

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY

IN RE: CHAPTER 11
LICKING RIVER MINING, LLC, *et al.* CASE NO. 14-10201
DEBTORS IN POSSESSION (ASHLAND, LONDON, &
LEXINGTON DIVISIONS)
JOINTLY ADMINISTERED

IN RE: CHAPTER 11
HARLAN COUNTY MINING, LLC CASE NO. 14-52501
OAK HILL COAL, INC. CASE NO. 14-52502
SANDLICK COAL COMPANY, LLC CASE NO. 14-52503
U.S. COAL MARKETING, LLC CASE NO. 14-52504
(LEXINGTON DIVISION)
DEBTORS IN POSSESSION JOINT ADMINISTRATION
APPLICATION PENDING

**MOTION FOR ORDER AUTHORIZING ADDITIONAL DEBTORS TO EMPLOY
GLASSRATNER ADVISORY & CAPITAL GROUP AS FINANCIAL ADVISOR**

Harlan County Mining, LLC, Oak Hill Coal, Inc., Sandlick Coal Company, LLC, and U.S. Coal Marketing, LLC, as debtors and debtors in possession (collectively, the “Additional Debtors”), and Licking River Resources, Inc., Licking River Mining, LLC, S. M. & J., Inc., J.A.D. Coal Company, Inc., Fox Knob Coal Co., Inc., and U.S. Coal Corporation, as jointly-administered debtors and debtors in possession (collectively, the “Jointly-Administered Debtors,” and together with the Additional Debtors, the “Debtors”), by counsel, and pursuant to §§ 105, 327(a), 328, 331, and 1107(b) of Title 11 of the United States Code (the “Bankruptcy Code”), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014 of the Local Rules for the United States Bankruptcy Court for the Eastern District

of Kentucky (the “Local Rules”), and upon the Affidavit of Evan Blum of GlassRatner Advisory & Capital Group, hereby move the Court for an order authorizing the Additional Debtors to employ GlassRatner Advisory & Capital Group (“GlassRatner”) as their financial advisor, effective as of the commencement of the Additional Debtors’ bankruptcy cases (the “Motion”).

JURISDICTION AND VENUE

1. On May 22, 2014, an involuntary petition seeking relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) was filed against Licking River Mining, LLC (“LR Mining”). On May 23, 2014, involuntary petitions seeking relief under Chapter 11 of the Bankruptcy Code were filed against Licking River Resources, Inc. (“LRR”) and Fox Knob Coal Co., Inc. (“Fox Knob”). On June 3, 2014, an involuntary petition seeking relief under Chapter 11 of the Bankruptcy Code was filed against S. M. & J., Inc. (“SM&J”). On June 4, 2014, an involuntary petition seeking relief under Chapter 11 of the Bankruptcy Code was filed against J.A.D. Coal Company, Inc. (“JAD”).¹ On June 10, 2014, an involuntary petition seeking relief under Chapter 11 of the Bankruptcy Code was filed against U.S. Coal Corporation (“U.S. Coal”). The foregoing involuntary petitions are collectively referred to as the “Involuntary Petitions,” and the dates upon which the Involuntary Petitions were filed are collectively referred to as the “Commencement Dates.”

2. On June 12, 2014, the Court entered an order for relief in each of the Subsidiary Debtors’ bankruptcy cases (the “Subsidiary Relief Date”). On June 27, 2014, the Court entered an order for relief in U.S. Coal’s bankruptcy case (the “U.S. Coal Relief Date,” and together with the Subsidiary Relief Date, the “Relief Dates”).

3. On June 13, 2014, the Court entered an Order [Doc 91]² directing the joint

¹ LR Mining, LRR, Fox Knob, SM&J, and JAD are collectively referred to as the “Subsidiary Debtors.”

administration of the Subsidiary Debtors' bankruptcy cases. On June 27, 2014, the Court entered an Order [U.S. Coal Doc 48] directing that the bankruptcy case of U.S. Coal be jointly administered with the Subsidiary Debtors' bankruptcy cases. Contemporaneously herewith, the Debtors are filing a motion requesting that the Additional Debtors' bankruptcy cases be jointly administered with the Jointly-Administered Debtors' bankruptcy cases.

