

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)**

**Hearing: January 29, 2013
#449**

**ORDER AUTHORIZING AND APPROVING PROCEDURES
FOR COMPROMISE AND SETTLEMENT OF CERTAIN CLAIMS,
LITIGATIONS AND CAUSES OF ACTION**

Upon the motion (the “**Motion**”)² of Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) for an order authorizing and approving procedures to compromise and settle certain existing, pending, threatened or contemplated claims, litigations and causes of action, both prepetition and postpetition, including, but not limited to, prepetition claims threatened or brought against one or more of the Debtors or their estates in judicial, administrative, arbitral or other actions or proceeding, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 9.01(B)(1) of the Local Rules of the United States District Court for the Eastern District of Missouri; and consideration of

¹ 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.

² Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Motion.

the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion having been provided in accordance with the Order Granting Debtors' Motion for an Order Establishing Certain Notice, Case Management and Administrative Procedures entered on July 16, 2012 [ECF No. 1386] (as may be amended, the "**Case Management Order**"); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; 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 on the record; and the Court having determined that the legal and factual bases set forth in the Motion 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 the Debtors are authorized, but not directed, to compromise and settle certain existing, pending, threatened or contemplated claims, litigations and causes of action, both prepetition and postpetition, including, but not limited to, prepetition claims threatened or brought against one or more of the Debtors or their estates in judicial, administrative, arbitral or other actions or proceedings (together, the "**Claims**") in accordance with the following three-tiered procedures (the "**Settlement Procedures**"). The Settlement Procedures are based upon (i) the settlement amount and (ii) the "Claim Variance", which is the difference between the settlement amount and the lesser of (a) the

amount set forth on the filed proof of claim associated with such Claim, (b) the amount associated with such Claim that is set forth on the Debtors' schedules of assets and liabilities and (c) the Debtors' best estimate of the actual amount of the Claim in consultation with the official committee of unsecured creditors (the "**Committee**").

Tier I: With respect to prepetition Claims, the Debtors may enter into, execute and consummate written agreements of settlement with Settling Parties that will be binding on the Debtors and their estates in the ordinary course of the Debtors' business without further action by this Court or notice to any party and (A) grant such Settling Parties allowed prepetition general, non-priority unsecured claims in amounts not to exceed \$250,000 per Claim or (B) grant such Settling Parties allowed prepetition general, non-priority unsecured claims in amounts exceeding \$250,000 but not exceeding \$1,000,000 per Claim if the Claim Variance is a Permitted Variance,³ in each case in full settlement of such Claims; *provided, however,* that by the fifteenth business day after the last business day of each quarter, the Debtors shall file a report reflecting the adjustments to the official claims register for each applicable Debtor resulting from any Tier I settlement executed and consummated during that quarter (the "**Tier I Settlements Report**"); *provided, further, however,* that, any settlement of Claims (w) with (a) Peabody Energy Corporation or its insiders and/or affiliates, or (b) Arch Coal, Inc. or its insiders and/or affiliates; (x) where more than one Debtor is a Settling Party under the relevant settlement agreement and the claims being settled arise from the same transaction(s) or other basis or bases of liability arising from the same event(s), such as guaranty claims and claims for joint and several liability; (y) where the Debtor is providing a release to a Settling Party under the relevant settlement agreement that is unrelated to the Claim; or (z) where the Debtor is releasing any claim under chapter 5 of the Bankruptcy Code shall not be a Tier 1 settlement, and shall be deemed a Tier 2 settlement irrespective of the face amount of the Claim.

