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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	
	Chapter 11
PATRIOT COAL CORPORATION, ***et al.*****,**	**Case No. 12-12900 (SCC)**
Debtors.	**(Jointly Administered)**

DEBTORS' OBJECTION TO THE MOTION OF PATRICIA WILLITS, WILLIAM G. PARROTT, JR., AND DON PETRIE, TRUSTEE FOR THE PPW ROYALTY TRUST, FOR RELIEF FROM AUTOMATIC STAY

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Debtors Heritage Coal Company LLC, Beaver Dam Coal Company, LLC, Central States Coal Reserves of Kentucky, LLC, Grand Eagle Mining, LLC, and Ohio County Coal Company, LLC (collectively, the "Debtors") respectfully submit this objection in opposition to the Motion of Patricia Willits, William G. Parrott, Jr., and Don Petrie, Trustee for the PPW Royalty Trust (collectively, the "Movants") for relief from the Automatic Stay pursuant to 11 U.S.C. § 362(d) [ECF No. 339] (the "Motion" or "Mot."). In support hereof, the Debtors respectfully represent:

PRELIMINARY STATEMENT

1. If any action should be subject to the automatic stay, it is this one. The relevant facts, which the Motion studiously obscures, are the following:

2. In 2008, the Movants sued the Debtors and others in Missouri state court for breach of contract. The Movants lost on summary judgment. The Movants then appealed to the Missouri Court of Appeals, and lost again. They moved for rehearing before the appeals court and lost yet again. The Missouri Supreme Court then denied to hear any further appeal. At that point, the Movants' breach-of-contract claims had been fully, finally, and conclusively adjudicated in favor of the Debtors. It is now res judicata that the Movants have no breach-of-contract claims against the Debtors.

3. Undeterred, the Movants then sued the very courts that had ruled against them. In 2011, they commenced a new action, in a different Missouri state trial court, asserting that the State of Missouri – through its courts (by ruling against the Movants in the prior action) – had violated the Takings Clause and other provisions of the U.S. and Missouri Constitutions. As relief for this so-called "judicial taking" claim, Movants request that the judgments against them in the prior breach-of-contract action be vacated. In short, the Movants assert that the Missouri state courts, by rejecting their contract claims against the Debtors, have inflicted a constitutional

injury on the Movants that should be remedied by reversing the res judicata effect of the prior judgments. The theory of the case is as baseless and unprecedented as it sounds. Not surprisingly, the trial court dismissed the Movants' complaint against the State of Missouri for failure to state a claim upon which relief can be granted.

4. Still undeterred, the Movants appealed the dismissal of their complaint to the Missouri Court of Appeals. To this point in the "judicial taking" action, the Debtors had been dragged along because the Movants named them as "interested parties" who could be affected by their request to vacate the prior judgments. The Debtors have had to expend significant time, effort, and resources opposing the Movants' tortured and vain attempt to challenge a final and unappealable adverse judgment. The automatic stay has afforded the Debtors a much needed breathing spell from this action.

5. Just five weeks into this bankruptcy proceeding, the Movants filed the Motion urging the Court to lift the stay and require the Debtors to continue wasting their time and money as the Movants pursue the appeal on their "judicial taking" claim. The notion that the Debtors should spend another penny on this action at a time when they are focused on critical restructuring tasks is absurd on its face.

6. The Motion has no legal basis and should be denied. As an initial matter, the Movants do not even have standing to modify the automatic stay because they are not creditors of the Debtors (precisely because it is now res judicata that the Movants have no claims against the Debtors). In addition, even putting aside their lack of standing, the Movants do not come close to establishing "cause" to lift the automatic stay. Not a single one of the well-known <u>Sonnax</u> factors supports their request.

BACKGROUND

A. The Breach of Contract Action

7. In May 2008, in the Circuit Court for the City of St. Louis, the Movants filed breach-of-contract and declaratory judgment claims against the Peabody Defendants[1] (which then included the Debtors) and the Armstrong Defendants alleging that the defendants had failed to make payments purportedly required under certain royalty agreements (the "Breach of Contract Action"). (Mot. ¶ 11.)

8. On March 29, 2010, the trial court granted summary judgment in favor of the Peabody Defendants and the Armstrong Defendants. (Id.)

