

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)**

**Hearing Location:
Courtroom 7 North**

**Re: ECF Nos. 2604, 2605
Hearing: February 26, 2013**

**STIPULATION AND ORDER WITH REGARD TO MOTION TO ALLOW
AND AMEND INFORMAL PROOFS OF CLAIM, OR, IN THE ALTERNATIVE,
TO EXTEND TIME TO FILE TIMELY PROOFS OF CLAIM AND MOTION
FOR RELIEF FROM AND MODIFICATION OF THE AUTOMATIC STAY TO
ENFORCE ALLEGED MECHANIC'S LIENS**

This Stipulation and Order (the “**Stipulation and Order**”) is made as of February 22, 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 Industrial Contracting of Fairmont, Inc. (“**Fairmont**”), Industrial Resources, Inc. (“**IRI**”), West Virginia Electric Industries, Inc. (“**WVEI**”) and Salem Electric Company (“**Salem**”) (collectively, the “**Movants**”), on the other hand, through their respective and duly authorized counsel of record. Movants and Debtors are collectively referred to herein to as the “**Parties**.”

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. sections 101 et. seq. (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**New York Bankruptcy Court**”), which cases were subsequently transferred to the United States Bankruptcy Court for the Eastern District of Missouri (the “**Bankruptcy Court**”); and

WHEREAS, on September 27, 2012, the Debtors filed their *Motion for Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [ECF No. 820] seeking to establish a bar date for the filing of proofs of claim in these cases; and

WHEREAS, on October 18, 2012, the New York Bankruptcy Court entered the *Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [ECF No. 1388] (the “**Bar Date Order**”), which established December 14, 2012 as the General Bar Date (as defined in the Bar Date Order); and

WHEREAS, Movants allege that, prior to the Petition Date, they provided certain goods and labor at the request, benefit or instance of Eastern Associated Coal, LLC (“**EAC**”), one of the affiliated debtors, in connection with the erection, construction and/or improvements of certain real property located in Monongalia County, West Virginia, commonly known as the Federal No. 2 Coal Preparation Plant and owned by Eastern Royalty, LLC, formerly known as Eastern Royalty Corp., (“**Eastern**”), another affiliated debtor; and

WHEREAS, WVEI and Fairmont allege that, prior to the Petition Date, they provided certain goods and labor at the request, benefit or instance of Hobet Mining, LLC

(“**Hobet**”), one of the affiliated debtors, in connection with the erection, construction and/or improvements of certain real property located in Boone County, West Virginia, commonly known as the Beth Station Preparation Plant and owned by Robin Land Company, LLC (“**Robin**”), another affiliated debtor; and

WHEREAS, Movants allege that subsequent to the Petition Date they filed and served their various Notices of Mechanic’s Lien (the “**Alleged Mechanic’s Liens**”); and

WHEREAS, on or about December 6, 2012, Movants submitted various Proofs of Claim as follows against the account debtors:

Claim No.	Claimant	Debtor	Secured Claim Amount
1188	Industrial Contracting of Fairmont, Inc.	EAC	\$118,000.00
1189	Industrial Resources, Inc.	EAC	\$34,734.00
1190	West Virginia Electric Industries, Inc.	EAC	\$106,809.00
1191	Salem Electric Company	EAC	\$7,280.00
1192	Industrial Contracting of Fairmont, Inc.	Hobet	\$223,709.00
1193	West Virginia Electric Industries, Inc.	Hobet	\$3,001.02

WHEREAS, the supporting documentation submitted with Proof of Claim Nos. 1188 through 1191 reflect that the real property allegedly being improved was owned by Eastern, and the supportive documentation submitted with Proof of Claim Nos. 1192 and 1193 reflect that the real property allegedly being improved was owned by Robin; and

WHEREAS, on January 30, 2013, Movants filed their *Motion to Allow and Amend Informal Proofs of Claim, or, in the Alternative, to Extend Time to File Timely*

Proofs of Claim [ECF No. 2604] (the “**Claims Motion**”) pursuant to which Movants sought, among other items, 1) that the four Proofs of Claim filed against EAC be deemed as being timely filed secured Proofs of Claim against Eastern; and 2) that the two Proofs of Claim filed against Hobet be deemed as being timely filed secured Proofs of Claim against Robin; and

WHEREAS, Movants filed contemporaneously their *Motion for Relief from and Modification of the Automatic Stay to Enforce Mechanic’s Liens* [ECF No. 2605] (the “**Stay Relief Motion**”) pursuant to which Movants sought, in part, relief from the automatic stay to file and pursue enforcement actions with regard to the Alleged Mechanic’s Liens; and

WHEREAS, Section 108(c) of the Bankruptcy Code and West Virginia Code Section 55-2-22 toll and extend the time for Movants to file an action to enforce and foreclose the Alleged Mechanic’s Liens that have been properly perfected and attached pursuant to applicable law; and

WHEREAS, the Parties are interested in resolving the Claims Motion and the Stay Relief Motion as more fully set forth in this Stipulation and Order.

