

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)

Objection Deadline:

April 15, 2013 at 4:00 p.m.  
(prevailing Central Time)

Hearing Date:

April 23, 2013 at 10:00 a.m.  
(prevailing Central Time)

Hearing Location:

Courtroom 7 North

Motion No. \_\_\_\_\_

**NOTICE OF HEARING ON PAYNE-GALLATIN COMPANY MOTION  
FOR ORDER (a) DIRECTING DEBTORS TO FILE A RESPONSE TO THE PAYNE-  
GALLATIN COMPANY OBJECTION TO DEBTORS' MOTION FOR  
AUTHORIZATION TO (i) ASSUME OR (ii) REJECT UNEXPIRED LEASES OF  
NONRESIDENTIAL REAL PROPERTY WITH RESPECT TO CONTRACT ID LND  
323, AND (b) SCHEDULING MEDIATION AND HEARING**

**PLEASE TAKE NOTICE** Payne-Gallatin Company ("Payne-Gallatin"), a creditor and party in interest, will call for hearing on **April 23, 2013 at 10:00 a.m. (prevailing Central Time)** at the United States Bankruptcy Court, **Courtroom 7 North**, Thomas F. Eagleton Courthouse, 111 South Tenth Street, St. Louis, Missouri 63102 before the **Honorable Judge Kathy Surratt-States** (the "Hearing"):

(A) Payne-Gallatin Company Motion For Order (A) Directing Debtors To File A Response To The Payne-Gallatin Company Objection To Debtors' Motion For Authorization To (I) Assume Or (Ii) Reject Unexpired Leases Of Nonresidential Real Property With Respect To Contract Id Lnd 323, And (B) Scheduling Mediation And Hearing (the "Motion").

Any objection or other response to the Motion should be filed on or before **April 15, 2013 at 4:00 p.m. (prevailing Central Time)**. At the Hearing, Payne-Gallatin will seek entry of an order substantially in the form of the Proposed Order attached to the Motion as Exhibit A.

Dated: March 28, 2013  
Charleston, West Virginia

Respectfully submitted,

/s/ Thomas Persinger  
Thomas Persinger  
WVSB No. 2874  
Admission pro hac vice  
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Counsel for Payne-Gallatin Company

Dated: March 28, 2013  
St. Louis, Missouri

/s/ Howard S. Smotkin  
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Local Co-Counsel for  
Payne-Gallatin Company

**CERTIFICATE OF SERVICE**

I hereby certify that on March 28, 2013, a true and correct copy of the foregoing Payne-Gallatin Company Motion for Order (a) Directing Debtors To File A Response To The Payne-Gallatin Company Objection To Debtors' Motion For Authorization To (i) Assume Or (ii) Reject Unexpired Leases Of Nonresidential Real Property With Respect To Contract ID LND 323, And (b) Scheduling Mediation And Hearing was served by (i) the Electronic Case Filing system for the United States Bankruptcy Court for the Eastern District of Missouri, St. Louis Division, on those parties consenting to such service in these cases, and (ii) by United States mail, first class postage prepaid, on the counsel and or parties listed below:

- (a) Davis Polk & Wardwell LLP Counsel to the Debtors  
Attn: Marshall S. Huebner  
Brian M. Resnick  
Michelle M. McGreal  
Kevin J. Coco  
450 Lexington Avenue  
New York, NY 10017
- Bryan Cave LLP  
Attn: Brian C. Walsh  
Laura Uberti Hughes  
211 North Broadway  
St. Louis, MO 63102
- (b) Curtis, Mallet-Prevost, Colt & Mosle LLP Conflicts counsel to the Debtors  
Attn: Steven J. Reisman  
Michael A. Cohen  
101 Park Avenue  
New York, NY 10178
- (c) Office of the United States Trustee Office of the United States Trustee  
USBC Eastern District of Missouri  
Attn: Paul A. Randolph  
Leonora S. Long  
Thomas F. Eagleton US Courthouse  
111 S. 10<sup>th</sup> Street, Suite 6-353  
St. Louis, MO 63102
- (d) Kramer Levin Naftalis & Frankel LLC Counsel for the Official Committee of  
Attn: Thomas Moers Mayer, Unsecured Creditors  
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Gregory G. Plotko  
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Carmody MacDonald P.C.  
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St. Louis, MO 63105-1705

