IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WOLF CREEK COLLIERIES,	)	
	)	
Petitioner	)	
	)	
vs.	)	
	)	
RUBY SAMMONS	)	No. 02-3528
	)	
and	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,	)	
	)	
Respondents	)	

DIRECTOR'S MOTION TO REINSTATE CASE TO ACTIVE DOCKET

The Director, Office of Workers' Compensation Programs, United States Department of Labor, requests that this Court vacate the Clerk's determination of December 16, 2002, which held this case in abeyance "pending disposition of [Wolf Creek Collieries'] Notice of Bankruptcy and Automatic Stay." The Director requests that the Court reinstate this case to its active docket. As grounds for this motion, the Director states:

INTRODUCTION

This case involves a claim under the Black Lung Benefits Act (BLBA), 30 U.S.C. §§901-945, by Ruby Sammons, the widow of a deceased coal miner. During the initial processing of her claim, the Director identified Wolf Creek as the responsible operator liable for the payment of benefits, an identification not challenged in the subsequent litigation. During the course of litigation, Horizon Natural Resources Company acquired Wolf Creek. An administrative law judge awarded Mrs. Sammons' claim in June 2000, and the Benefits Review Board affirmed that

award in March 2002. Wolf Creek then appealed to this Court. After the parties filed their briefs, Horizon and 77 of its subsidiaries, including Wolf Creek, filed petitions under chapter 11 of the Bankruptcy Code. *In re Horizon Natural Resources Co.*, Nos. 02-14261 and 02-14336 (Bankr. E.D. Ky.).[1] Wolf Creek subsequently filed a notice of its bankruptcy filing and of the Bankruptcy Code's automatic stay provision, 11 U.S.C. §362(a), in this case. In response, the Clerk issued a form letter on December 16, 2002, stating that the case would "be held in abeyance pending the disposition of . . . Notice of Filing of Bankruptcy and Automatic Stay (filed by petitioner)." This Court's decision in *In re Mansfield Tire and Rubber Co.*, 660 F.2d 1108 (6th Cir. 1981), however, makes plain that the administration of claims analogous to workers' compensation claims – such as federal black lung claims – is exempt from the automatic stay under the police and regulatory powers exception. 11 U.S.C. §362(b)(4). Thus, the Clerk's determination should be vacated, and this case should be reinstated to the active docket.

JURISDICTION

This Court has jurisdiction to determine whether the automatic stay of Section 362(a) applies to this case, or whether this appeal is excepted from the stay. *Chao v. Hospital Staffing Services, Inc*, 270 F.3d 374, 384 (6th Cir. 2001). The Court's jurisdiction is concurrent with that of the Bankruptcy Court. *Id.* at 383-84. The Court also "may enter orders not inconsistent with the terms of the stay and any orders entered by the bankruptcy court respecting the stay." *Id.* at 384. Thus, the Court has jurisdiction to determine whether this appeal is excepted from the stay and, if so, to reinstate it to the active docket.

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[1] Many of Horizon's subsidiaries are or were coal mine operators that have been named as operators potentially liable for their former employees' black lung benefits. At least 64 federal black lung claims against Horizon subsidiaries are pending before the Department of Labor's Office of Administrative Law Judges and Benefits Review Board, or the U.S. Courts of Appeals.

STATUTORY AND REGULATORY BACKGROUND

The BLBA Claims Adjudication Process

The BLBA provides benefits to former coal miners who prove their total disability due to pneumoconiosis arising out of coal mine employment, and to certain survivors of miners who died due to pneumoconiosis. 30 U.S.C. §901(a); *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 8 (1976); *Southard v. Director, OWCP*, 732 F.2d 66, 68 (6th Cir. 1984). Under Part C of the BLBA, a claim is filed with a district director of the Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP). 33 U.S.C. §919(a) (incorporated into the BLBA by 30 U.S.C. §932(a)).[2] The district director is a subordinate of the Director, OWCP, whom the Secretary has designated as the administrator of the BLBA. 20 C.F.R. §701.202(f).

