

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

IN RE:)
)
BEAR RIDGE MINING, INC.) **CASE No. 00-00708**
)
Debtor.) **CHAPTER 11**

MEMORANDUM DECISION

The matter before the Court is the Debtor’s Final Report and Application for Final Decree to which one of its secured creditors has objected. For the reasons noted below, the Court will overrule the objection and grant the Application.

FINDINGS OF FACT

The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on March 8, 2000. “Trustees UMWA Pension Funds” was listed as a secured creditor on Schedule D in the amount of \$170,754.00 secured by equipment having a purported value of \$413,000. The schedules only listed the UMWA Trustees in only one place, Schedule D. The Trustees of the UMWA 1950 Pension Plan filed a Proof of Claim on May 22, 2001 for a “contingent claim for withdrawal liability from multiemployer pension plan pursuant to 29 U.S.C. Section 1381 et. seq.” in the amount of \$5,741.25 as an unsecured nonpriority claim. On the same date the Trustees of the UMWA 1974 Pension Plan filed a Proof of Claim for a “contingent claim for withdrawal liability from multiemployer pension plan pursuant to 29 U.S.C. Section 1381 et. seq.” in the amount of \$285,729.90 as an unsecured nonpriority claim. Neither the Debtor nor any party in interest has objected to the UMWA claims. On March 30, 2000, Pamira Shah Matteis filed a Notice of Appearance and Request for Notices and Service of

Papers as counsel for the UMWA Health & Retirement Funds¹, which also requested that all notices also be served upon local counsel, John E. Kieffer, Esquire.

The 2nd Amended Plan of Reorganization was filed on July 20, 2001. The plan listed the UMWA Trustees' claim as a claim which was not impaired, with the Debtor to continue to make its regular monthly payment under the terms of its promissory notes and other obligations with UMWA Trustees. According to the Plan, that debt, along with the Trustees' liens, passed through the Chapter 11 without any impairment or change. The Order confirming the Debtor's second plan of reorganization was entered on October 25, 2001. The Order confirming the plan provided for supervision over the Debtor as follows: "Jurisdiction is hereby retained for a period of eighteen (18) months or until entry of a final decree, whichever comes first, to resolve disputed claims and such other matters in consummation of the plan as may be appropriate." The Order also provided that the Debtor shall apply for a final decree twelve months after confirmation. The Certificate of Service for the confirmation order indicates that Pamira S. Matteis and John Kieffer were served with a copy of the order by first class mail.

On August 31, 2005, the Debtor filed its Final Report and Application for Final Decree, which was set for hearing on October 5, 2005. The Application provides that "[a]bsent written objections filed no later than five (5) days before the hearing an order approving the final report and closing the case may be entered without further notice or hearing." On September 30, 2005, the United States Trustee filed an objection to the Debtor's Application as the Debtor had not filed a quarterly operating report for the 2nd quarter of 2005. No other party in interest

¹ UMWA 1950 Pension Trust, UMWA 1974 Pension Trust, UMWA Cash Deferred Savings Plan of 1988, UMWA 1992 Benefit Plan, UMWA 1993 Benefit Plan, and UMWA Combined Benefit Fund.

filed any objection. On October 5, 2005, a hearing was held and at the request of counsel for the Debtor and for the United States Trustee the matter was continued to November 9, 2005. On November 9, 2005, a hearing was held and again at the request of counsel the matter was continued to November 22, 2005. On November 22, 2005, a hearing was held and yet again at the request of counsel the matter was continued to December 7, 2005. On December 7, 2005, a hearing was held and for the first time John E. Kieffer, Esq. on behalf of the UMWA Benefit Plans objected to the Motion for Final Decree. Mr. Kieffer did not file a written objection to the Application on behalf of the UMWA, nor had he noted an objection on the record at any of the prior hearings regarding this matter or any objection to the continuances granted by the Court at the request of counsel. At the December 7th hearing, counsel for the United States Trustee stated her intention to withdraw the United States Trustee's Objection to the Application. The matter was taken under advisement by the Court on December 7, 2005.