(e) Patriot Coal Corporation  
c/o GCG, Inc.  
P.O. Box 9898  
Dublin, OH 43017-5798

Debtors' authorized claims and  
noticing agent

/s/ Howard S. Smotkin  
Howard S. Smotkin

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
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Courtroom 7 North

Motion No. \_\_\_\_\_

**PAYNE-GALLATIN COMPANY MOTION FOR ORDER (a) DIRECTING DEBTORS TO FILE A RESPONSE TO THE PAYNE-GALLATIN COMPANY OBJECTION TO DEBTORS' MOTION FOR AUTHORIZATION TO (i) ASSUME OR (ii) REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY WITH RESPECT TO CONTRACT ID LND 323, AND (b) SCHEDULING MEDIATION AND HEARING**

Payne-Gallatin Company, a West Virginia corporation ("Payne-Gallatin"), respectfully moves the United States Bankruptcy Court for the Eastern District of Missouri, Eastern District, for entry of an order (a) directing Debtors to file a response to the Payne-Gallatin Objection to Debtors' Motion For Authorization To (i) Assume Or (ii) Reject Unexpired Leases Of Nonresidential Real Property With Respect To Contract ID LND 323 [Doc 2056], and (b) scheduling mediation and a hearing on same.

In support of this motion, Payne-Gallatin respectfully represents:

**Jurisdiction and Venue**

1. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §

1334.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. Venue is proper in the Court pursuant to 28 U.S.C. § 1408 and 1409.

**Payne-Gallatin Lease**

4. Payne-Gallatin is the lessor to Debtor Panther LLC of nonresidential real property under a lease dated October 15, 1976 between Payne-Gallatin, as “Payne-Gallatin Mining Company”, and OCAMCO, a West Virginia corporation, dated October 15, 1976 (the “Base Lease”), as subsequently assigned, amended, subleased and assigned, and assumed by various instruments (the Base Lease and said subsequent instruments collectively, the “Lease”).

5. The Lease is for (i) the sole and exclusive right to mine and remove all the coal in the Stockton seam and all seams below by deep mining or by the strip and auger methods of mining on and underlying a certain tract of land situate principally on the waters of Wet Branch of Cabin Creek, a tributary of Kanawha River, in Cabin Creek District of Kanawha County, West Virginia, consisting of 994 acres, more or less, and (ii) other rights and privileges as set forth in the Lease.

6. On January 15, 2013, Debtors filed “Debtors’ Motion For Authorization To (i) Assume Or (ii) Reject Unexpired Leases Of Nonresidential Real Property” [Doc 1995] (the “Debtors’ Lease Assumption Motion”). Therein, Debtors state the Cure Amount for the Payne-Gallatin Lease to be \$184,311.97. [Doc 1995, Schedule A – Assumed Leases, p. 44] Upon information and belief, Debtors’ stated Cure Amount is comprised of (i) unpaid pre-petition property tax for the First Half 2012, Cabin Creek District, Kanawha County, West Virginia in the amount of \$6,476.13, and (ii) Debtors’ calculation of unpaid pre-petition wheelage royalty in the amount of \$177,835.84.

**Objection to Motion to Assume and Underpayment of Wheelage Royalty**

7. On January 22, 2013, Payne-Gallatin filed the “Payne-Gallatin Company Objection To Debtors’ Motion For Authorization To (i) Assume Or (ii) Reject Unexpired Leases Of Nonresidential Real Property With Respect To Contract ID LND 323,” [Doc 2056] (the “Objection”).