The statute requires the district director to serve as the primary investigator of each BLBA claim. 33 U.S.C. §919(c) (incorporated by 30 U.S.C. §932(a)) (district director "must make or cause to be made such investigations as he considers necessary in respect of the claim"). The investigation entails the development of evidence concerning both the miner's medical condition and employment history in order to determine: (1) whether the claimant is eligible for benefits, and (2) which, if any, coal mine operator would be responsible for the payment of any benefits awarded. The district director is responsible for identifying the potentially liable responsible operator based on specific statutory and regulatory criteria, including the past

[2] The statute uses the term "deputy commissioner," but the black lung program regulations substitute the term "district director." 20 C.F.R. §725.101(a)(16). We will use the latter term in this motion.

employment of the miner. 30 U.S.C. §§802(d), 932(h); 20 C.F.R. §§725.490-725.495 (1999); *e.g., Kentland Elkhorn Coal Co. v. Hall*, 287 F.3d 555, 561 (6th Cir. 2002).[3]

After the district director issues a proposed decision and order, any dissatisfied party may request a hearing before a DOL administrative law judge, whose decision, in turn, is subject to review by DOL's Benefits Review Board, and then by the U.S. Court of Appeals for the circuit in which the miner's coal mine employment occurred. 33 U.S.C. §§919(d), 921(a), (b), (c); 20 C.F.R. §§725.419(a), 725.481, 725.482, 802.410 (2002). Generally, black lung awards issued by administrative law judges are effective, and require payment, even if the operator appeals the award. 20 C.F.R. §725.502(a) (2002). Congress intended to insure that totally disabled coal miners would receive benefits while operators pursue appeals. *See* 127 CONG. REC. 29932 (1981) (statement of Sen. Hatch) (quoting section-by-section analysis to effect that the Black Lung Disability Trust Fund is to pay benefits when operator fails to do so while case is on appeal). If an operator fails to comply with an effective award, the Trust Fund must pay benefits. 26 U.S.C. §9501(d)(1)(A); 20 C.F.R. §725.522(a) (2002).[4]

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[3] If no coal mine operator meets the applicable criteria, then the Black Lung Disability Trust Fund, which is funded by an excise tax on coal producers and repayable advances from the general treasury, is potentially liable for any benefits awarded. 26 U.S.C. §§9501(b), (c), (d)(1)(B). In such case, the Director, OWCP, is the respondent on behalf of the Trust Fund and defends the Trust Fund's interests before the ALJ and, if necessary, the Benefits Review Board and Court of Appeals.

[4] If the award is ultimately upheld, the operator must reimburse the Trust Fund for the benefits paid, plus interest. 30 U.S.C. §934. A "lien in favor of the United States" for the amount owed (plus interest) upon all the operator's property "arises on the date on which [the operator's] liability [for black lung benefits] is finally determined . . . ." 30 U.S.C. §934(b)(2); 20 C.F.R. §725.603(b) (1999). If the award is ultimately reversed, the benefits paid by the Trust Fund become an overpayment subject to recovery from the claimant under the incorporated Social Security Act overpayment provision. 42 U.S.C. §404 (incorporated by 30 U.S.C. §923(b), implemented by 20 C.F.R. §§725.540-725.548 (1999)).

After a district director transfers a claim to the Office of Administrative Law Judges for a hearing, the Director, OWCP, remains a party to the proceedings. 30 U.S.C. §932(k); 20 C.F.R. §725.360(a)(5). In this capacity, the Director submits evidence and argues in favor of findings that uphold the district director's identification of the responsible coal mine operator. Additionally, Congress intended for the Secretary "to advance his views in the formal claims litigation context whether or not the Secretary ha[s] a direct financial interest in the outcome of the case." Senate Comm. on Human Resources, S. Rep. No. 95-209, pp. 20-21, *Black Lung Benefits Reform Act and Black Lung Benefits Revenue Act of 1977*, 96th Cong. 624-25 (House Education and Labor Comm. Print 1979).

