

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

**In re:**

**PATRIOT COAL CORPORATION, *et al.*,**

**Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 12-12900 (SCC)**

**Jointly Administered**

**ORDER APPROVING PROCEDURES FOR THE ASSERTION,  
RESOLUTION AND TREATMENT OF RECLAMATION CLAIMS AND  
CLAIMS ASSERTED PURSUANT TO 11 U.S.C. § 503(b)(9)**

Upon the motion (the “**Motion**”)<sup>2</sup> of Patriot Coal Corporation and its subsidiaries, that are debtors and debtors in possession (collectively, the “**Debtors**”), for authorization pursuant to sections 105(a), 503(b) and 546(c) of title 11 of the United States Code (the “**Bankruptcy Code**”) to establish procedures for the treatment of unpaid claims<sup>3</sup> pursuant to 546(c) (the “**Reclamation Claims**”) or 503(b)(9) (the “**503(b)(9) Claims**”), as more fully described in the Motion; and upon consideration of the Declaration of Mark N. Schroeder, Patriot Coal Corporation’s Senior Vice President and Chief Financial Officer, filed on July 9, 2012 [ECF No. 4] (“the **Declaration**”); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant

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<sup>1</sup> The Debtors are the entities listed on Schedule 1 attached to the Motion. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

<sup>2</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.

<sup>3</sup> Certain vendors may receive payment on account of their prepetition claims pursuant to other orders of the Court. To the extent a Reclamation Vendor or a 503(b)(9) Vendor receives payment on account of its prepetition claim pursuant to any such other order, the Procedures shall not apply to such Reclamation Vendor or 503(b)(9) Vendor.

to 28 U.S.C. §§ 157 and 1334 and Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.) as amended by Standing Order M-431, dated February 1, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion having been provided in accordance with the Case Management Order, and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion and having held a hearing with appearances of parties in interest noted in the transcript thereof (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion, the Declaration and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the relief requested in the Motion is hereby granted as set forth herein; and it is further

ORDERED that if the Procedures conflict with the Case Management Order, the Procedures shall control with respect to Reclamation Claims and 503(b)(9) Claims. In all other circumstances, except as otherwise provided by separate order, the Case Management Order shall govern; and it is further

ORDERED that neither the filing of this Motion nor any of the information contained therein shall constitute an admission of the solvency or insolvency of the Debtors, as of or prior to, the Petition Date; and it is further

ORDERED that pursuant to sections 105(a), 546(c) and 503(b)(9) of the Bankruptcy Code, the following procedures are hereby approved and shall be implemented throughout the Debtors' chapter 11 cases:

**Reclamation Procedures**

1. A Reclamation Demand shall not be valid unless:

**A. Reclamation Demand**

a. Parties wishing to make a Reclamation Demand shall fill out a Reclamation Claim Form, attached to the Motion as Exhibit B (the "**Reclamation Claim Form**"), identifying (i) the particular goods sought to be reclaimed (the "**Reclamation Goods**"), (ii) the quantity or dollar value of the Reclamation Goods, (iii) the date the Reclamation Goods were delivered to the Debtors, (iv) the invoice numbers and/or purchase order numbers applicable to the Reclamation Goods and (v) the basis for the Reclamation Demand;

b. The Reclamation Claim Form, accompanied by the applicable invoice(s), and bill(s) of lading or other documentation establishing proof of delivery and proof of the date of delivery of the Reclamation Goods, should be served and actually received by (i) the Debtors, either by facsimile transmission to (314) 275-3626 or delivery to Patriot Coal Corporation, 12312 Olive Boulevard, Suite 400, St. Louis, Missouri, 63141, Attn: Marguerite A. O'Connell, Reclamation Claims, (ii) the Debtors' proposed notice and claim agent, GCG, Inc. ("**GCG**"), either by facsimile transmission to (855) 687-2627 or delivery to Patriot Coal Corporation, c/o GCG, Inc., P.O. Box 9898, Dublin, Ohio, 43017 and (iii) proposed counsel to the Debtors, Davis Polk & Wardwell LLP, either by facsimile transmission to (212) 607-7983 or delivery to Davis Polk &

Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Brian M.

