Schulte Roth & Zabel

Hot Topics in Coal Company Bankruptcies

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The recent "fracking revolution" has allowed U.S. energy companies to tap into abundant supplies of shale gas.[1] Previously thought inaccessible, this form of natural gas has been found throughout the United States in deep underground shale formations.[2] The shale gas boom has created a spike in natural gas supplies, causing prices to decline to their lowest level since 1999,[3] and this has been cause for concern for coal-based energy producers, as well as their suppliers, as declining natural gas prices have made competing gas-fired plants far more cost-effective alternatives to coal-burning plants.[4]

Indeed, coal-based electricity generation in the United States has dipped from half to about only one-third since 2007, and profits from the nation's coal-fired power plants selling electricity in the open market have plummeted from $20 billion in 2008 to $4 billion in 2011.[5] Consequently, plans for more than 150 new coal-fired power plants have been canceled since the mid-2000s and many existing plants have closed.[6] In 2012, only one new coal-fired power plant began operations in the United States.[7] In sum, increased supplies of shale gas have made it increasingly difficult for coal mining companies to compete and even survive in the current energy market.

The recent bankruptcies of coal mining companies James River Coal Company (2014 and 2003), Trinity Coal Corporation (2013), America West Resources Inc. (2013), Patriot Coal Corporation (2012), Americas Energy Company (2011), Clearwater Resources LP (2009) and Consolidated Energy (2007) provide evidence of the rapidly deteriorating market for U.S. coal companies. In addition, a 2013 Fitch Ratings report identified several coal mining companies as "distressed" and "near distressed" given their bond spreads over U.S. Treasuries. Fitch Ratings also had a negative sector outlook for coal mining companies in 2013 based on numerous negative factors.[8] While natural gas prices have recently increased, reducing the immediate pressure on coal companies, a coal renaissance is unlikely due to new and pending regulations by the Environmental Protection Agency requiring reductions in carbon emissions that will increase coal processing costs and prompt further interest in natural gas processing plants instead.[9]

Coal companies looking to use bankruptcy as a means to achieve a balance sheet restructuring will encounter unique challenges arising

from legacy liabilities owed to current and former mining employees as well as mine clean-up obligations. This *Guide* focuses on the key issues raised in some of the recent coal company bankruptcy cases.

Legacy Obligations: Union and Retiree Benefits and Obligations Under the Coal Act and Black Lung Act

Coal companies often have significant unsecured legacy obligations to their employees and retirees under benefit plans required by federal legislation and through collective bargaining agreements.

Similar to other types of companies in distress, coal companies often have significant unsecured legacy obligations to their employees and retirees under benefit plans required by federal legislation and through collective bargaining agreements ("CBAs"). Unlike other industries that generally do not have federal statutes requiring health care and employment benefits for retirees, however, the coal industry is unique in that it is subject to several federal statutes, including the Coal Industry Retiree Health Benefit Act (the "Coal Act") and the Black Lung Benefits Act (the "Black Lung Act"), mandating benefits to workers and retirees. Treatment of these obligations in a bankruptcy restructuring is often hotly contested.

Modifications to CBAs and Retiree Benefits

To reduce costs in a competitive environment, coal mining companies often look to shed substantial liabilities from their balance sheet, including employee benefits for the current workforce and retirees. Across the table are the union representatives who fight vehemently to retain the wages, benefits and post-retirement benefits provided for in the CBAs that were negotiated on behalf of thousands of current and former employees. In cases commenced under Chapter 11 of the Bankruptcy Code,[10] debtors are prohibited from unilaterally rejecting or modifying CBAs. Instead, debtors must make proposals to the unions that satisfy a heightened standard[11]

(typically, contract rejection only requires that debtors satisfy the business judgment standard) as well as bankruptcy court approval before modifying or rejecting a CBA. However, where parties are unable to reach agreement, courts have generally applied Congressional intent favoring rehabilitation of the debtor to substantially scale back wages and benefits under CBAs or terminate the CBAs altogether.[12]

