

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Re:) Chapter 11
) Case No. 12-51502-659
PATRIOT COAL CORPORATION,) Jointly Administered
et al.,) Honorable Kathy Surratt-States
Debtors.)
) Hearing Date: February 26, 2013
) Hearing Time: 10:00 a.m.

**MOTION TO ALLOW AND AMEND INFORMAL PROOFS OF CLAIM, OR, IN THE
ALTERNATIVE, TO EXTEND TIME TO FILE TIMELY PROOFS OF CLAIM**

COME NOW Industrial Contracting of Fairmont, Inc. (“Fairmont”), Industrial Resources, Inc. (“IRI”), West Virginia Electric Industries, Inc. (“WVEI”) and Salem Electric Company (“Salem”) (collectively the “Movants”), by and through counsel, and for their Motion to Allow and Amend Informal Proofs of Claim, or, in the Alternative, to Extend Time to File Timely Proofs of Claim (“Motion”)¹ state as follows:

1. On or about, July 9, 2012, Debtor Patriot Coal Corporation and numerous affiliated entities filed petitions in bankruptcy under Chapter 11 in the United States Bankruptcy Court for the Southern District of New York. These cases, all administratively consolidated, were recently transferred to the United States Bankruptcy Court for the Eastern District of Missouri.

2. Movants are affiliated entities that are organized under the laws of the State of West Virginia or the laws of the State of Delaware and bring this Motion seeking relief with regard to the filing of proofs of claims as against Debtor Eastern Royalty LLC, formerly known as Eastern Royalty Corp., the record owner, (“Eastern”) as to the Monongalia Property, hereinafter referenced, and Robin Land Company, LLC, (“Robin”) as to the Boone Property,

¹ Contemporaneously with the filing of this Motion, Movants are also filing a Motion for Relief from the Automatic Stay.

also hereinafter referenced. Debtor Eastern Associated Coal, LLC (“Debtor EAC”) and Debtor Hobet Mining, LLC (“Debtor Hobet”) are other debtors which contracted with the Movants with regard to the improvements made on the Monongalia Property and the Boone Property.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 157(b)(2)(B) and (O)..

A. The Federal No. 2 Coal Preparation Plant.

4. By virtue of various purchase orders, invoices and/or agreements, Movants, at the instance, request or benefit of Debtor EAC, provided various goods, materials and labor utilized in the erection, construction and/or improvements of the Federal No. 2 Coal Preparation Plant located in the County of Monongalia, West Virginia (the “Monongalia Property”) and owned by Eastern. All of the goods, materials and labor were provided pre-petition. See the Exhibits hereinafter referenced in this Motion.

5. Amounts are due and owing to Movants under various purchase orders and invoices with regard to the Monongalia Property are more fully described in the Exhibits to this Motion. Although demand for payment of the sums due and owing was made by Movants, Debtor EAC has failed or refused to compensate Movants for the alleged deficiency.

6. Within the time prescribed by West Virginia law, Movants filed their Notices of Mechanic’s Liens against the Monongalia Property owned by Eastern by filing their Notices of Mechanic’s Lien in the Office of the Clerk of the County Commission of Monongalia County on September 14, 2012. In addition, Movants timely filed and served additional Notices of Mechanic’s Lien upon the owner of the Monongalia Property through the Secretary of State of the State of West Virginia, all as required by West Virginia law.

7. With regard to these unpaid obligations, Movants timely filed Proofs of Claim in the case of Debtor EAC in accordance with the procedures set forth in these cases. These Proofs of Claims were filed as secured claims. Movants, however, did not file a formal Proof of Claim form with regard to their secured claims against Eastern, against which mechanic's liens have been asserted, although the information contained in the timely filed formal Proofs of Claim clearly reflect that Movants have secured mechanic's lien claims against Eastern. Movants will amend their Proofs of Claims against EAC to properly reflect their claims as being general unsecured claims; and, to the extent relief is granted herein, Movants will file formal Proofs of Claim against Eastern as secured claims, consistent with what has previously been filed.

8. A summary and description of each of the mechanic's liens, the claimants and the amounts due, exclusive of interest, fees and/or penalties, with regard to the Monongalia Property is attached hereto as Exhibit A, which is incorporated herein by reference. The Notices of Mechanic's Liens filed with the Office of the Clerk of the County Commission of Monongalia County are referenced as Exhibits B through E and the Notices of Mechanic's Liens served upon the owner of the Monongalia Property, with proof of receipt of service, are referenced as Exhibits F through I.² The timely Proofs of Claims filed with regard to the Monongalia Property are referenced as Exhibits POC1 through POC4.

B. The Beth Station Coal Preparation Plant Property.

9. By virtue of various purchase orders, invoices and/or agreements, certain Movants, at the instance, request or benefit of Debtor Hobet, provided various goods, materials and labor utilized in the erection, construction and/or improvements of the Beth Station Coal

² Exhibits A through N are also referenced in Movants' Motion for Relief from the Automatic Stay. To avoid unnecessary copying, Movants simply reference these Exhibits, which are being furnished to certain parties as part of the Motion for Relief from the Automatic Stay.

