

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

**IN RE:** **CHAPTER 11**  
**BLACKJEWEL, L.L.C., ET AL.,** **CASE NO. 3:19-BK-30289**  
**DEBTORS.**

**ORDER APPROVING THE JOINT EX PARTE MOTION OF THE DEBTORS AND  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN  
ORDER PURSUANT TO BANKRUPTCY RULE 2004 AUTHORIZING  
EXAMINATIONS AND WRITTEN DISCOVERY DIRECTED TO UNITED BANK**

Pending before the Court is the *Joint Motion of the Debtors and Official Committee of Unsecured Creditors for Entry of an Order Pursuant to Bankruptcy Rule 2004 Authorizing Examinations and Written Discovery Directed to United Bank* (Doc. No. 1723).<sup>1</sup> For the reasons stated *infra*, the undersigned **GRANTS** the *Joint Motion* and **OVERRULES** the objections of Mr. Hoops and the Hoops-Related Entities and Hoops-Related Individuals (Doc. Nos. 1761, 1918).<sup>2</sup>

**Procedural History**

On March 13, 2020, Judge Frank W. Volk referred the *Joint Motion of the Debtors and Official Committee of Unsecured Creditors for Entry of an Order Pursuant to Bankruptcy Rule 2004 Authorizing Examinations and Written Discovery Directed to United Bank* (Doc. No. 1723) to the undersigned for determination. Since then, numerous creditors and/or parties in interest, namely, Jeffery A. Hoops; entities Genesis Trucking, LLC, Lexington Coal Royalty Company,

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<sup>1</sup> The Debtors in these chapter 11 cases are as follows: Blackjewel, L.L.C.; Blackjewel Holdings L.L.C.; Revelation Energy Holdings, LLC; Revelation Management Corporation; Revelation Energy, LLC; Dominion Coal Corporation; Harold Keene Coal Co. LLC; Vasant Coal Corporation; Lone Mountain Processing, LLC; Powell Mountain Energy, LLC; and Cumberland River Coal LLC. Together with the Official Committee of Unsecured Creditors (the “Committee”), the undersigned will simply refer to all these parties/entities as the “Debtors” for the sake of simplicity.

<sup>2</sup> Again, for the sake of simplicity, the undersigned refers to these individuals and entities collectively as “Hoops Parties”.

LLC, Grand Patrician Resort, LLC, Triple H Real Estate, LLC, Black Diamond Insurance Group, LLC, Clearwater Investment Holdings, LLC, Hoops Dynasty Trust, Clearwater Trust, JBLCO, LLC<sup>3</sup>, Active Medical, LLC, Forrest Machine, LLC, Blackjewel Trust, Revelation Energy Trust, Walls & Associates, PLLC, Triple H Aviation, LLC, Lexington Coal Company, LLC, Construction & Reclamation Services, LLC, Prep Plant Solutions, LLC, Lexington Coal Trust<sup>4</sup>; and individuals Patricia A. Hoops, Jeffery A. Hoops, II, Jeremy A. Hoops, Joshua A. Hoops, Jessica Hoops, Lesley Hoops, Amanda Hoops, and Brent T. Walls have filed their *Response* in opposition (Doc. No. 1761).

Following a telephone conference concerning the *Joint Motion* on March 19, 2020, and pursuant to the written agreement between the Debtors and United Bank, the undersigned ordered United Bank to begin rolling disclosures on March 27, 2020 and to continue making its disclosures until completed every other Friday thereafter (i.e., April 10, 2020; April 24, 2020; May 8, 2020; May 22, 2020; etc.).<sup>5</sup> (Doc. No. 1863) Because Counsel for Debtors announced he would file additional pleadings regarding Mr. Hoops' statements about certain accounts held by United Bank<sup>6</sup> that were not in his name, and represented that these additional pleadings may assist the Court in resolving the discovery matters raised in the *Joint Motion* as it relates to United Bank, the undersigned further ordered a briefing schedule. (Id.) In accordance thereto, on April 10, 2020, the Debtors filed their *Supplemental Memorandum* (Doc. No. 1901) in support of their *Joint Motion*, to which the Hoops Parties filed their *Supplemental Response* in opposition (Doc. No. 1918), and

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<sup>3</sup> Counsel for this entity has advised that JBLCO, LLC is now known as Republic Superior Products, LLC.