Patriot Coal Corporation ("Patriot Coal") filed its bankruptcy case after its business could no longer support its retirement and health care obligations to 21,000 individuals despite having only 4,200 employees.[13] The Bankruptcy Court for the Eastern District of Missouri granted the company's motion to reject its CBA with the union and to modify the retiree benefits.[14] The modifications reduced wage benefits and planned wage increases, increased employee contributions to health care plans in line with benefits offered to non-union employees, and transitioned Patriot Coal's current retiree health

care benefits to the Voluntary Employee Beneficiary Association (the "VEBA"), a health care trust that would receive a 35 percent equity stake in the reorganized company.[15]

While the bankruptcy court expressed sympathy to the plight of workers and retirees, the court found that the requirements to modify the CBA under Section 1113 of the Bankruptcy Code had been met, including that: (1) at least five proposals had been made; (2) sufficient information had been provided to the union to evaluate the proposals; (3) the modifications were necessary because the debtors would not be able to compete without the concessions; (4) the plan was fair because many non-union members had been laid off pre-bankruptcy, and union health care needs would still be met by sharing profits and royalties through its equity distribution; (5) several good faith meetings between the union and debtors had taken place; and (6) the balance of the equities favored modification because, without concessions, the debtors would likely be forced into liquidation, and then employees would have no jobs at all.[16] Thus, Patriot Coal was permitted to reject the CBA and modify its retiree benefits.

The union appealed the bankruptcy court's decision to the United States District Court for the Eastern District of Missouri and also contemplated a work stoppage if the debtors implemented the court-approved modified CBA. Before the appeal could be heard, however, the debtors and union engaged in another round of settlement negotiations, ultimately agreeing to certain concessions in a new CBA and memorandum of understanding, which were both approved by the bankruptcy court.[17] As a result of the settlement, Patriot Coal has estimated it will save approximately $130 million a year, allowing it to effectively compete in the coal mining industry.[18]

Limited Potential to Separate Unionized and Non-Unionized Debtors

Immediately after the Patriot Coal debtors filed their motion to modify the CBA (a version slightly different than the modifications ultimately approved by the bankruptcy court), two noteholders filed a motion seeking appointment of a Chapter 11 trustee for the 86 out of 99 debtors that the noteholders alleged did not owe salary, pension and health care benefits to union employees and retirees.[19] The noteholders argued that the Section 1113 proposal to provide the VEBA with a 35 percent equity stake in the reorganized company and certain profit-sharing for nothing in return was an attempt to satisfy unionized debtors' obligations using non-unionized debtors' assets in breach of the fiduciary duties owed to creditors of the non-unionized debtors.[20]

The debtors vehemently opposed the noteholders' motion, arguing that: (1) the non-unionized debtors were jointly and severally liable with the unionized debtors for approximately $1 billion in liabilities including debtor-in-possession financing obligations, certain union pension claims, and Coal Act liabilities; (2) non-unionized debtors' operations were often dependent on union operations; (3) significant economies of scale benefitted both types of debtors; and (4) to the extent the non-unionized and unionized debtors were deemed under common ownership or control, violations of coal mining permit obligations (which are discussed below) by the unionized debtors could result in government denial of future mining permits for non-unionized debtors and vice versa.[21]

Ultimately, the bankruptcy court denied the motion to appoint a Chapter 11 trustee, finding that the debtors were "inextricably intertwined between unionized and non-unionized operations" and that "some non-union operations are either completely dependent on other operations that involve unionized labor or operate with both

union and non-union labor."[22] Further, because the debtors shared administrative operations, a single cash management system, and numerous contracts and agreements, the debtors were "more efficiently operated together," and the bankruptcy court could not "fathom" nor had any party presented a "potential structure for, the creation of two pools of Debtors."[23] This ruling casts doubt on the strategy of future coal mining debtors and their stakeholders who wish to divide reorganization efforts and assets between those subsidiaries who have costly legacy obligations (the so-called "bad" mines) and those who do not (the so-called "good" mines).

