

Bailey Glasser Attorneys Help DEP Negotiate A Better Deal in Patriot Bankruptcy

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A negotiated agreement between the West Virginia Department of Environmental Protection and Patriot will ensure that the coal company won't abandon legacy liability sites.

When Patriot Coal announced a sale of most of its ongoing operations to Blackhawk Mining, LLC, as part of a proposed Chapter 11 bankruptcy plan, the West Virginia Department of Environmental Protection was concerned about whether the sale would ensure the reclamation of Patriot's many legacy liability sites, including the Hobet, Apogee and Catenary mining complexes.

These sites must still be reclaimed and water pollution from mining activities must be treated. Representing DEP, Bailey Glasser attorney Kevin Barrett of the firm's Charleston, West Virginia, office, objected to approval of the bankruptcy plan. They deposed and investigated Patriot's management, board of directors, advisors and hedge-fund investors.

Eventually, they reached an agreement with Patriot and the Virginia Conservation Legacy Fund, the entity expected to oversee the reclamation of Patriot's former mining sites that will guarantee \$50 million to fund Patriot's many remaining environmental obligations.

Patriot will post \$12.5 million cash, in addition to its existing surety bonds. The Virginia Conservation Legacy Fund will commit an additional \$30 million or more and Blackhawk Mining will provide \$7.5 million worth of reclamation services on former Patriot sites.

DEP Secretary Randy C. Huffman said the agreement was historic. "Patriot might have just walked away from its reclamation obligations and tried to leave the reclamation to the Special Reclamation Fund," Huffman said. "DEP's aggressive enforcement actions and bankruptcy strategy ensured that significant additional funding would be provided for reclamation over and above the amount of Patriot's mining bonds."

The agreement must still be approved by the bankruptcy court, and a number of other obstacles remain, but if the agreement goes through, it will ensure that Patriot does not escape its environmental obligations with its bankruptcy.

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“These were the direct results of the DEP’s aggressive action that we took in bankruptcy court,” Barrett told The Wall Street Journal.

Attorneys

Kevin W. Barrett

Practice Areas

Bankruptcy & Business Reorganization