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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 12-12900-scc; Adv. Proc. No. 12-01786-scc

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In the Matter of:
PATRIOT COAL CORPORATION, ET AL.,
Debtors.

- - - - -x

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

- against -

BOONE EAST DEVELOPMENT CO., ET AL.,
Defendants.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

September 25, 2012
10:12 AM

B E F O R E:
HON. SHELLEY C. CHAPMAN
U.S. BANKRUPTCY JUDGE

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Pre-Trial Conference

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P R O C E E D I N G S

THE COURT: Okay, Patriot, Eastern Royalty v. Boone East Development, et al.

Good morning.

MR. MARTIN: Good morning, Your Honor. Jonathan Martin from Davis Polk for debtor, Eastern Royalty.

THE COURT: Okay.

MR. BAREFOOT: And Your Honor Luke Barefoot and Jim Bromley from Cleary Gottlieb Steen & Hamilton LLP for defendants Boone East, Performance Coal, and New River Energy.

MR. PLOTKO: And Gregory Plotko with Kramer Levin Naftalis & Frankel for the committee.

THE COURT: Okay, thank you. All right, I read the report of the Rule 26(f) meeting. Has there been any subsequent discussion or development since then?

MR. MARTIN: There has been, Your Honor.

THE COURT: Okay.

MR. MARTIN: Pleased to report that the parties have continued to confer and have reached agreement subject to the Court's approval --

THE COURT: Okay.

MR. MARTIN: -- on a schedule that would involve motion practice and, if necessary, discovery. As the Court may be aware, on Friday of last week, Eastern Royalty filed a motion for judgment on the pleadings. That motion will be

1 fully briefed by November 1st. And the parties have also
2 agreed to stay any discovery pending a ruling on that motion --

3 THE COURT: Okay.

4 MR. MARTIN: -- or at least until the earlier of a
5 ruling on the motion or January 7th.

6 THE COURT: Earlier of a ruling -- okay.

7 MR. MARTIN: I'll let Mr. Barefoot speak to that.

8 THE COURT: Okay.

9 MR. MARTIN: But I think the idea is just that they've
10 been very accommodating about a stay, Your Honor, and I think
11 they just want to revisit the issue if an opinion is still --

12 THE COURT: Sure.

13 MR. MARTIN: -- not issued as of January 7th.

14 THE COURT: Okay, but no discovery pending that
15 occurring?

16 MR. MARTIN: Correct.

17 THE COURT: All right, well, that's exactly what I was
18 going to tell you I wanted to do, so that's delightful.

19 Mr. Barefoot?

20 MR. BAREFOOT: Yes, Your Honor. One point of
21 clarification. It's the stay is the earlier of five days after
22 issuance of Your Honor's opinion --

23 THE COURT: Okay.

24 MR. BAREFOOT: -- on the 12(c) motion or January 7th,
25 2013.

1 THE COURT: Okay, great.

2 MR. BAREFOOT: And Mr. Martin is correct that we are
3 agreeing to this, in light of the relatively expedited briefing
4 schedule that the debtors have consented to --

5 THE COURT: Okay.

6 MR. BAREFOOT: -- notwithstanding our continued belief
7 that we can ultimately complete discovery with relatively
8 limited burden on the parties.

9 THE COURT: Okay, all right. So you're going to stick
10 with the November 1st reply deadline?

11 MR. MARTIN: That's correct, Your Honor.

12 THE COURT: Right, and then there'll be a rebuttal or
13 further response the following week? Or --

14 MR. MARTIN: Well, no, the opposition would be due on
15 October 18th.

16 THE COURT: Oh, okay.

17 MR. MARTIN: Our reply --

18 THE COURT: I'm sorry. I was misreading.

19 MR. MARTIN: Sure.

20 THE COURT: And then the reply due on November 1st.

21 MR. MARTIN: And Your Honor, the one open item on that
22 schedule is a hearing on the motion.

23 THE COURT: Hearing date, right.

24 MR. MARTIN: And so we were going to take your
25 guidance on that. The parties do have a joint request, if

1 it --

2 THE COURT: Sure.

3 MR. MARTIN: -- if the Court's calendar can
4 accommodate it, for hearing in the early part of November to
5 account for --

6 THE COURT: All right, let --

7 MR. MARTIN: -- scheduling conflicts later that month.

8 THE COURT: Sure, let's --

9 MR. MARTIN: But again, if the Court's calendar
10 accommodates.

11 THE COURT: Let's look at the calendar.

12 How about Thursday, November 8th?

13 MR. MARTIN: That works, Your Honor.

14 THE COURT: No? Okay.

15 MR. BAREFOOT: Your Honor, that does not work for
16 defendants.

17 THE COURT: Why don't --

18 MR. BAREFOOT: Would potentially some time the
19 following week be available in chambers?

20 THE COURT: Let's look. Thursday, November 15th?

21 MR. BAREFOOT: That works fine, Your Honor.

22 MR. MARTIN: We can make that work, Your Honor.

23 THE COURT: All right, is there a different date that
24 would be better for you? I'm happy to try to accommodate you.

25 MR. MARTIN: If there's something earlier that week

1 and it works for the defendants, that would be --

2 THE COURT: Earlier the --

3 MR. MARTIN: That week of the 12th.

4 THE COURT: The 12th, we're closed, and I get in
5 trouble when I try to open the court on days that we're closed.

6 MR. MARTIN: I can imagine, Your Honor. The 14th?

7 THE COURT: We're going to have to stick with the
8 15th.

9 MR. MARTIN: We'll do the 15th, Your Honor.

10 THE COURT: Okay. All right, so the 15th, at 10 a.m.

11 MR. BAREFOOT: Very well, Your Honor.

12 MR. MARTIN: Thank you, Your Honor.

13 THE COURT: All right? Okay, thank you. I appreciate
14 it. Have a good day.

15 (Whereupon these proceedings were concluded at 10:17 AM)

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C E R T I F I C A T I O N

I, Dena Page, certify that the foregoing transcript is a true and accurate record of the proceedings.



DENA PAGE

AAERT Certified Electronic Transcriber CET**D-629

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Date: September 25, 2012