The certificate of service attached to the Final Report and Application for Final Decree certifies that a copy of said document was mailed by first class mail on August 31, 2005 to all parties in interest. On December 13, 2005, counsel for the Debtor, upon the request of the Court, filed an Amended Certificate of Mailing which certified that a true copy of the Debtor's Motion for Entry of Final Decree and all orders entered subsequently thereto were mailed via first class mail to all parties listed on the Debtor's mailing matrix on the date specified in each document. John E. Kieffer, Esq. and Pamire [sic] Shah Matteis, Esq. are both listed on the mailing matrix. The certificates of mailing given by Mr. Copeland's office for the various orders of continuance only listed the Debtor and the United States Trustee and made no mention of any alleged service on those listed on the mailing matrix. The Amended Certificate of Service does

not indicate that either Zurich American Insurance Co., which subsequent to plan confirmation was granted an administrative claim for insurance coverage it provided to the Debtor, the unpaid balance of which according to the Final Report and Application remains \$67,527.83, or Zurich American's counsel of record, was served with such pleading.

In his letter to the Court, dated December 22, 2005, Mr. Kieffer stated: "My records reflect that I did receive a 'final report and application for final decree' from Bob Copeland bearing service date of August 31st, setting a hearing for October 5th." His letter further states: "I appeared on October 5th, only to find that the case had been continued until November 8th. I received no further notice or order on the scheduling of this hearing and learned about the December 6th hearing only the day before from my client." The Court finds that Ms. Matteis and Mr. Kieffer were properly served with the Application. In his letter, Mr. Kieffer stated his objection to the Application as follows:

Again, our concern with closing the case is that the debtor has not performed his plan obligations to the Funds, which were listed as unimpaired under the plan, and has repeatedly withheld the collateral under representations that it would be sold for the Funds' account, or that in the alternative, while the collateral was being used at or about the mine sit for equipment recovery, etc., tat we would be paid from the proceeds of real estate sales. It is our position that the case should remain open long enough for these matters to be resolved.

See Letter from John E. Kieffer, Esq. to William F. Stone, Jr. dated December 22, 2005.

At no point during the almost four years between the date of the confirmation order and the date of the filing of the Application have the UMWA Trustees filed any motion or adversary proceeding with respect to the Debtor's activities regarding its debt to them or any other matter.

The Court entered an Order on December 30, 2005 providing that its subsequent ruling on the Application would be *nunc pro tunc* as of December 30, 2005.

CONCLUSIONS OF LAW

Jurisdiction

This Court has jurisdiction of this proceeding by virtue of the provisions of 28 U.S.C. §§ 1334(a) and 157(a) and the delegation made to this Court by Order from the District Court on July 24, 1984. This is a “core” bankruptcy matter pursuant to 28 U.S.C. § 157(b)(2)(A).

Service

Based on its finding of fact that the Application was served upon both counsel specified in the Notice of Appearance filed on behalf of the various Trustees of the various UMWA benefit plans, the Court concludes that such creditors had proper notice of the Application. The Court also concludes that they likewise had notice of the confirmation order and therefore of course of its provisions. Although their counsel probably did not receive copies of the continuance orders, they were certainly aware that the Application was pending before the Court and could have filed a written objection to confirmation or simply tracked the relevant docket entries electronically through the Court’s CM/ECF System.

Application for Final Decree

Entry of a final decree in a Chapter 11 bankruptcy case is not synonymous with a

determination that everything which might have been completed in the case has been completed and that everything provided for in the plan of reorganization has been accomplished. Federal Rule of Bankruptcy Procedure 3022 provides as follows: “After an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.” The Advisory Committee’s comments to the 1991 revision to that Rule indicate that the Rule is intended to make clear “that a decree closing a case has administrative rather than jurisdictional consequences.” Chapter 11 Theory and Practice § 32.07 at p. 32:10. Quotation from the Committee’s Commentary is helpful:

Entry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Factors that the court should consider in determining whether the estate has been fully administered include (1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

The court should not keep the case open only because of the possibility that the court’s jurisdiction may be invoked in the future. A final decree closing the case after the estate is fully administered does not deprive the court of jurisdiction to enforce or interpret its own orders and does not prevent the court from reopening the case for cause pursuant to § 350(b) of the Code. For example, on motion of a party in interest, the court may reopen the case to revoke an order of confirmation procured by fraud under § 1144 of the Code. If the plan or confirmation order provides that the case shall remain open until a certain date or event because of the likelihood that the court’s jurisdiction may be required for specific purposes prior thereto, the case should remain open until that date or event.