The BLBA Insurance Provisions

The BLBA requires coal mine operators to secure the payment of black lung benefits to disabled miners either by purchasing commercial insurance or obtaining authorization from OWCP to self-insure. 30 U.S.C. §§932(b); 933(a); 20 C.F.R. §§726.1-726.213 (2002). Horizon did neither.[5] Wolf Creek, though, had self-insured status, secured by a $500,000 indemnity bond that covers the instant case, based on an authorization granted to its prior corporate parent. *See* 20 C.F.R. §§726.104(b)(1), 726.106(b) (1999) (allowing self-insurer to secure its liability by obtaining indemnity bond). If the indemnity bond does not suffice to pay any benefits ultimately awarded in this case, the Trust Fund would be required to make any benefit payments on which Wolf Creek defaults. 26 U.S.C. §9501(d)(1)(A).

[5] OWCP rejected Horizon's application for authorization to self-insure, and no commercial insurance carrier reported to OWCP that it had issued a policy covering Horizon's potential federal black lung liability. *See* 20 C.F.R. §726.208 (1999) (requiring carrier to report to OWCP each policy and endorsement issued to cover federal black lung liability).

ARGUMENT

BLBA CLAIMS ADJUDICATION PROCEEDINGS FALL UNDER THE POLICE OR REGULATORY POWER EXCEPTION TO THE BANKRUPTCY CODE'S AUTOMATIC STAY PROVISION.

A. The Automatic Stay and the Police or Regulatory Power Exception

When a company files a petition in bankruptcy under chapter 11 of the Bankruptcy Code, as Horizon and its subsidiaries did here, the filing automatically stays specified proceedings against the debtor. Under 11 U.S.C. §362(a)(1), the petition generally stays the commencement or continuation of judicial, administrative or other proceedings against the debtor that were, or could have been, brought before the bankruptcy petition was filed.

Certain proceedings, however, are excepted from the automatic stay under 11 U.S.C. §362(b). One of these exceptions provides that the automatic stay does not apply to:

> . . . the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power . . . .

11 U.S.C. §362(b)(4). This "police or regulatory power" exception applies to a governmental unit's enforcement of laws "affecting health, welfare, morals, and safety, 'but not to regulatory laws that directly conflict with the control of the res or property by the bankruptcy court.'" *Matter of Currency Exchange, Inc.*, 762 F.2d 542, 555 (7th Cir. 1985) (quoting *State of Missouri v. United States Bankruptcy Court*, 647 F.2d 768, 776 (8th Cir. 1981)). As this Court has observed, "Congress clearly intended for the police power exception to allow governmental agencies to remain unfettered by the bankruptcy code in the exercise of their regulatory powers." *Word v. Commerce Oil Co.*, 847 F.2d 291, 295 (6th Cir. 1988). Thus, a proceeding by a governmental unit enforcing such laws may proceed to entry of a money judgment, although

actions to collect such a judgment fall outside the exception and are stayed. *See generally Board of Governors of the Federal Reserve System v. MCorp. Financial Inc.*, 502 U.S. 32, 41 (1991) (stay applies to agency action to enforce final agency order that affects Bankruptcy Court's control over property of estate, but not to agency's making of final order).

For the reasons set forth below, the Director urges the Court to hold that BLBA proceedings are excepted from the automatic stay under the police or regulatory power exception.

B. BLBA proceedings are excepted from the automatic stay because they are an exercise of DOL's police or regulatory power

Workers' compensation programs – and analogous programs, such as the federal black lung compensation program – are valid exercises of police or regulatory power. In *New York Central R. R. Co. v. White*, 243 U.S. 188, 206 (1917), the Supreme Court rejected a constitutional challenge to the Workmen's Compensation Law of New York and held that the law was "a reasonable exercise of the police power of the State." The Court defined the rationale for the law: principally that modern conditions of employment required a swift means of compensating injured workers, who otherwise would bear the greater part of loss from industrial accidents and become a burden on public or private charity. *Id.* at 196-97. The Court held that the legislation was a reasonable exercise of police powers, stating:

> The subject matter in respect of which freedom of contract is restricted is the matter of compensation for human life or limb lost or disability incurred in the course of hazardous employment, and the public has a direct interest in this as affecting the common welfare. The whole is no greater than the sum of its parts, and when the individual health, safety, and welfare are sacrificed or neglected, the state must suffer.