Resnick and Michelle M. McGreal:

(i) before 45 days after the receipt of such Reclamation Goods by the Debtors, unless such 45th day is not a business day, in which case before the next business day; or

(ii) if such 45-day period expires after the Petition Date, before 20 days after the Petition Date, unless such 20th day is not a business day, in which case before the next business day.

2. Any entity that fails to timely submit a Reclamation Demand pursuant to the Reclamation Procedures shall be and hereby is deemed to have irrevocably waived its right to payment on any account of any purported Reclamation Claim;<sup>4</sup> *provided* that, to the extent that (i) a timely submitted Reclamation Demand does not provide all of the information required in the Reclamation Claim Form but (ii) such Reclamation Demand is otherwise valid under applicable law, then the Debtors shall use reasonable efforts to request the missing information from the Reclamation Vendor submitting such Reclamation Demand, and such Reclamation Vendor shall have 10 days from receipt of such request to provide such information to the Debtors.

**B. Reconciliation Process for Reclamation Claims**

3. As soon as practicable after the receipt of a Reclamation Demand, the Debtors shall review the demand and evaluate (i) the legal sufficiency of the Reclamation

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<sup>4</sup> A vendor that fails to provide notice in the manner described in the Reclamation Procedures still may assert, in conformity with the 503(b)(9) Procedures, a 503(b)(9) Claim for goods sold to the Debtors in the ordinary course of the Debtors' businesses within the 20 days before the Petition Date.

Demand, (ii) whether the Reclamation Goods were in the Debtors' possession when the Debtors received the Reclamation Demand, (iii) the invoice amount of the Reclamation Goods and (iv) any setoffs, deductions, credits, and other defenses and claims that the Debtors may have against the party asserting the Reclamation Demand.

4. If, at any point in the reconciliation process, the Debtors determine that a claim asserted in a Reclamation Demand should be allowed (each an "**Allowed Reclamation Claim**"), the Debtors are hereby authorized, in the exercise of their reasonable business judgment, to (i) make the Reclamation Goods available for pick-up by the seller that served the Reclamation Demand (the "**Reclamation Vendor**") subject to paragraph 9 below or (ii) grant, subject to paragraph 9 below, the Reclamation Vendor an administrative claim to be paid pursuant to any plan of reorganization confirmed in these chapter 11 cases. If, at any point in the reconciliation process, the Debtors determine that a 503(b)(9) Claim that has been asserted in a Reclamation Demand should be an Allowed Reclamation Claim, the Debtors are hereby authorized, in the exercise of their reasonable business judgment, to grant such Reclamation Vendor an administrative claim to be paid pursuant to any plan of reorganization confirmed in these chapter 11 cases, and such administrative claim shall be in full satisfaction of such 503(b)(9) Claim and such Reclamation Vendor is hereby barred from later prosecuting such 503(b)(9) Claim.

5. The Debtors are also hereby authorized, in the exercise of their reasonable business judgment, to (a) negotiate with Reclamation Vendors whose Reclamation Demands have not been reconciled in order to reach agreement (a "**Reclamation Settlement**") regarding any unresolved claims or portions thereof, (b) allow

administrative claims to be paid in connection with any plan of reorganization approved in these cases pursuant to such a Reclamation Settlement that may be less than the amount of the Reclamation Demand or (c) make agreed Reclamation Goods available for pick-up by the applicable Reclamation Vendor; *provided* that any Reclamation Settlement shall be subject to the provisions of any order of this Court establishing procedures for the settlement of claims.