<sup>4</sup> Counsel has further advised that he represents Lexington Coal Company, LLC, Construction & Reclamation Services, LLC, Lexington Coal Royalty Company, LLC, Prep Plant Solutions, LLC, and Lexington Coal Trust.

<sup>5</sup> It became clear during the telephone conference that United Bank had unilaterally decided not to honor its original written agreement with the Debtors, and had misrepresented its role in the drafting of the agreement; the undersigned strongly suggested that United Bank not continue in that endeavor.

<sup>6</sup> United Bank represented that it has no objection to the Debtors' *Joint Motion* as it relates to this particular issue.

subsequently, the Debtors filed their *Reply* (Doc. No. 1944). Accordingly, this matter is briefed and ready for resolution.

### **Debtors' Argument in Support of Rule 2004 Order**

From the onset, the Debtors have indicated their intent to investigate potential claims for the benefit of the Debtors' estates, specifically, potential claims involving Mr. Jeff A. Hoops, Sr., the former Chief Executive Officer of Blackjewel, and the aforementioned various related entities and individuals. The *Joint Motion* seeks discovery from United Bank regarding financial information related to the Hoops Parties that is in the possession, custody, or control of United Bank, including but not limited to, regarding financial dealings with the Debtors and related party and insider transactions. (Doc. No. 1723)

The Debtors have represented to this Court that United Bank has a longstanding relationship not only with the Debtors, but also with Mr. Hoops and with the individual members of the Hoops Parties collective. The Debtors contend that the nature and circumstances of prepetition transactions and financial dealings involving the Hoops Parties make their request for financial discovery from United Bank particularly appropriate. The Debtors cite as one significant but non-exclusive example, the Hoops Parties' own filings in the case admit that tens of millions of dollars moved between accounts at United Bank (from the Debtors to one of the Hoops Parties, Clearwater Investment Holdings, LLC) on account of "loans" for which no written loan agreement or other formal documentation exists. The Debtors assert that Mr. Hoops' relationships with the Hoops Parties and the prepetition dealings, including financial transactions between and among Mr. Hoops, the Hoops Parties, and the Debtors are numerous, complicated, and intertwined. The Debtors allege that they have devoted significant resources to the attempt to identify and investigate potentially inappropriate transactions that may have injured Debtors to the detriment

of their estates and the interests of their creditors. They contend that the discovery requested in the *Joint Motion* is necessary and appropriate to this ongoing investigation.

The discovery requested in the *Joint Motion* is also appropriate because the existing record demonstrates that Mr. Hoops exercised *de facto* control regarding entities in which family members held the nominal governance or ownership positions. The Debtors have submitted a “Declaration” by David J. Beckham, Senior Managing Director of FTI Consulting, Inc., an individual intimately familiar with the financial transactions sought in discovery, as support for their assertion that Mr. Hoops exercises such control and was directly involved in multi-million dollar transfers from and between the Debtors’ accounts to Mr. Hoops himself and/or to Hoops Parties just prior to the initial petition date. (See Doc. No. 1901-1) These transactions require further investigation as many of them lack documentation or otherwise substantiated in the Debtors’ files. (Id.)

The Debtors state that the discovery requested in the *Joint Motion* also should be permitted to proceed because the Hoops Parties have failed to provide appropriate responses to discovery requests directed to them. After months of effort, many written communications, numerous meet-and-confer sessions, and formal discovery conferences with the Court, the Hoops Parties have produced an extremely limited number of organizational documents and nothing else; the Debtors assert that even that production is deficient because some of the key documents are incomplete.

The Debtors have explained that they have a duty to investigate the conduct of persons or entities that may have contributed to their need for relief under chapter 11 of the Bankruptcy Code, or that may have engaged in conduct that injured the Debtors or their estates. This includes investigating potential causes of action against such parties. Certain bank accounts held at United Bank were allegedly frozen just prior to the filing of the Debtors’ voluntary petitions for relief,

thus triggering the Debtors need to investigate facts and circumstances related thereto, as well as financial transactions and dealings of the Hoops Parties, regarding which United Bank may possess bank account and financial information.

