

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	: Chapter 11
PATRIOT COAL CORPORATION, <i>et al.</i> ,	: Case No. 12-12900 (SCC)
Debtors.	: (Jointly Administered)
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EASTERN ROYALTY LLC f/k/a EASTERN ROYALTY CORP.,	:
Plaintiff,	: Adv. Pro. No. 12-01786 (SCC)
v.	:
BOONE EAST DEVELOPMENT CO., PERFORMANCE COAL CO., AND NEW RIVER ENERGY CORP.,	: <u>ANSWER</u>
Defendants.	:
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Defendants Boone East Development Co., Performance Coal Co., and New River Energy Corp. (the “Defendants”), by and through their attorneys Cleary Gottlieb Steen & Hamilton LLP, as and for their Answer to the Complaint for Declaratory Relief (the “Complaint”) of Plaintiff Eastern Royalty LLC f/k/a Eastern Royalty Corp. (the “Plaintiff”), dated August 6, 2012, state as follows:¹

¹ All answers to allegations in a particular paragraph of the Complaint should be construed to apply equally to the allegations contained in the footnote, if any, accompanying such paragraph of the Complaint. All capitalized terms not defined herein shall have the meaning ascribed to them in the Complaint.

NATURE OF THE ACTION AND THE NEED FOR RELIEF

1. Paragraph 1 of the Complaint purports to either characterize the nature of the action brought or constitutes a conclusion of law, and accordingly no response is required. Paragraph 1 otherwise purports to characterize the contents of a written document, which document speaks for itself. Defendants deny any such characterizations that are inconsistent with the contents of the referenced document, all related documents, and the intention of the parties, and refer to the document cited in Paragraph 1 and all other related documents for their true and correct contents.

2. In response to Paragraph 2 of the Complaint, Defendants admit that ERC is a debtor entity, and that Defendants were subsidiaries of Massey Energy Company in August 2005 and are currently indirect subsidiaries of Alpha Natural Resources, Inc (“Alpha”). Defendants further admit that Plaintiff and Defendants executed a Payment Agreement dated August 31, 2005 in connection with other related and integrated documents.

3. To the extent the allegations contained in Paragraph 3 of the Complaint constitutes conclusions of law, no response is required. Paragraph 3 otherwise purports to characterize the contents of a written document, which document speaks for itself. Defendants deny any such characterizations that are inconsistent with the contents of the referenced document, all related documents, and the intention of the parties, and refer to the document cited in Paragraph 3 and all other related documents for their true and correct contents.

4. Defendants deny the allegations in Paragraph 4 of the Complaint, except that they admit the Assignment Agreements and the Boone Lease were executed on August 31, 2005 in connection with other related documents.

5. Defendants admit the allegations in Paragraph 5 of the Complaint.

6. Paragraph 6 of the Complaint purports to characterize the nature of the action brought and the relief sought, and accordingly no response is required.

JURISDICTION AND VENUE

7. Defendants lack knowledge or information sufficient to form a belief as the truth of the allegations of Paragraph 7 of the Complaint. To the extent the allegations contained in Paragraph 7 constitute conclusions of law, no response is required.

8. Defendants admit that the Court entered a Joint Administration Order on July 10, 2012 [ECF No. 30] and refer to the Joint Administration Order for its true and correct contents.

9. Defendants lack knowledge or information sufficient to form a belief as the truth of the allegations of Paragraph 9 of the Complaint. To the extent the allegations contained in Paragraph 9 constitute conclusions of law, no response is required.

10. Paragraph 10 of the Complaint constitutes a conclusion of law as to which no response is required.

11. Paragraph 11 of the Complaint constitutes a conclusion of law as to which no response is required.

PARTIES

12. Defendants lack knowledge or information sufficient to form a belief as the truth of the allegations of Paragraph 12 of the Complaint.

13. Defendants admit that each of the Defendants is a West Virginia corporation and that Alpha is a Delaware corporation. Defendants direct Plaintiff to their Rule 7.1 Statement, filed concurrently herewith, for information on Defendants' ownership structure.

BACKGROUND

Settlement Between Massey and Peabody

14. Defendants admit that Massey Coal Sales and Coaltrade are parties to a Settlement Agreement dated July 5, 2005. Paragraph 14 of the Complaint otherwise purports to characterize the contents of a written document, which document speaks for itself. Defendants deny any such characterizations that are inconsistent with the contents of the referenced document, all related documents, and the intention of the parties, and refer to the document cited in Paragraph 14 and all other related documents for their true and correct contents.

15. Paragraph 15 of the Complaint purports to characterize the contents of a written document, which document speaks for itself. Defendants deny any such characterizations that are inconsistent with the contents of the referenced document, all related documents, and the intention of the parties, and refer to the document cited in Paragraph 15 and all other related documents for their true and correct contents.