Tier II: (i) With respect to prepetition Claims, the Debtors may enter into, execute and consummate written agreements of settlement with Settling Parties that will be binding on the Debtors and their estates without further action by this Court or notice to any party and (A) grant such Settling Parties allowed prepetition general, non-priority unsecured claims in amounts exceeding \$250,000 (where the Claim Variance is not a Permitted Variance) but not exceeding \$1,000,000 per Claim or (B) grant

³ For purposes of the Claims Settlement Procedures, a Permitted Variance is a Claim Variance that is less than or equal to 10 percent of the settlement amount.

such Settling Parties allowed prepetition general, non-priority unsecured claims in amounts exceeding \$1,000,000 but not exceeding \$10,000,000 per Claim if the Claim Variance is a Permitted Variance, in each case in full settlement of such Claims and (ii) with respect to prepetition priority or secured Claims and postpetition Claims, the Debtors may enter into, execute and consummate written agreements of settlement with Settling Parties that will be binding on the Debtors and their estates without further action by this Court or notice to any other party and grant such Settling Parties allowed prepetition priority, secured or administrative claims, as the case may be, in amounts not exceeding \$1,000,000 per Claim in full settlement of such Claims; *provided*, in each case, that the Debtors (a) must provide notice of the terms of any such settlement (the “**Settlement Notice**”) and the proposed settlement to (x) the Office of the United States Trustee for the Eastern District of Missouri (the “**U.S. Trustee**”), 111 South 10th Street, Suite 6.353, St. Louis, Missouri 63102, Attn: Leonora S. Long and Paul A. Randolph; (y) attorneys for the administrative agents for the Debtors’ postpetition lenders (the “**DIP Agents**”) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia Goldstein and Joseph Smolinsky and Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Margot B. Schonholtz and Ana Alfonso; and (z) attorneys for the Committee, 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 (collectively, the “**Notice Parties**”) ⁴ and (b) must not actually receive a written objection to such proposed settlement (addressed to counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Brian M. Resnick and Michelle M. McGreal) by 4:00 p.m. (prevailing Central Time) by the day that is 10 calendar days from the date the Debtors provided such Settlement Notice and proposed settlement. If the Debtors receive an objection from a Notice Party, the parties will confer and attempt to resolve any differences. Failing that, the Debtors may petition the Court for approval of the settlement in accordance with the Case Management Order. An objection by a Notice Party with respect to a given Tier II settlement shall not delay the finality or effectiveness of any other settlement to which an objection has not timely been delivered.

⁴ To the extent the Debtors deem it necessary, the Debtors may submit the Settlement Notice and the proposed settlement to the attorneys for the DIP Agents and the Committee on a professional eyes’ only basis, without prejudice to the rights of such parties to object to the proposed settlement being designated as professional eyes’ only, based on such submission. If any such party objects on this basis, and such objection is not resolved, the proposed settlement shall not be effective absent court approval. The right of the DIP Agent and/or the Committee to object to the terms of a settlement being designated as professional eyes’ only shall be in addition to any other grounds to object to a settlement under this Order.

The Settlement Notice shall specify: (i) the Claim settled; (ii) whether the Claim was a prepetition or postpetition Claim, (iii) the identity of the Settling Parties (including whether there is more than one Debtor); (iv) if the Settling Party is an “insider” or “affiliate” of Peabody Energy Corporation or Arch Coal, Inc., as those terms are defined under section 101 of the Bankruptcy Code; (v) the face amount of the Claim; (vi) the settlement amount; (vii) whether the Settling Party is receiving an allowed claim equal to the settlement amount; (viii) whether the Debtors are providing a release to the Settling Party and if so, a description of the known/potential claims, the merits of any such claims, and the release; and (ix) whether the Settling Party has agreed to fully, finally and forever waive, release and/or discharge the Debtors and their affiliates from the Claim.

By the fifteenth business day after the last business day of each quarter, the Debtors shall file a report reflecting the adjustments to the official claims register for each applicable Debtor resulting from any Tier II settlement executed and consummated during that quarter (the “**Tier II Settlements Report**”), *provided, that*, the Debtors may combine the Tier I and Tier II Settlements Reports in one document for purposes of filing and service.