9. The Movants appealed to the Missouri Court of Appeals, which on December 28, 2010 affirmed the judgment in favor of the Peabody Defendants and the Armstrong Defendants. (Id. ¶ 12); see Willits v. Peabody Coal Co., 332 S.W.3d 260, 265 (Mo. Ct. App. 2010).

10. The Movants filed a motion for rehearing in the Missouri Court of Appeals, which was denied on March 1, 2011. See generally Willits, 332 S.W.3d 260.

11. The Movants then filed an application for transfer in the Missouri Supreme Court, which denied to hear the appeal on March 29, 2011. (Id.) The judgment in favor of the Peabody Defendants and the Armstrong Defendants was then final and unappealable.

B. The "Judicial Taking" Action

12. Having been told by the Missouri courts that they have no claim against the Debtors, the Movants then sued the Missouri courts. The Movants sought a declaratory judgment against the State of Missouri that the rulings by the Missouri courts in the Breach of Contract Action constituted a "judicial taking" in violation of the Missouri Constitution and the

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[1] All capitalized terms not defined herein have the meanings ascribed to them in the Motion.

U.S. Constitution. (Mot. ¶ 13.) The declaratory judgment action was filed in the Circuit Court for the County of St. Louis (the "Judicial Taking Action"), a different trial court than the one that heard the Breach of Contract Action.[2]

13. As relief on their "judicial taking" claim, the Movants request that the judgments in the Breach of Contract Action be "vacated." (Id.)

14. The Movants have joined the Debtors (along with the other Peabody Defendants and the Armstrong Defendants) as parties in the Judicial Taking Action, "because, pursuant to R.S.Mo. § 527.110, such parties all have an interest in the action before the Trial Court as the prevailing parties in the Missouri Judgments that will be affected by the declaratory relief sought against the State of Missouri." (Id.)

15. On February 29, 2012, the trial court granted a joint motion to dismiss the Movants' complaint filed by the State of Missouri, the Peabody Defendants, and the Armstrong Defendants. (A copy of the trial court's opinion is attached hereto as **Exhibit A**.)

16. The Movants thereafter appealed the dismissal of their complaint to the Missouri Court of Appeals.

17. The Movants now seek to lift the automatic stay to allow the appeal to proceed in the Missouri Court of Appeals and, if they lose there, in the Missouri Supreme Court. (Mot. ¶¶ 22 n.5, 26 n.6.) The Movants have indicated that they also intend to move to recuse the Missouri Court of Appeals (because it is the same appeals court that ruled against them in the Breach of Contract Action). (Id. ¶ 26 n.6.)

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[2] As noted above, the Breach of Contract Action had been filed in the Circuit Court for the City of St. Louis.

18. While the Movants insist that the appeal will resolve whether they possess a claim against the Debtors, that is wrong. The appeal will resolve whether the Movants have a claim against the State of Missouri. That claim would then have to be litigated to judgment in the trial court, where it was dismissed for failure to state a claim. While the Movants also insist that the proper relief, should they somehow prevail on their claim against the State of Missouri would be to vacate the underlying judgments in the Breach of Contract Action, the Movants cite no authority – nor could they – for such a proposition. Such a result would violate fundamental principles of due process and finality that are at the core of American jurisprudence. In short, the Movants do not explain – because they cannot – any rational basis for their assertion that if they prevail in their action against the State of Missouri, they will then also have a claim against the Debtors.

ARGUMENT

A. The Movants Lack Standing to Lift the Automatic Stay

19. As an initial matter, the Motion should be denied for lack of standing. The Movants seek to lift the automatic stay for cause pursuant to Section 362(d), but such relief is available only to "a party in interest." 11 U.S.C. § 362(d). It is well settled in the Second Circuit that only "a direct creditor of the bankrupt" qualifies as "a party in interest" for purposes of Section 362(d). In re Comcoach Corp., 698 F.2d 571, 574 (2d Cir. 1983); see also In re Refco Inc., 505 F.3d 109, 116-17 & n.9 (2d Cir. 2007); In re Lippold, 457 B.R. 293, 296 (Bankr. S.D.N.Y. 2011).