16. Paragraph 16 of the Complaint purports to characterize the contents of a written document, which document speaks for itself. Defendants deny any such characterizations that are inconsistent with the contents of the referenced document, all related documents, and the intention of the parties, and refer to the document cited in Paragraph 16 and all other related documents for their true and correct contents.

17. Defendants lack knowledge or information sufficient to form a belief as the truth of the allegations of Paragraph 17 of the Complaint.

18. Defendants lack knowledge or information sufficient to form a belief as the truth of the allegations concerning other Patriot affiliates or any predecessor entity. Paragraph 18 of the Complaint otherwise purports to characterize the contents of a written document, which

document speaks for itself. Defendants deny any such characterizations that are inconsistent with the contents of the referenced document, all related documents, and the intention of the parties, and refer to the document cited in Paragraph 18 and all other related documents for their true and correct contents.

The Payment Agreement

19. Defendants admit that ERC and the Massey Entities executed the Payment Agreement on August 31, 2005. Paragraph 19 of the Complaint otherwise purports to characterize the contents of a written document, which document speaks for itself. Defendants deny any such characterizations that are inconsistent with the contents of the referenced document, all related documents, and the intention of the parties, and refer to the document cited in Paragraph 19 and all other related documents for their true and correct contents.

20. Defendants admit that the tonnage payments required by the terms of the Payment Agreement constitute “override” payments as commonly referred to in the coal mining industry. Paragraph 20 of the Complaint otherwise purports to characterize the contents of a written document, which document speaks for itself. Defendants deny any such characterizations that are inconsistent with the contents of the referenced document, all related documents, and the intention of the parties, and refer to the document cited in Paragraph 20 and all other related documents for their true and correct contents.

21. Defendants deny the allegations in Paragraph 21 of the Complaint.

The Assignment Agreements and Boone Lease

22. Defendants admit that: (i) New River and ERC are parties to an Assignment Agreement, dated August 31, 2005; (ii) Performance Coal and ERC are parties to two separate Assignment Agreements, both dated August 31, 2005; and (iii) Boone and ERC are parties to an

Assignment Agreement, dated August 31, 2005. Paragraph 22 of the Complaint otherwise purports to characterize the contents of written documents, which documents speak for themselves. Defendants deny any such characterizations that are inconsistent with the contents of the referenced documents, all related documents, and the intention of the parties, and refer to the documents cited in Paragraph 22 and all other related documents for their true and correct contents.

23. Defendants admit that Boone and ERC are parties to the Boone Lease, dated August 1, 2005. Paragraph 23 of the Complaint otherwise purports to characterize the contents of a written document, which document speaks for itself. Defendants deny any such characterizations that are inconsistent with the contents of the referenced document, all related documents, and the intention of the parties, and refer to the document cited in Paragraph 23 and all other related documents for their true and correct contents.

24. Paragraph 24 of the Complaint purports to characterize the contents of written documents, which documents speak for themselves. Defendants deny any such characterizations that are inconsistent with the contents of the referenced documents, all related documents, and the intention of the parties, and refer to the documents cited in Paragraph 24 and all other related documents for their true and correct contents.

25. Paragraph 25 of the Complaint purports to characterize the contents of written documents, which documents speak for themselves. Defendants deny any such characterizations that are inconsistent with the contents of the referenced documents, all related documents, and the intention of the parties, and refer to the documents cited in Paragraph 25 and all other related documents for their true and correct contents.

Other Contemporaneous Agreements

26. Defendants admit that: (i) Coaltrade and Massey Coal Sales are parties to the 2005 Coal Supply Agreement; (ii) Peabody Coal Company, Pine Ridge Coal Company, and Eastern Associates Coal Corp. each entered into certain Partial Release and Surrender agreements with various landowners; (iii) Pine Ridge Coal Company, Eastern Associated Coal Corp., Peabody Coal Company, Elk Run Coal Company, Inc., Boone, and Ceres Land Company are parties to a Payment Agreement; (iv) and Peabody Coal Company and Elk Run Coal Company, Inc. are parties to a Payment Agreement. Defendants further admit that each of these agreements is an exhibit to the Settlement Agreement. Paragraph 26 of the Complaint otherwise purports to characterize the contents of written documents, which documents speak for themselves. Defendants deny any such characterizations that are inconsistent with the contents of the referenced documents, all related documents, and the intention of the parties, and refer to the documents cited in Paragraph 26 and all other related documents for their true and correct contents.

27. Paragraph 27 of the Complaint purports to characterize the contents of written documents, which documents speak for themselves. Defendants deny any such characterizations that are inconsistent with the contents of the referenced documents, all related documents, and the intention of the parties, and refer to the documents cited in Paragraph 27 and all other related documents for their true and correct contents.