Tier III: (i) With respect to prepetition Claims, the Debtors may enter into, execute and consummate written agreements of settlement with Settling Parties that will be binding on the Debtors and their estates without further action by this Court or notice to any party and (A) grant such Settling Parties allowed prepetition general, non-priority unsecured claims in amounts exceeding \$1,000,000 per Claim (where the Claim Variance is not a Permitted Variance) or (B) grant such Settling Parties allowed prepetition general, non-priority unsecured claims in amounts exceeding \$10,000,000 per Claim if the Claim Variance is a Permitted Variance, in each case in full settlement of such Claims and (ii) with respect to prepetition priority or secured Claims and postpetition Claims, the Debtors may enter into, execute and consummate written agreements of settlement with Settling Parties that will be binding on the Debtors and their estates without further action by this Court or notice to any other party and grant such Settling Parties allowed prepetition priority, secured or administrative claims, as the case may be, in amounts exceeding \$1,000,000 per Claim in full settlement of such Claims; *provided*, in each case, that (a) the Debtors must file a Settlement Notice and the proposed settlement with the Court and serve the Settlement Notice and the proposed settlement on the Core Parties (as defined in the Case Management Order) and the relevant settlement counterparties and (b) there must be no objection to such settlement filed and served by 4:00 p.m. (prevailing Central Time) on the day that is 10 calendar days from the date the Settlement Notice and the proposed settlement is filed

(the “**Objection Deadline**”). An objection will be considered properly filed and served only if it is filed with the Court and actually received by the following parties on or before the Objection Deadline: (i) counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Brian M. Resnick and Michelle M. McGreal, (ii) attorneys for the DIP Agents, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia Goldstein and Joseph Smolinsky and Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Margot B. Schonholtz and Ana Alfonso and (iii) attorneys for the Committee, 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. If a Tier III Settlement Notice and proposed settlement is properly filed and served by the Debtors and no objections are properly filed and served by the Objection Deadline, then at such time a Tier III settlement covered by this paragraph shall immediately become final and effective without any further action by the Court. If an objection is timely filed and received, the parties will confer and attempt to resolve any differences. Failing that, the Debtors may petition the Court for approval of the settlement in accordance with the Case Management Order. The filing of an objection with respect to a given Tier III settlement shall not delay the finality or effectiveness of any other settlement to which an objection has not timely been filed and served.

ORDERED that the Debtors are authorized but not directed, to enter into settlement agreements substantially in the form attached as Exhibit A hereto with respect to settled Claims with such changes as may be agreed by the parties thereto; and it is further

ORDERED that the Debtors are authorized, but not directed, to settle claims where some or all of the consideration is being provided by a third party and/or where the Debtors are releasing claims against creditors or third parties provided the Debtors otherwise comply with the Settlement Procedures; and it is further

ORDERED that, with respect to any proofs of claim that are settled pursuant to these Settlement Procedures, the Debtors shall so represent in writing to the Debtors’ authorized claims and noticing agent, GCG, Inc. (“**GCG**”) and GCG shall be authorized

and directed to amend the claims register accordingly without further Order of the Court;
and it is further

ORDERED that nothing contained herein shall amend, modify or otherwise conflict with the Order Approving Procedures for the Assertion, Resolution and Treatment of Reclamation Claims and Claims Asserted Pursuant to 11 U.S.C. § 503(b)(9) [ECF No. 261]; and it is further

ORDERED that the Debtors are authorized, but not required, to agree to the modification of the automatic stay of section 362 of the Bankruptcy Code without further Court approval to allow claimants to commence or continue prosecuting litigation on account of which the Debtors have (or may have or are believed to have) insurance coverage; *provided, however*, that at a minimum each relevant litigation claimant: (a) waives all related claims against the Debtors and their estates and (b) agrees to enforce any litigation claim (and any judgment on account of such claim) solely against applicable insurance proceeds, if any. To modify the automatic stay, the Debtors shall submit to the Court an executed stipulation substantially in the form attached as Exhibit B hereto evidencing such agreement, which can be entered immediately by the Court with no further notice to any party; and it is further