4. No trustee or examiner has been appointed in the Chapter 11 cases of any of the Debtors. The Official Committee of Unsecured Creditors (the "Committee") was appointed in the Jointly-Administered Debtors' bankruptcy cases on June 18, 2014 [*See* Doc 145].

5. On September 15, 2014, the Committee filed a Motion [Doc 468] requesting, among other things, that the Court compel the Jointly-Administered Debtors to file Chapter 11 petitions for the Additional Debtors, which are subsidiaries of U.S. Coal.

6. On October 27, 2014, the Court entered an Order [Doc 574] which authorized, compelled, and directed the Jointly-Administered Debtors to file Chapter 11 petitions for the Additional Debtors. Contemporaneously with the filing of this Motion, voluntary Chapter 11 petitions were filed for each of the four Additional Debtors as directed by the Court.

7. The Debtors all continue to operate their businesses and manage their properties as debtors in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

8. This Court has jurisdiction over all of the Debtors' Chapter 11 cases under 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A).

9. The Debtors all maintain their principal places of business in Fayette County, Kentucky. Accordingly, venue for all of the Debtors' Chapter 11 cases is proper in this District under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

10. Information regarding the Debtors' businesses and operations can be found in the Declaration of John Collins in Support of the Debtors' First Day Pleadings [Doc 13] and the Declaration of John Collins Regarding the Motion of the Official Committee of Unsecured Creditors for an Order Compelling the Debtors to File Chapter 11 Petitions for Non-Debtor Subsidiaries [Doc 542], which are fully incorporated herein by reference.

PREVIOUS RELIEF

11. Certain first-day motions were previously filed in the Jointly-Administered Debtors' Chapter 11 cases. Among the first-day motions filed by the Subsidiary Debtors was the Motion to Employ and Retain GlassRatner Advisory & Capital Group as Financial Advisor to the Debtors [Doc 30], which was subsequently joined by a similar Motion on behalf of U.S. Coal [Doc 169] (together, the "Original GR Employment Applications"). The Court entered its Final Order [Doc 277] granting the Original GR Employment Applications on a final basis on July 11, 2014. By this Motion, the Debtors are simply seeking to employ GlassRatner to represent the Additional Debtors as well.

BASIS FOR RELIEF

12. The Debtors desire to employ GlassRatner to serve as their financial advisor in connection with the commencement and prosecution of these Chapter 11 cases. The Debtors have been advised by GlassRatner that they will not be able to take all actions necessary to represent the Debtors until such time as their employment is approved. Pursuant to 11 U.S.C. §§ 327 and 328, the Debtors request that this Court approve the interim and final employment of GlassRatner as financial advisor for the Debtors, under a general retainer, to perform the extensive financial services that will be necessary during these Chapter 11 cases.

13. The Debtors have selected GlassRatner as their financial advisor because of its experience and knowledge in the fields of debtors' and creditors' rights and business reorganizations under Chapter 11 of the Bankruptcy Code. The Debtors believe that GlassRatner is well qualified to represent them in these Chapter 11 cases in an efficient and timely manner.

14. The services of GlassRatner as financial advisor under a general retainer are necessary to enable the Additional Debtors to execute faithfully their duties as debtors. The entry of an Interim Order authorizing the employment of GlassRatner is necessary to avoid immediate and irreparable harm to the Additional Debtors' operations, their creditors, and other parties in interest. Subject to further order of this court, GlassRatner will render the following professional services:

- a. Assisting the Additional Debtors with the preparation and submission of financial information to the United States Trustee for the Eastern District of Kentucky (the "U.S. Trustee") and Bankruptcy Court;
- b. Assisting the Additional Debtors in their communication with and dissemination of financial information to secured and unsecured creditors;
- c. Assisting the Additional Debtors in the preparation of customary reporting for Chapter 11 debtors, including monthly operating reports;
- d. Assisting the Additional Debtors in the analysis and preparation of weekly compliance reporting in connection with potential DIP loan financing and cash collateral requirements;
- e. Reviewing financial aspects of motions and responses thereto for accuracy;
- f. Preparing alternative liquidation analyses (high and low scenarios);