### **Hoops Parties' Objection to the *Joint Motion***

As an initial matter, the undersigned notes that at first, the Hoops Parties represented to this Court that if the Debtors could sufficiently tailor or narrow down their discovery requests, they would accommodate those requests, however, even after the undersigned attempted to bring the parties to resolution and/or compromise for the requested material, the Hoops Parties have for one reason or another, been unable or unwilling to honor the agreed-upon commitments. (Doc. No. 1761)

In response to the Debtors' *Supplemental Memorandum* (Doc. No. 1901), the Hoops Parties argue that the Debtors have not shown good cause for their *Joint Motion*, as it is overly broad and akin to a fishing expedition. (Doc. No. 1918) Though the Hoops Parties do not dispute that several transactions were made between the Debtors and Hoops Parties, the Debtors do not distinguish between the various individuals and entities, thus this discovery should not be permitted. Other than pointing out the familial relationship among the Hoops-Related individuals, the Debtors offer nothing that would justify such an intrusion into their confidential financial accounts, as there is nothing to suggest any relation or relative information that concerns the Debtors themselves. The Hoops Parties had already agreed to produce certain documentation within its custody and control, however, they object to the Debtors' unfettered access to all financial transactions information.

To the extent the Debtors have argued Mr. Hoops himself exercises de facto control over the various Hoops-Related entities and individuals, the Hoops Parties contend that such

transactions on their behalf, including the Debtors, is not in and of itself improper, again, this does not justify Debtors' request to examine all transactions.

The Hoops Parties contend that due to the confidential and private nature of the documentation requested, the protective order should apply to same, and that the Hoops Parties also be provided with the same documentation should this Court order United Bank to respond to the Debtors' production requests.

### **Debtors' Reply**

The Debtors point out that the Hoops Parties' sole legal argument against their *Joint Motion* is that the Debtors have not demonstrated "good cause" for the discovery regarding the financial dealings of allegedly separate entities and persons. (Doc. No. 1944) Though the Hoops Parties states that there are differences among them, the Hoops Parties offer nothing to this Court that permits it to disentangle the relationships among and between them. The Hoops Parties misunderstand that the Debtors have presented sufficient facts that demonstrate several questionable multi-million dollar transactions were made, and done so without proper documentation that warrants an investigation specifically endorsed by Rule 2004. Their blanket claims of confidentiality ignore the fact that this information is being sought from United Bank, which has no objection to the Debtors' requests, and which is protected by the protective order entered herein. Further, the Debtors' requests are not intended to annoy, harass or embarrass the Hoops Parties, but are necessary particularly where the Debtors have already identified numerous transactions that are unexplained, and thereby rendering such requests legally appropriate.

### **Relevant Law**

It is well-settled that a debtor "may use Rule 2004 to determine the nature and extent of a bankruptcy estate and to ascertain whether wrongdoing has occurred." In re Hilsen, 2008 WL

2945996, at \*4 (Bankr. S.D.N.Y. July 25, 2008). Further, the scope of Bankruptcy Rule 2004 is broader than the scope of permissible discovery under Rule 26 of the Federal Rules of Civil Procedure. See In re Hentz, 2012 WL 2263121, at \*2 (Bankr. D.N.D. June 18, 2012) (“The scope of a Rule 2004 examination is broader than the scope of discovery under Rule 26 of the Federal Rules of Civil Procedure The request for discovery concerning debtor’s assets and financial affairs may include examination of the debtor and/or third parties.”) (internal citations omitted); In re Recoton Corp., 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004) (“The purpose of a Rule 2004 examination is to assist a party in interest in determining the nature and extent of the bankruptcy estate, revealing assets, examining transactions and assessing whether wrongdoing has occurred.”).