Preparation Plant located in the County of Boone, West Virginia (the “Boone Property”) owned by Debtor Robin. All of the goods, materials and labor were provided pre-petition. See the additional Exhibits referenced hereinafter in this Motion.

10. Amounts are due and owing to certain Movants under various purchase orders and invoices with regard to the Boone Property are more fully described in the Exhibits to this Motion. Although demand for payment of the sums due and owing was made by these Movants, Debtor Hobet has failed or refused to compensate said Movants for the alleged deficiency.

11. Within the time prescribed by West Virginia law, the applicable Movants filed their Notices of Mechanic’s Liens against the Boone Property owned by Debtor Robin by filing their Notices of Mechanic’s Lien in the Office of the Clerk of the County Commission of Boone County on September 14, 2012. In addition, these Movants timely filed and served additional Notices of Mechanic’s Lien upon the owner of the Boone Property through the Secretary of State of the State of West Virginia, all as required by West Virginia law.

12. With regard to these unpaid obligations, these Movants also timely filed Proofs of Claim in accordance with the procedures set forth in these cases against Debtor Hobet. These Proofs of Claims were filed as secured claims. These Movants, however, did not file a formal Proof of Claim form with regard to their secured claims against Debtor Robin, against which mechanic’s liens have been asserted, although the information contained in the timely filed formal Proofs of Claim clearly reflect that Movants have secured mechanic’s lien claims against Robin. Movants will amend their Proofs of Claims against Hobet to properly reflect their claims as being general unsecured claims; and, to the extent relief is granted, will file formal Proofs of Claim against Debtor Robin as secured claims, consistent with what was previously filed.

13. A summary and description of each of the mechanics' liens, the claimants and the amounts due, exclusive of interest, fees and/or penalties, with regard to the Boone Property is attached hereto as Exhibit J, which is incorporated herein by reference. The Notices of Mechanic's Liens filed with the Office of the Clerk of the County Commission of Boone County are referenced herein as Exhibits K and L and the Notices of Mechanic's Liens served upon the owner of the Boone Property, with proof of receipt of service, are referenced herein as Exhibits M and N. The timely Proofs of Claims filed with regard to the Boone Property are referenced as Exhibits POC5 through POC6.

C. Requested Relief

14. Movants seek a determination that their Proofs of Claim already filed, including the supporting documents, are deemed to be timely filed as informal proofs of claim in the bankruptcy cases of Eastern and Robin. In the alternative, Movants seek an extension of time to file timely proofs of claim in the cases of Eastern and Robin pursuant to Bankruptcy Rule 9006.

15. The Eighth Circuit provides for great liberality in the amendment of claims and further recognizes and allows for the filing of an informal proof of claim. To qualify as an informal proof of claim, a document must include the nature and amount of the claim as well as indicate the creditor's intent to hold the debtor accountable and pursue the claim. See In re Haugen Construction Services, Inc., 876 F.2d 681 (8th Cir. 1989); In re SportsStuff, Inc., 2011 WL 6260234 (Bkrtcy. D. Neb. 2011); and In re Larson, 245 B.R. 609 (Bkrtcy. D. Minn. 2000).

16. In this case, Movants filed multiple Notices of Mechanic's Liens reflecting the amount and nature of the claims as well as their intent to pursue the claims and hold these Debtors accountable. They further followed up and filed timely formal Proofs of Claim in the cases of EAC and Hobet, which further provide support for an allowance of an informal proof of

claim. As a result, Debtors should be fully aware of Movants' claims. In a similar situation in the case of In re Interco, 149 B.R. 934 (Bkrcty. E.D. Mo. 1993), the Court permitted claimants, which filed Proofs of Claims in one of the administratively consolidated cases, to have an informal proof of claim in one of the other affiliated cases when the documents attached to the Proofs of Claims reflected and indicated that another debtor entity was liable. That situation is no different than the one before this Court. All conditions necessary to file a proof of claim have been met. As a result, this Court should treat the Proofs of Claims filed by the Movants to also be deemed as informal Proofs of Claim in the Eastern and Robin cases.

17. Alternatively, Movants state that they meet the test of excusable neglect enunciated in the landmark case of Pioneer Investment Services Company v Brunswick Associates Limited Partnership, 507 U.S. 380, 113 S.Ct. 1489 (1993) and construed by Missouri Bankruptcy Courts in various cases, including In re Laclede Cab Company, 186 B.R. 688 (Bkrcty. E.D. Mo. 1995) and In re Broadmoor Country Club & Apt., 158 B. R. 146 (Bkrcty. W.D. Mo. 1993). The factors to be considered include: a) prejudice to the Debtor; b) the length of delay and its impact on the case's administration; c) the reason for the mistake; and d) creditor's good faith.

18. All factors support Movants' position. There is no prejudice to the Debtors, as the Notices of Mechanic's Liens and the timely filing of Proofs of Claim reflect no surprise. Debtors will have ample opportunity to review the claims and also preserve any and all other possible objections they may have. No plan of reorganization has been filed and the cases were just recently transferred to this Court. The bar date has only recently passed and there has been no long delay in correcting the error. The Movants have acted in good faith. With a case of this

size with almost one hundred debtors, any honest mistake in the filing of claims is easy to comprehend.