Fed. R. Bankr. P. 3022 advisory committee’s note (1991).

The Debtor’s Final Report indicates that during the pendency of the case a total of \$104,655.60 was paid to “UMWA” upon a total purported secured claim of \$170,754. This

Report does not provide an itemization of the unsecured claims paid but simply states that all of the \$54,625.42 of accounts payable required under the Plan to be paid in fact had been paid. The Court is unable to reconcile the two unsecured proofs of claim filed by the UMWA Plans' Trustees with the Debtor's bankruptcy schedules or plan of reorganization, which both indicate only one debt and that being a secured one. The Court is unsure whether these claims were in addition to the secured obligation reported in the bankruptcy schedules or a different statement of the same claim. Of course the UMWA Trustees were under no obligation to file any proof of claim with respect to their secured claim as the Plan proposed to pay it in full when due and without modification of its terms. The confirmed Plan provided that unsecured general creditors would receive 25% of their claims. In any case the docket does not reflect that any objection to the UMWA Plans' claims has been filed by the Debtor or any other party in interest. Accordingly, such claims are deemed allowed. 11 U.S.C. § 502(a).

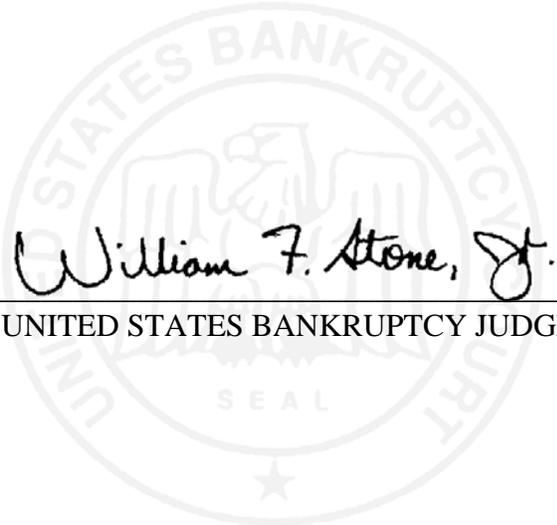
It is Mr. Kieffer's contention that the case should remain open long enough for his clients to be paid. He complains that the Debtor has made promises to his clients during this case that have not been fulfilled. He identifies no specific controversy, however, which should be put before the Court for determination. There is no pending motion or adversary proceeding in this case other than the present Application and counsel makes no assertion that his clients have any present wish or intention to initiate one now. Neither does he note any specific objection to the Debtor's Final Report accompanying the Application. The entry of a final decree certainly does not prevent the UMWA Trustees from enforcing their security rights against the Debtor's equipment serving as collateral for its obligations to them or from asserting claims against any remaining proceeds of the real estate settlement reached by the Debtor with a

former bookkeeper. Simply the fact that all creditors have not been paid is not reason by itself to refuse to enter a final decree when substantial distributions to creditors have commenced and been paid. The entry of a final decree closing the administration of the case does not diminish any rights the UMWA Plans have and does not prevent the re-opening of the case in the future should good cause be shown. *See In re Jay Bee Enterprises, Inc.*, 207 B.R. 536, 538 (Bankr. E.D. Ky. 1997). The Court concludes that the UMWA Plans Trustees had more than four years after the confirmation order was entered in this case to initiate any contested matters or adversary proceedings they or their counsel thought appropriate before the date of the December 6, 2005 hearing at which Mr. Kieffer appeared. That period was more than two years beyond the date specified in the confirmation order for entry of a final decree. If there is some particular matter which they wished to bring before this Court regarding their claims against the Debtor, the Trustees have only themselves to blame for failing to do so in a timely manner.

CONCLUSION

Based upon the above authorities, the Court concludes that the Application should be granted and the case be closed as of December 30, 2005. An order to such effect will be entered contemporaneously with the signing of this Decision.

This 20th day of January, 2006.

The seal of the United States Bankruptcy Court is visible in the background. It is a circular emblem with the words "UNITED STATES BANKRUPTCY COURT" around the perimeter. In the center, there is an eagle with its wings spread, perched on a shield. Below the eagle, the word "SEAL" is written, and a five-pointed star is positioned at the bottom center of the seal.

William F. Stone, Jr.

UNITED STATES BANKRUPTCY JUDGE