Treatment of Coal Act Obligations

The Coal Act[24] requires health care contributions for certain retired coal miners in the form of continuing existing individual employer retiree

health plans as well as payment of per-beneficiary premiums to two national health benefit funds (the UMWA 1992 Benefit Plan and the UMWA Combined Benefit Fund (collectively, the "Coal Act Funds")). Companies who are signatories to a coal wage agreement or their "related persons" are "jointly and severally liable" for contributions to the Coal Act Funds, with the concept of "related persons" creating broad liability for companies who may have only attenuated ties to their beneficiaries.[25]

Despite the Coal Act's requirement that "coverage shall continue to be provided for as long as the last signatory operator (any related person) remains in business," at least one district court has held that Chapter 11 debtors may modify their Coal Act obligations if they can meet the stringent requirements of Section 1114 of the Bankruptcy Code described above.[26] Further, the Fourth Circuit Court of Appeals has held that coal companies can sell their assets free and clear of Coal Act obligations under Section 363(f) of the Bankruptcy Code.[27] In *In re Leckie Smokeless Coal Co.*, the Fourth Circuit held that purchasers of the debtors' assets would not be held liable for the debtors' future premiums under the Coal Act despite the Coal Act's imposition of "successor liability." In overruling employees' objections to the sale, the court found that "if a free and clear order could not be issued, the assets would almost inevitably have to be sold piecemeal, thereby generating fewer funds with which to satisfy the claims of the Fund, the Plan, and the debtors' other creditors."[28] Recently, the James River Coal Company debtors cited the Fourth Circuit's *Leckie Smokeless Coal Co.* decision in their motion to the Bankruptcy Court for the Eastern District of Virginia seeking approval of bidding procedures for a potential sale "free and clear of all encumbrances which may be asserted against" the assets to be sold.[29]

Coal Act obligations may not be discharged under a Chapter 11 reorganization plan and, instead, are considered "taxes" under the Bankruptcy Code.

Coal Act obligations may not be discharged under a Chapter 11 reorganization plan and, instead, are considered "taxes" under the Bankruptcy Code.[30] Moreover, to the extent a debtor's obligations to the Coal Act Funds arise after the filing of the bankruptcy case, courts have generally ruled that such obligations (as well as indemnifications to third party sureties who paid those obligations) are entitled to administrative expense priority.[31]

Treatment of Black Lung Act Obligations

Under the Black Lung Act, coal miners who suffer from pneumoconiosis (black lung disease) and their dependents may file claims with the Department of Labor who then investigates the claims and assigns the liability to a "responsible operator" (likely the miner's employer or a successor of the employer).[32] If the "responsible operator" files for bankruptcy, the miner would likely then be an unsecured creditor of the "responsible operator." However, where a "responsible operator" is unable to pay, the miner's claim will be paid from the Black Lung Disability Trust Fund, which can then assert liens (with the same priority as tax claims) against the assets of the "responsible operator" as well as exercise the subrogation rights of the miner or his or her dependents.[33] Moreover, certain of the operator's officers can also be held personally liable for unpaid Black Lung Act benefits.[34] Further, administrative proceedings to determine Black Lung Act claims may not be subject to the automatic stay.[35] As a result of the significant protections afforded to Black Lung Act claims, a debtor's Black Lung Act obligations often remain unimpaired throughout its Chapter 11 case.

For example, in *Patriot Coal*, the bankruptcy court approved the debtors' request for authorization to pay prepetition Black Lung Act obligations and modification of the automatic stay to permit Black Lung Act claims to proceed in the appropriate judicial forum.[36] Further, the claims were unimpaired by Patriot Coal's confirmed plan of reor-

ganization, which provided that "[n]othing in the Plan or the Confirmation Order, or any documents incorporated by reference herein…limits or in any way affects…the liability of the Debtors, the Reorganized Debtors, or any third party to successful claimants or the [Department of Labor] under the [Black Lung Act]."[37]

Reclamation Obligations

In addition to the unique employee-related issues discussed above, coal mining implicates numerous safety and environmental laws that can affect the ability to achieve a successful restructuring. The intersection between environmental and bankruptcy laws is complex and inconsistent across jurisdictions. Set forth below is a brief review of certain environmental liability issues that arise in coal mining cases. For a comprehensive analysis of the treatment of environmental liabilities in bankruptcy cases generally, see "The Intersection of Environmental and Bankruptcy Laws," authored by Schulte Roth & Zabel business reorganization partner Lawrence V. Gelber and associate Stephanie Blattmachr, available at www.srz.com/The_Intersection_of_Environmental_and_Bankruptcy_Laws.

