Labor Liabilities in Coal Bankruptcies

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Labor Issues in Coal Bankruptcies

• Quick stats:
  – US Coal industry in a deep depression
  – Unprecedented wave of bankruptcies of the largest producers, including:
    • Peabody Energy (E.D. Missouri 2016)
    • Arch Coal (E.D. Missouri 2016)
    • Patriot Coal (E.D. Virginia 2016)
    • Walter Energy (N.D. Alabama 2015)
    • Alpha Natural (E.D. Virginia 2015)
  – Labor-related liabilities, particularly legacy healthcare costs for retirees, can be substantial and unsustainable from current operational cash flow.
    • Ex., Patriot Coal had retiree benefit obligations of over $1.6 billion on account of 21,000 individuals despite having only 4,200 employees.
  – Bankruptcy is deployed as a tool to modify/eliminate some of these liabilities.
Labor Issues in Coal Bankruptcies

- Labor related liabilities generally:
  - Multi-employer CBA
    - National Bituminous Coal Wage Agreement (NBCWA) is the industry-wide CBA between the United Mine Workers of America (UMWA) and the Bituminous Coal Operators Association (BCOA).
    - The United Mine Workers of America Health and Retirement Funds (the "Funds") is a group of multi-employer plans that provide health and pension benefits to over 90,000 retired coal miners and their eligible dependents, including:
      - 1974 Pension Plan - provides pensions to eligible mine workers who retire, to those who become totally disabled as a result of a mine accident, and to the eligible surviving spouses of mine workers.
      - 1993 Benefit Plan - provides health benefits to certain eligible retired mine workers and disabled mine workers
  - Single-employer CBA
  - Coal Industry Retiree Health Benefit Act (Coal Act)
    - Intended to address the looming insolvency of trusts that were paying coal industry retiree health care costs and to address "orphan retirees" who were promised medical benefits by operators no longer in business.
      - Combined Benefit Fund
      - 1992 Benefit Plan
  - Black Lung Benefits Act
    - Provides benefits to coal miners affected by black lung disease
Labor Issues in Coal Bankruptcies

• **Debtor Can Modify/Terminate CBAs and Retiree Healthcare Benefits**
  
  In bankruptcy, debtors can unilaterally reject burdensome contracts. Courts generally defer to debtor's business judgment. The Bankruptcy Code sets a higher standard to modify or terminate CBAs (section 1113) and retiree benefits for union or non-union employees (section 1114).

• **Section 1113 Requirements – Modify CBAs**
  
  Under section 1113, Debtor must: (a) provide union with up-to-date information about the company, (b) make a formal proposal to modify the CBA, (c) meet and negotiate in good faith. The CBA can be rejected only if the bankruptcy court finds that, among other things,
  
  • the modifications are "necessary to permit the reorganization of the debtor";
  • the union refused to accept the proposal without good cause;
  • the balance of the equities clearly favors rejection of such agreement.
  
  Determining whether the proposed modification is "necessary to permit the reorganization of the debtor" is often the subject of dispute and litigation.
  
  • Some courts have held that "necessary" means essential to prevent liquidation. See *Wheeling-Pittsburgh Steel Corp. v. United Steelworkers of America*, 791 F.2d 1074 (3d. Cir. 1986).
  
  • Other courts have held that "necessary" means that the modifications will increase the likelihood of a successful reorganization. See *Truck Drivers Local 807 v. Carey Transportation Inc.* , 816 F.2d 82 (2d. Cir. 1987).