20. The Movants are not creditors of the Debtors. The Bankruptcy Code defines a "creditor" as an entity that has a "claim" against the debtor. 11 U.S.C. § 101(10). A "claim" is defined in turn to mean, in relevant part, a "right to payment, whether or not such right is

reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5). The Movants have no "right to payment" from the Debtors because the Missouri state courts have fully, finally, and conclusively adjudicated their claims in the Breach of Contract Action. It is res judicata that the Movants have no claims against the Debtors.

21. The mere fact that the Movants have filed the Judicial Taking Action, asserting that the Missouri state courts supposedly violated their constitutional rights when ruling against them in the Breach of Contract Action, does not make their claims against the Debtors "contingent." While the Movants have asserted that the relief on their claim against the State of Missouri should include vacating the judgments in the Breach of Contract Action (and thereby presumably reinstating their claims against the Debtors), there is no basis in the law for such relief, and Movants identify none. Indeed, even the Movants themselves concede that they have only an "asserted status as general, unsecured creditors." (Mot. ¶ 20 (emphasis added).) Accordingly, the Movants "possess[] no claim against the debtor or the estate, lack[] 'creditor' status, and cannot move to lift the automatic stay." Comcoach, 698 F.2d at 574.

22. Indeed, this action bears remarkable similarity to Comcoach, the seminal case in the Second Circuit on standing under Section 362(d). There, a bank sought to foreclose on premises that the debtor occupied as a tenant because the debtor's landlord had defaulted on its mortgage payments to the bank. Id. at 572-73. The bank moved to lift the automatic stay to name the debtor/tenant as a "necessary party" in the foreclosure action against the landlord. Id. The Second Circuit ruled that the bank had no standing to lift the automatic stay to join the debtor/tenant in the action against its landlord because "it is only creditors who may obtain relief from the automatic stay." Id. at 573. The facts here are similar, except that the Movants seek to

continue, rather than commence, an action in which a debtor is named as a "necessary party" under state law. The Movants named the Debtors in their declaratory judgment action against the State of Missouri solely because the Debtors have an interest in the putative relief that is sought – i.e., vacating the judgments in the Breach of Contract Action. Just as in Comcoach, the Movants are not creditors of the Debtors and therefore have no standing to modify the automatic stay in order to drag the Debtors, as purported "necessary parties," into litigation against a third party (here, the State of Missouri).

23. In re St. Vincent's Catholic Medical Centers of New York, 429 B.R. 139 (Bankr. S.D.N.Y. 2010), is also instructive. There, the plaintiffs sued the New York State Department of Health ("DOH") in state court to enjoin the DOH from taking any actions to facilitate the closure of St. Vincent's Hospital, which had been approved as part of the debtors' Chapter 11 proceeding. See id. at 143-44. The debtors, which had not been named as a party, moved to stay the action against the DOH. See id. at 144. Chief Judge Morris ruled that the automatic stay applied to the action against the DOH, even though the debtors were not named as parties, id. at 146-47, and that the plaintiffs did not have standing to request relief from the stay because they were not creditors of the debtors. Id. at 149. The same conclusion applies here with even more force. Here, the Movants have actually named the Debtors as parties to their declaratory judgment action against the State, so the automatic stay plainly applies, and the Movants have no standing to seek relief from the stay because they are not creditors of the Debtors.

24. Accordingly, the Motion should be denied for lack of standing.

B. Even If the Movants Had Standing, Cause Would Not Exist to Lift the Stay

25. It is difficult to imagine an action for which there might be less cause to lift the automatic stay than the Judicial Taking Action. The automatic stay is a fundamental protection

provided to debtors under the Bankruptcy Code. Grocery Haulers, Inc. v. A&P (In re A&P), 467 B.R. 44, 51 (S.D.N.Y. 2012) (the automatic stay is "a fundamental debtor protection" that "provides a debtor with a breathing spell" and "allows the bankruptcy court to centralize all disputes concerning property of the debtor's estate in the bankruptcy court so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas"). The automatic stay is "designed to relieve the financial pressures that drove debtors into bankruptcy." E. Refractories Co. Inc. v. Forty Eight Insulations Inc., 157 F.3d 169, 172 (2d Cir. 1998) (internal quotation marks and alterations omitted). It provides that relief by giving the debtor a "breathing spell" during which it can focus on reorganization efforts rather than the burdens of litigation or other wasteful harassment by creditors and others. In re A&P, 467 B.R. at 51; see also In re AP Indus., Inc., 117 B.R. 789, 798 (Bankr. S.D.N.Y. 1990) ("The automatic stay is intended to protect the assets of the debtor's estate from dissipation and administrative interference.").