6. Receipt of payment on account of a Reclamation Claim or execution of a Reclamation Settlement shall constitute a waiver, release, discharge and satisfaction of any and all other claims (as defined in section 101(5) of the Bankruptcy Code), including any 503(b)(9) Claims (collectively, “**Claims**”), related to any and all reclamation rights or claims of the holder of the paid Reclamation Claim or the party to the Reclamation Settlement (together, the “**Reclamation Settling Party**”), against any of the Debtors, their affiliates and estates, and the Reclamation Settling Party are hereby be barred from asserting any and all other Claims whatsoever, whether known or unknown, presently existing, whether or not asserted, and whether found in fact or law or in equity, related to any and all such Reclamation Claims.

**C. Reclamation Report**

7. No later than 120 days after entry of this Order, the Debtors shall file with the Court a report (the “**Reclamation Report**”) including the following information: (i) the names of the Reclamation Vendors, (ii) the date of each of the Reclamation Demands listed in the Reclamation Report, (iii) the basis upon which the Debtors believe that the Reclamation Demands are not legally valid, if applicable, (iv) a description of the Debtors’ proposed treatment of each of the Reclamation Demands identified in the

Reclamation Report and (v) any defenses that the Debtors choose to reserve, notwithstanding any allowance of the Reclamation Demands; *provided* that the Debtors shall not assert that a Reclamation Demand submitted prior to entry of this Order is not legally valid solely on the ground that such Reclamation Demand was not served in accordance with the Reclamation Procedures.

8. On the date the Reclamation Report is filed with the Court, the Debtors shall send such Reclamation Report by facsimile, overnight or hand delivery, to the following parties (i) the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”), 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Elisabetta G. Gasparini and Paul K. Schwartzberg, (ii) attorneys for the administrative agents for the Debtors’ postpetition lenders, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and (b) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Margot B. Schonholtz and Ana Alfonso and (iii) proposed counsel to the Official Committee of Unsecured Creditors (the “**Committee**”), Kramer, Levin, Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Adam C. Rogoff, Esq. and Gregory G. Plotko, Esq. The Reclamation Report shall also be sent, by U.S. mail, to each Reclamation Vendor whose Reclamation Demand is identified in the Reclamation Report.

**D. Objections**

9. The deadline to file objections to the Reclamation Report shall be 4:00 p.m. (prevailing Eastern time) on the day that is 20 calendar days from the day on which the Reclamation Report is filed and served. Any objections must be received by (i) the

Debtors, either by facsimile transmission to (314) 275-3626 or delivery to Patriot Coal Corporation, 12312 Olive Boulevard, Suite 400, St. Louis, Missouri, 63141, Attn: Marguerite A. O'Connell, Reclamation Claims, (ii) the Debtors' proposed notice and claim agent, GCG, Inc. ("GCG"), either by facsimile transmission to (855) 687-2627 or delivery to Patriot Coal Corporation, c/o GCG, Inc., P.O. Box 9898, Dublin, Ohio, 43017, (iii) proposed counsel to the Debtors, Davis Polk & Wardwell LLP, either by facsimile transmission to (212) 607-7983 or delivery to Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Brian M. Resnick and Michelle M. McGreal, (iv) attorneys for the administrative agents for the Debtors' postpetition lenders, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and (b) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Margot B. Schonholtz and Ana Alfonso and (v) proposed counsel to the Committee, Kramer, Levin, Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Adam C. Rogoff, Esq. and Gregory G. Plotko, Esq.

a. With respect to each Reclamation Demand in the Reclamation Report as to which no objection is timely received, the Debtors are hereby authorized, without further order of the court, to treat the Reclamation Demand as set forth in the Reclamation Report.

b. With respect to each Reclamation Demand in the Reclamation Report as to which an objection is timely received, and such objection is settled by the Debtors and the applicable Reclamation Vendor, the Debtors are hereby authorized, without further order of the court, to treat the agreed upon Reclamation Demand as an



Allowed Reclamation Claim in accordance with the Reclamation Procedures, unless otherwise agreed by the parties; *provided* that any such settlement shall be subject to the provisions of any order of this Court establishing procedures for the settlement of claims.

c. With respect to any Reclamation Demand in the Reclamation Report as to which an objection is timely received, and such objection cannot be settled by the Debtors and the applicable Reclamation Vendor, such Reclamation Demand(s) shall not be deemed allowed except upon order of the Court, after a hearing on such Reclamation Demand(s) is requested by the Debtors.