- g. Assisting in the preparation of business plans to be utilized as the basis for a plan of reorganization;
- h. Identifying and analyzing potential avoidance action claims;
- i. Assisting the Additional Debtors in the claim estimation and resolution process;
- j. Assisting the Additional Debtors in the evaluation of potential reorganization scenarios and in the preparation of documents and analyses needed for the plan confirmation process;
- k. Attending meetings and conducting telephone calls with management, counsel and other parties, as necessary; and
- l. Performing other services as requested by the Additional Debtors.

15. GlassRatner has stated its desire and willingness to act as financial advisor in these cases and to render the necessary professional services in accordance with the terms set forth herein, subject to approval of its employment by the Court and approval of acceptable “carve-out” arrangements for payment of its allowed fees and expenses.

16. Good cause has been shown for the entry of an Order authorizing GlassRatner’s employment on an interim basis. An Interim Order will allow the Additional Debtors to have the competent financial guidance needed to maintain their operations and preserve their assets at the outset of these cases, pending the approval of GlassRatner’s employment, which will maximize recovery to all creditors. Immediate and irreparable harm may occur if Additional Debtors’ proposed financial advisor cannot act while approval remains pending for the first days of these cases, an especially busy time period for any Chapter 11 case.

17. To the best of the Debtors’ knowledge, GlassRatner does not have any connection with the Debtors, their creditors, any party in interest, or their respective attorneys,

except as specifically set forth herein and in the Affidavit of Evan Blum.

18. It is necessary that the Additional Debtors employ a financial advisor under a general retainer to render the above-referenced professional services.

19. GlassRatner has done work for certain of the Debtors since March 25, 2014, and received payment for that work through May 30, 2014 of approximately \$393,099.40. In addition, GlassRatner has performed work for certain of the Debtors for the period from May 31, 2014 through June 8, 2014, the value of which is \$61,267.67 that will be credited against a \$100,000 retainer obtained by GlassRatner for its postpetition work (the "Retainer").

20. GlassRatner intends to apply to the Court for allowance of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and Orders of this Court. GlassRatner seeks interim approval of its employment on behalf of the Debtors in order to protect its right to payment from the Retainer and the "carve-out" payments to be deposited in GlassRatner's escrow accounts, as requested in the Cash Collateral Motion filed contemporaneously herewith.

21. Subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and Orders of this Court, GlassRatner proposes to charge its customary hourly rates for matters of this size, nature, and complexity, as set forth in the Affidavit, which rates may be increased in the ordinary course of business during the pendency of these cases, and the Debtors believe that such rates are reasonable and customary.

WHEREFORE, the Debtors respectfully request entry of an order approving the Additional Debtors' retention of GlassRatner as financial advisor, pursuant to 11 U.S.C. §§ 327(a) and 328(a) and granting the Debtors such other relief as is just and proper.

Dated: November 4, 2014

LICKING RIVER MINING, LLC

By: /s/ John A. Collins

Title: CEO

LICKING RIVER RESOURCES, INC.

By: /s/ John A. Collins

Title: CEO

S. M. & J., INC.

By: /s/ John A. Collins

Title: CEO

FOX KNOB COAL CO., INC.

By: /s/ John A. Collins

Title: CEO

J.A.D. COAL COMPANY, INC.

By: /s/ John A. Collins

Title: CEO

U.S. COAL CORPORATION

By: /s/ John A. Collins

Title: CEO

HARLAN COUNTY MINING, LLC

By: /s/ John A. Collins

Title: CEO

OAK HILL COAL, INC.

By: /s/ John A. Collins

Title: CEO

SANDLICK COAL COMPANY, LLC

By: /s/ John A. Collins

Title: CEO

U.S. COAL MARKETING, LLC

By: /s/ John A. Collins

Title: CEO

Respectfully submitted,

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COUNSEL FOR ADDITIONAL
DEBTORS
(UNDER PENDING APPLICATION)