26. In order for a party to obtain relief from the automatic stay, it must first demonstrate that cause exists for the stay to be lifted. 11 U.S.C. § 362(d)(1); In re Sonnax Indus., Inc., 907 F.2d 1280, 1285 (2d Cir. 1990); In re A&P, 467 B.R. at 55. Only after the movant makes such a showing does a party opposing the lifting of the automatic stay need to present support for keeping the stay in place. In re A&P, 467 B.R. at 55.

27. In determining whether there is "cause" to grant stay relief, courts in this Circuit consider the twelve "Sonnax factors." In re Sonnax Indus., Inc., 907 F.2d at 1286; In re A&P, 467 B.R. at 55. Not all of the factors are relevant in every case, nor must a court assign equal weight to each factor, In re N.Y. Med. Grp., 265 B.R. 408, 413 (Bankr. S.D.N.Y. 2001). Moreover, the court may consider factors in addition to those listed in Sonnax. Lamarche v.

Miles, 416 B.R. 53, 57 (E.D.N.Y. 2009) ("[T]he Second Circuit catalogued a non-exclusive list of factors to be weighed in deciding whether litigation should be permitted to continue in another forum.").

28. The relevant Sonnax factors here are:

- Factor 1: whether relief would result in a partial or complete resolution of the issues;
- Factor 2: the lack of any connection with or interference with the bankruptcy case;
- Factor 4: whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;
- Factor 5: whether the debtor's insurer has assumed full responsibility for defending it;
- Factor 6: whether the action primarily involves third parties;
- Factor 7: whether litigation in another forum would prejudice the interests of other creditors;
- Factor 10: the interests of judicial economy and the expeditious and economical resolution of litigation;
- Factor 11: whether the parties are ready for trial in the other proceeding; and
- Factor 12: the impact of the automatic stay on the parties and the balance of harms.

See In re Sonnax Indus., Inc., 907 F.2d at 1286; In re A&P, 467 B.R. at 55.[3] All of the relevant Sonnax factors compel the continuation of the automatic stay.

[3] The Movants incorrectly assert that Factor 5 (the availability of insurance coverage) is not relevant here. (Mot. ¶ 29 n.7.) The Debtors agree with the Movants that Factors 3, 8, 9 are not relevant in the present case: whether the other proceeding involves the debtor as a fiduciary (Factor 3); whether the judgment claim arising from the other action is subject to equitable subordination (Factor 8); and whether the movant's success in the other proceeding would result in a judicial lien avoidable by the debtor (Factor 9). In re Sonnax Indus., Inc., 907 F.2d at 1286; In re N.Y. Med. Grp., 265 B.R. at 413.

Factor 1 (No Partial or Complete Resolution) and Factor 10 (Judicial Economy)

29. This is not a case where a non-bankruptcy court is poised to rule in a way that will confirm or liquidate a creditor's claim against a debtor. Here, the Missouri state courts have already finally and conclusively established in the Breach of Contract Action that the Movants have no claim against the Debtors. In the Judicial Taking Action, the Movants are suing the State of Missouri, not the Debtors. While the Movants insist that the relief in the Judicial Taking Action should include vacating the prior judgments in favor of the Debtors in the Breach of Contract Action – a position that faces insurmountable hurdles in itself – the first obstacle that the Movants must overcome is establishing that they in fact have a claim against the State of Missouri.

30. The trial court has ruled that the Movants have failed to state such a claim. The Movants wish to test that on appeal, but even if that appeal is somehow successful, the result will solely be that the Movants have the right to pursue a "judicial taking" claim against the State of Missouri. The Movants would then have to return to the trial court to prove their claim on the merits. They would also have to demonstrate that the proper relief on such a claim, if they prevailed, would be to vacate the judgments in the Breach of Contract Actions and reinstate claims against the Debtors and others.