#### **503(b)(9) Procedures**

10. The following Procedures shall be implemented with respect to all 503(b)(9) Demands:

##### **A. 503(b)(9) Demand**

a. Any 503(b)(9) Vendor asserting a 503(b)(9) Claim must prepare a proof of claim (a “**Proof of 503(b)(9) Claim**”) that sets forth (i) the particular goods (the “**503(b)(9) Goods**”) on which the Proof of 503(b)(9) Claim is based, (ii) the quantity or dollar value of the Goods, (iii) the date the 503(b)(9) Goods were delivered to the Debtors, (iv) the invoice numbers and/or purchase order numbers applicable to the 503(b)(9) Goods and (v) the basis for the 503(b)(9) Demand.

b. The Proof of 503(b)(9) Claim, accompanied by the applicable invoice(s), and bill(s) of lading or other documentation establishing proof of delivery and proof of the date of delivery of the 503(b)(9) Goods, must be mailed to the Debtors’ proposed notice and claim agent, GCG, Inc. (“**GCG**”), either by facsimile transmission to (855) 687-2627 or delivery to Patriot Coal Corporation, c/o GCG, Inc., P.O. Box 9898,

Dublin, Ohio, 43017, with a copy served on (i) the Debtors, Patriot Coal Corporation, 12312 Olive Boulevard, Suite 400, St. Louis, Missouri, 63141, Attn: Marguerite A. O’Connell, 503(b)(9) Claims and (ii) proposed counsel to the Debtors, Davis Polk & Wardwell LLP, either by facsimile transmission to (212) 607-7983 or delivery to Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Brian M. Resnick and Michelle M. McGreal, so as to be actually received no later than the general claims bar date as determined by order of this Court.

11. Any entity that fails to timely submit a 503(b)(9) Demand pursuant to the 503(b)(9) Procedures shall be and hereby is deemed to have irrevocably waived its right to payment on any purported 503(b)(9) Claim.

**B. Reconciliation Process for 503(b)(9) Claims**

12. As soon as practicable after the receipt of a 503(b)(9) Demand, the Debtors shall review the demand and evaluate (i) the legal sufficiency of the 503(b)(9) Demand, (ii) the invoice amount of the 503(b)(9) Goods and (iii) any setoffs, deductions, credits, and other defenses and claims that the Debtors may have against the party asserting the 503(b)(9) Demand.

13. If, at any point in the reconciliation process, the Debtors determine that a claim asserted in a 503(b)(9) Demand should be allowed (each, an “**Allowed 503(b)(9) Claim**”), the Debtors are hereby authorized, in the exercise of their reasonable business judgment, to grant, subject to paragraph 18 below, the vendor that served the 503(b)(9) Demand (the “**503(b)(9) Vendor**”) an administrative claim to be paid pursuant to any plan of reorganization confirmed in these chapter 11 cases; *provided* that if at any point during these Procedures, a 503(b)(9) Claim is allowed as a Reclamation Claim (in

accordance with the Reclamation Procedures), such 503(b)(9) Claim shall be deemed satisfied and shall not be provided for under, or subject to, the 503(b)(9) Procedures.