To procure a mining permit (which is required for all coal mining), a coal mining company must post a reclamation performance bond payable to the applicable regulatory authority in an amount sufficient to fund the projected reclamation expenses should the permit-holder (i.e., the coal mining company) default on its reclamation obligations.

Various federal, state and local laws, including the Surface Mining Control and Reclamation Act ("SMCRA"),[38] require mines and affected areas to be cleaned up, a process known as reclamation. Most states implement their own programs under the SMCRA to regulate mining operations, with states issuing permits, inspecting mines and taking any enforcement action.[39] The SMCRA also requires that coal mine operators pay reclamation fees per ton of coal produced into a trust fund administered by the Secretary of the Interior.[40] Courts have held that these reclamation fees owed under the SMCRA are considered taxes that are entitled to administrative expense priority and are not dischargeable in bankruptcy.[41]

To procure a mining permit (which is required for all coal mining), a coal mining company must post a reclamation performance bond payable to the applicable regulatory authority in an amount sufficient to fund the projected reclamation expenses should the permit-holder (i.e., the coal mining company) default on its reclamation obligations.[42] If the permit-holder fails to honor its reclamation obligations, then the sureties that issued the bonds must either reclaim the land or forfeit the bonds so the state can use the money to reclaim the land. The sureties can then "step into" the government's shoes and seek indemnification from the coal mine operator or owner for these reclamation costs.[43] The resulting reimbursement claim of the sureties then takes the same priority as if the state were the one bringing the claim for the reclamation costs.[44] Thus, sureties are often a major stakeholder in the restructuring process. To the extent reclamation work is performed and reclamation costs are incurred post-petition, such costs may also be entitled to administrative expense priority.[45]

Because mining permits can only be sold with the issuing state's consent, reclamation liabilities must generally be assumed by any purchaser of

the permits. For example, in Kentucky, the state will only approve the transfer of a mining permit if certain conditions are met, including that the purchaser post a bond to ensure reclamation of the entire area of land affected under the permit as well as agree to operate under the permit's provisions.[46]

In certain situations, there is no economic value in purchasing or continuing to mine the unreclaimed land and the debtor may wish to simply abandon the property. Under federal laws, however, debtors must "manage and operate property…according to the requirements of the valid laws of the State in which such property is situated."[47] Bankruptcy courts have interpreted this provision to mean that despite its generally broad abandonment powers, a debtor cannot "abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identifiable hazards."[48] Because of the health hazards posed by unreclaimed mines, debtors may not be able to abandon an unreclaimed coal mine even if abandonment is cheaper than continued mining or the sale of the mine.

The complexity, priority and costs associated with reclamation obligations often force debtors, sureties and state environmental agencies to seek to consensually resolve reclamation issues and obligations.[49] For example, in *In re Horizon Natural Resource Co.*, the Chapter 11 plan provided for a sale of various assets and a liquidation of the company's remaining assets. However, the plan could not be consummated unless the debtors and applicable state and federal regulatory agencies reached an agreement regarding satisfaction of the debtors' reclamation obligations with the sureties who had over $350 million of reclamation and surety bonds outstanding.[50] The parties later reached an agreement that provided that the purchasers of the debtors' assets (in sales proposed in connection with the debtors' Chapter

11 plan) would take the debtors' applicable mining permits, subject to government approvals, and would assume all liabilities and obligations under the permits.[51] Further, mining permits and liabilities from the remaining assets (which would be purchased by another entity) would be paid by a reclamation collateral account funded by sale proceeds, monthly reclamation royalties from one of the purchasers, release of cash bonds posted by the debtors, income from mining of the other purchasing entity's assets, and its accounts receivable.[52]

Conclusion

As the coal mining industry continues to face mounting pressures, regulations and competition, we expect additional bankruptcy filings. As described in this *Guide*, bankruptcy may provide an effective tool to deal with excessive secured and unsecured debt, but there are significant complexities in addressing employer and environmental liabilities.

