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FILED
UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO
JUL 21 1988
BRADFORD L. BOLTON, Clerk
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re: KAISER STEEL CORPORATION, Debtor.	Chapter 11 Case No. 87 B 01552 E Jointly Administered Adversary Proceeding Number _____
MELLON FINANCIAL SERVICES CORPORATION #4, a Pennsylvania Corporation, Plaintiff, vs. KAISER COAL CORPORATION, a Colorado Corporation; KAISER COAL CORPORATION OF UTAH, a Utah Corporation; KAISER COAL CORPORATION OF SUNNYSIDE, a Utah Corporation; UTAH DIVISION OF OIL, GAS AND MINING, an agency of Utah; UNITED STATES DEPARTMENT OF THE INTERIOR, THE OFFICE OF SURFACE MINING, RECLAMATION AND ENFORCEMENT, an agency of the United States of America, Defendants.	88E 558 COMPLAINT

1. Plaintiff, Mellon Financial Services Corporation #4 ("MFSC") is a Pennsylvania Corporation with its principal place of business at Room 3030, One Mellon Bank Center, Pittsburgh, Pennsylvania 15258.

2. Defendants, Kaiser Coal Corporation, Kaiser Coal Corporation of Utah and Kaiser Coal Corporation of Sunnyside are Chapter 11 Debtors (collectively referred to herein as the "Debtor").

3. Defendant, The Utah Division of Oil, Gas and Mining ("DOGM") is an agency of the State of Utah.

4. Defendant, The United States Department of the Interior, the Office of Surface Mining, Reclamation and Enforcement ("OSM") is an agency of the United States of America.

5. On February 13, 1987 (the "Filing Date"), the Debtor filed a petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. Sections 101 et seq. (the "Bankruptcy Code").

6. Since the Filing Date, the Debtor has remained in possession of its properties and has operated its business pursuant to Section 1108 of the Bankruptcy Code.

7. Jurisdiction over this adversary proceeding is conferred upon the United States District Court by 28 U.S.C. 1334 and upon this Court by referral from the United States District Court as permitted by 28 U.S.C. §157(a). This is a core

proceeding under 28 U.S.C. §157(b)(2)(A) in that it relates to the administration of the Debtor's estate.

8. During this Chapter 11 case, the Debtor has operated a deep coal mine in Utah known as the Sunnyside mine.

9. The Sunnyside mine was operated by the Debtor more or less continuously from the Filing Date until April, 1988, when it was idled.

10. Pursuant to a Lease Agreement dated as of August 15, 1985 (the "Lease"), a copy of which is attached as Exhibit A, MFSC leased a substantial amount of mining equipment to the Debtor. The initial cost of the equipment used at the Sunnyside mine (the "Sunnyside Equipment") was in excess of $6,000,000.

11. The Debtor has failed to make all of the required rent payments on the Sunnyside Equipment, resulting in prepetition past due rent of $236,811 and postpetition past due rent of $1,186,372.

12. The Lease was rejected in February, 1988 at which time this Court granted MFSC relief from stay to allow it to recover the Equipment.

13. MFSC and the Debtor reached an agreement (the "Interim Agreement") which permitted the Debtor to continue to use the Equipment through May 31, 1988, provided it was not in default.

14. In May, 1988, MFSC notified the Debtor that it wished to recover the Sunnyside Equipment after the Interim Agreement terminated on May 31, 1988.

15. Since May, 1988, MFSC has conducted negotiations and discussions with the Debtor, other equipment lessors and other interested parties regarding the orderly and efficient removal of the Sunnyside Equipment and other lessor-owned equipment. Defendants, DOGM and/or the OSM have attended some of the meetings in which these topics were discussed.

16. MFSC has been informed by Debtor that the roof and/or the floor at the Sunnyside mine have begun to shift and collapse and that if removal of the Sunnyside Equipment does not begin immediately it may be impossible to retrieve it, causing

severe loss to MFSC. MFSC is informed that this condition may be worsening daily.

17. The removal process was scheduled to begin on July 25, 1988, which is the latest possible starting date that will enable MFSC to deliver the Equipment to its buyer by the promised date of September 1, 1988.

18. MFSC is advised that approximately 16,000 tons of coal must be removed in order to safely remove the Sunnyside Equipment.

19. The Debtor has refused to permit the removal of coal in the Sunnyside Equipment removal process without the consent or approval of DOGM and OSM.

20. MFSC has been advised by the Debtor that DOGM has threatened to assert civil and criminal penalties against Debtor and its officers and directors if any coal is removed from the Sunnyside mine during the process of removing the Sunnyside Equipment.