8. Payne-Gallatin asserts a larger Cure Amount. Payne-Gallatin agrees the unpaid pre-petition property tax is correctly stated in Debtors’ Lease Assumption Motion as \$6,476.13. Payne-Gallatin believes the stated amount of unpaid pre-petition wheelage royalty on Debtors’ monthly reports to Payne-Gallatin to be \$165,034.36, which is actually less than that the amount thereof (\$177,835.84) included by Debtors in its Cure Amount. However, as part of the Cure Amount, Payne-Gallatin asserts an additional item consisting of underpayment of wheelage royalty from July 8, 2002 to July 8, 2012 resulting from the deduction of trucking and rail expenses from the gross sales price of coal crossing the Lease premises, plus legal interest as provided by West Virginia law. The amount of this wheelage royalty underpayment has been calculated by Suttle & Stalnaker, PLLC, Certified Public Accountants, Charleston, West Virginia (“Suttle & Stalnaker”), to be \$399,658.00. A copy of Suttle & Stalnaker's report dated 12.13.12 is attached as Exhibit A to the Objection. Suttle & Stalnaker also has calculated the legal interest on the asserted wheelage royalty underpayment to be \$169,440.19. A copy of this calculation was provided by Lewis Payne, Vice President of Payne-Gallatin, to Mr. John Eagan, Director, Land, of Magnum Coal Company, LLC, on or about March 1, 2013. Thus, Payne-Gallatin submits that the correct Cure Amount is \$740,608.68, consisting of:

(i)	Unpaid pre-petition property tax	\$ 6,476.13
(ii)	Unpaid pre-petition wheelage royalty	165,034.36
(iii)	Underpayment of pre-petition wheelage royalty 2002 -2012	399,658.00

(iv)	Legal interest on item (iii)	<u>169,440.19</u>
	Cure Amount	<u>\$740,608.68</u>

9. In an attempt to resolve its Objection with Debtors, Andrew A. Payne, III, the President of Payne-Gallatin, and Lewis Payne have met with Charles A. Ebetino, Jr., Senior Vice President – Global Strategy & Corporate Development of Patriot Coal Corporation, and Mr. Eagan. Thereafter, Lewis Payne has spoken by phone on one (1) occasion with Mr. Ebetino and Mr. Eagan. Although these discussions have been amicable, to date Payne-Gallatin and Debtors have been unable to reach a resolution.

10. The Payne-Gallatin Objection has been adjourned by Debtors from the Court’s January 29, 2013 docket, February 26, 2013 docket, and March 19, 2013 docket.

**Relief Requested**

11. Rule 9014 Contested Matters of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) states that “[n]o response is required under this rule unless the court directs otherwise.” To date, Debtors have not filed a response to the Payne-Gallatin Objection.

12. Although requiring Debtors to file a response to the Payne-Gallatin Objection is admittedly discretionary with the Court, Payne-Gallatin submits that the interests of justice support same. Simply put, a response by Debtors to the Payne-Gallatin Objection will allow Payne-Gallatin to know “on the record” the position of the Debtors as to its Objection and allow Payne-Gallatin to efficiently address the issues in dispute.

13. Although Payne-Gallatin and Debtors have been unable to date to resolve the Objection through discussions, Payne-Gallatin nevertheless believes mediation would be worthwhile. For this and such other reasons as may appear to the Court, Payne-Gallatin submits that the Objection should be submitted to mediation.

14. Given the three (3) adjournments of its Objection, Payne-Gallatin also submits that the Objection should be docketed for hearing as the Court's docket will allow.

WHEREFORE, Payne-Gallatin Company, a West Virginia corporation, respectfully requests that the Court (a) enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein, and (b) grant such further relief as the Court may deem proper, equitable and just.

