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Opposition Deadline: October 18, 2012 at 11:59 pm (Eastern Time)

Reply Deadline: November 1, 2012 at 11:59 pm (Eastern Time)

Hearing Date (if necessary): TBD

*Counsel to Plaintiff/Debtor
and Debtor in Possession*

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

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

EASTERN ROYALTY LLC f/k/a EASTERN
ROYALTY CORP.,

Plaintiff,

v.

BOONE EAST DEVELOPMENT CO.,
PERFORMANCE COAL CO., and NEW RIVER
ENERGY CORP.,

Defendants.

Chapter 11

Case No. 12-12900 (SCC)

(Jointly Administered)

Adv. Pro. No. 12-01786 (SCC)

NOTICE OF MOTION FOR JUDGMENT ON THE PLEADINGS

PLEASE TAKE NOTICE that, upon the accompanying Plaintiff's Memorandum of Law in Support of Its Motion for Judgment on the Pleadings,¹ and all prior pleadings and proceedings

¹ All capitalized terms used herein have the meanings ascribed to such terms in Plaintiff's Memorandum of Law.

in this action, Plaintiff/Debtor Eastern Royalty LLC f/k/a Eastern Royalty Corp., by its undersigned counsel, hereby moves this Court before the Honorable Judge Shelley C. Chapman of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York, 10004, for an Order pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, as incorporated by Rule 7012 of the Federal Rules of Bankruptcy Procedure, granting judgment on the pleadings, dismissing Defendants' counterclaim in its entirety for failure to state a claim, and declaring (1) that the Payment Agreement is a non-executory contract for purposes of section 365 of the Bankruptcy Code, and (2) that the Payment Agreement is not integrated with or is severable from the Settlement Agreement, the Assignment Agreements, the Boone Lease, and/or any other agreement.

Dated: New York, New York
September 21, 2012

Respectfully Submitted,

DAVIS POLK & WARDWELL LLP

By: /s/ Jonathan D. Martin

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