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Peabody Energy Investor Demands Records Of Coal Mine Fire

By **Brian Steele**

Law360 (February 24, 2023, 8:07 PM EST) -- An investor in Peabody Energy Corp., the largest coal mine operator in the U.S., wants to investigate the company for possible mismanagement after the board allegedly misled shareholders about the financial impact of a devastating fire at one of its mines in Australia, according to a books and records lawsuit filed in the Delaware Chancery Court.

Investor P. David Pollard said a fire erupted at the North Goonyella mine in Queensland on Sept. 22, 2018, and Peabody waited to inform shareholders until it had been burning for six days, even though the company released other news about elevated gas levels at the site. He wants to inspect the minutes of all board meetings since April 2017 during which safety at the mine was discussed, among other internal documents, and he said the company is unlawfully denying his demand.

In light of Australian investigators' findings that "Peabody had deficient safety systems at the North Goonyella mine, plaintiff seeks the books and records necessary to assess whether Peabody's directors ... have fully complied with their fiduciary duties by ensuring that adequate safety systems are in place at the company's mines and that all public statements concerning such operations are not materially false and misleading," the lawsuit filed on Thursday said.

Based in Missouri, Peabody operates 21 mines in Australia and the United States, including in Alabama, Wyoming and New Mexico. Shareholders sued the company in a securities class action in the Southern District of New York in 2020, alleging that the failure to quickly disclose the spontaneous combustion of gas at the North Goonyella mine had artificially inflated the share price before it plunged, and the case settled for $4.6 million on Feb. 7, court records show.

Six days after the fire started, Peabody issued a press release that described the blaze as "ongoing" and said the company was still assessing the effects, Pollard said. When investors learned that no production was expected from the mine in the fourth quarter of 2018, the share price fell 13.5% to close at $35.64, according to the lawsuit.

The company announced that it had a plan to reopen the mine, but Pollard's lawsuit said there were several problems. He alleged that the "low-cost plan" had unreasonable safety and environmental risks and that local mining regulators were unlikely to approve it; on May 1, 2019, that fear was realized when the Queensland Mining Inspectorate issued a directive that caused further delays. Pollard said that development shaved another 5.6% off Peabody's stock price.

More bad news followed when regulators alleged that Peabody was not fully cooperating with the investigation into the fire, Pollard said. The preliminary report spooked investors again and the share price fell to $18.13 on Aug. 9, and when the company announced that "no meaningful" production would happen for at least three more years, the price fell to $12.48, according to the lawsuit.

Pollard said he has the right to review company books and records under Delaware General Corporation Law Section 220, but counsel for Peabody said his request was too broad and failed to establish a "proper purpose." Pollard asked the Chancery Court to intervene so that he can investigate "wrongdoing, mismanagement, and breaches of fiduciary duties" and potentially prepare a derivative lawsuit.

An attorney for Pollard and a representative for Peabody did not immediately respond to requests for comment.

Pollard is represented by Seth D. Rigrodsky, Gina M. Serra and Herbert Mondros of Rigrodsky Law PA, and Joshua Grabar of Grabar Law Office.

Counsel information for Peabody was not immediately available.

The case is Pollard v. Peabody Energy Corp., case number 2023-0232, in the Court of Chancery of the State of Delaware.

--Editing by Rich Mills.
