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Arch Coal paid execs $8M in bonuses on eve of bankruptcy

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Arch Coal Inc. paid its top executives more than $8 million in bonuses the business day before the company filed for bankruptcy in January, according to U.S. Bankruptcy Court for the Eastern District of Missouri filings published last week.

Securities and Exchange Commission records also show that 12 company insiders exercised or converted about 88,000 "phantom stocks" -- a type of financial derivative used to incentivize employees -- worth more than $70,000 that same Friday, Jan. 8, 2016.

On the following Monday, Jan. 11, Arch announced it had filed for bankruptcy protection.

Arch declined several written and telephone requests for comment about financial transactions made as the company stood on the brink of bankruptcy.

No agency has accused the company of wrongdoing in making the payments or in connection with the phantom stock activity. Several experts, however, said the timing of the payments and the activity by company officials so shortly before Arch filed for bankruptcy raises questions.

The most notable transactions Arch made in the days before filing for Chapter 11 bankruptcy protection, according to court and SEC filings, were payments of $8.12 million in bonuses to seven of its corporate officers, including its CEO, chief financial officer and president.

Chairman and CEO John Eaves received $2.78 million the Friday before the bankruptcy announcement. Arch President and Chief Operating Officer Paul Lang received $1.75 million that same day, while Chief Financial Officer and Treasurer John Drexler received $1.17 million.

Allen Kelley, vice president of human resources; Deck Slone, senior vice president of strategy and public policy; Kenneth Cochran, senior vice president of operations; Lang; and Robert Jones, general counsel, also received payments ranging from $164,666 to $868,398.

The bonuses were paid on a regular schedule unconnected to the bankruptcy date and were approved by Arch well before the bankruptcy filing, according to a person familiar with the company's current payment practices.

The bonuses were divided into two sections: those associated with a 2013-15 long-term incentive plan and those paid as part of an annual bonus plan, according to the same person, who spoke on the condition of anonymity, citing Arch's ongoing bankruptcy proceedings. Approvals of each plan date back to 2013 and February 2015, respectively, they explained.

Still, some financial experts said they are concerned by the timing of bonus payments and phantom share transactions.

Expert questions 'bizarre,' 'suspicious' timing

Gary Hufbauer, a senior fellow at the Peterson Institute for International Economics, said the bonus payments "could be very likely voided by a bankruptcy court."

Bankruptcy courts scrutinize a company's financial transactions and payments made during the 90 days before that firm filed for protection. Hufbauer called the $8.12 million on the eve of bankruptcy "really suspicious."

"So I would suspect that would be pretty hotly contested" by other creditors, he said of the $8.12 million in payouts, describing the situation as a "bizarre set of facts."

Of the 12 insiders named in transactions with phantom stock, 10 were board members and the remaining two were Drexler, the CFO, and Cochran, senior vice president of operations.

Overall, the Jan. 8 transactions covered 87,783 phantom shares either exercised or converted for $72,859.89, according to SEC filings, which each list a name of a director or corporate officer, corresponding to a number of phantom shares.

For example, a **form** filed Jan. 12 but dated four days before lists David Freudenthal, the former Democratic governor of Wyoming, and shows that 2,757 shares worth $2,288.31 were disposed of.

"It seems strange that you would have such a coincidence," said Thaya Brook Knight, associate director of financial regulation studies at the Cato Institute, referring to the short window between the Friday transactions and the Monday morning bankruptcy declaration.

Deferred compensation

She said companies commonly draft agreements about phantom stock -- a type of compensation plan typically offered to insiders that pays out based on the performance of real shares. The document outlining a company's phantom stock agreement is what a court would have to examine to determine if wrongdoing had been committed, according to Knight. That agreement would also likely detail when and how phantom stock payments are permitted to occur, she added.

"With so little data, it's hard to really say that this or that happened," said Knight, who reviewed SEC documents of Arch's insider transactions at the request of *ClimateWire*.

"But if the executives had a choice in when the payout was made, that may make the transactions something of a red flag," she said.

Arch made the transactions on behalf of its executives, and the phantom stocks involved deferred compensation, said the anonymous official with direct knowledge of Arch payment policies.

Deferred compensation is the portion of the salary an employee opts to receive at a later date in order to save on taxes. The practice is allowed so long as the compensation is not guaranteed, or "unsecured." Otherwise, it would be taxed.

The company held deferred compensation in a distinct fund, the source said. When the Department of Justice requested that the company move toward more conservative investments in preparation for bankruptcy, the company moved the phantom stocks, the person said.

Generally, insider trading involves someone, often a corporate executive inside a company, buying or selling an investment based on non-public information that would likely affect the performance of that investment if it were shared with the public.

However, Arch's pre-bankruptcy transactions don't appear to have involved investors on the open market. Rather, the phantom stock activities seem to have been made between Arch and its insiders, experts said.

Losing billions, golf club payments

Hemmed in by falling coal prices globally, cheap natural gas from U.S. hydraulic fracturing and looming environmental regulations, Arch is struggling financially.

The company reported yesterday a net loss of more than $2.9 billion for 2015, compared to a $558 million loss for the same period in 2014. The difference is a decline of more than 400 percent.

Arch has lost more money than it has taken in every year since 2012.

In financial statements filed yesterday, Arch called U.S. EPA's Clean Power Plan a "sweeping" regulation.

"If the Clean Power Plan ultimately is upheld in its current form, it is projected to significantly curtail the construction of new coal-fired power plants and have a materially adverse impact on the demand for coal nationally," the company said in a section of its latest annual report about climate change.

Court documents also show Arch made two other payments on the business day before it sought bankruptcy protection.

One was a $12,540 payment to the Algonquin Golf Club in St. Louis, where the firm is headquartered, and the other a $10,680 payment to the Bellerive Country Club, also in St. Louis.