

W. Timothy Miller
Taft, Stettinius & Hollister LLP
425 Walnut Street, Ste. 1800
Cincinnati, OH 45202
Tel. No.: (513) 381-2838
Fax No.: (513) 381-0205

- and -

Janice B. Grubin
Toddman, Nachamie, Spizz & Johns, P.C.
425 Park Avenue
New York, NY 10022
Tel. No.: (212) 754-9400
Fax No.: (212) 754-6262

Counsel for J.H. Fletcher & Co.

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

In re:

PATRIOT COAL CORPORATION, *et al.*

Debtors.

Chapter 11

Case No. 12-12900 (SCC)

(Jointly Administered)

**OBJECTION OF J.H. FLETCHER & CO. TO THE DEBTORS'
RECLAMATION REPORT AND NOTICE OF OBJECTION PROCEDURES**

J.H. Fletcher & Co. ("JHF"), through its undersigned counsel, hereby submits this Objection to the Debtors' Reclamation Report and Notice of Objection Procedures [Docket Number 1651] (the "**Report**"). In support of its Objection JHF, respectfully submits the following:

1. JHF provides machinery, equipment, and replacement parts to the Debtors.

2. On July 30, 2012, JHF timely filed its Notice of Reclamation Demand Pursuant to 11 U.S.C. Section 546 and Debtors' Motion for Approval of Procedures for Assertion, Resolution and Treatment of Reclamation Claims [Docket Number 217] (the "**Reclamation Demand**"). The Reclamation Demand listed goods with a total value of \$152,786.10 that were received by the Debtors within 45 days before the date of the commencement of this bankruptcy case.

3. On October 19, 2012, JHF timely filed Section 503(b)(9) administrative expense claims in the following bankruptcy cases based on goods provided by JHF that were received by certain of the Debtors within 20 days before the date of the commencement of the bankruptcy case: Eastern Associated Coal, LLC (Case No. 12-12934, Claim No. 317), Hillside Mining Company (Case No. 12-12942, Claim No. 313), Kanawha Eagle Coal LLC (Case No. 12-12950, Claim No. 311), Midland Trail Energy LLC (Case No. 12-12960, Claim No. 309), Panther LLC (Case No. 12-12967, Claim No. 307), Remington LLC (Case No. 12-12980, Claim No. 305), and Black Stallion Coal Company LLC (Case No. 12-12908, Claim No. 319).

4. The Report outlines the legal bases for the Debtors' reduction or disallowance of the Reclamation Demand. Specifically, the Debtors contend that the goods included in the Reclamation Demand cannot be reclaimed because either the goods were received outside the period, the Debtors paid amounts included in the Reclamation Demand, the goods were consumed, or the goods are subject to a prior security interest. The Debtors propose an Administrative Claim Amount of zero for the goods listed in the Reclamation Demand.

5. Somewhat surprisingly, in a footnote at the very bottom of the Report, the Debtors assert that “Proposed Administrative Claim Amounts allowed as set forth herein shall be in full satisfaction of any 503(b)(9) Claim related to the delivery of the applicable goods giving rise to such allowed claims.” JHF has not been served with any objection to its properly filed Section 503(b)(9) administrative expense claims.

ARGUMENT

JHF objects to the Report to the extent that the Debtor is requesting to disallow JHF’s otherwise valid and properly filed Section 503(b)(9) claims. The Debtors may have valid defenses to the Reclamation Demand, however, these defenses do not entitle the Debtor to disallow JHF’s valid Section 503(b)(9) claims without properly interposing objections to those claims.

7. In order to qualify for administrative priority treatment under Section 503(b)(9) of the Bankruptcy Code, a claim must be for goods, received by the debtor within the 20 days prior to case commencement, and sold to the debtor in the ordinary course of its business. *In re Pilgrim’s Pride Corporation*, 421 B.R. 231 (Bankr. N.D. Tex. 2009).

