

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
Office of Administrative Law Judges

In the Matter of: )  
PEABODY ENERGY CORPORATION, )  
a public company, )  
and ) Docket No. 9391  
ARCH COAL, INC., )  
a public company, )  
Respondents. )

REMOTE TELEPHONIC SCHEDULING CONFERENCE  
FRIDAY, JULY 10, 2020  
3:00 P.M.  
PUBLIC SESSION

BEFORE THE HONORABLE D. MICHAEL CHAPPELL  
ADMINISTRATIVE Law Judge

Reported by: Susanne Bergling, RMR-CRR-CLR

Scheduling Conference  
Peabody Energy and Arch Coal

7/10/2020

1 APPEARANCES:  
2 ON BEHALF OF THE FEDERAL TRADE COMMISSION:  
3 JONATHAN LASKEN, ESQ.  
4 AMY DOBRZYNSKI, ESQ.  
5 Federal Trade Commission  
6 400-7th Street, S.W.  
7 Washington, D.C. 20024  
8 (202) 326-2604  
9 jlasken@ftc.gov  
10  
11 ON BEHALF OF RESPONDENT PEABODY ENERGY CORP.:  
12 EDWARD HASSI, ESQ.  
13 Debevoise & Plimpton  
14 801 Pennsylvania Avenue, N.W.  
15 Washington, D.C. 20004  
16 (202) 383-8000  
17 thassi@debevoise.com  
18  
19 ON BEHALF OF RESPONDENT ARCH COAL, INC.:  
20 MICHAEL J. PERRY, ESQ.  
21 Baker Botts LLP  
22 700 K Street, N.W.  
23 Washington, D.C. 20001  
24 (202) 639-7700  
25 michael.perry@bakerbotts.com

For The Record, Inc.  
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

Scheduling Conference  
Peabody Energy and Arch Coal

7/10/2020

1 P R O C E E D I N G S

2 - - - - -

3 JUDGE CHAPPELL: Okay. Let's go on the record.

4 This is an initial prehearing conference in the  
5 matter of Peabody Energy and Arch Coal, Docket Number  
6 9391.7 I just heard a weird beeping sound. Did  
8 someone drop off the call? All right, this is Judge  
9 Chappell. Can everyone hear me?

10 MR. LASKEN: Yes, Your Honor.

11 MR. PERRY: Yes, Your Honor.

12 MR. HASSI: Yes, Your Honor.

13 JUDGE CHAPPELL: This prehearing conference is  
14 being conducted telephonically and is being transcribed  
15 by a court reporter who is on the line.16 Would the court reporter please state your name  
17 for the record.18 THE REPORTER: Susanne Bergling, with For The  
19 Record, Inc.20 JUDGE CHAPPELL: I will now take the  
21 appearances of the individuals designated to speak for  
22 the parties, and I will need you to identify everyone  
23 who is on the call.

24 Go ahead and start, Complaint Counsel.

25 MR. LASKEN: May it please the Court. Jonathan

Scheduling Conference  
Peabody Energy and Arch Coal

7/10/2020

1 Lasken, counsel for the complaint. With me on the  
2 phone for the litigation team are Amy Dobrzynski and  
3 Martin Sicilian, Your Honor.

4 JUDGE CHAPPELL: Thank you.  
5 Respondents?

6 MR. HASSI: Good afternoon, Your Honor. This  
7 is Ted Hassi of Debevoise & Plimpton on behalf of  
8 Respondent Peabody. I believe I'm the only person on  
9 the line from Peabody.

10 JUDGE CHAPPELL: Mr. Hassi, welcome back.

11 MR. HASSI: Thank you, sir. It's good to be  
12 here.

13 MR. PERRY: Good afternoon, Your Honor. This  
14 is Michael Perry from Baker Botts on behalf of  
15 Respondent Arch Coal. I believe I am the only person  
16 on the phone for Respondent Arch as well.

17 JUDGE CHAPPELL: Okay. Is that everyone?

18 My attorney-advisors are also on the line. At  
19 the request of the court reporter, which is a very good  
20 idea, I need everyone to mute your phones when you are  
21 not speaking. And until the court reporter learns who  
22 we are by voice, before anyone makes a statement, I  
23 need you to identify yourself for the court reporter.

24 Susanne, do we need to do that for everyone or  
25 do you think you'll recognize the voices?

Scheduling Conference  
Peabody Energy and Arch Coal

7/10/2020

1 THE REPORTER: I don't need you to do it, but  
2 I'd appreciate it if the others could.

3 THE COURT: All right. Everyone adhere to  
4 that, please.

5 Let's begin. The transcript of this conference  
6 may be made available to the public, so you're  
7 instructed not to present any confidential information  
8 in your overview.

9 There's currently a preliminary injunction  
10 proceeding pending in the Federal District Court for  
11 the Eastern District of Missouri, I believe. According  
12 to the court docket, that hearing is scheduled to begin  
13 Monday, on the 13th of July. I will need the parties  
14 to keep us informed of any substantive decisions in  
15 that case.

16 Would someone like to give me an update on  
17 what's going on in that proceeding?

18 MR. HASSI: Yes, Your Honor. This is Ted Hassi  
19 on behalf of Peabody.

20 As you've indicated, it's not just on the  
21 docket, but we had a pretrial yesterday. We are going  
22 forward with a ten-day preliminary injunction hearing  
23 starting on Monday to run for ten consecutive days, so  
24 through the 24th.

25 The Judge has set it for closing arguments on

Scheduling Conference  
Peabody Energy and Arch Coal

7/10/2020

1 the afternoon of August the 10th, and we hope to get a  
2 decision relatively soon thereafter.

