

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

In re:) Chapter 11
)
Blackjewel, L.L.C., *et al.*,) Case No. 19-30289
)
Debtors.¹) (Jointly Administered)

**DEBTORS' EMERGENCY MOTION, PURSUANT TO SECTION 363
OF THE BANKRUPTCY CODE, TO TRANSFER CERTAIN
EASTERN PERMITS AND RECLAMATION OBLIGATIONS TO
AN AFFILIATE OF FM COAL, LLC OR ITS DESIGNEE**

Blackjewel, L.L.C., and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases, hereby move this Court for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to section 363 of the Bankruptcy Code, authorizing the Debtors to transfer 135 of their remaining eastern mining permits (collectively, the “Eastern Permits”) and all of the reclamation liabilities associated therewith to an affiliate of FM Coal, LLC or its designee (the “Purchaser”), which is an affiliate of the parent of the purchaser of the Debtors’ western assets (the “Western Assets”), Eagle Specialty Materials, LLC (“ESM”). In support of this emergency motion, the Debtors respectfully state as follows:

REQUEST TO APPROVE TRANSFER TO ESM

1. Last week, the Court approved the sale of the Debtors’ Western Assets to ESM [Docket No. 1187]. The Debtors and ESM have been working diligently toward a closing of that sale early this week. One of the requirements for the ESM sale to close, however, is that ESM must

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: Blackjewel, L.L.C. (0823); Blackjewel Holdings L.L.C. (4745); Revelation Energy Holdings, LLC (8795); Revelation Management Corporation (8908); Revelation Energy, LLC (4605); Dominion Coal Corporation (2957); Harold Keene Coal Co. LLC (6749); Vansant Coal Corporation (2785); Lone Mountain Processing, LLC (0457); Powell Mountain Energy, LLC (1024); and Cumberland River Coal LLC (2213). The headquarters for each of the Debtors is located at 1051 Main Street, Milton, West Virginia 25541-1215.

obtain replacement bonding to guarantee the reclamation obligations associated with the Western Assets.

2. Over the weekend, the Debtors were informed by ESM for the first time that Lexon Insurance Company and Sompo International Insurance (collectively, “Lexon”), the parties that will provide ESM’s bonding for the Western Assets going forward, are requiring that an affiliate of ESM’s corporate parent accept a transfer of the Eastern Permits and all attendant reclamation obligations. The reclamation obligations associated with the Eastern Permits are currently guaranteed by approximately \$100 million of bonding provided by Lexon. Because Lexon is limited in the amount of bonding exposure it can have with a single company, it is also requiring that a replacement surety be secured² for the Eastern Permits before it can finalize new bonding for the Western Assets.

3. Subject to the approval of this Court, the Purchaser, an affiliate of ESM’s parent, will acquire the Eastern Permits and assume the associated reclamation obligations so that ESM can obtain the bonding needed to close the sale of the Western Assets, which is now expected to take place on Wednesday, October 9, 2019. As noted above, the reclamation obligations under the Eastern Permits are guaranteed by approximately \$100 million of bonding provided by Lexon. As the Court is aware, the Debtors have generally calculated the reclamation obligations underlying a particular permit as a function of the amount of the bonding. Thus, the Debtors believe the Eastern Permits have no residual value and instead represent very substantial reclamation liabilities of their

² A replacement surety for the Eastern Permits has been identified and the appropriate documentation is in process.

estates. Indeed, if the Purchaser did not acquire the Eastern Permits, the Debtors would have likely sought authority to surrender such permits to the appropriate state authorities.

4. Even though the acquisition of the Eastern Permits and the assumption of the reclamation liabilities was not previously contemplated as part of the sale of the Western Assets, Lexon's requirement and the Purchaser's willingness to take transfer of the Eastern Permits will provide a significant benefit to the Debtors and their estates and will meaningfully reduce the claims pool in these chapter 11 cases. Given that the Eastern Permits have no value and that, with one limited exception, no party previously sought to acquire such permits,³ the Debtors believe it is indisputable that authorizing the Purchaser to acquire the Eastern Permits is in the best interest of their estates and represents a sound exercise of their business judgment. Accordingly, the Debtors request that the Court enter an order, on an *ex parte* basis to the extent the Court is willing to do so, approving the transfer of the Eastern Permits to the Purchaser so that the sale of the Debtors' Western Assets to ESM can close no later than Wednesday, October 9, 2019.⁴ If the Court determines to schedule a hearing on the Motion, the Debtors respectfully request a telephonic hearing at the earliest opportunity.

5. The Debtors understand and appreciate that approving the relief requested in this emergency motion on an extremely expedited or even *ex parte* basis is unusual. To mitigate against this concern, on Sunday, October 6, 2019, the Debtors contacted counsel to (i) the Official Committee of Unsecured Creditors (the "Committee"), (ii) the Office of the United States Trustee for the Southern District of West Virginia (the "U.S. Trustee"), (iii) Riverstone Credit Partners –

³ The Debtors previously received an offer of \$10,000 to purchase one of the 135 permits being transferred to the Purchaser pursuant to this motion. The Debtors did not find that offer acceptable and chose not to move forward. No other offers have been received for any of the permits the Debtors are now seeking to transfer to the Purchaser.

⁴ The Debtors sincerely regret the emergency nature of the relief sought. However, as noted above, the issues presented materialized for the first time this weekend and materially affects the Debtors' ability to close the ESM sale transaction.

