

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re

PATRIOT COAL CORPORATION, *et al.*,

Debtors¹

Chapter 11

Case No. 12-51502-659

(Jointly Administered)

Objection Deadline:

January 22, 2013 at 4:00 p.m.

(Central Time)

Hearing Date (if necessary):

January 29, 2013

10:00 a.m. (Central Time)

Hearing Location:

Courtroom 7 North

**OBJECTION TO DEBTORS' MOTION FOR AUTHORIZATION TO (I) ASSUME OR
(II) REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

Penn Virginia Operating Co., LLC and its affiliated entities, including, but not limited to, Penn Virginia Coal Company, K-Rail LLC (f/k/a Kanawha Rail Corp.), Suncrest Resources LLC (successor in interest to Penn Virginia Resource GP, LLC, and Penn Virginia Resource Partners, L.P.), Crimson Processing Company and Carbon Fuel Company Kanawha Rail Corp., (all of the

¹ The Debtors are the entities listed on Schedule 1 attached hereto. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

foregoing, “PVR”) object to the motion of the Debtors dated January 15, 2013 for Authorization to (i) Assume or (ii) Reject Unexpired Leases of Nonresidential Real Property [Docket No. 1995] (the “Motion”) and state as follows:

1. Pursuant to section 365 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Debtors have sought the entry of an order: (a) authorizing the assumption of certain of the Debtors’ unexpired leases of nonresidential real property with PVR; (b) authorizing the Debtors to reject certain of the Debtors’ unexpired leases of nonresidential real property with PVR.

Objection to Assumption of Certain PVR Leases

2. With respect to the PVR leases sought to be assumed by the Debtors, section 365 of the Bankruptcy Code provides, in relevant part, as follows:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee –

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property . . . ;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

3. Pursuant to section 365(b)(1) of the Bankruptcy Code, all defaults must be cured as of the time of assumption, or adequate assurance of prompt cure must be provided. The defaults that must be cured include both pre-petition and post-petition defaults. *See Stoltz v. Brattleboro Hous. Auth. (In re Stoltz)*, 315 F.3d 80, 86, 94 (2d Cir. 2002); *South St. Seaport Ltd. P'ship. v. Burger Boys, Inc. (In re Burger Boys, Inc.)*, 94 F.3d 755, 763 (2d Cir. 1996); *In re Bradlees Stores, Inc.*, 2001 WL 36143034, at * 2 (Bankr. S.D.N.Y. 2001). The burden is on the Debtors to provide evidence that defaults have been cured or will be promptly cured and there is adequate assurance of future performance. *In re F.W Restaurant Associates, Inc.*, 190 B.R. 143, 147 (Bankr. D. Conn. 1995). The Debtors have the ultimate burden to demonstrate that agreements are subject to assumption and that all requirements for such assumption have been met. *See, e.g., In re PRK Enters., Inc.*, 235 B.R. 597, 603 (Bankr. S.D. Tex. 1999).

4. PVR objects to the assumption of certain of the Debtors' leases with PVR. Among other things, the correct cure amounts with respect to the PVR leases sought to be assumed are set forth in Exhibit A annexed hereto. In addition, the Debtors' proposed cure amounts do not include the payment of accrued but unbilled taxes due for the second half of 2012. *See Ex. A.*

Objection to Rejection of Certain PVR Leases

5. PVR also objects to the rejection of certain of the Debtors' leases with PVR. Among other things, the Motion fails to address fundamental issues in connection with the proposed rejection. Will the Debtors remove their property and equipment from PVR's properties? Will the Debtors want access to PVR's properties after rejecting the leases with PVR? If the Debtors do intend to enter the properties and remove their personal property and equipment, will the Debtors indemnify PVR for any liability associated with the entry on to

PVR's properties? Will the Debtors remediate the rejected properties as they are required to both under the leases and various federal, state and local laws and regulations? Who if anyone will perform the reclamation services and who will indemnify PVR with respect to reclamation work being performed on PVR's properties? Will the Debtors continue to maintain insurance with respect to the PVR properties that are proposed to be rejected and that are required to be remediated? These and many other fundamental questions affecting the rights of lessors whose leases the Debtors are seeking to reject should be answered by the Debtors prior to rejection. In addition, it should be noted that as of the filing of this objection, the Debtors continue to perform mining operations on PVR's properties that are proposed to be rejected. The Debtors apparently do not intend to perform any services necessary to securely and safely cease mining operations, and therefore there may be hazardous conditions that will not be addressed upon rejection.

6. PVR reserves all of its rights under the Bankruptcy Code and applicable non-bankruptcy law. In addition, PVR reserves the right to amend or supplement this Objection, including with respect to cure amounts.

[Objection continues on following page]

CONCLUSION

WHEREFORE PVR respectfully requests that the Court deny the relief requested in the Motion; and (b) grant such other and further relief to PVR as the Court may deem proper.

Dated: January 22, 2013

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EXHIBIT A

PENN VIRGINIA OPERATING CO., LLC
West Virginia Properties

SCHEDULE A - ASSUMED LEASES

Debtors' Contract ID	Debtor Parties to the Contracts and Leases to be Assumed	Counter Parties to the Contracts and Leases to be Assumed	Debtors' listed Cure Amount	Counter Parties calculated Cure Amount	Accrued but not billed 2nd half 2012 taxes	
LMS1533	Kanawha Eagle Coal, LLC	K Rail LLC	\$ -	\$ 19,473.48	\$ 19,473.48	Includes claim amounts for K Rail & Big Eagle Rail
LMS1534	Kanawha Eagle Coal, LLC	K Rail LLC	\$ 6,907.42	\$ 75,720.62	\$ 17,352.83	Includes claim amounts for Winifrede Dock & K Rail
LMS2181	Kanawha Eagle Coal, LLC	Penn Virginia Operating Co., LLC	\$ 76,679.73	\$ 76,679.73	\$ 43,719.49	Lens Creek Lease
LMS2182	Kanawha Eagle Coal, LLC	Penn Virginia Operating Co., LLC	\$ 482,181.46	\$ 653,405.19	\$ 133,469.32	Fields Creek Lease; includes amounts owed by WWMV
LND 054	Eastern Royalty, LLC	Penn Virginia Operating Co., LLC	\$ 442,194.25	\$ 507,754.05	\$ 152,047.05	
LND 321	Wildcat, LLC	Penn Virginia Operating Co., LLC	\$ 27,948.77	\$ 27,948.77	\$ 2,142.33	
LND 325	Panther, LLC	Penn Virginia Operating Co., LLC	\$ 17,138.65	\$ 218,906.06	\$ 17,138.65	
LND 467	Remington, LLC	Penn Virginia Operating Co., LLC	\$ 2,142.33	\$ 2,142.33	\$ 2,142.33	
LMS2221	Eastern Associated Coal, LLC	Penn Virginia Resource Partners	\$ -	\$ 20,128.79	\$ -	
LND 045	Eastern Associated Coal, LLC	Suncrest Resources, LLC	\$ 218,190.44	\$ 218,190.44	\$ 218,190.44	
			\$ 1,273,383.05	\$ 1,820,349.46	\$ 605,675.92	
TOTAL AMOUNT TO CURE FOR ASSUMED LEASES					\$ 2,426,025.38	