



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

P. DAVID POLLARD, )  
 )  
 Plaintiff, )  
 )  
 v. ) C.A. No. \_\_\_\_\_  
 )  
 PEABODY ENERGY )  
 CORPORATION, )  
 )  
 Defendant. )

**VERIFIED COMPLAINT PURSUANT TO 8 DEL. C. § 220  
TO COMPEL INSPECTION OF BOOKS AND RECORDS**

Plaintiff P. David Pollard (“Plaintiff”), by his undersigned attorneys, for this Verified Complaint against defendant Peabody Energy Corporation (“Peabody,” the “Company,” or “Defendant”), alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

**NATURE OF THE ACTION**

1. Plaintiff, a beneficial owner of Peabody common stock at all relevant times, brings this action pursuant to 8 *Del. C.* § 220 (“Section 220”) to enforce Plaintiff’s statutory right to inspect certain books and records of Defendant.
2. In particular, Plaintiff wishes to inspect books and records relating to meetings of Peabody’s Board of Directors (the “Board”) dating from no earlier

than April 1, 2017 through no later than the date of the Company's response to the Demand (defined, *infra*) regarding the Company's dissemination of materially false and/or misleading statements and the Company's failure to disclose material adverse facts about the Company's production and plans at Peabody's North Goonyella Mine.

3. Plaintiff's purpose in making the Demand is reasonably related to his interests as a Peabody stockholder. Public information about Peabody and its directors' and officers' failures to implement or maintain any reasonable system of oversight, reporting, or risk management over the Company's procedures and controls at the Company's North Goonyella Mine, supplies a credible basis to suspect wrongdoing that warrants investigation. That information, however, is insufficient for Plaintiff's purpose of investigating that wrongdoing and for his separate but related purpose of investigating the independence of each of the Company's directors and officers.

4. Accordingly, Plaintiff seeks a summary Order from this Court requiring the Company to produce the demanded books and records for inspection.

### **PARTIES**

5. Plaintiff has been a continuous beneficial owner of Peabody common stock at all relevant times.

6. Defendant is a Delaware corporation with its principal executive offices located at 701 Market Street, St. Louis, Missouri 63101.

### **SUBSTANTIVE ALLEGATIONS**

7. Peabody is a leading producer of metallurgical and thermal coal. The Company has twenty-one coal mines located in core regions across the United States and Australia. The Company's coal mines are organized into six business segments, the largest of which is the Australian Metallurgical Mining segment, in which Peabody owns and operates seven Australian mines.

8. On September 22, 2018, a fire erupted in Peabody's North Goonyella Mine, which is an underground coal mine located in Queensland, Australia. No announcement regarding the fire was immediately made to the Company's shareholders.

9. On September 25, 2018, days after the fire occurred, the Company filed a Form 8-K with the SEC. The 8-K failed to mention any fire or smoke at the North Goonyella Mine, but stated, in relevant part:

Peabody noted today that gas levels at its North Goonyella Mine have been variable and remain elevated. The Company is working with the Queensland Mines Inspectorate and third-party experts as we continue a progress plan aimed at reducing gas levels and accommodating a safe return to mining operations. Determination of the timing of completion of the longwall move and expected financial effects will be made when gas levels subside and personnel can safely resume longwall move activities.

10. Later on September 25, 2018, the Company issued an “Updated Statement” on the North Goonyella Mine, which stated, in relevant part:

Gas levels at Peabody’s North Goonyella Mine in Queensland have been variable and remain elevated, with employees and other personnel remaining above ground. . . . The company is working with the Queensland Mines Inspectorate and third-party experts as we continue a progressive plan aimed at reducing gas levels. . . .

Peabody has relocated more than half of the major equipment associated with the originally planned two-month longwall move when elevated gas levels were detected. The company has notified customers of expected impacts to October shipments from the extended longwall move.

Determination of the timing of completion of the longwall move and expected financial effects will be made when gas levels subside and personnel can safely resume longwall move activities.

11. On September 28, 2018, the Company issued a press release finally confirming the North Goonyella Mine fire. The press release stated that the fire was “ongoing,” and the effects were uncertain and being assessed. The press release further stated that the Company “does not expect any production from North Goonyella in the fourth quarter of 2018.”

12. Following this announcement of the fire, Peabody’s shares fell 13.5%, or \$5.54 a share, to close at \$35.64 per share on September 28, 2018.

