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U.S. Supreme Court Declines to Disturb the Fifth Circuit's Ruling That Coal Miner Retiree Health Benefits Can Be Modified in Bankruptcy

On May 24, 2021, the U.S. Supreme Court denied a certiorari petition filed by the trustees of certain United Mine Workers of America benefit plans (the "Trustees") arising out of the bankruptcy of Westmoreland Coal Company, which filed for chapter 11 protection in October 2018.[1] The Supreme Court's decision not to grant certiorari leaves undisturbed an August 2020 ruling by the U.S. Court of Appeals for the Fifth Circuit[2] that held Westmoreland could use section 1114 of the Bankruptcy Code[3] to modify its coal miner retirees' health care benefits, notwithstanding the protections afforded to those retirees under the Coal Industry Retiree Health Benefit Act (the "Coal Act").[4] As a result of that ruling, Westmoreland was able to consummate the sale of substantially all of its assets to a successor entity through its chapter 11 plan, free of its obligations under the Coal Act, which obligations became the responsibility of benefit funds established by the United States government.

Background

At issue in the case was the interaction of the Coal Act and section 1114 of the Bankruptcy Code, both of which were enacted by Congress to protect retiree health care benefits. The Coal Act was passed in 1992, during a time when many coal companies were defaulting on benefit obligations to their retirees. The purpose of the Act is to ensure that retired coal miners have access to company-provided health care by requiring coal companies to pay premiums to fund retirees' benefits and limiting subsequent interference with those obligations. Section 1114 of the Bankruptcy Code, enacted in 1988, requires a debtor to maintain the benefits it was paying to retirees prepetition unless they are modified through either an agreement between the debtor and the retirees' representative or a court order. To obtain a court-ordered modification, a debtor must show that it has first negotiated in good faith with the retirees' representative regarding proposed modification, and that the representative has refused the debtor's proposal "without good cause."[5] If such a showing is made, the bankruptcy court "shall" order the

1 *See In re: Westmoreland Coal Co.*, Case No. 18-35672 (S.D. Tex).

2 *See Holland v. Westmoreland Coal Co. (In re: Westmoreland Coal Co)*, 968 F.3d 526 (5th Cir. 2020).

3 11 U.S.C. § 1114.

4 Coal Industry Retiree Health Benefit Act of 1992 (Coal Act). Pub. L. No. 102-486, 106 Stat. 2776.

5 11 U.S.C. § 1114(f), (g)(1)–(2).

modification if it "is necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably, and is clearly favored by the balance of the equities."[6]

To preserve itself as a going concern, Westmoreland agreed to sell substantially all of its assets to its prepetition first lien lenders pursuant to a chapter 11 plan (following an auction process that did not yield any other qualified bidders). The sale was conditioned on the termination of any successor liability for Westmoreland's Coal Act obligations, which required Westmoreland to seek to modify those obligations under section 1114. In a preemptive move, the Trustees asked the bankruptcy court for a declaratory judgment that Coal Act obligations are not "retiree benefits" and thus could not be modified under section 1114.

Coincidentally, before the Westmoreland bankruptcy court ruled on the Trustees' request, the U.S. Court of Appeals for the Eleventh Circuit issued an opinion in *In re Walter Energy, Inc.*[7] dealing with precisely the same legal question raised by the Trustees. The Eleventh Circuit determined that Coal Act obligations were "retiree benefits" and so could be modified under section 1114.[8] Two days later, the Westmoreland bankruptcy court reached the same conclusion as the Eleventh Circuit, and certified its judgment for direct appeal to the Fifth Circuit.[9]

The *Westmoreland* Decision

The Fifth Circuit affirmed the decision of the bankruptcy court. The Fifth Circuit first undertook a textual analysis of whether Coal Act obligations are "retiree benefits" under section 1114, which requires that such obligations are payments "under any plan, fund, or program . . . maintained . . . in whole or in part" by Westmoreland prior to filing bankruptcy.[10] The court concluded that Westmoreland "maintained" the benefits, "in part, by funding them" and that they were "maintained" by Westmoreland prior to the bankruptcy petition.[11] Thus, Coal Act obligations are "retiree benefits" under section 1114, the court held. The court then addressed whether a conflict exists between the Coal Act and the Bankruptcy Code, such that section 1114 would not apply to obligations under the Coal Act. On that issue, the court found "no clear indication that Congress intended to carve out Coal Act obligations from Section 1114's reach," such that "section 1114 can apply to those obligations."[12] The Fifth Circuit noted that its decision in was "in line with every other court that has answered the question," including the Eleventh Circuit in *Walter Energy*.[13]

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6 *Id.* § 1114(g)(3).