ORDERED that the automatic stay is hereby modified (to the extent it is applicable) to permit the Debtors' insurers to pay settled or adjudicated Claims and defense costs related to any Claim, whether incurred pre- or postpetition, in accordance with the terms and conditions of the applicable insurance policies, and subject to all rights, remedies and defenses of the Debtors and any insurer, all of which are preserved pursuant to this Order; and it is further

ORDERED that nothing in this Order shall be construed to impact, impair, affect, determine, release, waive, modify, limit or expand: (i) the terms and conditions of any insurance policy, (ii) any of the rights, remedies, defenses to coverage or other defenses of any insurer under or in respect of any insurance policy (including the right of any insurer to disclaim coverage) or (iii) any claim or payment right of any insurer against any of the Debtors including, but not limited to, any claim or payment right for, on account of, arising from or related to any premium, deductible, reimbursement, self-insured retention or otherwise. All rights, remedies, defenses, defenses to coverage, claims and payment rights of the Debtors' insurers are expressly preserved, including but not limited to any right to receive notice, participate in the resolution of a controversy, decide upon or approve the resolution of a controversy, and all rights of subrogation and contribution; and it is further

ORDERED that nothing in this Order shall be construed to authorize the Debtors to act on behalf of or as an agent for any insurer of the Debtors; and it is further

ORDERED that the Settlement Procedures are without prejudice to the right of the Debtors to seek an order of this Court approving additional or different procedures with respect to specific claims or categories of claims; and it is further

ORDERED that notwithstanding anything to the contrary contained herein, this Order shall not affect, impair, impede or otherwise alter the right of the Debtors to resolve any prepetition or postpetition controversy arising in the ordinary course of the Debtors' businesses (other than to agree to a settlement of a proof of claim), or resolve any controversy authorized by any other order of the Court; and it is further

ORDERED that nothing in this Order or the Motion shall constitute a determination or admission of liability or of the validity or priority of any claim against the Debtors, and the Debtors reserve their rights to dispute the validity or priority of any claim asserted; and it is further

ORDERED that nothing in this Order or the Motion shall constitute an approval, assumption or rejection of any agreement, contract or lease; and it is further


ORDERED that the following claims shall not be subject to the Settlement Procedures: (a) any claims on account of postpetition professional fees incurred by any professional retained in the Debtors' Chapter 11 cases, (b) any claims arising under or based on sections 503(b)(2), 503(b)(3), 503(b)(4), 503(b)(5) or 503(b)(6) of the Bankruptcy Code, (c) the U.S. Trustee's fees or (d) any claims of an "insider," as defined in section 101(31) of the Bankruptcy Code; and it is further

ORDERED that where Court approval of a settlement contemplated in this Motion is sought or required under applicable non-bankruptcy law, nothing herein shall make a settlement final and effective prior to obtaining such approval; and it is further

ORDERED that any period prescribed or allowed by these Procedures shall be computed in accordance with Bankruptcy Rule 9006; and it is further

ORDERED that to the extent that there may be any inconsistency between the terms of the final order approving the debtor in possession financing and this Order, the terms of the final order approving the debtor in possession financing shall govern; and it is further

ORDERED that notwithstanding the possible applicability of Bankruptcy
Rules 2002(a)(3), 6004(h), 7062 or 9014, the terms and conditions of this Order shall be
immediately effective and enforceable upon its entry.