13. After the fire at the North Goonyella Mine was announced, Peabody informed the market that the Company had a feasible plan to remediate and reopen the mine, and that in the near term, it would be able to extract coal at the mine.

14. However, Peabody's officers and directors failed to disclose, *inter alia*, the following material adverse facts: (i) Peabody's low-cost plan to restart operations at the North Goonyella Mine had unreasonable environmental and safety risks; (ii) the Queensland Mines Inspectorate (the "QMI") would likely require a safer but cost-prohibitive approach; and (iii) thus, there would be serious delays in reopening the mine and restarting the production of coal.

15. On February 6, 2019, Peabody issued a press release announcing its fourth quarter 2018 operating results, which revealed that the mining activities at North Goonyella Mine would not return to normal until early 2020. Following this news, Peabody's shares fell 10.6%, or \$3.80 per share, to close at \$32.05 per share on February 6, 2019.

16. On May 1, 2019, Peabody disclosed that it received a directive from the QMI, which would potentially lead to further delays and require a reevaluation of Peabody's re-entry plan for the North Goonyella Mine. Upon this news, Peabody's shares fell 5.6%, or \$1.61 per share, to close at \$27.16 per share on May 1, 2019.

17. Several months later, on July 31, 2019, Peabody issued a press release announcing the Company's earnings for quarter ended June 30, 2019, which disclosed additional delays to the re-entry plan for the North Goonyella Mine. The Company revealed that the regulatory requirements resulted in a slower rate of progress than the original plan, and as a result, the Company was upending its 2020 production guidance at the North Goonyella Mine and reevaluating the entire re-entry plan. Following this news, Peabody's shares fell 4.8%, or \$1.06, to close at \$21.06 on July 31, 2019.

18. Shortly thereafter, on August 9, 2019, the QMI published a document containing its preliminary investigative findings, which indicated that Peabody had deficient safety systems at the North Goonyella Mine and that the Company was not fully cooperating with the QMI's investigation. Following this news, Peabody's shares fell 4.8%, or \$1.06 per share, to close at \$18.13 at close on August 9, 2019.

19. On October 29, 2019, Peabody disclosed that the QMI was placing restrictions on restarting the operations at the North Goonyella Mine and that, accordingly, Peabody had to substantially adjust its re-entry plan. Peabody announced that "the [C]ompany expects no meaningful North Goonyella volumes

for three or more years.” Upon this news, Peabody’s shares fell twenty-two percent, or \$3.56 per share, to close at \$12.48 at close on October 29, 2019.

20. On September 28, 2020, purchasers of the Company’s common stock brought a securities class action suit in the United States District Court for the Southern District of New York, captioned *In re Peabody Energy Corp. Sec. Litig.*, Case No. 1:20-cv-08024-PKC (S.D.N.Y.), against the Company and two of the Company’s officers (the “Securities Action”). On March 7, 2022, the court in the Securities Action issued an Opinion and Order denying in part defendants’ motion to dismiss the complaint. On October 13, 2022, the court entered an Order Granting Preliminary Approval of Class Action Settlement. On February 7, 2023, the court in the Securities Action entered the Final Order and Judgment, approving the final settlement.

***Plaintiff’s Books and Records Demand***

21. Plaintiff’s Section 220 Demand Letter (the “Demand” or “Demand Letter”), dated January 13, 2023, is annexed hereto as Exhibit A and is incorporated herein by reference. Attached to the Demand Letter as Exhibit A was a true and correct copy of Plaintiff’s current brokerage account statement reflecting Plaintiff’s beneficial ownership of Peabody common stock as of the date of that document. *Id.* Attached to the Demand Letter as Exhibit B was a true and correct

copy of a Special Power of Attorney authorizing Rigrodsky Law, P.A. to act on behalf of Plaintiff in connection with the Demand. *Id.* Attached to the Demand Letter as Exhibit C was a true and correct copy of a Verification of Plaintiff. *Id.*

22. The Demand Letter was sent on January 13, 2023 via FedEx overnight delivery to the Company's principal place of business in St. Louis, Missouri. The Demand Letter was also served on the Company's Registered Agent in Delaware.