Id. at 206-07. Subsequently, in upholding the constitutionality of the BLBA, the Supreme Court relied upon *White*, explaining, "this Court long ago upheld against due process attack the

competence of Congress to allocate the interlocking economic rights and duties of employers and employees upon workmen's compensation principles *analogous* to those enacted here . . . ." *Turner Elkhorn*, 428 U.S. at 15 (emphasis added).

Relying on *White*, this Court in *Mansfield Tire* concluded that the "administration of claims" under a workers' compensation statute is a "valid exercise of the police power of the state," and excepted from the automatic stay under Section 362(b)(4). 660 F.2d at 1113; *see also In re Perkins*, 1995 WL 468204 (Bankr. D. Idaho 1995); *Rodriguez v. Continental Steel Corp.*, 483 N.Y.S.2d 832, 834 (1984); *Matter of Penn Terra Ltd,* 24 B.R. 427 (Bankr. W.D. Pa. 1982*); cf. In re Mart*, 34 B.R. 448, 449 (Bankr. D. Or. 1983) (lifting stay because state workers' compensation proceedings are an exercise of state police or regulatory power). Failing to except such proceedings from the automatic stay would improperly prevent the state from exercising "its lawful powers and operate[] to hinder, delay, and deprive [the employer's] injured workers of the benefits to which they are lawfully entitled . . . ." *Mansfield Tire*, 660 F.2d at 1113.

This rationale applies with equal force to BLBA proceedings. The purpose of the statute is to "provide benefits . . . to coal miners who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such disease." 30 U.S.C. §901(a). Congress intended the BLBA to replace "State workmen's compensation law" where the state statutes fail to "provide[ ] adequate coverage for pneumoconiosis . . . ." 30 U.S.C. §931(a); *see* 20 C.F.R. §§722.1-722.4 (2002).[6] Indeed, this Court has recognized that the BLBA was enacted in order to facilitate and liberalize the flow of compensation to miners who become totally disabled due to pneumoconiosis arising out of their coal mine employment. *Wiley v. Consolidation Coal Co.*, 892 F.2d 498, 503 (6th Cir. 1989).

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[6] No state workers' compensation law has ever been deemed "adequate" within the meaning of the BLBA. 20 C.F.R. §722.4.

Although this Court has observed that the federal black lung program is "*not* a workers' compensation statute for mine workers[,]" it has done so in the context of a case that addressed the "narrow" question of whether a widow could collect BLBA benefits when her husband committed suicide. *Johnson v. Peabody Coal Co.*, 26 F.3d 618, 618, 621 (6th Cir. 1994); *but cf. Turner Elkhorn*, 428 U.S. at 15 (characterizing BLBA as "analogous" to workers' compensation). *Johnson* simply did not involve the applicability of the bankruptcy stay to BLBA claims. Moreover, *Johnson* recognized that the BLBA serves to fill the gaps in state workers' compensation laws, describing the BLBA as "a very specific and limited piece of legislation designed to address a medical condition that inflicts miners with such frequency that it required its own set of rules and regulations, apart from any other workers' compensation coverage that may have been afforded to miners." *Johnson*, 26 F.3d at 621.