31. In short, the Movants seek to modify the automatic stay solely to allow the present appeal to continue – which they note will include motions to recuse the current appellate court and an appeal to the Missouri Supreme Court (Mot. ¶¶ 22 n.5, 26 n.6) – but the result, even if the Movants somehow prevailed, solely would be a finding that the Movants have the right to pursue a "judicial taking" claim against the State of Missouri – not that such a claim has been

established on the merits, or that the relief for such a claim is to vacate the underlying, final judgments.

32. The pending appeal will therefore provide no resolution whatsoever on the question of whether the Movants have a claim against the Debtors, which counsels against lifting the stay. See In re Motors Liquidation Co., No. 10 Civ. 36 RJH, 2010 WL 4630327, at *4 (S.D.N.Y. Nov. 8, 2010) (ruling that first Sonnax factor weighed against lifting the stay where – as here – allowing suit to proceed would resolve only a limited issue, and likely against the movant); In re Bally Total Fitness of Greater N.Y., Inc., 402 B.R. 616, 623-24 (Bankr. S.D.N.Y. 2009), aff'd, 411 B.R. 142 (S.D.N.Y. 2009) (denying motion to lift automatic stay where, as here, multiple issues remained to be resolved in pending litigation). Indeed, it is hard to overstate the improbability of such an outcome – even if the Movants somehow prevailed on the appeal and established their right to bring a "judicial taking" claim against the State of Missouri.

Factor 2 (Interference with the Bankruptcy Case) and Factor 7 (Prejudice to Creditors)

33. Factors 2 and 7 also weigh heavily in favor of enforcing the automatic stay. If the stay were lifted to permit the Movants to pursue their far-fetched legal theories, the Debtors would be forced to waste estate assets and divert personnel from the more pressing effort of reorganization. Thus, "allowing the actions to proceed would distract the Debtors' management from the bankruptcy proceeding by forcing them to litigate [the Judicial Taking Action] and hinder its ability to perform its fiduciary duty of maximizing the value of the Debtors' estates, thereby affecting the interests of other creditors." See In re Bally Total Fitness, 402 B.R. at 623. The automatic stay was intended precisely to prevent these consequences.

Factor 4 (No Specialized Tribunal)

34. If the Movants were to file a claim against the Debtors, this Court would be as well equipped as the Missouri state courts to determine (i) whether a "judicial taking" claim even exists in these circumstances, (ii) whether the Movants could prevail on such a claim, and (iii) whether the proper remedy for such a claim is to vacate the judgments in the Breach of Contract Action (notwithstanding what principles of res judicata and due process might otherwise require). The fact that the Movants rely in part on state law for their "judicial taking" claim does not change the analysis. See In re WorldCom, Inc., No. 05 Civ. 5704, 2006 U.S. Dist. LEXIS 55284, at *31-32 (S.D.N.Y. Aug. 4, 2006) (affirming bankruptcy court's holding that California state court was a court of general jurisdiction, not a "specialized tribunal" within the meaning of the fourth Sonnax factor and noting that "[b]ankruptcy courts are often called upon to apply state laws in resolving claims against the estate"); In re Bally Total Fitness, 402 B.R. at 624 (noting that "this Court has significant experience in applying state law").

35. It will be a long time before the Missouri state courts could even resolve issue (i) above. The Movants themselves note that an answer on that question will require a decision by the appeals court, perhaps a motion to recuse that court, and then an appeal to the Missouri Supreme Court. That process could take years in itself.

Factor 5 (No Insurance Coverage)

36. The Debtors do not have insurance coverage available to defend the Judicial Taking Action. The costs of participating in this action have been borne directly by the Debtors and would continue to be in the absence of the stay. See In re Bally Total Fitness, 402 B.R. at 624 (denying relief from automatic stay where "the Debtors do not have insurance coverage with respect to the claims asserted").

Factor 6 (Action Does Not Primarily Involve Third Parties)

37. While the State of Missouri is the principal respondent in the Judicial Taking Action, the Movants' objective is to have the judgments in the Breach of Contract Action vacated. As such, the Judicial Taking Action directly implicates the Debtors, and the continuance of the action would require active participation by the Debtors, with the attendant waste of estate assets and distraction of key personnel. See In re Sonnax Indus., Inc., 907 F.2d at 1287 (denying relief from automatic stay and noting that stay only precluded the movant from continuing suit against the debtor corporation, not against the two other non-debtor defendants).