COUNT I

Declaratory Judgment

28. Defendants repeat and reallege each and every response set forth in Paragraphs 1 through 27 of this answer as if fully set forth herein.

29. Defendants admit the allegations in Paragraph 29 of the Complaint.

30. Paragraph 30 of the Complaint purports to characterize the nature of the action brought and the relief sought, and accordingly no response is required.

31. Defendants deny each and every allegations contained in the Complaint which is not expressly admitted herein.

FIRST AFFIRMATIVE DEFENSE

32. The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

33. Plaintiff's claims are barred by the doctrines of estoppels, laches, ratification, and acquiescence.

THIRD AFFIRMATIVE DEFENSE

34. Plaintiff's claims are barred by waiver.

FOURTH AFFIRMATIVE DEFENSE

35. Plaintiff's claims are barred by the failure to provide consideration.

FIFTH AFFIRMATIVE DEFENSE

36. Plaintiff's claims are barred by the terms of the agreements.

SIXTH AFFIRMATIVE DEFENSE

37. The obligations created by the Payment Agreement (as an exhibit to and incorporated into the Settlement Agreement) constitute real property interests that run with the land that was assigned pursuant to the Assignment Agreements or leased pursuant to the Boone Lease. As such, the Payment Agreement (and the obligations therein) are not subject to treatment as a contract or contractual rights, respectively, by Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

38. The Payment Agreement (as an exhibit to and incorporated into the Settlement Agreement) is either integrated with or constitutes a modification of or amendment to the Settlement Agreement and each of its exhibits, including without limitation the Boone Lease and each of the Assignment Agreements. Consequently, the payment obligations under the Payment Agreement are integrated into those agreements and may not be treated separately from the Settlement Agreement and/or the Boone Lease and the Assignment Agreements.

FURTHER AFFIRMATIVE DEFENSES

39. Defendants hereby give notice that they intend to rely upon any other defense or defenses that may become available or appear during the pre-trial proceedings in this case and hereby reserve the right to amend their Answer to assert any such defenses.

FIRST COUNTERCLAIM

Post-Petition Breach of Contract

40. On July 5, 2005, Massey Coal Sales and COALTRADE entered into a Settlement Agreement to resolve a lawsuit regarding a coal supply agreement between the parties. The Settlement Agreement has thirteen exhibits, including a Payment Agreement, four Assignment Agreements, and the Boone Lease. Pursuant to the four Assignment Agreements, the Massey Entities assigned certain coal reserves to ERC, and pursuant to the Boone Lease, one of the Massey Entities leased a coal reserve to ERC.

41. A material aspect of the consideration for these assignments and lease is provided for in the Payment Agreement. The Payment Agreement provided that the parties would enter into the four Assignment Agreements and the Boone Lease. As consideration, in relevant part, ERC agreed to pay the Massey Entities for each ton of coal mined and sold from the Assigned

Reserves, as defined in the Assignment Agreements, and the Leased coal, as defined in the Boone Lease (the “Tonnage Payments”). *See* Adv. Compl. Ex. A at 4. Absent ERC’s agreement to make the Tonnage Payments for coal mined from the five reserves that were the subject of the Assignment Agreements and the Boone Lease, Defendants would not have entered into the Assignment Agreements, the Boone Lease, or the other instruments that are attached to the Settlement Agreement.

42. Following receipt of a payment dated May 23, 2012, ERC has ceased to pay the Tonnage Payments required by the Payment Agreement, but on information and belief continues to mine certain of the land transferred to it pursuant to the Assignment Agreements and/or the Boone Lease. This constitutes a breach of a material term of the Payment Agreement, and Defendants have suffered damages as a result of this breach.

43. Furthermore, such mining to the extent conducted post-petition is for the benefit of Plaintiff’s estate, and thus is allowable as an administrative expense pursuant to 11 U.S.C. § 503(b).

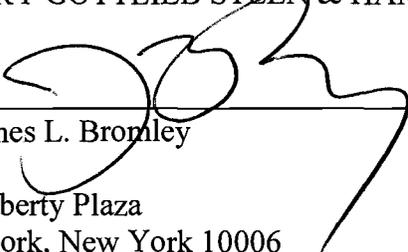
WHEREFORE, DEFENDANTS request that this Court:

- (i) dismiss the Complaint in its entirety;
- (ii) award Defendants damages in an amount to be determined at trial on their First Counterclaim and allow such damages as an administrative expense pursuant to 11 U.S.C. § 503(b);
- (iii) award Defendants all of its costs and expenses of this action, including reasonable attorneys' fees; and
- (iv) grant Defendants such other and further relief as this Court may deem just and proper.

Dated: New York, New York
September 7, 2012

Respectfully submitted,

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