14. The Debtors are also hereby authorized, in the exercise of their reasonable business judgment, to (i) negotiate with 503(b)(9) Vendors whose 503(b)(9) Demands have not been reconciled in order to reach agreement (a “**503(b)(9) Settlement**”) regarding any unresolved claims or portions thereof and (ii) allow administrative claims to be paid in connection with any plan of reorganization approved in these cases pursuant to such a 503(b)(9) Settlement that may be less than the amount of the 503(b)(9) Demand; *provided* that any 503(b)(9) Settlement shall be subject to paragraph 18 below and the provisions of any order of this Court establishing procedures for the settlement of claims.

15. Receipt of payment on account of a 503(b)(9) Claim or execution a 503(b)(9) Settlement shall constitute a waiver, release, discharge and satisfaction of any and all other Claims, including Reclamation Claims, related to any and all claims under section 503(b)(9) of the Bankruptcy Code of the holder of the paid 503(b)(9) Claim or the party to the 503(b)(9) Settlement (together, the “**503(b)(9) Settling Party**”) against any of the Debtors, their affiliates and estates, and the 503(b)(9) Settling Party is hereby barred from asserting any and all other Claims whatsoever, whether known or unknown, presently existing, whether or not asserted, and whether found in fact or law or in equity, related to any and all such claims.

**C. 503(b)(9) Reports**

16. No later than a date that is 75 days after the general claims bar date as determined by order of this court, the Debtors shall file with the Court a report (the

“**503(b)(9) Report**”) including the following information: (i) the names of the 503(b)(9) Vendors, (ii) the date of each of the 503(b)(9) Demands listed in the 503(b)(9) Report, (iii) the basis upon which the Debtors believe that the 503(b)(9) Demands are not legally valid, if applicable, (iv) the Debtors’ proposed allowed amount, if any, for each of the 503(b)(9) Demands identified in the 503(b)(9) Report and (v) any defenses that the Debtors choose to reserve notwithstanding any allowance of the 503(b)(9) Demands.

17. On the date the 503(b)(9) Report is filed with the Court, the Debtors shall send such 503(b)(9) Report by facsimile, overnight or hand delivery, to the following parties (i) the U.S. Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Elisabetta G. Gasparini and Paul K. Schwartzberg, (ii) the attorneys for the administrative agents for the Debtors’ postpetition lenders, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and (b) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Margot B. Schonholtz and Ana Alfonso and (iii) proposed counsel to the Committee, Kramer, Levin, Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Adam C. Rogoff, Esq. and Gregory G. Plotko, Esq. The 503(b)(9) Report shall also be sent, by U.S. mail, to each 503(b)(9) Vendor whose 503(b)(9) Demand is identified in the 503(b)(9) Report.

**D. Objections**

18. The deadline to file objections to the 503(b)(9) Report shall be 4:00 p.m. (prevailing Eastern time) on the day that is 20 calendar days from the day on which the 503(b)(9) Report is filed and served. Any objections must be received by (i) the Debtors, either by facsimile transmission to (314) 275-3626 or delivery to Patriot Coal

Corporation, 12312 Olive Boulevard, Suite 400, St. Louis, Missouri, 63141, Attn: Marguerite A. O'Connell, 503(b)(9) Claims, (ii) the Debtors' proposed notice and claim agent, GCG, Inc. ("GCG"), either by facsimile transmission to (855) 687-2627 or delivery to Patriot Coal Corporation, c/o GCG, Inc., P.O. Box 9898, Dublin, Ohio, 43017, (iii) proposed counsel to the Debtors, Davis Polk & Wardwell LLP, either by facsimile transmission to (212) 607-7983 or delivery to Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Brian M. Resnick and Michelle M. McGreal, (iv) attorneys for the administrative agents for the Debtors' postpetition lenders, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and (b) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Margot B. Schonholtz and Ana Alfonso and (v) proposed counsel to the Committee, Kramer, Levin, Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Adam C. Rogoff, Esq. and Gregory G. Plotko, Esq.

a. With respect to each 503(b)(9) Demand in the 503(b)(9) Report as to which no objection is timely received, the Debtors are hereby authorized, without further order of the court, to treat the 503(b)(9) Demand as set forth in the 503(b)(9) Report.