AGREED ORDER

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

1. Movants are permitted to amend and submit certain Proofs of Claim as set forth below (the “**Amended Proofs of Claim**”):
 - a. Movants are permitted to (i) amend Proof of Claim Nos. 1188 through 1191 (the “**Original EAC Claims**”) solely to reflect that the applicable claims are being asserted as general unsecured claims against EAC and

(ii) submit secured Proofs of Claim against Eastern (the “**Eastern Proofs of Claim**”); *provided that* (A) the amount set forth in the applicable Eastern Proof of Claim shall be limited to the amount set forth in the corresponding Original EAC Claim and (B) the supporting documentation set forth in the applicable Eastern Proof of Claim shall be consistent with the supporting documentation set forth in the corresponding Original EAC Claim.

- b. WVEI and Fairmont are permitted to (i) amend Proof of Claim Nos. 1192 and 1193 (the “**Original Hobet Claims**”) solely to reflect that the applicable claims are being asserted as general unsecured claims against Hobet and (ii) submit secured Proofs of Claim against Robin (the “**Robin Proofs of Claim**”); *provided that* (A) the amount set forth in the applicable Robin Proof of Claim shall be limited to the amount set forth in the corresponding Original Hobet Claim and (B) the supporting documentation set forth in the applicable Robin Proof of Claim shall be consistent with the supporting documentation set forth in the corresponding Original Hobet Claim.

2. The Amended Proofs of Claim shall be considered timely submitted as long as the Amended Proofs of Claim (i) are actually received in accordance with the Bar Date Order by 5:00 p.m. (prevailing Central Time) on the date that is twenty days after entry of this Order, or if such date is not a business day, the following business day; and (ii) otherwise comply with the procedures set forth in the Bar Date Order.

3. The Debtors, and any other applicable party in interest, reserve all their rights to review, evaluate and object to any of the Proofs of Claim of any of the Movants, including the Amended Proofs of Claim, and including on the basis of the validity or invalidity of the Alleged Mechanic's Liens, except upon the grounds that such Amended Proofs of Claim were not timely filed.

4. Section 108(c) of the Bankruptcy Code and West Virginia Code Section 55-2-22 toll and extend the time for Movants to file an action to enforce and foreclose the Alleged Mechanic's Liens that have been properly perfected and attached pursuant to applicable law. The time to file such an enforcement action shall be tolled and extended until the later of the time as provided in accordance with Section 108(c) of the Bankruptcy Code or West Virginia Code Section 55-2-22.

5. The Stay Relief Motion and the Claims Motion are withdrawn; *provided, however*, that the Movants reserve their rights to seek additional relief regarding the issues addressed in the Stay Relief Motion and the Claims Motion in the event of materially changed circumstances, and parties in interest, including the Debtors, reserve their right to object or otherwise respond to any such additional relief as may be sought.

6. Pursuant to section 362(a) of the Bankruptcy Code, the Movants are stayed from the commencement or continuation of any proceeding against the Debtors, except upon further order of the Bankruptcy Court granting relief from the automatic stay.

7. This Stipulation and Order shall constitute a duly provided notice under Section 546(b) of the Bankruptcy Code for the perfection, maintenance or continuance of perfection of the Alleged Mechanic's Liens, in lieu of commencement of a lawsuit within

the time fixed by West Virginia law, to the extent such notice applies or is required.

Notwithstanding the foregoing, such notice shall not constitute an admission by Movants that such notice is required for the perfection, maintenance or continuation of perfection of the Alleged Mechanic's Liens.

8. Movants reserve any and all rights to assert that the enforcement and foreclosure of the Alleged Mechanic's Liens should be heard in a non-bankruptcy forum, including any alleged claim for abstention by the Bankruptcy Court. The Debtors, and any other applicable party in interest, reserve any and all rights to oppose any request for abstention or other relief pursuant to which Movants seek to adjudicate and enforce the Alleged Mechanic's Liens in any forum other than the Bankruptcy Court. The failure to seek any abstention of the adjudication of the Alleged Mechanic's Liens at this time shall not be construed as being prejudicial to Movants seeking such relief at a later date.

9. Nothing herein shall be deemed an acknowledgment of the validity or priority of the Alleged Mechanic's Liens.

10. This Stipulation and Order shall be binding upon the Parties, all creditors of the Debtors, all formal and informal committees, any trustee or liquidation agent, and their successors and assigns.

11. 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.

12. The Debtors, the Debtors' claims and noticing agent, GCG, Inc., and the Clerk of this Court are authorized to take all such actions as are necessary or appropriate to implement the terms of this Stipulation and Order.

IT IS SO ORDERED


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: February 27, 2013
St. Louis, Missouri
jjh

Dated: February 22, 2013

Dated: February 22, 2013

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