3 JUDGE CHAPPELL: All right.

4 Do Complaint Counsel concur?

5 MR. LASKEN: Yes, Your Honor, Jonathan Lasken.  
6 We concur.

7 JUDGE CHAPPELL: All right. The parties were  
8 provided a draft scheduling order and provided joint  
9 proposed changes to the dates to be consistent with the  
10 new trial date. The parties' proposed changes are  
11 acceptable, and I will incorporate them in an order I  
12 will be issuing shortly.

13 I trust the parties have attempted to settle  
14 this matter. Who wants to provide the Court with a  
15 status of settlement discussions?

16 MR. LASKEN: Your Honor, this is Jonathan  
17 Lasken, counsel for the complaint. I'm happy to  
18 provide that update, which is to say that there is no  
19 settlement discussion ongoing, and I'm not aware of any  
20 past offers that are still on the table or that merit  
21 discussion.

22 JUDGE CHAPPELL: Well, that doesn't sound very  
23 encouraging.

24 Mr. Hassi, have you got anything to say there?

25 MR. HASSI: Your Honor, I concur. We expect

Scheduling Conference  
Peabody Energy and Arch Coal

7/10/2020

1 this decision to be -- this matter to be decided here  
2 in St. Louis by the judge, and we don't see any  
3 prospect of a settlement short of that.

4 JUDGE CHAPPELL: So it's locked horns all the  
5 way?

6 MR. HASSI: Yes, sir.

7 JUDGE CHAPPELL: All right.

8 At this time I'll allow each side to make a  
9 presentation limited to ten minutes. The Government  
10 goes first.

11 MR. LASKEN: Thank you, Your Honor. This is  
12 Jonathan Lasken, counsel for the complaint.

13 This case is about a joint venture between the  
14 largest and second largest suppliers of coal from the  
15 Southern Powder River Basin. Peabody is the largest  
16 coal supplier in the Southern Powder River Basin and in  
17 the United States. Arch --

18 JUDGE CHAPPELL: Hang on a second. The way you  
19 worded that, the largest provider just in the Powder  
20 River Basin or to the United States?

21 MR. LASKEN: Both. Both, Your Honor. So they  
22 are both the largest in the Southern Powder River Basin  
23 and the largest in the United States overall.

24 JUDGE CHAPPELL: All right.

25 MR. LASKEN: Arch is the second largest coal

Scheduling Conference  
Peabody Energy and Arch Coal

7/10/2020

1 supplier in the Southern Powder River Basin and they  
2 are also the second largest in the United States. The  
3 combined entity would control more than 60 percent of  
4 Southern Powder River Basin coal production and  
5 reserves.

6 Complaint Counsel contends the product market  
7 in this case is the sale of Southern Powder River Basin  
8 coal and that the geographic market is the Southern  
9 Powder River Basin. There is a strong presumption of  
10 illegality in this case with HHIs many times more than  
11 the threshold, and there is strong evidence that  
12 head-to-head competition between Peabody and Arch will  
13 be lost with no significant countervailing factors.

14 I provide that as a very high-level statement  
15 because I understand that Mr. Hassi intends to waive  
16 his statement. I am prepared to provide further detail  
17 and speak for the ten minutes if you would like, Your  
18 Honor, but I am also prepared to leave it at that in  
19 light of that understanding, whatever the Court would  
20 prefer.

21 JUDGE CHAPPELL: Let's first check with  
22 Mr. Hassi.

23 You're waiving your overview?

24 MR. HASSI: Yes, Your Honor. In light of the  
25 fact that, as we've previously discussed -- and I



Scheduling Conference  
Peabody Energy and Arch Coal

7/10/2020

1 should have said this is Ted Hassi speaking -- in light  
2 of the fact that we have a preliminary injunction  
3 hearing happening starting on Monday and that we expect  
4 a decision well before the trial of this case, and the  
5 parties have already told the Court here in St. Louis  
6 that we expect that her decision -- that the parties  
7 will abide by her decision. If she decides against the  
8 joint venture, we will abandon it.

9 And so we don't anticipate that -- while we  
10 think we will be vindicated in that case and that the  
11 FTC will hopefully follow its past practice and not  
12 proceed with an administrative proceeding after losing  
13 in federal court, we don't anticipate that we will be  
14 presenting this case to Your Honor.

15 And so rather than waste Your Honor's time this  
16 afternoon -- I'm obviously happy to answer any  
17 questions Your Honor has -- but we're going to forgo an  
18 opening statement at this time or a preliminary  
19 statement at this time.

20 JUDGE CHAPPELL: All right, that sounds good.  
21 Of course, it's optional.

22 With that, do I have anything further from  
23 either side?

24 MR. LASKEN: Nothing, Your Honor.

25 MR. HASSI: Nothing from Respondents, Your

Scheduling Conference  
Peabody Energy and Arch Coal

7/10/2020

1 Honor.

2 JUDGE CHAPPELL: All right. Hearing nothing  
3 further, thank you for your participation and  
4 cooperation telephonically, and we are adjourned.

5 MR. HASSI: Thank you, Your Honor.

6 MR. LASKEN: Thank you, Your Honor.

7 (Whereupon, at 3:10 p.m., the hearing was  
8 adjourned.)

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Scheduling Conference  
Peabody Energy and Arch Coal

7/10/2020

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

I, Susanne Bergling, do hereby certify that the foregoing proceedings were recorded by me via stenotype and reduced to typewriting under my supervision; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were transcribed; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.



SUSANNE BERGLING, RMR-CRR-CLR