Dated: March 28, 2013  
Charleston, West Virginia

Respectfully submitted,

/s/ Thomas Persinger  
Thomas Persinger  
WVSB No. 2874  
Admission pro hac vice  
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Counsel for Payne-Gallatin Company

Dated: March 28, 2013  
St. Louis, Missouri

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Local Co-Counsel for  
Payne-Gallatin Company

**CERTIFICATE OF SERVICE**

I hereby certify that on March 28, 2013, a true and correct copy of the foregoing Payne-Gallatin Company Motion for Order (a) Directing Debtors To File A Response To The Payne-Gallatin Company Objection To Debtors' Motion For Authorization To (i) Assume Or (ii) Reject Unexpired Leases Of Nonresidential Real Property With Respect To Contract ID LND 323, And (b) Scheduling Mediation And Hearing was served by (i) the Electronic Case Filing system for the United States Bankruptcy Court for the Eastern District of Missouri, St. Louis Division, on those parties consenting to such service in these cases, and (ii) by United States mail, first class postage prepaid, on the counsel and or parties listed below:

- (a) Davis Polk & Wardwell LLP Counsel to the Debtors  
Attn: Marshall S. Huebner  
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- (c) Office of the United States Trustee Office of the United States Trustee  
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- (d) Kramer Levin Naftalis & Frankel LLC Counsel for the Official Committee of  
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Carmody MacDonald P.C.  
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(e) Patriot Coal Corporation  
c/o GCG, Inc.  
P.O. Box 9898  
Dublin, OH 43017-5798

Debtors' authorized claims and  
noticing agent

/s/ Howard S. Smotkin  
Howard S. Smotkin

**EXHIBIT A**

**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)**

**ORDER DIRECTING DEBTORS TO FILE A RESPONSE  
TO THE PAYNE-GALLATIN COMPANY OBJECTION TO DEBTORS' MOTION FOR  
AUTHORIZATION TO (i) ASSUME OR (ii) REJECT UNEXPIRED LEASES OF  
NONRESIDENTIAL REAL PROPERTY WITH RESPECT TO CONTRACT ID LND  
323, AND SCHEDULING MEDIATION AND HEARING**

Upon the Payne-Gallatin Company Motion For Order (a) Directing Debtors To File And Serve A Response To The Payne-Gallatin Company Objection To Debtors' Motion For Authorization To (i) Assume Or (ii) Reject Unexpired Leases Of Nonresidential Real Property With Respect To Contract ID LND 323, And (b) Scheduling Mediation And Hearing [Doc \_\_\_\_] (the "Motion"), as more fully set forth in the Motion, and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding which the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with the Case Management Order (as may be amended); and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion and having held a hearing with appearances of parties in interest noted on the record (the "Hearing"); 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 after due deliberation and sufficient cause appearing therefore, it is

ORDERED that Debtors are hereby directed to file a response to the Payne-Gallatin Objection To Debtors' Motion For Authorization To (i) Assume Or (ii) Reject Unexpired Leases Of Nonresidential Real Property with Respect To Contract ID LND 323 [Doc 2056] (the "Payne-Gallatin Objection") within \_\_\_\_\_ (\_\_) days of the entry of this Order; and it is further

ORDERED that mediation of the Payne-Gallatin Objection shall occur before \_\_\_\_\_, no later than \_\_\_\_\_, 2013; and it is further

ORDERED that a hearing on the Payne-Gallatin Objection shall be held in this Court on \_\_\_\_\_, at \_\_\_\_\_ o'clock.

No later than 7 days after the date of this order, Payne-Gallatin is directed to serve a copy of the order on all parties listed below and is directed to file a certificate of service no later than 24 hours after service.

DATED: \_\_\_\_\_  
St. Louis, Missouri

\_\_\_\_\_  
KATHY A. SURRETT-STATES  
Chief United States Bankruptcy Judge

**Order prepared by:**

Thomas Persinger  
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Admission pro hac vice  
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and

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Local Co-Counsel for  
Payne-Gallatin Company