23. Plaintiff demanded that Peabody<sup>1</sup> provide him with the opportunity to inspect and copy the following books, records, and documents<sup>2</sup> within the Company's possession, custody, and control during the usual hours of business within five (5) business days of receipt of the Demand Letter:

1. Minutes of all meetings of the Board of Directors of Peabody (the "Board")<sup>3</sup> from April 1, 2017 through the date of your response to this demand (unless otherwise specified), inclusive, during which the following were on the agenda or otherwise discussed at the meetings:

---

<sup>1</sup> "Peabody" was defined to include "the Company's subsidiaries as defined at 8 *Del. C.* § 220(a)(2).

<sup>2</sup> The term "books, records, and documents" was to be "construed as broadly as possible under Delaware precedent, including emails of directors or officers, whether or not stored on the Company's servers."

<sup>3</sup> The term "all meetings of the Board of Directors of Peabody" includes, for purposes of this letter, all regular, special, and ad hoc meetings of the Board and all such meetings of regular, special, or ad hoc committees or subcommittees of the Board, whether held in person, telephonically, electronically, or otherwise.



- a. The safety procedures and controls at the Company's North Goonyella Mine;
- b. The fire that erupted at the North Goonyella Mine on or about September 22, 2018;
- c. The Form 8-K filed by Peabody with the United States Securities and Exchange Commission ("SEC") on September 25, 2018;
- d. The "Updated Statement" issued by Peabody on September 25, 2018;
- e. The September 28, 2018 press release issued by Peabody regarding the North Goonyella Mine fire;
- f. Ceasing operations at the North Goonyella Mine following the fire;
- g. Resuming operations at the North Goonyella Mine following the fire;
- h. The drops in Peabody stock on or around:
  1. September 28, 2018;
  2. February 6, 2019;
  3. May 1, 2019;
  4. July 31, 2019;
  5. August 9, 2019; and
  6. October 29, 2019;
- i. Policies, procedures, guidelines, charters, and codes of conduct applicable to the Board and its committees, including the Health, Safety, Security, and Environmental Committee;

- j. *In re Peabody Energy Corp. Sec. Litig.*, Case No. 1:20-cv-08024-PKC (“S.D.N.Y.”) (the “Securities Action”); and
  - k. *In re Peabody Energy Corp. Derivative Litig.*, Case No. 1:20-cv-01747-CFC (D. Del.) (the “Derivative Action”).
2. All of the Board’s materials, agendas, packages, presentations, reports, exhibits, official correspondence and emails, recordings, summaries, memoranda, transcripts, notes, summaries of meetings, and resolutions for all of the above-described meetings of the Board.
  3. Any other stockholder books and records demand letters received by the Company regarding the above-referenced items (“Related Demands”).
  4. All books, records, and documents produced by the Company in response to Related Demands or related derivative actions.
  5. All books, records, and documents produced by the Company in response to the Securities Action.
  6. All books, records, and documents produced by the Company in response to the Derivative Action.

(Exhibit A, pgs. 2-3).

24. The Demand Letter set forth Plaintiff’s desire to inspect the materials listed above for the following legitimate and proper purposes, all of which are reasonably related to Plaintiff’s interests as a stockholder of Peabody:

- A. Investigating wrongdoing, mismanagement, and breaches of fiduciary duties by the members of the Board, Company officers, and/or others, including, but not limited to, dissemination of materially false and/or misleading statements or material omissions;

- B. Assessing the ability of the Board to consider impartially a demand for action, including a request for permission to file a derivative lawsuit on the Company's behalf, related to such issues; and
- C. Taking appropriate action if the members of the Board did not properly discharge their duties, including making a demand on the Board and/or preparing and filing a stockholder derivative lawsuit, if appropriate.

*(Id. at 3).*

25. The Demand Letter also stated:

An additional purpose to those stated above is to take appropriate action if the Board did not properly discharge its duties. This purpose relates to a stockholder's decision about how to act in the event the demanded inspection reveals impropriety or actionable conduct. Possible courses of conduct include making a demand on the Board to act or initiating litigation against the Board on the Company's behalf. Both possible courses of action are well within a stockholder's rights under Delaware law, and, thus, gathering information for this purpose is proper.

*(Id. at 7).*

26. Plaintiff designated Rigrodsky Law, P.A. to act as his agents to conduct the demanded inspection.

27. By letter dated January 23, 2023, counsel for Peabody stated the Demand failed to establish a "proper purpose" and that the requests were "overbroad and exceed the scope of what is necessary and essential for the stated purpose." The letter is annexed hereto as Exhibit B and is incorporated herein by reference.