Factor 11 (Parties Not Ready for Trial)

38. The debtors are as far from establishing a "claim" against the Debtors as conceivably possible. The Movants' repeated assertion that the present appeal will "determine whether Movants have an unsecured claim against these estates" (Mot. ¶ 21) is simply wrong.

39. The Movants are seeking to assert a claim against the State of Missouri, not against the Debtors. The only issue on appeal is whether their so-called "judicial taking" claim states a cognizable cause of action. Even if an appeals court were to conclude that such a claim exists and was properly stated in the Movants' complaint, that would not come close to establishing the existence of a claim against the Debtors. As the trial court observed in dismissing the Movants' complaint: "Plaintiffs do not state, nor ask for any relief, remedy or action be declared or determined between themselves and Defendants Peabody Companies and Armstrong Companies. Their inclusion in the current lawsuit is based only on the fact they were involved in the previous decisions and are, under § 527.110 RSMo, parties with an interest which would be affected by declaratory judgment." (Ex. A, at 2.)

40. Factor 11 thus weighs against lifting the stay. See In re Sonnax Indus., Inc., 907 F.2d at 1287 (affirming denial of stay relief and noting that the state court litigations had not proceeded to discovery); In re Northwest Airlines Corp., No. 05-17930, 2006 Bankr. LEXIS 477, at *7 (Bankr. S.D.N.Y. Mar. 13, 2006) (finding that the fact that parties had not yet prepared for trial weighed against lifting the stay).

Factor 12 (Balance of Harms)

41. The balance of harms tips decidedly in the Debtors' favor for several reasons. First, the Debtors' reorganization is in its early stages. "Forcing the Debtors to litigate at this point would distract and hinder the Debtors from their reorganization efforts and would take away the 'breathing space' necessary to allow them to restructure and preserve the value of their assets for the benefit of their creditors." See In re Bally Total Fitness, 402 B.R. at 623-24 (denying motion to lift stay four months after debtor filed for bankruptcy); In re Northwest Airlines Corp., No. 05-17930, 2006 WL 2381865, at *2-3 (Bankr. S.D.N.Y. July 11, 2006) (denying relief ten months after filing and noting that the debtors there faced a host of issues that required the full attention of management); In re Lazarus Burman Assocs., 161 B.R. 891, 901 (Bankr. E.D.N.Y. 1993) (same); In re Drexel Burnham Lambert Grp., No. 90B-10421, 1990 WL 302177, at *7 (Bankr. S.D.N.Y. Dec. 14, 1990) (denying relief seven months after filing and alluding to "the relatively brief period of time elapsed from the date of the bankruptcy filings"). The Debtors, having filed for bankruptcy only three months ago, remain in the period in which the need for the breathing room afforded by the automatic stay is greatest. The Debtors should be permitted to focus their energy and resources on efforts that will yield the greatest benefit to their estates and their creditors. They should not have to waste time and money on baseless

litigation that cannot change the fact that the Movants are barred by res judicata from ever asserting claims against the Debtors.

42. The Movants, by contrast, face little or no harm from continuing the stay. Lifting the stay to permit the appeal to proceed would – at best – allow the Movants to demonstrate that their "judicial taking" claim is a cognizable cause of action against the State of Missouri. The Movants concede that even that appeals process could involve protracted litigation – including recusal motions against the current appeals court, appeals to the Missouri Supreme Court, and perhaps more. A delay in that process while the Debtors focus on their restructuring will not appreciably extend an appeals process that will already extend for many years. The Movants could also elect, if they wish, to drop any claims for relief that implicate the Debtors' property and seek relief only from the State of Missouri. In all events, the Movants can, as they concede, look to this Court to determine whether they have a claim against the Debtors as part of the claims process. (See, e.g., Mot. ¶ 22.)