Endnotes

[1] "Fracking Can Be Done Safely, but Will It Be?," *Scientific American*, May 17, 2013.

[2] *Id.*

[3] "Shale Will Power U.S. Economy," *Financial Times*, April 7, 2013.

[4] "Coal Plants Are Victims of Their Own Economics," *Science Now*, Feb. 18, 2013.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] "U.S. Coal Bankruptcies: Future, Present, and Past," *Fitch Ratings*, Feb. 5, 2013.

[9] "Big Coal to Fight Obama Plan," *Wall Street Journal*, June 26, 2013.

[10] 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code").

[11] A court may reject or modify a CBA under Section 1113 of the Bankruptcy Code or modify retiree benefits under § 1114 of the Bankruptcy Code if the debtor meets the following requirements by a preponderance of the evidence:

(1) The debtor makes a proposal to the Union to modify the CBA;

(2) The proposal is based on the most complete and reliable information available at that time;

(3) The proposed modifications are necessary to permit the debtor's reorganization;

(4) The proposed modifications treat the creditors, debtor and all affected parties fairly and equitably;

(5) The debtor provides to the Union such relevant information as is necessary to evaluate the proposal;

(6) Between the time of the making of the proposal and the time of the hearing on approval of the rejection of the existing collective bargaining agreement, the debtor meets with the Union at reasonable times;

(7) At the meetings the debtor confers in good faith in attempting to reach mutually satisfactory modifications of the CBA;

(8) The Union refuses to accept the proposal without good cause; and

(9) The balance of the equities clearly favors rejection of the CBA.

In re Patriot Coal Corp., 493 B.R. 65, 113 (Bankr. E.D. Mo. 2013) (citing *In re American Provision Co.*, 44 B.R. 907, 909 (Bankr. D. Minn. 1984)).

[12] *In re Patriot Coal Corp.*, 493 B.R. 65 (Bankr. E.D. Mo. 2013) (authorizing rejection of a CBA under Section 1113 of the Bankruptcy Code); *In re Horizon Natural Res. Co.*, 316 B.R. 268 (E.D. Ky. 2004) (authorizing rejection of CBAs because the requirements of Section 1113 of the Bankruptcy Code had been met and the debtor's assets and operations could not have been sold otherwise). *See also In re Hostess Brands, Inc.*, No. 12-22052

(Bankr. S.D.N.Y. Oct. 4, 2012) (order granting Debtors' second motion to reject certain CBAs); *In re AMR Corp.*, 2012 WL 3834798 (Bankr. S.D.N.Y. Sept. 5, 2012) (order authorizing debtors to reject a CBA with the Allied Pilots Association under Section 1113 of the Bankruptcy Code); *but see In re Lady H Coal Co., Inc.*, 193 B.R. 233, 241-243 (Bankr. S.D. W.Va. 1996) (denying motion to reject CBA because debtors had not sufficiently proven the American Provision factors had been met including that all affected parties were treated fairly, the debtor had made a good faith effort to modify the CBA and the balance of the equities favored rejection).

[13] *In re Patriot Coal Corp.*, 493 B.R. at 91.

[14] *Id.* at 139-140.

[15] *Id.* at 104-107.

[16] *Id.* at 113-137.

[17] *In re Patriot Coal Corp.*, No. 12-51502 (Bankr. E.D. Mo. Aug. 13, 2013), ECF No. 4460 ("9019 Motion"); *In re Patriot Coal Corp.*, No. 12-51502 (Bankr. E.D. Mo. Aug. 22, 2013), ECF No. 4511.

[18] 9019 Motion, at ¶ 21.

[19] *In re Patriot Coal Corp.*, No. 12-51502 (Bankr. E.D. Mo. March 28, 2013), ECF No. 3423.

[20] *Id*. at ¶¶ 17-22, 33-39.

[21] *In re Patriot Coal Corp.*, No. 12-51502 (Bankr. E.D. Mo. Apr. 16, 2013), ECF No. 3675.

[22] Order Denying Appointment of a Chapter 11 Trustee at p. 3, *In re Patriot Coal Corp.*, No. 12-51502 (Bankr. E.D. Mo. May 10, 2013), ECF No. 3965.