The BLBA thus serves the same purpose as a workers' compensation statute by filling a gap where state workers' compensation laws are inadequate. *See* 30 U.S.C. §901(a) ("Congress finds . . . that few States provide benefits for death or disability due to [pneumoconiosis] to coal miners or their surviving dependents."); 30 U.S.C. §921(a) (BLBA applies where "State workmen's compensation law" does not "provide[] adequate coverage for pneumoconiosis"); *Caney Creek Coal Co. v. Satterfield*, 150 F.3d 568, 570 n. 3 (6th Cir. 1998) (liability imposed against coal mine operator under BLBA "if the state statute was inadequate"); *Hawkins v. Director, OWCP*, 907 F.2d 697, 701 (7th Cir. 1990) (BLBA "enacted in large part because the state workers' compensation programs were inadequate to meet the needs of disabled coal miners"). Congress intended that "traditional workers' compensation principles" be applied, as appropriate, in black lung proceedings. Senate Comm. on Human Resources, S. Rep. No. 95-209, pp. 13-14. Then-Deputy Undersecretary of Labor Robert Collyer testified to the same

effect in support of the 1981 amendments to the BLBA, stating that one of the purposes of the amendments was to "make the Federal statute consistent with traditional workers' compensation principles by limiting survivors' benefits to cases where death was a result of black lung and not some unrelated event." *Hearings on S. 1922 Before the Subcomm. on Labor of the Senate Comm. on Labor and Human Resources*, 97th Cong., 1st sess. 17, 30 (1981). Hence, as Congress enacted the BLBA to achieve the same policies that underlie state workers' compensation statutes and to remedy a deficiency in those statutes, *Mansfield Tire's* holding that state workers' compensation proceedings are excepted from the automatic stay under the "regulatory or police power" exception should apply equally to federal black lung proceedings.

Additionally, the Ohio workers' compensation program at issue in *Mansfield Tire* is similar to the federal black lung benefits program in an important respect. Under the Ohio program, when a self-insurer's indemnity bond failed to cover liability for claims, a state insurance fund paid workers their benefits and then could seek reimbursement from the employer. Similarly, under the BLBA, when an employer defaults, the Trust Fund must pay benefits and then may seek reimbursement from the employer. 30 U.S.C. §934. Where, as in *Mansfield Tire*, the employer was in bankruptcy, the state insurance fund could file a claim against the employer in the bankruptcy proceeding. *See Mansfield Tire*, 660 F.2d at 1110, 1115.

C. This case should be excepted from the automatic stay under both the "pecuniary interest" and "public policy" tests.

In *Hospital Staffing Services*, this Court set forth a two-part test for determining whether an action qualifies for the police or regulatory power exception under Section 362(b)(4): the "pecuniary interest" test and the "public policy" test. 270 F.3d at 385-86. (Although *Mansfield Tire* did not mention this two-part test, the Court endorsed *Mansfield Tire* in *Hospital Staffing Services*. 270 F.3d at 390, n. 13.) The instant case passes muster under both tests.

An action qualifies for exception from the automatic stay under the "pecuniary interest" test where the government's action would not "'result in a pecuniary advantage *to the government* vis-à-vis other creditors of the debtor's estate.'" *Hospital Staffing Services*, 270 F.3d at 388 (quoting *In re Commonwealth Cos.*, 913 F.2d 518, 523-24 (8th Cir. 1990)). Entry of a judgment or order for monetary damages provides no pecuniary advantage to a governmental unit vis-à-vis other creditors. In contrast, enforcement of a money judgment would provide a pecuniary advantage to the government. *Hospital Staffing Services*, 270 F.3d at 388, n. 10; *see generally MCorp.*, 502 U.S. at 41 (stay does not apply to agency's making of final order, but precludes agency enforcement of a final order that affects the Bankruptcy Court's control over the property of the estate). Accordingly, proceedings initiated by or before a governmental unit up to and including entry of a judgment are within the police power and satisfy the "pecuniary interest" test. *See Hospital Staffing Services*, 270 F.3d at 388, n. 10 ("Therefore, in excepted cases, non-bankruptcy fora have jurisdiction to reduce claimed civil liability to a money judgment.").