Bankruptcy Rule 2004 is appropriately used as a “pre-litigation discovery device.” *In re Wilson*, 413 B.R. 330, 336 (Bankr. E.D. La. 2009); *In re Almatris*, 2010 WL 4877868, at \*3 (“No contested matter or adversary proceeding need be instituted as a prerequisite to conducting an examination under [Rule 2004]”); *In re Symington*, 209 B.R. 678, 683 (Bankr. D. Md. 1997) (observing that Rule 2004 allows “examination of any party without the requirement of a pending adversary proceeding or contested matter”).

### **Discussion**

There is no question that the discovery that the Debtors seek from United Bank falls clearly within the contours of Bankruptcy Rule 2004. Clearly, the Debtors are seeking to investigate “acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate, or to the debtor’s right to a discharge.” Fed. Bankr. R. 2004(b), (c). As such, the requested discovery is intended to assist the Debtors “in determining the nature and extent of the bankruptcy estate, revealing assets, examining

transactions and assessing whether wrongdoing has occurred.” In re Almatris, No. 10-12308, 2010 WL 4877868, at \*4 (Bankr. S.D.N.Y. Nov. 24, 2010); see also In re Countrywide Home Loans, Inc., 384 B.R. 373, 400 (Bankr. W.D. Pa. 2008) (noting that investigation of matters affecting a debtor’s estate “comfortably falls within the allowed limits under Rule 2004”).

Indeed, the scope of a Rule 2004 inquiry is very broad. In re Yahweh Center, Inc., 2017 WL 327473 at \*1 (Bankr. E.D.N.C. 2017) (observing that “the scope of inquiry permitted under Rule 2004 is very broad, practically unrestricted by the usual concepts of materiality and relevance[.]”). As noted *supra*, the requested discovery relates to the financial transactions and dealings that the Hoops Parties had with the Debtors. The Debtors already have shown that the Hoops Parties received significant transfers of cash and other property from the Debtors, some of which lack normal documentation.<sup>7</sup> Investigation of such transactions is a core purpose of Rule 2004. See, e.g., McLaughlin v. McPhail, 707 F.2d. 800, 804 (4<sup>th</sup> Cir. 1983); In re Hammond, 140 B.R. 197, 200 (Bankr. S.D. Ohio 1992); In re Wash. Mut., Inc., 408 B.R. 45, 50 (Bankr. D. Del. 2009) (“Legitimate goals of Rule 2004 examinations include ‘discovering assets, examining transactions, and determining whether wrongdoing has occurred.’ ”).

Further, there is also no question before this Court that despite the Hoops Parties suggestion that they are comprised of distinct entities and individuals, there is insurmountable evidence that the Hoops Parties as a collective, along with the Debtors and United Bank have enjoyed and

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<sup>7</sup> To the undersigned, this lack of documentation is significant. Just prior to the telephone conference held on April 14, 2020, counsel for the Hoops Parties emailed several documents in .pdf format to the undersigned and to counsel of record in preparation for the discussions to follow. These documents did little to assuage the undersigned’s belief that the Hoops Parties were flouting the rules of discovery as they indicate, incredibly, that none of the Hoops Parties nor their counsel have certain documentation the Debtors have requested in their endeavor to determine the nature and extent of the numerous multi-million dollar transactions that occurred just prior to their filing their voluntary petitions for relief under Chapter 11. (See, e.g., Doc. No. 1908) Although counsel for the Hoops Parties indicated in his email that those documents were to be filed later that day, the undersigned is advised by the Bankruptcy Clerk that they have not been filed in this proceeding. Accordingly, in order to ensure an accurate record of these proceedings, the Clerk is requested to file the documents that are attached herein separately.



continue to enjoy an intricately business relationship that justifies the Debtors' discovery requests. It is widely recognized that third parties "having knowledge of the debtor's affairs . . . are subject to examination." In Re Symington, 209 B.R. 678, 690 (Bankr. D. Md. 1997) (quoting In re Valley Forge Plaza Associates, 109 B.R. 669, 674 (Bankr. E.D. Pa. 1990)). Thus, Rule 2004 undisputedly extends "beyond the debtor to persons associated with him as well as to those persons who may have had business dealings with the debtor." Id. (quoting Deloitte & Touche v. Hassett (In re CIS Corp.), 123 B.R. 488, 490 (S.D.N.Y.1991)); In re Financial Corp. of America, 119 B.R. 728 (Bankr. C.D. Cal. 1990).