8. There is no requirement that goods included in a Section 503(b)(9) claim also be reclaimable goods. *In re Plastech Engineered Products, Inc.*, 397 B.R. 828, 838 (Bankr. E.D.Mich. 2008). “[Section] 546 does not limit or control in any way the rights that a claimant has under [Section] 503(b)(9).” *In re Plastech Engineered Products, Inc.*, 397 B.R. 828, 838 (Bankr. E.D.Mich. 2008); see also *In re Erving Industries, Inc.*, 432 B.R. 354, 373 (Bankr. D. Mass. 2010). The right to assert an administrative expense claim under Section 503(b)(9) is not linked to or conditioned upon the creditor's right to

assert a reclamation claim pursuant to Section 546(c). *In re Commissary Operations, Inc.*, 421 B.R. 873, 877 (Bankr. M.D.Tenn. 2010).

9. The Debtor cites *In re Dana Corp.*, 367 B.R. 409 (Bankr. S.D. N.Y. 2007) for the proposition that reclamation claims are valueless when the reclaimed goods are subject to an existing creditor's lien. Judge Lifland, however, specifically stated that the issues raised in *Dana Corp.* relate solely to defenses "to reclamation rights under Section 546(c) of the Bankruptcy Code and not to the rights to an administrative expense under the newly enacted section 503(b)(9) of the Bankruptcy Code." *In re Dana Corp.*, 367 B.R. at 411. Furthermore, Judge Lifland stated that the addition of a Section 503(b)(9) administrative claim "resolves a conflict among the courts concerning whether a reclaiming seller may be granted an administrative claim or lien on property of the debtor's estate pursuant to former section 546(c) even where there existed a lienholder with a superior interest," implying that a Section 503(b)(9) claim would be available to such a seller even if the debtor's assets were encumbered by a pre-existing lien. *Id.* at fn. 5.

10. The plain language of Section 503(b)(9) does not require that the goods received by the debtor within the 20 days prior to the commencement of the bankruptcy case be in the debtor's possession or be identifiable at any subsequent time after receipt in order for the seller of those goods to have a valid Section 503(b)(9) claim.

11. Section 503(b)(9) offers distinct relief to a trade creditor by providing for the payment of goods delivered within the 20-day period before the commencement of a case. It is not a reclamation claim, it entitles the creditor to priority payment in an

amount equal to the value of the goods and does not provide for the return of the goods to the creditor. *In re Commissary Operations, Inc.*, 421 B.R. at 877-888.

CONCLUSION

The Debtors may have valid defenses to the Reclamation Demand. However, those defenses are not a proper basis on which to disallow JHF's properly filed Section 503(b)(9) claims.

WHEREFORE, J.H. Fletcher & Co, respectfully requests that the Court sustain this Objection and that any order approving the Debtors' Report specifically provide that it will have no effect whatsoever on JHF's properly and timely filed Section 503(b)(9) claim.

Dated: December 19, 2012

By: /s/ W. Timothy Miller

W. Timothy Miller
Taft, Stettinius & Hollister
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202
Tel. No.: (513) 381-2838
Fax No.: (513) 381-0205

-and-

Janice B. Grubin
Todtman, Nachamie, Spizz & Johns, P.C.
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New York, NY 10022
Tel. No.: (212) 754-9400
Fax No.: (212) 754-6262

Counsel for J.H. Fletcher & Co.

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2012, a true copy of the foregoing was served electronically through the Court's ECF system on all registered users and by regular U.S. mail, postage prepaid, or via facsimile as allowed by the Report, upon the following Notice Parties:

Patriot Coal Corporation
12312 Olive Blvd., Suite 400
St. Louis, MO 63141
Attn: Marguerite O'Connell
Reclamation Claims
VIA FAX (314) 275-3626

Margot B. Schonholtz
Ana Alfonso
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
*Counsel for Administrative Agents for
Proposed Postpetition Lenders*

Patriot Coal Corporation
c/o GCG, Inc.
P. O. Box 9898
Dublin, OH 43017-5798
VIA FAX (855) 687-2627
Claims and Noticing Agent for Debtors

Thomas Moers Mayer
Adam C. Rogoff
Gregory G. Plotko
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
*Counsel for Official Committee of
Unsecured Creditors*

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
ATTN: Brian M. Resnick and
Michelle McGreal
VIA FAX (212) 607-7983
Counsel for Debtor

/s/ W. Timothy Miller
W. Timothy Miller

Marcia Goldstein
Joseph Smolinsky
Weil Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
*Counsel for Administrative Agents for
Proposed Postpetition Lenders*