

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re:)	
)	Chapter 11
WALTER ENERGY, INC., et al.,)	
Debtors,)	Case No. 15-02741 (TOM)
)	
)	(Jointly Administered)

**OBJECTION AND RESERVATION OF RIGHTS OF UNITED
STEELWORKERS TO DEBTORS’ MOTIONS FOR ENTRY OF (I) AN
ORDER AUTHORIZING THE DEBTORS TO ASSUME A RESTRUCTURING
SUPPORT AGREEMENT; AND (II) FINAL CASH COLLATERAL ORDER**

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union (“United Steelworkers” or “USW”), the collective bargaining representative of the employees of the Debtor Walter Coke Co. (“Walter Coke”) at its Birmingham facility,¹ by and through its undersigned counsel, hereby objects to (A) The Debtors’ Motion for an Order (A) Authorizing the Debtors to Assume a Restructuring Support Agreement and (B) Granting Related Relief [Docket No. 44] (the “RSA Motion”); and (B) entry of the final order (the “Final Cash Collateral Order”) approving The Debtors’ Motion for Entry of Interim and Final Orders Under 11 U.S.C. §§ 105, 361, 362, 363, 507 and 552, Bankruptcy Rules 20024001, 6003, 6004 and 9014 (A) (I) Authorizing Post-Petition Use of Cash Collateral,

¹ USW and Walter Coke are parties to a collective bargaining agreement dated March 25, 2010 through December 31, 2015 which sets terms and conditions of employment for USW-represented employees at the Birmingham facility. In addition, United Steelworkers and Walter Coke are parties to agreements under which Walter Coke provides retiree benefits within the meaning of Section 1114(a) of the Code, 11 U.S.C. § 1114(a), to former USW-represented employees, their surviving spouses or other eligible dependents. United Steelworkers is the authorized representative under Section 1114 of the former USW-represented employees, their surviving spouses or other eligible dependents who are owed retiree benefits under USW’s agreements with Walter Coke.



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(II) Granting Adequate Protection to Prepetition Secured Parties, and (III) Scheduling a Final Hearing; and (B) Granting Related Relief [Doc. No. 42] (the “Cash Collateral Motion,” and together with the RSA Motion, the “Motions”). In addition, as set forth below, USW reserves its rights with respect to any motion the Debtors might file to reject its collective bargaining agreement or modify its retiree benefit obligations.

OBJECTION AND RESERVATION OF RIGHTS

1. USW adopts the objections to the Motions submitted by the Official Committee Of Unsecured Creditors (the “Committee”),² as if fully set forth herein. Rather than rehearse those arguments, USW notes the following.

2. From the outset of this case, the Debtors have made clear their intent to seek material changes to its collective bargaining agreement with USW, as well as to reduce or eliminate obligations to USW-represented retirees, their spouses and dependents. These other post-retirement benefits (“OPEB”) include retiree health insurance obligations. As the Debtors’ Chief Financial Officer stated “the Debtors must obtain material concessions” from the USW and United Mineworkers of America “and otherwise reduce their existing and legacy labor and OPEB obligations” through consensual agreement or pursuant to Sections 1113 and 1114. Declaration of William G. Harvey in Support of First Day Motions, dated July 15, 2015 [Doc. No. 3] ¶ 116.

3. As the Committee notes, because of cross-default provisions the RSA Motion and the Cash Collateral Motion dictate a hurried restructuring (or forced sale). This process will be directed by, and work to the benefit of, the Debtors’ first lien secured lenders, leaving nothing for unsecured creditors, including USW-represented employees whose terms of employment the

² [Docs 555 and 556] (“UCC Objection”).

Debtors contend must be impaired. Indeed, the proposed plan includes no provision for post-petition financing of the Debtors continued operation. Other than the first lien lenders, the only parties who will benefit from these contemplated transactions are the Debtors' incumbent management who will receive up to 10% of the equity of the reorganized Debtors' under the terms of the Plan Term Sheet that is part of the RSA. RSA Motion, Exhibit B, Plan Term Sheet at p. 10 ("Management Incentive Plan and Other Employee Benefit Plans"). As the Committee has shown, these Motions seek relief contrary to law and should be denied.

