

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

**Chapter 11
Case No. 12-51502-659
(Jointly Administered)**

**STIPULATION AND ORDER EXTENDING TIME UNDER 11 U.S.C. § 365(d)(4) FOR
LEASES OF NON-RESIDENTIAL REAL PROPERTY WITH
ALPHA NATURAL RESOURCES, INC.**

This Stipulation and Order (the “Stipulation and Order”) is made as of January 24, 2013, by and between Patriot Coal Corporation (“Patriot”) and its affiliated debtors (collectively, the “Debtors”), as debtors and debtors in possession, on the one hand, and Alpha Natural Resources, Inc. and certain of its subsidiaries (collectively, “Alpha”), on the other (Alpha, together with Patriot, the “Parties”), through their respective and duly authorized counsel of record.

Recitals

WHEREAS, on July 9, 2012 (the “Petition Date”), the Debtors filed voluntary petitions under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of New York (the “New York Bankruptcy Court”);

WHEREAS, on the Petition Date, the Debtors also filed a motion for an order (i) confirming that a payment agreement with certain Alpha subsidiaries, dated August 1, 2005, (the “Payment Agreement”) was not an executory contract, or alternatively, (ii) approving rejection of the Payment Agreement (the “Payment Agreement Motion”);

WHEREAS, on August 6, 2012, after consultation with the New York Bankruptcy Court, the Debtors (i) withdrew the portion of the Payment Agreement Motion seeking an order

confirming that the Payment Agreement was not an executory contract and adjourned the balance of the Rejection Motion *sine die*, and (ii) commenced an adversary proceeding (the “Adversary Proceeding”) styled *Eastern Royalty LLC f/k/a Eastern Royalty Corp. v. Boone East Development Co., et al.*, seeking a declaratory judgment that the Payment Agreement was a standalone, fully integrated non-executory contract;

WHEREAS, on September 7, 2012, Alpha filed its answer to the complaint in the Adversary Proceeding, which also asserted a counterclaim for past-due tonnage payments under the Payment Agreement;

WHEREAS, on September 21, 2012, the Debtors filed a motion for judgment on the pleadings in the Adversary Proceeding pursuant to Rule 12(c) of the Federal Rules of Civil Procedure (the “Motion for Judgment on the Pleadings”), which, pursuant to a briefing schedule agreed to by the parties, was fully briefed by November 1, 2012;

WHEREAS, on October 10, 2012, pursuant to section 365(d)(4) of the Bankruptcy Code, the Debtors filed a motion for an extension of time to assume or reject unexpired leases of nonresidential real property (the “Motion to Extend”), which sought a 90-day extension, through and until February 4, 2013, to determine whether to assume or reject the unexpired leases of nonresidential real property;

WHEREAS, on October 23, 2012, the New York Bankruptcy Court granted the Motion to Extend;

WHEREAS, on November 27, 2012, the New York Bankruptcy Court issued a memorandum decision which transferred the above-captioned Chapter 11 cases and the Adversary Proceeding to the United States Bankruptcy Court for the Eastern District of Missouri

(the “Missouri Bankruptcy Court”), and on December 19, 2012, the New York Bankruptcy Court issued an order implementing the transfer of venue;

WHEREAS, on January 15, 2013, the Debtors filed a motion for authorization to assume or reject unexpired leases of nonresidential real property (the “Motion to Assume or Reject”), by which the Debtors seek, *inter alia*, to (i) assume certain agreements with Alpha subsidiaries (as set forth on Exhibit A, the “Alpha Proposed Assumed Agreements”), and (ii) exclude certain agreements with Alpha subsidiaries from the Proposed Assumed Agreements (as set forth on Exhibit B, the “Alpha Proposed Excluded Agreements,” and together with the Alpha Proposed Assumed Agreements, the “Alpha Agreements”);

WHEREAS, certain of the Alpha Agreements, including the Payment Agreement, are the subject of the Adversary Proceeding;

WHEREAS, there has been no argument or decision on the Motion for Judgment on the Pleadings;

WHEREAS, the Parties desire to extend the time for the Debtors to assume or reject the Alpha Agreements;

WHEREAS, the Parties desire to memorialize their agreement in this Stipulation and Order.

Agreed Order

IT IS THEREFORE AGREED, AND UPON BANKRUPTCY COURT APPROVAL
HEREOF, IT SHALL BE ORDERED AS FOLLOWS:

1. To the extent that section 365(d)(4) of the Bankruptcy Code applies, the time within which the Debtors must assume or reject the Alpha Agreements, listed on Exhibits A and B hereto, is hereby extended through and including April 6, 2013.

2. This Stipulation and Order hereby constitutes “prior written consent of the lessor” under section 365(d)(4)(B)(ii) of the Bankruptcy Code, to the extent such section applies, and no further consent of Alpha shall be required.

3. The Debtors hereby withdraw the Motion to Assume or Reject without prejudice as to the Alpha Agreements and shall revise any proposed order to remove the Alpha Agreements from its scope.

4. Any decision or order regarding the Motion to Assume or Reject will not determine, bind, be collateral estoppel, or otherwise prejudice the rights and defenses of the parties to the Alpha Agreements with respect to the claims and defenses in the Adversary Proceeding or otherwise.

5. Nothing herein shall be deemed to alter, amend or otherwise modify the terms of any of the Alpha Agreements, and such terms shall continue in full force and effect up to such time with respect to each of the Alpha Agreements as the Debtors have obtained an effective date of (a) rejection of such Alpha Agreement, or (b) assumption of such Alpha Agreement pursuant to section 365 of the Bankruptcy Code, in each case to the extent the Alpha Agreements are executory contracts under section 365 of the Bankruptcy Code.

6. Nothing herein shall be deemed a waiver of (a) any of Alpha’s actual or potential claims against the Debtors, including, without limitation, under sections 365 or 502 of the Bankruptcy Code on account of any potential rejection of the Alpha Agreements; (b) any of the Debtors’ actual or potential claims against Alpha; or (c) any arguments the Parties may have with respect to the severability or non-severability, as the case may be, of any of the Alpha Agreements from other non-residential property leases or executory contracts, including, without

limitation, the Payment Agreement. The Parties hereby reserve any and all rights with respect to the foregoing.

7. This Stipulation and Order is without prejudice to the Parties' agreement in writing to an additional extension beyond April 6, 2013, of the time within which the Debtors must assume or reject any or all of the Alpha Agreements, to the extent section 365(d)(4) of the Bankruptcy Code applies to the Alpha Agreements.

8. This Stipulation and Order shall inure to the benefit of and shall be binding upon the Parties, their successors and assigns.

9. This Stipulation and Order may be executed in one or more counterparts, which collectively shall form one and the same agreement. Any of the Parties may execute this Stipulation and Order by signing any such counterpart and each of such counterparts (whether an original or a copy) shall for all purposes be deemed an original.


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: February 8, 2013
St. Louis, Missouri
jjh

Dated: January 25, 2013

Dated: January 25, 2013

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In re:
Patriot Coal Corporation
Debtor

Case No. 12-51502-kss
Chapter 11

CERTIFICATE OF NOTICE

District/off: 0865-4

User: klom
Form ID: pdf02

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Total Noticed: 1

Date Rcvd: Feb 08, 2013

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Feb 10, 2013.

aty +Luke A. Barefoot, Cleary Gottlieb Steen & Hamilton LLP, 1 Liberty Plaza,
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Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
NONE. TOTAL: 0

***** BYPASSED RECIPIENTS *****

NONE. TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Feb 10, 2013

Signature:



District/off: 0865-4

User: klom
Form ID: pdf02

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Total Noticed: 1

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The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on February 8, 2013 at the address(es) listed below:

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The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system (continued)

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