21. A principal object of the Bankruptcy Code is to prevent a destructive race among creditors and to give the debtor a reasonable opportunity to preserve going concern value or to

effect an orderly liquidation of assets for the benefit of creditors, employees and equity owners. In re Security Gas & Oil, Inc. 70 B.R. 786, 796 (Bkrtcy. N.D. Cal. 1987)

22. The Debtor's refusal to permit removal of Sunnyside Equipment from the Debtor's Sunnyside mine unless DOGM/OSM consents disrupts the orderly liquidation of assets and distorts the creditor priority scheme established by Congress in the Bankruptcy Code by effectively granting DOGM/OSM priority status to which they are not entitled.

23. The Bankruptcy Court has broad powers under §105 of the Bankruptcy Code to ensure the orderly and equitable liquidation of a debtor's estate and to enforce the creditor priority scheme established by Congress.

24. The Debtor's refusal to permit the orderly retrieval of Sunnyside Equipment will cause immediate and irreparable harm for which there is no adequate remedy at law in that it will force MFSC to abandon its property or to resort to potentially dangerous methods of removal.

25. Permitting MFSC to remove its Sunnyside Equipment will not increase the Debtor's reclamation liability and will not lead to any additional harm to the environment.

WHEREFORE, for all of the above reasons, MFSC requests the Court to:

1. Order the Debtor to open the Sunnyside mine for the purpose of removing the Sunnyside Equipment.

2. Enter a Preliminary Injunction prohibiting the Debtor, DOGM, OSM or any other person from taking any actions to prohibit MFSC or other equipment lessors from removing coal to the extent necessary to recover equipment from the Sunnyside Mine.

3. Permanently enjoin DOGM and OSM from taking any action to assert or to enforce civil and/or criminal penalties against any individual or corporation including all officers and directors thereof for the removal of any coal that is reasonably necessary for the safe and efficient removal of equipment from the Sunnyside mine.

4. Enter any other order or relief as may be necessary and/or appropriate to ensure the safe and prompt removal of leased equipment from the Sunnyside mine.

Dated: July 21, 1988

Respectfully submitted,

Edwin G. Perlmutter

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Services Corporation #4

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MELLON FINANCIAL SERVICES CORPORATION #4, a Pennsylvania Corporation, Plaintiff, vs. KAISER COAL CORPORATION, a Colorado Corporation; KAISER COAL CORPORATION OF UTAH, a Utah Corporation; KAISER COAL CORPORATION OF SUNNYSIDE, a Utah Corporation; UTAH DIVISION OF OIL, GAS AND MINING, an agency of Utah; UNITED STATES DEPARTMENT OF THE INTERIOR, THE OFFICE OF SURFACE MINING, RECLAMATION AND ENFORCEMENT, an agency of the United States of America, Defendants.	MOTION FOR PRELIMINARY INJUNCTION AND REQUEST FOR HEARING FORTHWITH

Mellon Financial Services Corporation #4 ("MFSC") by its counsel Berenbaum & Weinshienk and Reed Smith Shaw & McClay moves this Court pursuant to Bankruptcy Rule 7065 to issue a Preliminary Injunction restraining and enjoining Kaiser Coal Corporation, Kaiser Coal Corporation of Utah, Kaiser Coal Corporation of Sunnyside (collectively the "Debtor"), the Utah Division of Oil,

Gas and Mining ("DOGM") and the United States Department of the Interior, the Office of Surface Mining, Reclamation and Enforcement ("OSM") from taking any action to prohibit MFSC or any other person or corporation from removing coal from Debtor's Sunnyside mine to the extent such removal is reasonably necessary to recover leased equipment. In support thereof, MFSC states as follows:

1. MFSC owns equipment (the "Equipment") which was previously leased to Debtors and is presently situated in Debtor's Sunnyside mine in Utah. The Court granted MFSC relief from stay in February, 1988 to permit it to recover its equipment.

2. The Equipment has a value in excess of $2,000,000.

3. The Equipment must be removed from the Sunnyside mine to realize its value and because physical conditions in the mine may render removal impossible if it is not accomplished immediately.

4. MFSC is advised that it is necessary to remove approximately 16,000 tons of coal before the Equipment can be safely recovered.

5. The Debtor is unable to post a reclamation bond and is unwilling to permit the removal of coal without the consent and approval of DOGM and OSM.

6. DOGM and/or OSM have refused to permit removal of any coal from the Sunnyside mine unless a reclamation bond in an amount of more than $2,000,000 is posted.

7. The Debtor's position, at the insistence of DOGM will force MFSC and possibly other equipment lessors to abandon equipment, thereby creating additional claims against Debtor's estate, or to resort to more dangerous methods of retrieving equipment, thereby risking human lives.