4. These provisions are in tension with the Debtors' obligations under Sections 1113 and 1114 of the Code, 11 U.S.C. §§ 1113, 1114. The Motions dictate an abbreviated process for collective bargaining negotiations that will be controlled by the first lien lenders. As set out in the RSA Motion, the terms of any consensual agreement must be acceptable to the first lien lenders and must be reached by October 21, 2015, or a default will be triggered under the proposed Cash Collateral Order. RSA Motion at p. 9. For these reasons, the first lien lenders-- and not the Debtors -- will be the real counterparty in any labor negotiations with control over the substance of the negotiations but the timeline as well.

5. In addition to reducing the Debtors to cat's paw for the first lien lenders, the relief requested would also undermine the procedural protections of Sections 1113 and 1114. While in bankruptcy, the Debtors are subject to the requirements of Sections 1113 and 1114 of the Bankruptcy Code to the extent they seek to reject a collective bargaining agreement or modify retiree benefits. *See* 11 U.S.C. §§ 1113(a) (a collective bargaining agreement may be "assumed or rejected only in accordance with the provisions of this section") and 1114(e) (debtor "shall timely pay and shall not modify any retiree benefits" absent compliance with procedures under

Section 1114).³ These provisions detail procedural and substantive requirements that apply where a debtor seeks rejection of a labor agreement or modification of retiree benefits. 11 U.S.C. §§ 1113(b), (c), 1114(g), (h). *See generally In re Bruno's Supermarkets LLC*, Case No. 09-00634-BGC-1, 2009 WL 1148369 at *3-*4 (Bankr. N.D. Ala. April. 27, 2009); *In re Alabama Symphony Ass'n*, 155 B.R. 556, 573 (Bankr. N.D. Ala. 1993), *aff'd in part and rev'd in part on other grounds*, 211 B.R. 65 (N.D. Ala. 1996).

6. Under the compressed timeline dictated by the first lien lenders, USW will have only a minimal amount of time to seek, obtain and evaluate information relating to the Debtors' demands (which have not yet been made) and seek in good faith to negotiate a consensual resolution. Of course, "the entire thrust of § 1113 is to ensure that well-informed and good faith negotiations occur in the market place, not as part of the judicial process. Reorganization procedures are designed to encourage such a negotiated voluntary modification." *Bruno's Supermarkets, supra* 2009 WL 1148369 at *15 (quoting *New York Typographical Union No. 6 v. Maxwell Newspapers, Inc. (In re Maxwell Newspapers, Inc.)*, 981 F.2d 85, 90 (2d Cir.1992)). The relief sought in these Motions undermine the possibility of such a voluntary consensual agreement..

7. Should the Debtors seek revisions of the collective bargaining agreement or retiree obligations, they must do so in accordance with Sections 1113 or 1114. The milestones or other conditions dictated by the first lien lenders cannot be read to excuse the Debtors from any of those requirements. *See Am. Flint Glass Workers v. Anchor Resolution Corp.*, 197 F.3d 76,

³ Absent full compliance with the provisions for seeking modification of a labor agreement and obtaining court-authorized rejection, a collective bargaining agreement remains in full force and effect. *See* 11 U.S.C. §1113(f) (providing that "[n]o provision of [Title 11] shall be construed to permit a trustee to unilaterally terminate or alter any provision of a collective bargaining agreement prior to compliance with the provisions of this section."); 1113(b), (c).

81-82 (3d Cir. 1999) (debtor could not, under Section 1113(f), contractually bind itself to obtain a change in the CBA as a condition precedent to asset sale closing; any such change required compliance with the Section 1113 procedures).