Direct L.P. (“Riverstone”), (iv) United Bank, (v) the Office of the United States Attorney for the Southern District of West Virginia (the “U.S. Attorney”), and (vii) Campbell County, Wyoming, to advise those parties of the need for this emergency motion and asking for confirmation that each party had no objection to the requested relief. As of the filing of this emergency motion, the Debtors received responses from the Committee, Riverstone, United Bank and Campbell County, Wyoming indicating they have no objection to the transfer of the Eastern Permits. The U.S Trustee and the U.S Attorney had not indicated their position at the time of filing, but also had not indicated an objection to the relief requested.

NOTICE

6. The Debtors, with the assistance of their claims and noticing agent, will provide notice of this motion by email and/or fax to: (i) the Office of the United States Trustee for the Southern District of West Virginia, (ii) the Debtors’ prepetition secured lenders, (iii) the creditors appearing on the Debtors’ consolidated list of top 30 unsecured creditors, (iv) the Office of the United States Attorney for the District of West Virginia, (v) the Internal Revenue Service, (vi) any local, state, or federal agencies that regulate the Debtors’ businesses, (vii) counsel to Riverstone Credit Partners – Direct, L.P., Bailey & Glasser LLP, (viii) counsel to United Bank, Inc., Steptoe & Johnson PLLC, (ix) counsel to The Official Committee of Unsecured Creditors, Whiteford Taylor & Preston, LLP, and (x) all parties requesting notices pursuant to Bankruptcy Rule 2002.

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WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as is just.

DATED: October 7, 2019

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EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

In re:) Chapter 11
)
Blackjewel, L.L.C., *et al.*,) Case No. 19-30289
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Debtors.¹) (Jointly Administered)

**ORDER GRANTING DEBTORS' EMERGENCY MOTION PURSUANT
TO SECTION 363 OF THE BANKRUPTCY CODE TO
TRANSFER CERTAIN EASTERN PERMITS AND RECLAMATION
OBLIGATIONS TO AN AFFILIATE OF FM COAL OR ITS DESIGNEE**

Upon the emergency motion (the "Emergency Motion") of the above-captioned Debtors² for entry of an order pursuant to section 363 of the Bankruptcy Code authorizing the Debtors to transfer the Eastern Permits and all associated reclamation obligations to an affiliate of FM Coal, LLC or its designee (the "Purchaser"), all as more fully set forth in the Emergency Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court

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² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed in the Emergency Motion.

having found that venue of this proceeding and the Emergency Motion in this District is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Emergency Motion having been given under the circumstances; and this Court having found that good and sufficient cause exists for the relief granted by this Order;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Emergency Motion is GRANTED.
2. Pursuant to section 363 of the Bankruptcy Code, the Debtors are authorized to transfer the Eastern Permits and all associated reclamation obligations to the Purchaser and to enter any other documentation necessary to effectuate the transfer. The Purchaser shall assume all reclamation obligations associated with the Eastern Permits and the Debtors shall have no further liability of any kind with respect to the Eastern Permits or the attendant reclamation obligations.
3. This Order is without prejudice to the Debtors' right to request an additional order(s) to assist with the closing of the sale of the Debtors' Western Assets to ESM.
4. For the avoidance of doubt, the Purchaser is not acquiring any equipment of the Debtors pursuant to this Order upon which United Bank asserts a lien, claim or interest (the "United Collateral"). The Purchaser shall permit United Bank (subject to the requirements of the Bankruptcy Code) or the Debtors reasonable ingress, egress and regress to its real properties necessary to retrieve the United Collateral.
5. Nothing in this Order or any documentation related to the transfer of the Eastern Permits releases, discharges, nullifies, precludes, or enjoins the enforcement of any environmental liability to a Governmental Unit or any police or regulatory liability (including, but not limited to, reclamation and mitigation and any associated long term protection requirements) to a Governmental Unit that any entity would be subject to as owner, lessee, permittee, controller or

operator of the Purchased Assets after the closing. Nothing in this Order or the Sale Agreement authorizes the transfer or assignment to the Purchaser of any governmental (a) license, (b) permit, (c) registration, (d) authorization, (e) lease or (f) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements under non-bankruptcy law governing such transfers or assignments. Notwithstanding the foregoing sentence, nothing in this Order shall: (i) be interpreted to deem the Purchaser as the successor to the Debtors under any successor liability doctrine with respect to any liabilities under environmental statutes or regulations for penalties for days of violation prior to the closing or for liabilities relating to off-site disposal of waste by the Debtors prior to the closing; (ii) create for any Governmental Unit any substantive right that does not already exist under law; or (iii) be deemed or construed to be an admission of liability by the Debtors. Notwithstanding anything to the contrary in the Sale Documents, this paragraph shall expressly supersede and control to the extent that any other provision in this Order or the documentation related to the transfer of the Eastern Permits conflicts with the terms of this paragraph. Nothing in this Order or any documentation related to the transfer of the Eastern Permits divests any tribunal of any jurisdiction that it may have under police or regulatory law to interpret this Order or to adjudicate any defense asserted under this Order.

6. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

7. Notwithstanding the possible applicability of Bankruptcy Rules 4001(a)(3), 6004(h), 7062, 9014 or otherwise, this Order shall be immediately effective and enforceable upon its entry.

8. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Presented By:

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