28. Peabody's letter states that the sole purpose specified in the Demand for "investigating purported mismanagement or wrongdoing is to commence litigation," and that because any claim on the alleged wrongdoing is time-barred, that the Demand failed to establish a "proper purpose." Exhibit B, pg. 2.

29. However, this assertion ignores Plaintiff's first-stated purpose in the Demand, which lists "[i]nvestigating wrongdoing, mismanagement, and breaches of fiduciary duties by the member of the Board, Company officers, and/or others, including but not limited to the dissemination of materially false and/or misleading statements or material omissions" as a purpose. Exhibit A, pg. 3.

30. In addition to the North Goonyella Mine, Peabody operates the Wambo Underground and the Metropolitan underground mines in Australia, as well as an underground mine in Shoal Creek Alabama. The Company also operates the Middlemount, Wilpinjong, and Wambo above-ground mines in Australia, as well as the North Antelope Rochelle, El Segundo/Lee Ranch and Bear Run above-ground mines in the United States. In light of the QMI's August 9, 2019 investigative 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 and 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.

31. Plaintiff's above-stated purpose sufficiently stated a proper purpose in the Demand under Delaware law. It is "well established that investigation of mismanagement is a proper purpose for a Section 220 books and records inspection." *Freund v. Lucent Techs., Inc.*, 2003 Del. Ch. LEXIS 3, at \*9 (Del. Ch. Jan. 9, 2003); *see also King v. VeriFone Holdings, Inc.*, 12 A.3d 1140, 1145 (Del. 2011) ("investigating corporate mismanagement . . . is a proper purpose for seeking a Section 220 books and records inspection"); *City of Westland Police & Fire Ret. Sys. v. Axcelis Techs., Inc.*, 1 A.3d 281, 289 n.30 (Del. 2010); *Thomas & Betts Corp. v. Leviton Mfg.*, 681 A.2d 1026, 1031 (Del. 1996).

32. Defendant has therefore failed to adequately respond to Plaintiff's lawful and proper Demand.

33. Accordingly, Plaintiff brings this action to enforce his rights under Section 220(c) based on Defendant's failure to provide books and records in response to Plaintiff's Demand.

## CAUSE OF ACTION

### **(Inspection of Books and Records of Peabody Pursuant to 8 *Del. C.* § 220(c))**

34. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth herein.

35. Plaintiff has complied fully with all requirements under Section 220 concerning the form and manner of making a demand for inspection of Peabody's books and records.<sup>4</sup>

36. Through his Demand, Plaintiff has demonstrated a credible basis from which to infer that there are reasonable grounds to suspect mismanagement that warrant further investigation. Plaintiff's Demand is for a proper purpose and the documents identified in the Demand are essential for that purpose.

37. Peabody has wrongfully failed to comply with the Demand.

38. Pursuant to Section 220, Plaintiff is entitled to apply to this Court for an Order compelling inspection of Peabody's corporate books and records because the Company has wrongfully refused to permit the inspection after Plaintiff complied with said statute concerning the form and manner of making a demand for inspection of such documents and articulated a proper purpose for the inspection.

---

<sup>4</sup> Plaintiff's proof of ownership is attached hereto as Exhibit A to Plaintiff's Demand and incorporated herein by reference.

39. Plaintiff therefore seeks relief from the Court pursuant to Section 220 to compel inspection of Peabody's books and records without further delay.

40. Plaintiff has no adequate remedy at law.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for judgment and relief as follows:

A. An order summarily requiring Peabody to permit immediately the inspection and copying of each and every requested book and record in un-redacted form as set forth in Plaintiff's January 13, 2023 Demand Letter;

B. An order directing Peabody to pay Plaintiff's reasonable attorneys' fees and expenses in connection with the Demand and related litigation; and

C. Such other and further relief as this Court deems just and proper.

Dated: February 23, 2023

**RIGRODSKY LAW, P.A.**

**OF COUNSEL:**

Joshua Grabar  
**GRABAR LAW OFFICE**  
1650 Market Street, Suite 3600  
Philadelphia, PA 19103

*/s/ Seth D. Rigrodsky* \_\_\_\_\_  
Seth D. Rigrodsky (#3147)  
Gina M. Serra (#5387)  
Herbert Mondros (#3308)  
300 Delaware Avenue, Suite 210  
Wilmington, DE 19801  
(302) 295-5310

*Attorneys for Plaintiff*