The entry of a final black lung benefits award against a coal mine operator is analogous to a money judgment, but also gives rise to a lien against the operator in favor of the United States for the amount of any benefits paid by the Trust Fund, plus interest. 30 U.S.C. §934(b)(2). A lien generally elevates a creditor to secured status in bankruptcy proceedings. 11 U.S.C. §506. But no lien would attach against Wolf Creek if the Court affirms the award in this case. A lien arising under the BLBA is treated as a federal tax lien. 30 U.S.C. §934(b)(3)(B). Federal tax liens generally do not attach against a bankruptcy debtor's property. 11 U.S.C. §362(b)(9)(D) ("any tax lien that would otherwise attach to property of the estate . . . shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor"); *see In re Avis*,

178 F.3d 718, 722-24 (4th Cir. 1999) (automatic stay prevents attachment and perfection of federal tax liens); *see also* 30 U.S.C. §934(b)(4)(B) (time for enforcing the lien is "suspended for any period during which the assets of the operator are in the custody or control of any court of the United States, . . . and for 6 months thereafter . . . ."). Accordingly, entry of a final award against Wolf Creek would not afford the government a pecuniary advantage vis-à-vis other creditors of the debtor's estate; rather, it would merely give rise to a debt to the United States for which DOL may file a proof of claim against the bankruptcy estate as a general unsecured creditor. *See Mansfield Tire*, 660 F.2d at 1113 ("[t]he exercise by the Commission of its lawful powers . . . gives it no preference over the creditors of the debtor").[7] Adjudication of the instant appeal will, nevertheless, serve an important purpose: it will finally resolve a pending black lung claim and thus settle the rights and obligations of the parties.

This case also qualifies for the police and regulatory power exception to the automatic stay under the "public policy" test. As defined in *Hospital Staffing Services*, an action qualifies for exemption from the automatic stay under the "public policy" test where the "*particular lawsuit* is undertaken by a governmental entity in order to effectuate public policy," but not where its purpose is to "adjudicate private rights" or where "a successful suit would result in a pecuniary advantage to certain private parties vis-a-vis other creditors of the [bankruptcy] estate . . . ." 270 F.3d at 389, 390.[8] Like the adjudication of the workers' compensation claims at

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[7] Other labor-related cases cited in *Mansfield Tire* as examples of governmental actions held to qualify for the police and regulatory power exception were *N.L.R.B. v. Evans Plumbing Co.*, 639 F.2d 291, 293 (5th Cir. 1981), and *Marshall v. Tauscher*, 7 B.R. 918, 920 (Bankr. E.D. Wis. 1981).

[8] We respectfully note our disagreement with two aspects of *Hospital Staffing Services*. First, in our view, if an action qualifies for exception to the automatic stay under the "pecuniary interest" test, it is unnecessary to consider the "public policy" test. *See* 3 COLLIER ON BANKRUPTCY ¶362.05[5][b] (Alan N. Resnick & Henry J. Summers, eds., 15th ed. rev. 2002) (action qualifies

issue in *Mansfield Tire*, adjudication of this black lung claim would serve the public policy of resolving a pending benefits claim and, if the award is affirmed, of ensuring that an entitled claimant receives the benefit payments due (from a source other than the debtor). Nor would successful prosecution of this claim "result in a pecuniary advantage to [Mrs. Sammons] vis-a-vis other creditors of the [Horizon's bankruptcy] estate." If Mrs. Sammons' award is affirmed, she will continue to receive benefit payments either out of the indemnity bond posted by Wolf Creek's prior corporate parent or, if the bond assets are exhausted, by the Trust Fund.[9] By contrast, in *Hospital Staffing Services*, successful prosecution of DOL's "hot goods" injunction action under the Fair Labor Standards Act would have resulted in payment of employees' minimum wages out of the assets of the bankruptcy estate ahead of the claims of other creditors. 270 F.3d at 393-94.

