



July 16, 2019

Debra A. Wertman
Assistant United States Trustee
Office of the United States Trustee
300 Virginia Street East, Room 2025
Charleston, WV 25301

Re: *In re: Blackjewel, L.L.C., et al.*,
Chapter 11 Case No. 19-30289
Case Filed: July 1, 2019 in the Southern District of West Virginia, Huntington Division

Dear Ms. Wertman:

We have been following the bankruptcy case of Blackjewel, L.L.C. (also referred to as the “Debtor”) with great concern as so many residents and businesses of our states have been financially devastated by the Debtor’s business failures and decisions. Most alarming are the dire circumstances that the Virginia and Kentucky employees (and their families) are facing as a result of their paychecks for prepetition wages having been dishonored by their own banks and financial institutions, either initially upon presentation or after being “clawed back” after being deposited. As a result of the bounced paychecks, many of the Virginia and Kentucky workers mistakenly overdrew their bank accounts. These workers and their families have been left without funds to meet mortgages, pay utility bills, and purchase even basic living necessities. The negative impact only begins with the workers and their families. The failure to pay workers’ wages has rippled through the regional economies, shortchanging area merchants, service providers, and other laborers.

Despite knowing for years of its precarious financial situation, the Debtor did nothing to prepare itself or its workforce for this month’s bankruptcy. Cash flow has been an issue ever since Blackjewel was formed in 2017.¹ Nevertheless, per media reports, Blackjewel leadership did not consult with bankruptcy lawyers or professional restructuring advisors until a few days

¹ <https://www.sightline.org/2019/07/09/blackjewel-bankruptcy-seven-bombshells/>

before the company declared bankruptcy.² Its failure to plan led Blackjewel to proceed toward bankruptcy in a haphazard fashion. Rather than enter Chapter 11 at the close of a fully-funded pay period to minimize worker disruption (which it could have done with a minimum of foresight), the Debtor issued a flurry of paychecks backed by insufficient funds days before declaring bankruptcy.³

Many miners have found themselves in a precarious state of purgatory and uncertainty: neither working, nor laid off. But regardless of their employment status, it is clear that many have not been paid the wages they have earned, creating financial chaos and a cascade of negative consequences. Their stories paint a picture of real, concrete, and ongoing harm to the financial well-being and stability of their families:

- A 33-year old miner said that his bank is requiring him to come up with \$2,100 to cover a bounced paycheck.⁴
- A 44-year old miner from Pennington Gap, Virginia has had his account balance drawn down to just \$30 after his \$2,200 paycheck was taken back. He estimates he is owed approximately one month of pay.⁵
- A 33-year old miner from Grundy, Virginia with four children says that he is \$500 overdrawn since he did not receive his paycheck.⁶
- A family of four from Keokee, Virginia is trying to make ends meet without a \$2,900 biweekly paycheck and has found themselves \$1,900 in the red.⁷
- A Virginia miner is preparing to relocate his family out of state for work after his paycheck bounced and he received no indication that future work would be available.⁸
- Kentucky families are suffering in similar ways.⁹

Upon hearing that the Debtor's employees' paychecks for prepetition earnings had not been honored by the employees' banks, the United States Bankruptcy Court, on its own motion, held an emergency hearing to address the problem. After the hearing was held, on July 5, 2019,

² *Id.*

³ https://www.heraldcourier.com/news/blackout-blackjewel-bankruptcy-leaves-workers-in-the-dark-paychecks-bouncing/article_236b7356-1d9d-51e9-a107-53add6069961.html.

⁴ <https://www.virginiamercury.com/2019/07/08/neither-unemployed-nor-allowed-to-work-virginias-blackjewel-miners-look-for-relief/>.

⁵ https://www.heraldcourier.com/news/blackout-blackjewel-bankruptcy-leaves-workers-in-the-dark-paychecks-bouncing/article_236b7356-1d9d-51e9-a107-53add6069961.html.

⁶ *Id.*

⁷ http://www.thecoalfieldprogress.com/news/blackjewel-miners-fate-remains-in-limbo/article_546758a0-a353-11e9-afb1-5fa8478788e3.html.

⁸ <https://wcyb.com/news/local/employees-of-bankrupt-mining-company-say-their-paychecks-bounced>.

⁹ <https://www.kentucky.com/news/state/kentucky/article232252047.html>.

the court entered a Minute Order requiring the parties, including the Debtor's bank, United Bank, to file a supplemental status report in the event that any employees of the Debtor had difficulties with their paychecks. Attached is a copy of the Minute Order. In response to the Minute Order, on July 11, 2019, United Bank filed a Supplemental Report of United Bank Regarding Payment Processing of Prepetition Wages to Employees.

United Bank fails to provide adequate assurances in the Supplemental Report that all employees' paychecks will be honored by their banks and financial institutions. First, the Supplemental Report refers to paychecks for only those employees who "are needed for Debtor's reduced operating capacity" The Report does not make representations or provide assurances that banks will honor the paychecks of all employees of the Debtor. Second, the report states that the banks that have been contacted by United Bank have only agreed to honor paychecks subject to holds of either 7 days or until checks clear. This does not provide any assurances that the checks will be honored, and does not provide any immediate financial relief for the employees. They need help now; not at some time in the future when their paychecks are declared "cleared." A copy of the Supplemental Report is attached.

Notwithstanding United Bank's Supplemental Report, within the last week, Debtor's employees from Kentucky and Virginia have filed letters with the court confirming that their paychecks have been dishonored and "clawed back," leaving them and their families in critical financial conditions. See the attached letters (pay advice information attached to the original letters has been redacted by our office for this transmission). Our Virginia and Kentucky families are in desperate need of their earned income now. In fact, as we can see from the attached letters, they desperately needed that income on the days when their paychecks ought to have been deposited.

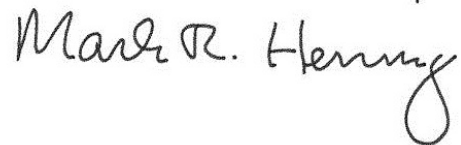
We are also not convinced that the assurances of payment of paychecks in United Bank's Supplemental Report, even with the payments conditioned upon holds by the recipient banks, covers all employees. Reporting has indicated that the Debtor is attempting to lure a subset of workers back to the company with the promise of making those workers whole on their back payments. Implicit in that strategy is that other workers who are owed back wages but not identified as part of the Debtor's plan going forward will not be made whole in the immediate term. This is untenable.

The Debtor is not exercising valid business judgment by picking and choosing which stiffed miners it will deign to make whole at this time. All workers who have labored for the company and are owed back wages should be made whole. And they should be made whole immediately. First, unlike most other creditors (secured and unsecured), these individuals face real personal hardship with every incremental delay, not just a discount associated with the time value of money. Second, requiring individual miners to navigate the intricacies of proof of claim forms when the Debtor has perfect knowledge regarding which wages are still outstanding creates an unnecessary procedural hurdle that can serve only to trap the unwary. Each claim is the same, and making 480 Virginians and 600 Kentuckians duplicate effort and risk a fatal error serves no legitimate purpose.

As the chief legal officers of the Commonwealths of Virginia and Kentucky, we urge an immediate resolution in the form of payment of all paychecks of all Virginia and Kentucky employees of Blackjewel, L.L.C. for their earned prepetition wages and commissions.

Thank you for your consideration.

Sincerely,

Handwritten signature of Mark R. Herring in black ink.

Mark R. Herring
Attorney General of Virginia

Handwritten signature of Andy Beshear in black ink.

Andy Beshear
Attorney General of Kentucky

Enclosures