7 911 F.3d 1121, 1126–32 (11th Cir. 2018).

8 In *Walter Energy*, the debtor sought to sell substantially all of its assets free and clear of its Coal Act obligations pursuant to section 363 of the Bankruptcy Code, rather than through a chapter 11 plan sale, as was the case in *Westmoreland*. Notably, among the arguments advanced by the objecting plan trustees in *Walter Energy* was that section 1114 could not be used to modify the debtor's Coal Act obligations in the section 363 sale context because section 1114 requires that the modifications "are necessary to permit the reorganization of the debtor," 11 U.S.C. § 1114(g)(3), and "when a debtor intends to sell its assets as a going concern in a [section] 363 sale the debtor is not engaged in a reorganization." *Walter Energy*, 911 F.3d at 1153. The Eleventh Circuit disagreed, holding that "for purposes of [section] 1114(g), a [c]hapter 11 liquidation [(including through a section 363 sale)] qualifies as a type of 'reorganization' … [such that] the bankruptcy court had the authority to terminate Walter Energy's obligation to pay premiums to the [f]unds." *Id.* at 1156. The Eleventh Circuit's holding expressly making section 1114(g) applicable in the section 363 sale context (in addition to the chapter 11 plan context) is significant because it provides debtors (and prospective purchasers) with clarity that a bankruptcy court can order the modification or elimination of a wide range of retiree benefit obligations (not just Coal Act obligations) through a section 363 sale.

9 *In re Westmoreland Coal Co.*, No. 18-35672, 2018 WL 6920227 (Bankr. S.D. Tex. Dec. 29, 2018).

10 11 U.S.C. § 1114(a).

11 *Westmoreland*, 968 F.3d at 539.

12 *Id.* at 543.

13 *Id.* at 529. *See also Walter Energy*, 911 F.3d at 1142-51; *In re Alpha Nat. Res., Inc.*, 552 B.R. 314, 326–28 (Bankr. E.D. Va. 2016); *In re Horizon Nat. Res. Co.*, 316 B.R. 268, 274–79 (Bankr. E.D. Ky. 2004).

Conclusion

The Supreme Court's denial of certiorari in *Westmoreland* leaves undisturbed a line of cases reaching back for over fifteen years holding that Coal Act obligations can be modified in chapter 11 cases. Importantly, even if a bankruptcy court orders the modification of Coal Act obligations, retirees will continue to receive benefits they were promised, but the costs of those benefits will be borne by the government benefit funds established for this purpose, rather than the debtors' estates (or their buyers).

As a result, chapter 11 remains a viable tool for coal companies to restructure their legacy retiree liabilities, including statutory Coal Act obligations. This may be an important consideration for coal companies seeking to maximize value in light of the changing landscape and the challenging economic realities facing the coal industry.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Jacob A. Adlerstein
+1-212-373-3142
jadlerstein@paulweiss.com

Paul M. Basta
+1-212-373-3023
pbasta@paulweiss.com

Brian Bolin
+1-212-373-3262
bbolin@paulweiss.com

Robert Britton
+1-212-373-3615
rbritton@paulweiss.com

Kelley A. Cornish
+1-212-373-3493
kcornish@paulweiss.com

Alice Belisle Eaton
+1-212-373-3125
aeaton@paulweiss.com

Brian S. Hermann
+1-212-373-3545
bhermann@paulweiss.com

Kyle J. Kimpler
+1-212-373-3253
kkimpler@paulweiss.com

Alan W. Kornberg
+1-212-373-3209
akornberg@paulweiss.com

Elizabeth R. McColm
+1-212-373-3524
emccolm@paulweiss.com

Andrew M. Parlen
+1-212-373-3141
aparlen@paulweiss.com

Andrew N. Rosenberg
+1-212-373-3158
arosenberg@paulweiss.com

Jeffrey D. Saferstein
+1-212-373-3347
jsaferstein@paulweiss.com

John Weber
+1-212-373-3656
jweber@paulweiss.com

Associate Neal Paul Donnelly contributed to this client memorandum.