[23] *Id.*

[24] 26 U.S.C. §§ 9701 et seq.

[25] 26 U.S.C. § 9704; 26 U.S.C. § 9701(c)(2)(A) ("A person shall be considered to be a related person to a signatory operator if that person is—

(i) a member of the controlled group of corporations (within the meaning of section 52(a)) which includes such signatory operator;

(ii) a trade or business which is under common control (as determined under section 52(b)) with such signatory operator; or

(iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.

A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii).").

[26] *In re Horizon Natural Res. Co.*, 316 B.R. 268 (E.D. Ky. 2004).

[27] *In re Leckie Smokeless Coal Co.*, 99 F.3d 573 (4th Cir. 1996).

[28] *Id.* at 586-587.

[29] Debtors' Motion for Entry of an Order (i) Approving the Strategic Transactions Bidding Procedures, (ii) Scheduling Bid Deadlines and the Action, (iii) Approving the Form and Manner of Notice Thereof and (iv) Granting Related Relief, *In re James River Coal Co.*, No. 14-31848 (Bankr. E.D. Va. Apr. 7, 2014), ECF No. 27.

[30] *Adventure Resources, Inc. v. Holland*, 137 F.3d 786, 793 (4th Cir. 1998); *United Mine Workers of America 1992 Benefit Plan v. Rushton (In re Sunnyside Coal Co.)*, 146 F.3d 1273, 1278 (10th Cir. 1998); *LTV Steel Co. v. Shalala (In re Chateaugay Corp.)*, 53 F.3d 478, 498 (2d Cir. 1995), *cert. denied*, 516 U.S. 913 (1995); *Callahan v. UMWA 1992 Plan (In re Callahan)*, 304 B.R. 743 (W.D. Va. 2004); *In re Bethlehem Steel Corp.*, 2004 Bankr. LEXIS 517, (Bankr. S.D.N.Y. Feb. 9, 2004); *but see Buckner v. Westmoreland Coal Co. (In re Westmoreland Coal Co.)*, 213 B.R. 1 (D. Co. 1997).

[31] *Id.*

[32] 30 U.S.C. §§ 901 et seq.; 20 C.F.R. §§ 725 et seq.

[33] 20 C.F.R. §§ 725.603-605.

[34] 20 C.F.R. § 725.491(b).

[35] Judges' Benchbook of the Black Lung Benefits Act (2008) at Chapter 7, V(G)(1)(e) Prepared by the U.S. Department of Labor Office of Administrative Law Judges 2008, Washington, D.C., accessible at http://www.oalj.dol.gov/PUBLIC/BLACK_LUNG/REFERENCES/REFERENCE_WORKS/USDOL_OALJ_BLACK_LUNG_BENCHBOOK_CONTENTS_2008.HTM; *see also* 11 U.S.C. § 362(b)(4).

[36] Final Order Authorizing (i) Debtors to (a) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (b) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (ii) Employees and Retirees to Proceed with Outstanding Workers' Compensation Claims and (iii) Financial Institutions to Honor and Process Related Checks and Transfers, *In re Patriot Coal Corp.*, No. 12-51502 (Bankr. E.D. Mo. Aug. 2, 2012), ECF No. 253.

[37] Debtors' Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, at Section 11.4(g), *In re Patriot Coal Corp.*, No. 12-51502 (Bankr. E.D. Mo. Dec. 15, 2013), ECF No. 5139.

[38] 30 U.S.C. §§ 1201 et seq.

[39] 30 U.S.C. §§ 1201(f), 1253.

[40] 30 U.S.C. § 1232.

[41] *U.S. v. Ringley*, 985 F.2d 185, 187-88 (4th Cir. 1993); *U.S. v. River Coal Co.,* 748 F.2d 1103, 1106-07 (6th Cir. 1984); *U.S. v. King (In re King)*, 19 B.R. 936, 939 (E.D. Tenn. 1982); *In re Sunset Enterprises, Inc.,* 49 B.R. 296 (W.D. Va. 1985).

[42] 30 C.F.R. § 800.11 (2013).

[43] *Pearlman v. Reliance Ins. Co.,* 371 U.S. 132 (1962).