8. Removal of enough coal to facilitate the safe and efficient retrieval of the Equipment will not lead to increased reclamation liability.

9. MFSC is not aware of any plans to begin reclamation at the Sunnyside mine, which means that Equipment removal will not interfere with such reclamation.

10. The Debtor's refusal to allow removal of enough coal to facilitate safe and efficient equipment removal will cause immediate and irreparable harm to MFSC in a way for which it cannot be adequately compensated at law.

11. The Debtor's refusal to permit MFSC to remove its E Equipment without DOGM/OSM approval conflicts with the Bankruptcy Code purpose of providing for the orderly liquidation of the Debtor's estate and disrupts the priority scheme established by Congress by permitting DOGM/OSM to interfere with the rights of other creditors unless DOGM/OSM nonpriority claims are satisfied first.

12. The relief requested will benefit the Debtor and general creditors by minimizing claims against the Debtor's estate and will benefit MFSC by permitting it to safely recover valuable equipment. The relief requested will not harm any party because there will be no increased reclamation liability and no interference with reclamation efforts.

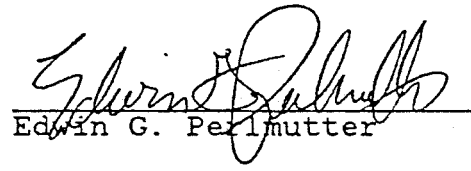
13. The relief requested is not opposed to the public interest.

14. MFSC respectfully requests a forthwith hearing on or before July 25, 1988 so that this issue can be resolved before deteriorating conditions at the Sunnyside mine make removal impractical.

WHEREFORE, MFSC respectfully requests that this Court grant the relief requested herein.

Dated: July 21, 1988

Respectfully submitted,



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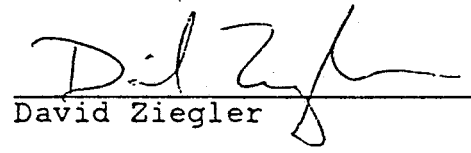

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Upon consideration of the motion of Mellon Financial Services Corporation #4 ("MFSC") for a preliminary injunction, the Courts finds as follows:

1. MFSC is the owner of equipment (the "Equipment") which was previously leased to the Debtor and which is currently located in the Debtor's Sunnyside mine in Utah.

2. The Court has previously granted MFSC relief from the stay of 11 U.S.C. §362(a) to permit it to recover the Equipment.

3. The Equipment cannot be safely removed unless approximately 16,000 tons of coal are first removed.

4. The Debtor has refused to permit the removal of coal without the approval of The Utah Department of Oil, Gas and Minerals ("DOGM"). DOGM has refused to permit the removal of coal because of the Debtor's failure to satisfy its reclamation obligations.

5. The removal of coal necessary for the safe recovery of the Equipment will not interfere with reclamation at the Sunnyside mine, will not increase the Debtor's reclamation liability and will not cause harm to the environment.

6. Unless the Debtor, the DOGM and the United States Department of the Interior, the Office of Surface Mining, Reclamation and Enforcement ("OSM") are enjoined from interfering

with the removal of the Equipment, MFSC will be irreparably harmed by having to abandon Equipment valued over $2,000,000.

7. Physical conditions in the Sunnyside mine make it imperative that removal of the Equipment begin immediately.

8. Basic purposes of the Bankruptcy Code include provision for an orderly and equitable liquidation of a debtor's estate and equitable treatment of creditors in accordance with a priority scheme established by Congress.

9. Any actions that prevent retrieval of equipment unless the claims of other creditors such as DOGM and OSM are first satisfied are contrary to the purpose of the Bankruptcy Code.

10. The Court has authority under 11 U.S.C. §105 to enjoin the Debtor and any other parties from interfering with the rights of creditors to recover assets from a debtor or from disrupting the priority scheme of the Bankruptcy Code.

WHEREFORE, it is hereby ordered, adjudged and decreed that:

(1) The Debtor is hereby ordered to open the Sunnyside mine for the purpose of permitting the removal of leased equipment.

(2) Kaiser Coal Corporation, Kaiser Coal Corporation of Sunnyside, Kaiser Coal Corporation of Utah, DOGM and OSM are hereby enjoined from taking any actions to prohibit the Debtor, MFSC or any entity acting on their behalf from removing coal from the Debtor's Sunnyside mine to the extent such removal is reasonably necessary for the safe and efficient removal of equipment from the Sunnyside mine.

(3) DOGM and OSM are hereby enjoined from taking any actions to assert or to enforce civil and/or criminal penalties against any individual or corporation, including all officers and directors thereof, for the removal of any coal from the Sunnyside mine in connection with the removal of equipment.

Dated: _____

_____