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: February 13, 2013
St. Louis, Missouri
jjh

Order prepared by:
Marshall S. Huebner
Damian S. Schaible
Brian M. Resnick
Michelle M. McGreal
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017

Exhibit A

**SETTLEMENT AGREEMENT BETWEEN
[THE CLAIMANT] AND [DEBTORS] RESOLVING
[INSERT DESCRIPTION OF CLAIM, CAUSE OF ACTION OR LITIGATION]**

WHEREAS, on July 9, 2012 (the “**Petition Date**”), Patriot Coal Corporation and its subsidiaries (collectively, the “**Debtors**”) each filed voluntary petitions under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and have continued to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code; and

WHEREAS, the Debtors are authorized under the Order Authorizing and Approving Procedures For Compromise and Settlement of Certain Claims, Litigations and Causes Of Action dated [_____], 2013 (the “**Settlement Procedures Order**”) to enter into this settlement agreement (the “**Agreement**”); and

WHEREAS, the parties desire to settle the [litigation/non-litigation claim, cause of action or litigation] (the “**Claim**”) [filed/brought/asserted] by [_____] (the “**Claimant**”) against [_____] [by way of proof of claim (Claim No. _____) filed on _____ in [name of court]/by letter/facsimile/email dated _____]; and

WHEREAS, the parties wish to resolve the Claim in its entirety by this Agreement;

NOW, THEREFORE, IT IS HEREBY AGREED, subject to and in accordance with the Settlement Procedures Order and the notice provisions therein, by and between the parties, as follows:

1. In full and final satisfaction of the Claim, the Claim shall be treated as follows:

- [TERMS OF SETTLEMENT]

2. It is expressly understood by the parties that the Claimant may seek satisfaction of the Claim only as set forth herein, and that in no event will the Debtors, their estates or any persons who are employed or otherwise associated with the Debtors be liable to the Claimant in any other way whatsoever with respect to the Claim or the debt, obligation, liability, account, suit, damages or cause of action giving rise to the Claim.

3. Except as expressly agreed herein, the Claimant, on behalf of itself, its heirs, representatives and assigns, does hereby fully, finally and forever waive, release and/or discharge the Debtors, their estates and any heirs, successors, assigns, affiliates, officers, directors, shareholders, associates, parents, subsidiaries, predecessors, successors, employees, attorneys and agents from the Claim (whether prepetition unsecured, priority, administrative or postpetition/administrative) and from all actions, causes of action, suits, debts, obligations, liabilities, accounts, damages, defenses or demands whatsoever, known or unknown, giving rise to or otherwise relating to the Claim.

4. Nothing contained herein shall be deemed an admission of liability on the part of the Debtors with respect to the Claim.

5. Neither this Agreement, nor any statement made or action taken in connection with the negotiation of this Agreement, shall be offered or received in evidence or in any way referred to in any legal action or administrative proceeding among or between the parties hereto, other than as may be necessary (a) to obtain approval of and to enforce this Agreement or (b) to seek damages or injunctive relief in connection therewith.

6. The parties shall maintain the confidentiality of this Agreement except to the extent necessary to enforce this Agreement or to comply with the Settlement Procedures Order.

7. Each of the parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary or appropriate in conjunction with the performance of their respective obligations hereunder.

8. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any person other than the parties hereto and their respective successors.

9. This Agreement shall be governed by the laws of the State of New York.

10. This Agreement may be signed in counterpart originals and delivered by facsimile or email, which, when fully executed, shall constitute a single original.

11. This Agreement constitutes the entire agreement and understanding of the parties regarding the Agreement and the subject matter thereof. The terms set forth in this Agreement are part of a comprehensive compromise and each element is an integral aspect of the agreed settlement and is non-severable.

12. The United States Bankruptcy Court for the Eastern District of Missouri shall retain jurisdiction (and the parties consent to such retention of jurisdiction) with respect to any disputes arising from or other actions to interpret, administer or enforce the terms and provisions of this Agreement.

13. Each person who executes this Agreement represents that he or she is duly authorized to execute this Agreement [on behalf of his or her client and that each such client has full knowledge of and has consented to this Agreement].

14. Subject only to the notice required and the objection rights in the Settlement Procedures Order, this Agreement is effective upon execution by both parties and shall not be modified, altered, amended or vacated without written consent of all parties hereto.

15. [Immediately upon the effectiveness of this Agreement, the Debtors' claims and noticing agent is authorized and directed to amend the claims register accordingly.]