Because Bankruptcy Rule 2004 allows discovery regarding any "acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge", and that the Debtors have demonstrated that millions of dollars of related party transactions between the Debtors and the Hoops Parties, the Debtors have plainly and logically demonstrate good cause.

#### **Ancillary Matters**

During the pendency of these discovery issues over the last several months in this proceeding, the undersigned's patience has been tested by the Hoops Parties, as they had previously agreed to produce discovery materials to the Debtors outside of this Court's intervention, however, unfortunately, the Debtors have only too frequently been forced to seek this Court's interference in order to obtain discovery that had originally been promised. The undersigned has entertained the Hoops Parties' numerous excuses for failing to timely turn over relevant and proportional discovery, however, as this matter has continued in this fashion, the excuses ring hollow.

The Debtors have more than sufficiently demonstrated the need for the materials requested in their initial *Joint Motion*, and as they have pointed, the Hoops Parties have provided nothing to this Court that delineates the differences among “Mr. Hoops”, “Hoops-Related Entities” and “Hoops-Related Individuals”, but if anything, has only underscored that “Mr. Hoops” has and perhaps continues to exercise significant control and authority over these entities and individuals. It is also not lost on the undersigned that despite the Hoops Parties’ insistence that some form of protective order be entered in order to protect the confidential and private nature of the documentation requested by the Debtors, the delay in entry of same is entirely due to the Hoops Parties’ failure to participate in any meaningful way with the Debtors to resolve a fairly easily resolvable issue.<sup>8</sup>

### **Ruling**

Accordingly, based on the foregoing, the undersigned **GRANTS** the Debtors’ *Joint Motion* (Doc. No. 1723) and to the extent that United Bank has not yet completed its fulfillment of the requests enumerated in **Exhibit 1** and **Exhibit 2** described under Exhibit A of the Debtors’ *Joint Motion* (See Doc. No. 1723-1): the Debtors are hereby authorized to issue requests for production, notices, and subpoenas compelling the production of documents and the provisions of testimony under oath as requested in **Exhibit 1** and **Exhibit 2** and to seek the oral examination of the individual(s) with knowledge regarding or responsible for administration of the Bank Accounts and Debtor Accounts; service of the document requests, notices, or subpoenas by email is authorized upon counsel for United Bank, who has appeared in these cases; and this Order is without prejudice to the rights of the Debtors to apply to the Court for further discovery.

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<sup>8</sup> Because the Hoops Parties could not or would not provide specific details as to why this District’s general form protective order was inadequate for their needs and did not provide their own version to the Debtors, the undersigned entered a protective order to facilitate the mechanism for discovery and to alleviate the Hoops Parties’ concerns for confidentiality. (Doc. No. 1902)

The Court further **ORDERS** that United Bank shall make reasonable efforts to ensure such responsive production is made forthwith and that copies of same be provided to counsel for the Hoops Parties.

In accordance with Rule 72(a) of the Federal Rules of Civil Procedure, the ruling set forth above on this non-dispositive motion may be contested by filing, within 14 days, objections to this Order with District Judge Frank W. Volk. If objections are filed, the District Court will consider the objections and modify or set aside any portion of the Order found clearly to be erroneous or contrary to law.

The Clerk is requested to send a copy of this Order to all counsel of record, including counsel for United Bank, Joseph Bunn, Esq., [Joe.Bunn@Steptoe-Johnson.com](mailto:Joe.Bunn@Steptoe-Johnson.com), and Haley Bunn, Esq., [Candace.Bunn@Steptoe-Johnson.com](mailto:Candace.Bunn@Steptoe-Johnson.com).

**ENTERED: April 29, 2020.**



A handwritten signature in blue ink that reads "Omar J. Aboulhosn".

Omar J. Aboulhosn  
United States Magistrate Judge

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