

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
LEXINGTON DIVISION**

**IN RE**

**CAMBRIAN HOLDING COMPANY,  
INC., ET AL.**

**CASE NO. 19-51200**

**DEBTORS**

**ORDER**

The Ratliff Trust seeks (1) an order compelling the Liquidating Trustee to abandon records of the Debtor Pike Letcher Land, LLC and (2) relief from an injunction in the Third Amended Joint Plan of Orderly Liquidation [ECF No. 1539 (the “Plan”)] confirmed by an Order entered on February 16, 2021 [ECF No. 1542]. [ECF No. 2054 (the “Motion”).]

The Plan established a Liquidating Trust to pursue claims and distribute funds to allowed unsecured creditors. Section 11.04 of the Plan is an extensive provision that enjoins enforcement of or collection on debts incurred by the Debtors prior to the filing of the jointly administered cases.

The Ratliff Trust is involved in prepetition litigation filed in state court against Debtor Pike Letcher Land LLC and non-debtors Pike Letcher, LLC, TECO Coal, LLC, and TECO Energy, styled *Thomas B. Ratliff Trust, et al. v. Pike Letcher Land Company, et al.*, Case No. 14-CI-1367, Pike Circuit Court, Kentucky. The Ratliff Trust admits it cannot recover from the Debtor Pike Letcher Land LLC but seeks relief to proceed against the non-debtor entities at a trial scheduled in October 2022.

The Liquidating Trustee Ellen Arvin Kennedy objects to the Motion. [ECF No. 2077.] The Liquidating Trustee maintains that allowing the state court litigation to proceed is burdensome because it would require her participation in the litigation. She also argues that the

litigation may result in the enforcement of an indemnification claim against the Debtors by one of the TECO entities, which will dilute the distribution to unsecured creditors.

A hearing was held on June 23, 2022. [ECF No. 2084.] Counsel for the Ratliff Trust and the Liquidating Trustee appeared. Counsel for the TECO entities also appeared and objected to the relief. The TECO entities seek enforcement of the Plan injunction and raised concerns with the timing of the October trial. They argue that the Ratliff Trust breached the Plan injunction when it pursued and obtained the trial date and other related deadlines. The parties could not negotiate a consensual resolution. [ECF Nos. 2090, 2096.]

The Liquidating Trustee's legitimate concerns regarding the imposition on her time are minimized because the Ratliff Trust and the TECO entities agreed they do not need documents from the Liquidating Trustee. [ECF Nos. 2080, 2084, 2090, 2096.] Further, they will not ask her to appear as a fact witness at any hearing or trial. [*Id.*]

The remaining issue affecting the Liquidating Trustee is the possibility TECO Diversified, Inc. might attempt to increase its claim based on an indemnification provision in an underlying document. Any discussion of recovery from the Liquidating Trust based on indemnification is premature. The claims bar date has passed and only TECO Diversified, Inc. filed a timely proof of claim. Amending the claim is not necessarily viable at this late stage and may not have any material impact on the creditor or the estate. *See, e.g., In re New River Shipyard, Inc.*, 355 B.R. 894 (Bankr. S.D. Fla. 2006) (post-bar date amendments are reviewed with scrutiny); *In re MacMillan*, 186 B.R. 35, 49 (Bankr. S.D. N.Y. 1995) (amendments to claims are not automatic and subject to contrary equitable considerations or prejudice to the opposing party); *see also* 9 COLLIER ON BANKRUPTCY 3001.04 (16th 2022).

In these circumstances, the Plan injunction should not prevent the Ratliff Trust from pursuing non-Debtor entities. This situation is more akin to the common request for relief from the automatic stay to allow litigation to proceed to determine the liability of an insurance provider than a third-party release. A detailed review of the Ratliff Trust's analysis of the facts based on the twelve factors adopted in *In re Sonnax Indus., Inc.*, 907 F.2d 1280 (2nd Cir. 1990) is not required by the decision in this Order. [See ECF No. 2080]; *see also In re Residential Capital, LLC*, 508 B.R. 838 (Bankr. S.D. N.Y. 2014) (relying on the twelve *Sonnax* factors to grant relief from a plan injunction).

It is not necessary to consider the impact on the non-Debtor parties in the state court litigation. They are not the intended beneficiaries of the injunction. The state court may handle its docket in any manner it sees fit. To avoid doubt, the Plan injunction still applies to the Debtor Pike Letcher Land LLC, although the Debtor may remain as a defendant in the state court litigation in name only.

Therefore, it is ORDERED that the Motion is GRANTED IN PART. Section 11.04 of the Plan does not prevent the Ratliff Trustees from prosecuting their claims against the non-debtor defendants in the case styled *Thomas B. Ratliff Trust, et al. v. Pike Letcher Land Company, et al.*, Case No. 14-CI-1367, Pike Circuit Court, Kentucky.

It is further ORDERED that the request to compel abandonment was withdrawn and is otherwise DENIED. By agreement of the parties, the Ratliff Trust and the TECO entities may not subpoena the Liquidating Trustee for either in-person testimony or production of documents.

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**The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.**



**Signed By:**  
***Gregory R. Schaaf***  
**Bankruptcy Judge**  
**Dated: Wednesday, July 6, 2022**  
**(grs)**