The Cases Cited by the Movants Are Inapposite

43. None of the cases cited by the Movants support their position, because each involved factual circumstances that were radically different from those presented here. See In re Project Orange Assocs., LLC, 432 B.R. 89, 108 (Bankr. S.D.N.Y. 2010) (granting relief where dispute needed to be resolved quickly before reorganization could proceed and the state court judge was "quite familiar" with the parties' "complicated, long-term arrangements" after having spent years familiarizing himself with the record); In re Keene Corp., 171 B.R. 180, 184-85 (Bankr. S.D.N.Y. 1994) (finding "extraordinary circumstances" warranted granting relief because a supersedeas bond securing a state court judgment in favor of the elderly movant, which was "fixed and liquidated for bankruptcy purposes," could not be challenged or satisfied

except in state court); In re Metz, 165 B.R. 769, 771-772 (Bankr. E.D.N.Y. 1994) (granting relief where permitting state court appeal to proceed would "result in a complete resolution of the issues" by determining conclusively whether a "claim against the debtor's estate existed"); In re Anton, 145 B.R. 767, 770 (Bankr. E.D.N.Y. 1992) (noting that the timing of the debtor's personal bankruptcy suggested it was filed in bad faith and finding justice would be served by lifting the stay).

CONCLUSION

For the foregoing reasons, the Motion should be denied in its entirety.

Dated: New York, New York
October 4, 2012

Respectfully submitted,

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Exhibit A

STATE OF MISSOURI)
)ss.
COUNTY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

PATRICIA WILLITS, et al.,	)
	)
Plaintiffs,	)
v.	) Cause No. 11SL-CC3193
	)
PEABODY COAL COMPANY, LLC, et al.,	) Division 32
	)
Defendants.	)

FINAL JUDGMENT

Cause called on Defendants' Joint Motion to Dismiss and Plaintiffs' Motion for Summary Judgment. Parties appeared by Counsel. Cause was argued and taken under submission. The Court having reviewed the pleadings and memorandums of law enters its Judgment as follows:

Plaintiffs filed an Amended Petition seeking Declaratory Relief in five counts alleging certain violations of the United States Constitution and the Missouri Constitution. Plaintiffs, in each count, seek a judgment vacating prior decisions of a Missouri Circuit Court and the Court of Appeals Eastern District involving the Plaintiffs and the Peabody Companies and Armstrong Companies as Defendants. The State of Missouri was not a party in that case.

By way of background, Plaintiffs state in their amended petition the history of the previous lawsuit. That case was brought to enforce certain rights to royalties based on 1954 royalty agreements between plaintiffs and a predecessor of Defendant Peabody Coal Company. The amended petition details the involvement of the Defendant Coal companies in sales and purchases of the rights to mine coal on the lands which were the subject of the original royalty

agreement.

Suit was brought in May of 2008 against the Defendants Peabody Coal Companies and Armstrong Companies in Missouri seeking damages for the breach of the 1954 Royalty Agreements and seeking declaratory relief on the failure to pay royalties since April 2008. Venue was the City of St. Louis. On March 29, 2010, Summary Judgment was entered on behalf of Defendants Peabody and Armstrong companies. The Plaintiffs appealed the decision of the Court. The Court of Appeals Eastern District upheld the decision of the lower court and affirmed the judgment. Motions for rehearing and transfer were denied. All State Court remedies have been exhausted. Plaintiffs did not seek a writ of certiorari to Federal court to address the constitutional issues.

Plaintiffs brought this suit in August, 2011 and included the State of Missouri as a party alleging the State, acting through its judicial branch, violated Plaintiffs' rights under various provisions of the United State and Missouri Constitutions.

Plaintiffs do not state, nor ask for any relief, remedy or action be declared or determined between themselves and Defendants Peabody Companies and Armstrong Companies. Their inclusion in the current lawsuit is based only on the fact they were involved in the previous decisions and are, under §527.110 RSMo, parties with an interest which would be affected by declaratory judgment.

Defendants filed a joint Motion to Dismiss and leave was granted to the State to join in the Motion. Defendants Peabody Companies and Armstrong Companies argue the suit is barred by the doctrine of Res Judicata. The State joins in the argument and further states the petition fails to state a claim upon which there can be relief granted.

The crux of the claims is seeking to vacate a prior decision of a Court after it has been

fully adjudicated. Plaintiffs allege in Count I the prior decision violates the Full Faith and Credit Clause of the United States Constitution. In Counts II and III Plaintiffs allege the prior decision results in a judicial taking in violation of the Fifth Amendment of the United States Constitution and Article I §28 of the Missouri Constitution. Counts IV and V alleges a violation of the Substantive Due Process in Article I, §10 of the Missouri Constitution and the Fourteenth Amendment of the United States Constitution.

