

From: Steve Alder
To: jhmemos@kyeb.uscourts.gov
Date: 5/7/04 5:52PM
Subject: Lodestar mediation

Judge Howard,

The attached is problem is being brought to your attention as soon as we became aware of it, so that any possible remedy will not overlooked.

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May 7, 2004

Honorable William S. Howard
Judge of the United States Bankruptcy Court
Eastern District of Kentucky
300 Community Trust Building
100 East Vine Street
Lexington, Kentucky 40507

RE: Utah's Concerns over Mediation of Lodestar Reclamation Liabilities

Judge Howard:

I realize the time you have to give to the Lodestar mediation is limited and so I will be brief and direct.

Utah was exasperated to learn this week that the anticipated transfer of permits to Wexford allowing it to mine coal in Kentucky had been approved notwithstanding your honor's request that the parties "stand still" and allow the mediation process a chance to succeed. It was known that the possible transfer of these permits to Wexford or some other a viable coal mining company were part of the structure of the proposed settlement. However, it was also known that Utah's proposed Findings of Control would not have allowed that transfer to occur without an opportunity for a hearing or resolution of the reclamation liability at White Oak. These Findings were disclosed at the first mediation hearing in January. All parties were to stand still. The injunction clearly applied to the transfer of permits as well as to the filing of our Findings.

Now three critical months later, Utah is desperately looking at ways to avoid the damage from a lost season of reclamation, Wexford is reaping high prices from coal that it is mining despite our failure to reach a global settlement, and Renco is recreating the Settlement Agreement by chiseling Kentucky out of control of its program. To rectify this situation, I ask that the Court suggest a structure of the settlement in a manner that will assure that the amount Utah agreed to accept is certain and will be received in time to do reclamation during Utah's brief summer season. In the alternative if a settlement is not finalized, Utah will seek the Court's assistance in voiding the transfers and attaching any profits for reclamation work in Utah.

With regard to the progress of the settlement, Utah fully concurs with the description of

the process. The global settlement is being slowly picked a part and appears headed toward a death by delay. Regardless of the terms that are being discussed, we are very late. The court should require that there be a final date for commitment by the parties, and a definite date for payment of the funds and penalties for missing these deadlines. Utah needs a firm commitment that there is a deal, and a definite date when the money will be available so it can enter into contracts for the reclamation work that might be done this season.

Sincerely yours,

Steven F. Alder
Assistant Attorney General

cc: Mary Ann Wright
counsel for parties to mediation