[44] *Coal Stripping v. Clarendon Nat'l Ins. Co. (In re Coal Stripping)*, 222 B.R. 78 (Bankr. W.D. Pa. 1998).

[45] *Id.*

[46] Ky. Rev. Stat. Ann. § 350.135 (West 2010).

[47] 28 U.S.C. § 959.

[48] *Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Protection,* 474 U.S. 494 (1986).

[49] *See, e.g., In re Trinity Coal Corp.*, No. 13-50364 (July 11, 2013) (order approving settlement between debtor and W.V. Dep't of Environmental Protection to take debtor off violation of permit list in order to have new permits issued in exchange for 50 percent payment of prior fines).

[50] Debtors' Third Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code in Support of: (A) The Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code With Respect to Certain of the Debtors; and (B) the Third Amended Joint Liquidating Plan Under Chapter 11 of the Bankruptcy Code With Respect to Certain Other Debtors, at 118-119, *In re Horizon Nat. Resources Co.*, No. 02-14261 (Bankr. E.D. Ky. July 11, 2004), ECF No. 3528.

[51] Notice of Filing of Permitting and Reclamation Plan Agreement, *In re Horizon Nat. Resources Co.*, No. 02-13261 (Bankr. E.D. Ky. Sept. 21, 2004), ECF No. 4111.

[52] *Id.*

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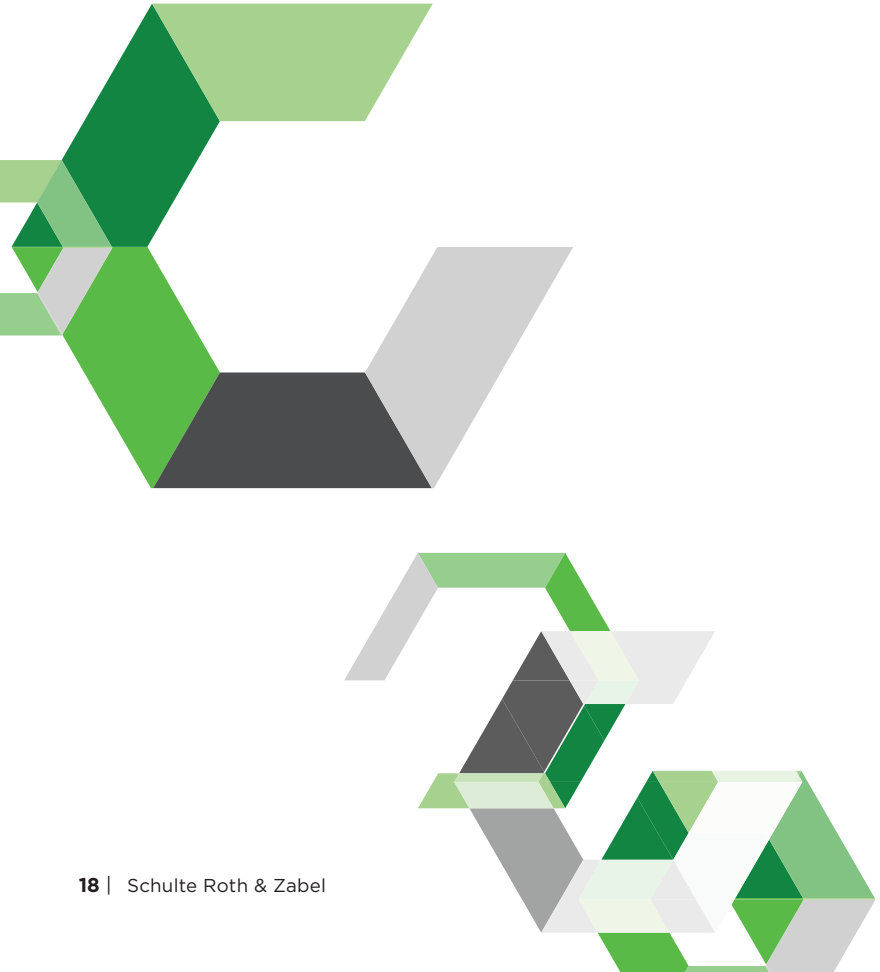

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