Plaintiffs argue res judicata does not bar the current lawsuit since it only raises constitutional issues based on a judicial taking without due process of law and this claim did not arise until the prior Court made its decision. This argument would support the Defendants Peabody Companies and Armstrong Companies argument to dismiss since private entities cannot engage in a judicial taking or violation of a constitutional right of due process. Further, Plaintiffs tacitly acknowledge that all issues have been determined between Plaintiffs and Defendant Peabody Companies and Armstrong Companies in the prior decision. The Amended Petition alleges no action taken by these Defendants nor does it ask for any relief or remedy as to them.

As stated above, the only issue is whether the previous judicial action states a claim upon which relief can be granted. The State of Missouri was not a party to the prior lawsuit, however, Plaintiffs argue the prior decisions resulted in violations of both the United States and Missouri Constitution giving rise to the present case. The State appears to be included as a party on a theory of vicarious liability with the State as the principle and the Judiciary as its agent. This would appear to violate Article 2 §1 of the Missouri Constitution whose purpose is to keep the several departments of state government separate and independent. Further, the prior Courts were exercising a "judicial function" as provided in Article V §1 and therefore have judicial immunity. As stated in State ex rel. Raak v. Kohn, 720 S.W.2d 941, 944 (Mo. banc 1986)"[a]

judge with subject matter jurisdiction has judicial immunity from all actions taken, even when acting in excess of his jurisdiction." Clearly, suit could not be brought against any of the individual judges. Instead, Plaintiffs have engaged in a sophistical exercise alleging the State has liability because of the actions of the Judiciary.

Plaintiffs do not allege that any of the actions taken by the judges were outside their official capacity. The amended petition ignores the immunity doctrine and instead attempts to couch the allegations as violations of the constitution. But the allegations fail to state a claim. Specifically the amended petition states in ¶¶ 55 and 64, Plaintiffs raised the issue of Full Faith and Credit in the prior lawsuit and this argument was rejected by both the trial court and the appellate court. The petition also sets out the due process afforded the parties during the pendency of the prior suit. Plaintiffs did not prevail in the action but that is not proof of the denial of their constitutional rights. The allegations concede that the actions taken by the Courts were done pursuant to their judicial authority and therefore, the Courts would not be "liable for its decisions, regardless of whether or not they were correct." Long v. Cross Reporting Service, Inc., et al., 103 S.W.3d 249, 254 (M0. App. W.D. 2003)

Plaintiffs finally allege the decisions of the Courts resulted in a judicial taking of property in violation of the Fifth Amendment of the United States Constitution. In support of this argument Plaintiffs cite a concurring opinion filed in the case of Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection, et al. 130 S.Ct 259 (2010) In this case the State of Florida was an original party and the suit involved a determination of Florida State property law. The United States Supreme Court upheld a Florida Supreme Court decision ruling it did not engage in an unconstitutional taking when it upheld the State's decision to restore eroded beach. In a concurring opinion, Justice Kennedy discussed certain scenarios where a

judicial takings case could arise. One of the scenarios involved a previous decision by a Court changing current property law and the right of property owners affected by the change in the law to bring suit for compensation. The opinion went on to discuss what type of remedy would be available in such cases. Justice Kennedy noted equitable relief is not available to enjoin the alleged taking since the violation requires a taking without just compensation. The opinion went on to discuss the difficulties involved in bringing such actions but came to no conclusion as to the viability of such claims.

In the present case, the State of Missouri was named as a party only after the prior Courts decided private property rights between private parties. The State did not initiate the action, change existing law, or derive any benefit as the result of the decision. Further, the relief requested is equitable since a suit for compensation or damages could not lie.

For the reasons stated above, the Joint Motion to Dismiss is granted. Plaintiffs' Motion for Summary Judgment is denied as the issue is moot. Defendants' Motion for Sanctions is denied as there has been no showing of bad faith.

Costs are assessed against plaintiffs.

SO ORDERED

Mary B. Schroeder
2/29/12

cc: Attorneys of Record