b. With respect to each 503(b)(9) Demand in the 503(b)(9) Report as to which an objection is timely received, and such objection is settled by the Debtors and the applicable 503(b)(9) Vendor, the Debtors are hereby authorized, without further order of the court, to treat the agreed upon 503(b)(9) Demand as an Allowed 503(b)(9) Claim in accordance with the Procedures, unless otherwise agreed by the parties; *provided* that

any such settlement shall be subject to the provisions of any order of this Court establishing procedures for the settlement of claims.

c. With respect to any 503(b)(9) Demand in the 503(b)(9) Report as to which an objection is timely received, and such objection cannot be settled by the Debtors and the applicable 503(b)(9) Vendor, such 503(b)(9) Demand(s) shall not be deemed allowed except upon order of the Court, after a hearing on such 503(b)(9) Demand(s) to be requested by the Debtors.

**Stay of Adversary Proceedings**

19. Pending completion of the Procedures, a standstill shall be in effect, such that Reclamation Vendors and 503(b)(9) Vendors may not take any action to establish the validity or amount of their Reclamation Demand or 503(b)(9) Demand (as applicable), including by the filing of an adversary proceeding, except pursuant to the Procedures. As to all parties that timely comply with the Procedures, the Debtors hereby waive their right to assert as a defense to a Reclamation Demand or 503(b)(9) Demand that the relevant Reclamation Vendor or 503(b)(9) Vendor has failed to promptly commence or prosecute an adversary proceeding to enforce its Reclamation Demand or 503(b)(9) Demand, without prejudice to any and all other rights, claims and defenses that the Debtors may have with respect to the applicable Reclamation Demand or 503(b)(9) Demand.

20. The Procedures shall be the sole and exclusive method for the assertion, resolution, allowance, and satisfaction of Reclamation Claims and 503(b)(9) Claims; and all Reclamation Vendors and 503(b)(9) Vendors are hereby prohibited from invoking any other means therefor, including, without limitation, the filing of a motion for allowance, or to compel payment, of any Reclamation Claims or 503(b)(9) Claims.

**Claims Against Reclamation Vendors  
and 503(b)(9) Vendors are Not Waived**

21. By requesting approval of the Procedures, the Debtors are not consenting or agreeing to the validity or enforceability of any reclamation or other rights of any party, the Debtors are not waiving any rights with respect to any Reclamation Demand or 503(b)(9) Demand, and the Debtors are reserving all rights to dispute and contest any Reclamation Demand or 503(b)(9) Demand; and it is further

ORDERED that nothing contained in this Order shall be deemed to constitute a rejection, assumption or postpetition reaffirmation of any executory contract pursuant to section 365 of the Bankruptcy Code or to require the Debtors to make any of the payments or to post any of the deposits authorized herein; and it is further

ORDERED that nothing contained herein shall (i) convert the priority of any claim, (ii) create or enhance any rights or status of any claim held by any person or entity or (iii) acknowledge, grant or otherwise permit any right of offset or recoupment by a non-debtor with respect to any claim asserted against the Debtors; and it is further

ORDERED that nothing in this Order shall constitute a waiver of any of the Debtors' or any other parties in interest's claims against any Reclamation Vendor or 503(b)(9) Vendor, including claims relating to preferential or fraudulent transfers and other potential claims, counterclaims, or offsets. The Debtors expressly reserve their rights to pursue such claims; and it is further

ORDERED that notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion; and it is further

ORDERED that to the extent that there may be any inconsistency between the terms of the interim or final order approving the Debtors' postpetition lending facility (the "**DIP Facility**"), if and when entered, and this Order, the terms of the interim or final order approving the DIP Facility, as applicable, shall govern; and it is further

ORDERED that this Court retains jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: August 2, 2012  
New York, New York

/s/ Shelley C. Chapman  
HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE