

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

PATRIOT COAL CORPORATION, et al.,

Debtors.¹

Chapter 11

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

Objection Deadline:

**February 19, 2013 at 4:00 p.m.
(prevailing Central Time)**

Hearing Date (if necessary):

**February 26, 2013 at 10:00 a.m.
(prevailing Central Time)**

Hearing Location:

Courtroom 7 North

**PATRIOT COAL SALES LLC'S MOTION FOR AUTHORIZATION
TO ASSUME CERTAIN TRANSLOADING AGREEMENTS**

Patriot Coal Sales LLC ("**Patriot Sales**"), a debtor and debtor in possession in these chapter 11 proceedings, respectfully represents:

Relief Requested

1. Pursuant to sections 105(a), 363 and 365(a) of the title 11 of the United States Code (the "**Bankruptcy Code**") and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "**Rules**"), Patriot Sales hereby seeks the entry of a stipulation

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.

and order (the “**Proposed Stipulation and Order**”)² authorizing Patriot Sales to assume the Amended Transloading Agreements (as defined below).

Background and Jurisdiction

2. On July 9, 2012 (the “**Petition Date**”), each Debtor commenced with the United States Bankruptcy Court for the Southern District of New York (the “**SDNY Bankruptcy Court**”) a voluntary case under chapter 11 of the Bankruptcy Code. On December 19, 2012, the SDNY Bankruptcy Court entered an order transferring these chapter 11 cases to this Court (the “**Transfer Order**”) [ECF No. 1789].³ The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the SDNY Bankruptcy Court’s Joint Administration Order entered on July 10, 2012 [ECF No. 30].

3. Additional information about the Debtors’ businesses and the events leading up to the Petition Date can be found in the Declaration of Mark N. Schroeder pursuant to Local Bankruptcy Rule 1007-2 of the SDNY Bankruptcy Court, filed on July 9, 2012 [ECF No. 4], which is incorporated herein by reference.

4. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

² The Proposed Stipulation and Order granting the relief requested in this Motion will be provided to the Core Parties (as defined below). A copy of the Proposed Stipulation and Order will be available at www.patriotcaseinfo.com/orders.php.

³ Pursuant to the Transfer Order, all orders previously entered in these chapter 11 cases remain in full force and effect in accordance with their terms notwithstanding the transfer of venue.

Relevant Facts

5. Prior to the Petition Date, Patriot Sales and Kanawha River Terminals, LLC (“**KRT**”) entered into certain agreements (the “**Transloading Agreements**”) (i) dated as of October 1, 2010 and titled “Master Transloading and Blending Agreement Ceredo Terminal” and (ii) dated as of December 29, 2010 and titled “Transloading and Blending Agreement”, each for transloading, ground storage and blending services (collectively, the “**Transloading Services**”) at certain of KRT’s facilities. Patriot Sales and KRT have agreed to enact certain amendments to the Transloading Agreements, each dated as of January 1, 2013 (the “**Transloading Agreement Amendments**” and, together with the Transloading Agreements, as amended, the “**Amended Transloading Agreements**”) and Patriot Sales desires to rescind the inclusion of the December 29, 2010 Transloading and Blending Agreement in its Eighth Omnibus Notice of Rejection of Certain Executory Contracts filed on December 18, 2012 [ECF No. 1776].

6. KRT and Patriot Sales have agreed that the amount to be paid to cure all prepetition defaults under the Amended Transloading Agreements shall be \$0 as a result of certain pre-assumption payments tendered by Patriot Sales pursuant to that certain letter agreement dated July 25, 2012.

7. There are no defaults under the Amended Transloading Agreements that preclude their assumption, and Patriot Sales has satisfied all of its obligations under section 365(b)(1) of the Bankruptcy Code with respect to the Amended Transloading Agreements.

Basis for Relief

8. After reviewing alternative transloading locations and services, Patriot Sales has determined in the exercise of its business judgment that assuming the Amended Transloading Agreements is in the best interests of Patriot Sales, its estates and all creditors and parties in interest.

9. Section 365(a) of the Bankruptcy Code provides that a debtor-in-possession may, upon Court approval, assume or reject executory contracts. 11 U.S.C. § 365(a). The assumption or rejection of an executory contract by a debtor is subject to review under the business judgment standard. *See In re Gateway Apparel, Inc.*, 210 B.R. 567, 570 (Bankr. E.D. Mo. 1997).

10. The business judgment standard is satisfied when a debtor shows that assumption or rejection of an executory contract will enhance the debtor's estate. *See In re Food Barn Stores, Inc.*, 107 F.3d 558, 567, n. 16 (8th Cir. 1997) ("Where the trustee's request is not manifestly unreasonable or made in bad faith, the court should normally grant approval '[a]s long as the [proposed action] appears to enhance [the] debtor's estate"). Courts review the effects of assumption or rejection of an executory contract on the debtor, the implications to the counterparty, the benefit to unsecured creditors and the significance of the contract to the debtor's reorganization in determining whether the business judgment test has been satisfied. *See Gateway Apparel*, 210 B.R. at 570.

11. If the debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an executory contract. *See, e.g., NLRB v. Bildisco and Bildisco*, 465 U.S. 513, 523 (1984); *Group of Institutional Investors v.*

Chicago M. St. P. & P.R.R. Co., 318 U.S. 523 (1943); *Food Barn Stores*, 107 F.3d at 567,
n. 16.

12. The Amended Transloading Agreements provide Patriot Sales barge access to both domestic and international markets for thermal and metallurgical coal and access via the Norfolk Southern railway that would otherwise be inaccessible to Patriot Sales and will further the business operations and interests of Patriot Sales. Moreover, the Transloading Agreement Amendments will materially improve Patriot Sales' position in respect of obtaining Transloading Services from KRT by (i) waiving any right of KRT to payment in respect of shortfalls in use ("**Deficiencies**") by Patriot Sales in the years 2012 and 2013, resulting in a savings to Patriot Sales of at least \$1,200,000.00⁴; (ii) significantly reducing Patriot Sales' volume commitment to better reflect Patriot Sales' future business plans, and eliminating any distinction between coal transloaded by rail and coal transloaded by barge; and (iii) materially reducing Patriot Sales' payment obligations in respect of Deficiencies for years 2013 through 2017.

Objections

13. Any objection to the relief requested in this Motion must be filed on or before 4:00 p.m. Central Time on February 19, 2013 (the "**Objection Deadline**") and served on (a) the Chambers of the Honorable Kathy A. Surratt-States, United States Bankruptcy Court for the Eastern District of Missouri, 111 South 10th Street, 4th Floor, St. Louis, Missouri 63102, (b) counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick, (c) conflicts counsel to the Debtors, Curtis, Mallet-Prevost, Colt & Mosle

⁴ This waiver is conditional on Patriot Sales meeting a relatively small usage threshold in 2013.

LLP, 101 Park Avenue, New York, New York 10178, Attn: Steven J. Reisman and Michael A. Cohen, (d) local counsel to the Debtors, Bryan Cave, 211 North Broadway, Suite 3600, St. Louis, Missouri, Attn: Lloyd A. Palans and Brian C. Walsh, (e) the Office of the United States Trustee for the Eastern District of Missouri, 111 South 10th Street, Suite 6.353, St. Louis, Missouri 63102, Attn: Leonora S. Long and Paul A. Randolph, (f) Kramer, Levin, Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Thomas Moers Mayer, Adam C. Rogoff and Gregory G. Plotko, counsel to the official committee of unsecured creditors in these cases (the “**Committee**”), (g) local counsel to the Committee, Carmody MacDonald P.C., 120 South Central Avenue, St. Louis, Missouri 63105-1705, Attn: Gregory D. Willard and Angela L. Schisler; (h) the Debtors’ authorized claims and noticing agent, Patriot Coal Corporation, c/o GCG, Inc., P.O. Box 9898, Dublin, Ohio 43017-5798; (i) counsel for the administrative agents for the Debtors’ postpetition lenders, (1) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia Goldstein and Joseph Smolinsky and (2) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Margot B. Schonholtz and Ana Alfonso; (j) counsel to KRT, Penn, Stuart & Eskridge, P.C., P.O. Box 2009, Bristol, Virginia/Tennessee 24203, Attn: Mark L. Esposito; and (k) local counsel for KRT, Jenkins & Kling, P.C., 150 North Meramec Avenue, Suite 400, St. Louis, Missouri 63105, Attn: Peter D. Kerth.

Notice

14. Consistent with the Order Granting Debtors’ Motion for an Order Establishing Certain Notice, Case Management and Administrative Procedures entered on October 18, 2012 [ECF No. 1386] (as may be amended, the “**Case Management**

Order”), the Debtors will serve notice of this Motion on (a) the Core Parties and (b) the Non-ECF Service Parties (as those terms are defined in the Case Management Order). All parties who have requested electronic notice of filings in these cases through the Court’s ECF system will automatically receive notice of this motion through the ECF system no later than the day after its filing with the Court. A copy of this Motion and any order approving it will also be made available on the Debtors’ Case Information Website (located at www.patriotcaseinfo.com). A copy of the Proposed Stipulation and Order will be provided to the Core Parties, and will be available at www.patriotcaseinfo.com/orders.php (the “**Patriot Orders Website**”). The Proposed Stipulation and Order may be modified or withdrawn at any time without further notice. If any significant modifications are made to the Proposed Stipulation and Order, an amended Proposed Stipulation and Order will be made available on the Patriot Orders Website, and no further notice will be provided. In light of the relief requested, the Debtors submit that no further notice is necessary. Pursuant to paragraph 22 of the Case Management Order, if no objections are timely filed and served in accordance therewith, the relief requested herein may be entered without a hearing.

No Prior Request

15. The Debtors have not previously sought the relief requested herein from this or any other court.

16. WHEREFORE the Debtors respectfully request the Court grant the Debtors the relief requested herein and such other and further relief as is just and proper.

Dated: February 12, 2012
New York, New York

Respectfully submitted,

DAVIS POLK & WARDWELL LLP

/s/ Brian M. Resnick

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-and-

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*Local Counsel to the Debtors
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Schedule 1
(Debtor Entities)

1. Affinity Mining Company
2. Apogee Coal Company, LLC
3. Appalachia Mine Services, LLC
4. Beaver Dam Coal Company, LLC
5. Big Eagle, LLC
6. Big Eagle Rail, LLC
7. Black Stallion Coal Company, LLC
8. Black Walnut Coal Company
9. Bluegrass Mine Services, LLC
10. Brook Trout Coal, LLC
11. Catenary Coal Company, LLC
12. Central States Coal Reserves of Kentucky, LLC
13. Charles Coal Company, LLC
14. Cleaton Coal Company
15. Coal Clean LLC
16. Coal Properties, LLC
17. Coal Reserve Holding Limited Liability Company No. 2
18. Colony Bay Coal Company
19. Cook Mountain Coal Company, LLC
20. Corydon Resources LLC
21. Coventry Mining Services, LLC
22. Coyote Coal Company LLC
23. Cub Branch Coal Company LLC
24. Dakota LLC
25. Day LLC
26. Dixon Mining Company, LLC
27. Dodge Hill Holding JV, LLC
28. Dodge Hill Mining Company, LLC
29. Dodge Hill of Kentucky, LLC
30. EACC Camps, Inc.
31. Eastern Associated Coal, LLC
32. Eastern Coal Company, LLC
33. Eastern Royalty, LLC
34. Emerald Processing, L.L.C.
35. Gateway Eagle Coal Company, LLC
36. Grand Eagle Mining, LLC
37. Heritage Coal Company LLC
38. Highland Mining Company, LLC
39. Hillside Mining Company
40. Hobet Mining, LLC
41. Indian Hill Company LLC
42. Infinity Coal Sales, LLC
43. Interior Holdings, LLC
44. IO Coal LLC
45. Jarrell's Branch Coal Company
46. Jupiter Holdings LLC
47. Kanawha Eagle Coal, LLC
48. Kanawha River Ventures I, LLC
49. Kanawha River Ventures II, LLC
50. Kanawha River Ventures III, LLC
51. KE Ventures, LLC
52. Little Creek LLC
53. Logan Fork Coal Company
54. Magnum Coal Company LLC
55. Magnum Coal Sales LLC
56. Martinka Coal Company, LLC
57. Midland Trail Energy LLC
58. Midwest Coal Resources II, LLC
59. Mountain View Coal Company, LLC
60. New Trout Coal Holdings II, LLC
61. Newtown Energy, Inc.
62. North Page Coal Corp.
63. Ohio County Coal Company, LLC
64. Panther LLC
65. Patriot Beaver Dam Holdings, LLC
66. Patriot Coal Company, L.P.
67. Patriot Coal Corporation
68. Patriot Coal Sales LLC
69. Patriot Coal Services LLC
70. Patriot Leasing Company LLC
71. Patriot Midwest Holdings, LLC
72. Patriot Reserve Holdings, LLC
73. Patriot Trading LLC
74. PCX Enterprises, Inc.
75. Pine Ridge Coal Company, LLC
76. Pond Creek Land Resources, LLC
77. Pond Fork Processing LLC
78. Remington Holdings LLC
79. Remington II LLC
80. Remington LLC
81. Rivers Edge Mining, Inc.
82. Robin Land Company, LLC
83. Sentry Mining, LLC
84. Snowberry Land Company
85. Speed Mining LLC
86. Sterling Smokeless Coal Company, LLC
87. TC Sales Company, LLC
88. The Presidents Energy Company LLC
89. Thunderhill Coal LLC
90. Trout Coal Holdings, LLC
91. Union County Coal Co., LLC
92. Viper LLC
93. Weatherby Processing LLC
94. Wildcat Energy LLC
95. Wildcat, LLC
96. Will Scarlet Properties LLC
97. Winchester LLC
98. Winifrede Dock Limited Liability Company
99. Yankeetown Dock, LLC