19. By filing this pleading, Movants are showing that they are acting promptly and diligently in correcting this error.

WHEREFORE, Movants pray that this Honorable Court enter its order (1) finding that the timely claims asserted by Movants against Debtors EAC and Hobet should also be construed to constitute timely filed informal proofs of claims against the estates of Debtors Eastern and Robin; (2) finding that these informal proofs of claims are timely filed; (3) extending the time for Movants to file formal Proofs of Claim against Debtors Eastern and Robin; 4) finding, in the alternative, excusable neglect with regard to the filing of these claims; and (4) granting such other and further relief as may be just and proper.

SUMMERS COMPTON WELLS PC

Date: January 30, 2013

By: /s/ David A. Sosne

David A. Sosne, Esq. #28365MO

8909 Ladue Road

St. Louis, Missouri 63124

Phone: 314-991-4999

Fax: 314-991-2413

Email: dasattymo@summerscomptonwells.com

Attorneys for Movants

- Exhibit G: Notice of Mechanic's Lien of Industrial Resources, Inc. served on Eastern Royalty Corp. n/k/a Eastern Royalty, LLC through the West Virginia Secretary of State.
- Exhibit H: Notice of Mechanic's Lien of Salem Electric Company served on Eastern Royalty Corp. n/k/a Eastern Royalty, LLC through the West Virginia Secretary of State.
- Exhibit I: Notice of Mechanic's Lien of West Virginia Electric Industries, Inc. served on Eastern Royalty Corp. n/k/a Eastern Royalty, LLC through the West Virginia Secretary of State.
- Exhibit J: Summary of Mechanics' Liens for the Beth Station Coal Preparation Plant in Boone County, West Virginia.
- Exhibit K: Notice of Mechanic's Lien of West Virginia Electric Industries, Inc. (filed with Boone County, West Virginia).
- Exhibit L: Notice of Mechanic's Lien of Industrial Contracting of Fairmont, Inc. (filed with Boone County, West Virginia).
- Exhibit M: Notice of Mechanic's Lien of West Virginia Electric Industries, Inc. served on Robin Land Company, LLC through the West Virginia Secretary of State.
- Exhibit N: Notice of Mechanic's Lien of Industrial Contracting of Fairmont, Inc. served on Robin Land Company, LLC through the West Virginia Secretary of State.
- POC 1: Proof of Claim of Industrial Contracting of Fairmont, Inc. against Eastern Associated Coal, LLC.
- POC 2: Proof of Claim of Industrial Resources, Inc. against Eastern Associated Coal, LLC.
- POC 3: Proof of Claim of Salem Electric Company against Eastern Associated Coal, LLC.
- POC 4: Proof of Claim of West Virginia Electric Industries, Inc. against Eastern Associated Coal, LLC.
- POC 5: Proof of Claim of West Virginia Electric Industries, Inc. against Hobet Mining, LLC.
- POC 6: Proof of Claim of West Virginia Electric Industries, Inc. against Hobet Mining, LLC.

SUMMERS COMPTON WELLS PC

Date: January 30, 2013

By: /s/ David A. Sosne

David A. Sosne, Esq. #28365MO

8909 Ladue Road

St. Louis, Missouri 63124

Phone: 314-991-4999

Fax: 314-991-2413

Email: dasattymo@summerscomptonwells.com

EXHIBIT A

Claimant	Amount Due Exclusive of interest and other charges, if any	Brief Description	Property	Owner
Industrial Contracting of Fairmont, Inc.	\$118,000	Dump Feed Gates & Chute Work-Install 2 dump feed double bladed horizontal slide gates and fabricate duplicates to the existing dump gates	Federal No. 2 Coal Property Plant	Eastern Royalty Corp. (record owner) Eastern Royalty, LLC
Industrial Resources, Inc.	\$34,734	Fabricate skip load linkage set; engineer new underground dewatering system; emergency repairs to rotary dump slide gate; and other miscellaneous items	Federal No. 2 Coal Property Plant	Eastern Royalty Corp. (record owner) Eastern Royalty, LLC
Salem Electric Company	\$7,280	Sample panel replacement	Federal No. 2 Coal Property Plant	Eastern Royalty Corp. (record owner) Eastern Royalty, LLC
West Virginia Electric Industries, Inc.	\$106,809	Control Logix @ Rotary Dump; sample panel replacement and panel reprogramming	Federal No. 2 Coal Property Plant	Eastern Royalty Corp. (record owner) Eastern Royalty, LLC

EXHIBIT J

Claimant	Amount Due Exclusive of interest and other charges, if any	Brief Description	Property	Owner
West Virginia Electric Industries, Inc.	\$3,001.02	Generic modem MACTEK; engraved nameplates; Yaskawa Inverter and VFD	Beth Station Prep Plant	Robin Land Company, LLC
Industrial Contracting of Fairmont, Inc.	\$223,709	Slurry Pumping and return water system; road guard plans; plant column plating and miscellaneous work	Beth Station Prep Plant	Robin Land Company, LLC