• **Section 1114 Requirements – Modify Retiree Benefits**
  
  Debtors can also modify retiree benefits so long as Debtor complies with Section 1114 of the Bankruptcy Code. Same requirements as Section 1113 above.
Labor Issues in Coal Bankruptcies

- Coal Act
  - The Coal Act generally:
    - Covers health benefits for retired employees and their dependents
    - Two categories of obligations
      - *provide healthcare benefits* for their own retirees and their dependents under the operator's healthcare benefit plan
      - *pay monthly premiums* to certain health care funds that were established by the Coal Act. These funds cover not only the operator's former employees but also the employees of operators that have gone out of business.
  - Debtors may terminate or modify Coal Act obligations in accordance with Section 1114.
  - But Coal Act *premiums* have generally been treated in bankruptcy as taxes with administrative expense priority status, although exceptions may exist.
  - Assets may be sold free and clear of past-due Coal Act premium obligations under § 363(f) of the Bankruptcy Code. See *Leckie Smokeless Coal Co.*
Labor Issues in Coal Bankruptcies

• Black Lung Act
  – Each coal mine operator must
    • Pay certain health and disability benefits to certain current and former employees who suffer from pneumoconiosis (black lung disease).
    • Pay an excise tax on coal sales
  – Miner files a claim with the Department of Labor (DOL). DOL investigates and assigns the liability to the "responsible operator" — likely the employer or a successor of the employer (which can include a buyer of the employer’s assets).
  – If the responsible operator files bankruptcy and cannot pay, the employee has an unsecured claim against that operator. However, the employee claim may be paid from the federal Black Lung Disability Trust Fund (the "Trust Fund"), established under the Tax Code.
  – The Trust Fund will then have a claim secured by a lien against such operator. The lien has the same priority as a federal tax lien. See 20 CFR 725.603(a) and (c)(1).
  – Coal operators are required to either self-insure or post a bond to secure their Black Lung obligations.
  – The Black Lung Act imposes personal liability on certain officers of the operator if such operator does not comply with its obligations to provide such security.
  – As a practical matter, these obligations can be expected to be paid in full in bankruptcy (e.g., Patriot Coal).
About the Speaker

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David M. Hillman is a partner at Schulte Roth & Zabel, where he practices in the areas of corporate restructuring and creditors’ rights litigation, with an emphasis on the representation of secured and unsecured creditors and other parties in Chapter 11 bankruptcy cases. He has recently represented TPG Specialty Lending Inc. as prepetition lender and DIP lender in the Chapter 11 case of Milagro Oil & Gas Inc., and Cerberus Capital Partners LP as a secured creditor in connection with the Chapter 11 case of RadioShack Corp., and he is currently representing an ad hoc group of equity holders in Republic Airways Holdings, Inc. and first lien noteholders and DIP lenders in the Chapter 11 case of Allied Systems Holdings in connection with intra-lender equitable subordination litigation. David has significant experience litigating issues involving solvency, valuation, plan confirmation, financing and cash collateral disputes, contested 363 sales, fraudulent transfers, preferences, equitable subordination, recharacterization, substantive consolidation, breach of fiduciary duty and similar disputes.

David is listed as a "leading individual" in bankruptcy/restructuring by Chambers USA, which noted that interviewees praised him as "wonderful to deal with," "very effective" and an "excellent litigator and strategist" who "thinks outside the box." Chambers also noted that David is "an excellent counselor for distressed situations with significant litigation elements" and "a terrific, conscientious and focused lawyer." He has also been recognized as a leader in his field by New York Super Lawyers. A member of the American Bankruptcy Institute, David speaks frequently on bankruptcy-related topics including recent decisions affecting secured creditor rights and preparing creditors for bankruptcy risks. His articles have appeared in Practising Law Institute’s 28th Annual Current Developments in Bankruptcy & Reorganization, Aspen Law & Business’ Bankruptcy Litigation Manual, Pratt’s Journal of Bankruptcy Law, Westlaw Journal – Bankruptcy, Reorg Research, Law360, The Bankruptcy Strategist, Bankruptcy Court Decisions and NYU Journal of Law and Business. David received his J.D., cum laude, from Albany Law School, where he was associate editor of the Albany Law Review, and his B.A., cum laude, from New York State University at Oneonta.