8. Accordingly, in the event the Debtors seek modifications to the labor agreements or retiree benefit obligations, including by seeking Court-approved interim relief from or rejection of the agreements, the USW reserves all of its rights with respect to any such proceedings, including its rights under Section 1113 and 1114 to assert that the milestones in any cash collateral order or order approving assumption of the RSA cannot excuse the Debtors from full and independent compliance with any of their obligations under Sections 1113 or 1114.⁴

CONCLUSION

The Motions should be denied or should the Motions be granted in any respect, this Court should recognize USW's reservation of rights with respect thereto.

⁴ By such reservation of rights, USW does not waive or excuse the Debtors from any of their obligations under the collective bargaining agreements or Sections 1113 and 1114.

Dated: August 26, 2015

Respectfully submitted.

/s/ Glen M. Connor

Glen M. Connor
Richard P. Rouco
Quinn, Connor, Weaver, Davies
& Rouco, LLP
Two North Twentieth Building
2-20th Street North, Suite 930
Birmingham, Alabama 35203
Phone: (205) 870-9989
Fax: (205) 803-4143
gconnor@qcwdr.com

Richard M. Seltzer
Thomas N. Ciantra
Cohen, Weiss and Simon LLP
330 West 42nd Street
New York, New York 10036-6979
Phone: (212) 563-4100
Fax: (646) 473-8238
tciantra@cwsny.com

David Jury
Associate General Counsel
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy Allied Industrial
and Service Workers International Union
Five Gateway Center, Room 807 USW
Pittsburgh, Pennsylvania 15222
Phone: (412) 562-2400
Fax: (412) 562-2574
djury@usw.org

Counsel to United Steel, Paper and
Forestry, Rubber, Manufacturing, Energy
Allied Industrial and Service Workers
International Union

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2015, a true and correct copy of the foregoing was filed using the Court's CM/ECF system, which will notify and serve all persons and entities that have formally appeared and requested service in this case. Additionally, I hereby certify that a true and correct copy of the foregoing was served on the Standard Parties via electronic mail as follows:

Counsel for the Debtors:

Kelley Cornish
kcornish@paulweiss.com
Claudia R. Tobler
ctobler@paulweiss.com
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019
(212) 373-3000

Patrick Darby
pdarby@babco.com
Jay Bender
jbender@babco.com
BRADLEY ARANT BOULT CUMMINGS LLP
1819 Fifth Avenue North
Birmingham, Alabama 35203
(205) 521-8000

The Bankruptcy Administrator:

J. Thomas Corbett
Thomas_Corbett@alnb.uscourts.gov
Jon Dudeck
jon_dudeck@alnb.uscourts.gov
Bankruptcy Administrator
Northern District of Alabama
1800 5th Avenue North
Birmingham, Alabama 35203

Counsel to Administrative Agent for the Debtors' Prepetition Secured Credit Facility:

Scott Greissman
sgreissman@whitecase.com
WHITE & CASE LLP
1155 Avenue of the Americas
New York, New York 10036

Counsel for the Indenture Trustee for Each of the Debtors' Outstanding Bond Issuances:

Mark R. Somerstein
mark.somerstein@ropesgray.com
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, New York 10036-8706

Patricia Chen
patricia.chen@ropesgray.com
ROPES & GRAY LLP
Prudential Tower
800 Boylston Street
Boston, Massachusetts 02199-3600

Counsel to the Steering Committee of First Lien Creditors:

Ira Dizengoff
idizengoff@akingump.com
Kristine Manoukian
kmanoukian@akingump.com
AKIN GUMP STRAUSS
HAUR & FELD LLP
One Bryant Park
New York, New York 10036
(212) 872-8076

James Savin
jsavin@akingump.com
AKIN GUMP STRAUSS
HAUR & FELD LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 887-4000

Michael L. Hall
mhall@burr.com
D. Christopher Carson
ccarson@burr.com
BURR FORMAN
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203
(205) 251-3000

/s/ Glen M. Connor
Glen M. Connor