Dated: [Place]
[Date]

Dated: [Place]
[Date]

By: _____
[CLAIMANT]

[Address]
[Address]
[Address]

By: _____
[DEBTOR]

[Address]
[Address]
[Address]

Exhibit B

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 BETWEEN DEBTORS AND
[CLAIMANT] MODIFYING AUTOMATIC STAY**

Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) respectfully represent:

Background and Jurisdiction

1. On July 9, 2012 (the “**Petition Date**”), each Debtor commenced a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). 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. The Debtors’ cases (the “**Chapter 11 Cases**”) are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the Court’s Joint Administration Order entered on July 10, 2012 [ECF No. 30].

2. 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,

Patriot Coal Corporation's Senior Vice President and Chief Financial Officer, filed on July 9, 2012 [ECF No. 4], which is incorporated herein by reference.

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

Claimant's Claim

4. _____ (the "**Claimant**") contends that it has a claim (the "**Claim**") against _____,
_____, _____,
_____ and _____ who are or are employed by or otherwise associated with the Debtors (collectively, the "**Debtor Defendant[s]**") [arising from a civil action, a contemplated civil action or otherwise] on account of alleged property damage or injury to the Claimant [initiated in the [COURT], caption [CASE CAPTION]].

5. On the Petition Date, the Claimant was automatically stayed under 11 U.S.C. § 362(a) (the "**Automatic Stay**") from commencing or continuing an action to seek recovery for alleged property damage or injury to the Claimant.

6. [On _____, 20[___], the Claimant filed a proof of claim (Claim No. _____) in these chapter 11 cases] [As of the date hereof, the Claimant has not filed a proof of claim in these chapter 11 cases.]

7. [On _____, 20[___], Claimant filed a motion (the “**Motion to Lift Stay**”) seeking a modification of and/or relief from the Automatic Stay in these chapter 11 cases.]

8. Pursuant to this stipulation (the “**Stipulation**”), the Claimant agrees to waive any and all claims against the Debtor Defendant[s] related to the Claim and agrees to seek recovery solely from the insurance coverage, if any, available under one or more insurance policies issued to the Debtor Defendant[s] to satisfy the Claim (the “**Available Coverage**”).

9. The parties to the Stipulation have agreed to modify the Automatic Stay solely on the terms and conditions set forth herein.

10. The Debtors are authorized under the Order Authorizing and Approving Procedures for Settling and Allowing Certain Claims, Litigations and Causes of Action entered in these chapter 11 cases on [_____], 2013 (the “**Settlement Procedures Order**”) to enter into and submit this Stipulation to the Court.

It is hereby stipulated and agreed, subject to and in accordance with the Settlement Procedures Order, by and among the parties to this Stipulation, as follows:

11. The Automatic Stay is hereby modified solely to the limited extent necessary to enable (a) the Claim to proceed to final judgment or settlement and (b) the Claimant to attempt to recover any liquidated final judgment or settlement on the Claim solely from Available Coverage, if any; *provided, however*, that any final judgment or settlement shall be reduced by (x) the amount of any applicable deductible or self-insured retention under the applicable insurance policy and (y) any share of liability under the applicable insurance policy of any insolvent or non-performing insurer or co-insurer (or

any reinsurer of any insolvent or non-performing insurer or co-insurer); and *provided further*, that the Automatic Stay shall not be modified for purposes of permitting the Claimant to attempt to recover from any party for intentional conduct or punitive damages.

12. It is expressly understood by the Claimant that (i) the automatic stay is hereby modified solely with respect to the specific Claim of the Claimant identified herein, (ii) the Claimant may seek satisfaction of the Claim only as set forth herein, and that in no event will the Debtors, their estates or any other Debtor Defendant be liable to the Claimant in any other way whatsoever with respect to the Claim and (iii) the Claimant may not seek, and the automatic stay is not modified for the purposes of, payment of any costs of defending the Action, including attorneys' fees, by the Debtors.