Although adjudication of black lung claims ensures that totally disabled miners and eligible survivors of deceased miners receive the benefits to which they are entitled, administration of the black lung program is not merely a quasi-judicial action by DOL to adjudicate the rights of private parties. To be sure, BLBA administrative proceedings, in part, adjudicate the private rights of employers and their employees. As we have shown, however, DOL's responsibility begins when a district director investigates a claim. 33 U.S.C. §919(c)

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for exception if it meets either test); *N.L.R.B. v. Edward Cooper Painting, Inc.*, 804 F.2d 934, 942 (6th Cir. 1986) ("Generally, *one* of two tests has been applied . . . .") (emphasis added). Second, we believe that the correct formulation of the "public policy" inquiry is whether the action effectuates public policy (an excepted action) or whether the agency merely "is acting in a quasi-judicial capacity . . . to adjudicate private rights . . . ." (a non-excepted action). *In re Dan Hixson Chevrolet Co.*, 12 B.R. 917, 921 (Bankr. N.D. Tex. 1981); *see Hospital Staffing Services*, 270 F.3d at 395-97 (Moore, J., dissenting) (majority interpretation of "public policy" test too narrow). As explained herein, however, this case qualifies for exception to the automatic stay under either formulation of the test.

[9] The Trust Fund has been paying Mrs. Sammons interim benefits because Wolf Creek refused to pay while pursuing its appeal. 26 U.S.C. §9501(d)(1)(A).

(incorporated by 30 U.S.C. §932(a)). The district director must gather evidence as to the miner's employment history, notify potentially liable coal mine operators of the claim, and afford such operators an opportunity to submit relevant evidence. The district director also schedules the miner for a complete pulmonary evaluation and determines, based on all the evidence gathered: (1) whether the claimant is entitled to benefits, and (2) which coal mine operator (and insurance carrier, if any) is liable for the claim. 20 C.F.R. §§725.406-725.408, 725.490-725.495 (1999); *Kentland Elkhorn*, 287 F.3d at 566 ("The regulations require that the Director identify, notify and develop evidence regarding potential responsible operators.").

Additionally, as a statutory party in BLBA proceedings before the ALJ, Benefits Review Board and Courts of Appeals, the Director's role in the black lung program is more than quasi-judicial. In this role, the Director not only defends the district director's responsible operator determination, but also advocates the proper interpretation and application of the BLBA and its implementing regulations in any given case. In sum, the Director's administration of the BLBA constitutes "action . . . by a governmental unit" that promotes public health and safety and therefore satisfies the "public policy" test. *See Mansfield Tire*, 660 F.2d at 1114 ("the administration of workers' compensation claims by the State of Ohio and the agencies created for that purpose is a valid exercise of the police or regulatory power of a government unit"). As with the state workers' compensation proceeding at issue in *Mansfield Tire*, staying proceedings under the BLBA would "hinder, delay and deprive [the debtor's] injured workers of the benefits to which they are lawfully entitled . . . ." 660 F.2d at 1113.

This Court said in *Mansfield Tire* that it would be unprecedented for a bankruptcy court to assert jurisdiction over workers' compensation claims: "we are not aware that any Bankruptcy Court in all the long years of the old Bankruptcy Act of 1898 attempted to exercise jurisdiction

over the administration of workers' compensation laws." *Mansfield Tire*, 660 F.2d at 1113-14. Conversely, there is no reason to foist upon bankruptcy courts the burden of adjudicating federal black lung claims.

CONCLUSION

Based on the foregoing, the Director respectfully requests that the Court reinstate the case to its active docket.

Respectfully submitted,

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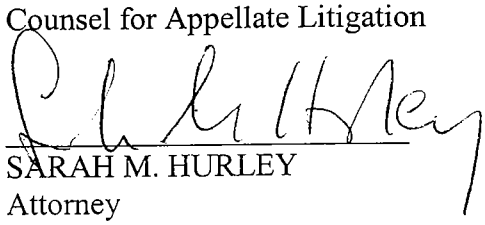

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CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2003, a copy of the foregoing motion was mailed, postage prepaid, to the following:

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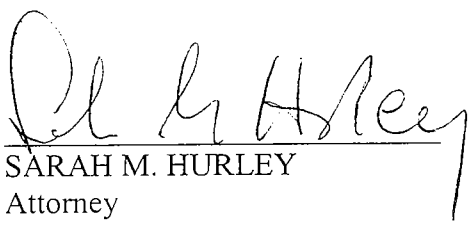

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