13. In connection with this modification of the Automatic Stay, the Claimant on behalf of itself, its heirs, representatives and assigns, does hereby fully, finally and forever waive, release and/or discharge the Debtors, their estates, the Debtor Defendants and their respective heirs, successors, assigns, affiliates, officers, directors, shareholders, associates, parents, subsidiaries, predecessors, successors, employees, attorneys and agents from the Claim (whether prepetition unsecured, priority or administrative) and from all related actions, causes of action, suits, debts, obligations, liabilities, accounts, damages, defenses, or demands whatsoever, known or unknown, that arise from the Claim, except to the extent of the Available Coverage.

14. [Claim No. _____ is hereby deemed to be disallowed with prejudice without further order of Court, and the Debtors' claims and noticing agent is authorized and directed to remove Claim No. _____ and any and all other claims arising from the

Claim filed by or on behalf of Claimant from the Debtors' claims register; *provided*,
however, that the withdrawal of any proof of claim shall not prejudice Claimant's ability
to collect on the Claim from any Available Coverage.]

15. [The Motion is hereby deemed to be withdrawn without further order of
Court.]

16. The agreement by the Debtors to the modification of the Automatic Stay
on the terms and conditions set forth herein shall not be deemed an agreement by the
Debtors to provide assistance to or to cooperate with the Claimant in any way in the
efforts of the Claimant to prosecute the Claim or secure payment on the Claim under the
Available Coverage.

17. Nothing contained herein shall be deemed an admission of liability or
otherwise on the part of the Debtors or their insurance carriers with respect to the Claim.

18. Nothing in this Stipulation shall be deemed or construed to impact, impair,
affect, determine, release, waive, modify, limit or expand: (i) the terms and conditions of
any insurance policy, (ii) any of the rights, remedies, defenses to coverage and other
defenses of any insurer under or in respect of any insurance policy (including the right of
any insurer to disclaim coverage) or (iii) any claim or payment right of any insurer
against any of the Debtors including, but not limited to, any claim or payment right for,
on account of, arising from or related to any premium, deductible, reimbursement,
self-insured retention or otherwise. All such rights, remedies, defenses, defenses to
coverage, claims and payment rights are expressly reserved and preserved. All rights of
subrogation and contribution also are expressly reserved and preserved. Furthermore,

nothing in this Stipulation shall affect the existing obligations of any insurer to pay defense fees or expenses or the existing arrangements for the payment thereof.

19. The modification of the Automatic Stay as set forth herein shall have no effect as to parties that are not a party to this Stipulation, and the Automatic Stay shall remain in full force and effect with respect to such parties and their claims or causes of action, if any, against the Debtors and their estates.

20. Neither this Stipulation, nor any terms contained herein shall be offered or received in evidence or in any way referred to in any legal action or administrative proceeding among or between the parties hereto, other than as may be necessary: (a) to obtain approval of and to enforce this Stipulation, (b) to seek damages or injunctive relief in connection therewith or (c) to prove that the Automatic Stay has been modified to allow prosecution of the Claim in accordance with the terms hereof.

21. This Stipulation may be signed in counterpart originals and delivered by facsimile, which, when fully executed, shall constitute a single original.

22. This Stipulation constitutes the entire agreement and understanding of the parties regarding the Stipulation and the subject matter thereof. The terms set forth in this Stipulation are part of a comprehensive compromise and each element is an integral aspect of the agreed settlement and is non-severable.

23. Each of the undersigned counsel represents that he/she is authorized to execute this Stipulation on behalf of his/her respective client.

24. This Stipulation is effective upon submission to the Court without further order of Court and shall not be modified, altered, amended or vacated without written consent of all parties hereto, subject to Court approval.

[CLAIMANT]

[DEBTOR]

SO ORDERED

THE HONORABLE KATHY SURRETT-STATES
UNITED STATES BANKRUPTCY JUDGE