

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.<sup>1</sup>

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

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

Hearing Location:  
Courtroom 7 North

Re: ECF Nos. 1995, 2056, 3419

**DEBTORS' LIMITED OBJECTION TO PAYNE-GALLATIN COMPANY'S 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**

1. Debtor Panther LLC ("**Panther**") files this limited objection (the "**Limited Objection**") to Payne Gallatin Company's ("**PGC**") above-referenced motion [ECF No. 3419] (the "**Motion**") and accompanying Proposed Order insofar as PGC requests the Court to schedule mediation with respect to its Objection to Debtors' Motion for Authorization to (i) Assume or (ii) Reject Unexpired Leases [ECF No. 2056] (the "**PGC Objection**").

2. Panther respectfully submits that mediation at this point in the current dispute would be premature. PGC seeks mediation concerning its assertion that it is entitled to

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<sup>1</sup> The Debtors are the entities listed on Schedule 1 attached to the Debtors' Motion for Approval of Procedures for the Rejection of Executory Contracts and Unexpired Leases and for the Abandonment of Personal Property [ECF No. 136]. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

additional “wheelage royalty” under the terms of its lease (the “**Lease**”) with Panther.

(Mot. ¶¶ 8, 13.) The PGC Objection does not explain the contractual basis for PGC’s claims to additional “wheelage royalty.” Panther believes that PGC’s claim is foreclosed by the plain meaning of the Lease’s definition of “gross sales price.”

3. Resolution of the parties’ dispute over the meaning of the contract is a predicate legal issue that must be resolved by the Court. The necessary first step is for PGC to explain the basis for its contractual claim to additional “wheelage royalty.” Accordingly, Panther is willing to enter into a scheduling order with PGC, and has expressed such willingness to PGC’s counsel, that bifurcates (i) briefing and a hearing on the predicate contractual issue and, subsequent to the adjudication of that legal issue and only if necessary, (ii) the calculation of amounts, if any, owed under the Lease in light of the Court’s determination. On Monday, April 8, 2013, PGC’s counsel agreed to provide Panther’s counsel with a draft proposed scheduling order, which has not yet been provided as of the filing of this Limited Objection.

4. Any mediation before the Court determines the predicate contractual issue, let alone before the parties have even submitted briefing on that issue, would be premature. Only in the unlikely event that the Court were to agree with PGC’s interpretation of the Lease would mediation make sense, in order to determine the value of any additional “wheelage royalty” due in connection with the assumption and cure of the Lease by Panther. Mediation at this time would unnecessarily impose additional burden and cost on Panther’s limited resources. If the Court agrees with Panther’s reading of the contract, as Panther strongly expects, mediation would be completely unnecessary.

5. For the foregoing reasons, Panther respectfully requests that the Court deny the Motion insofar as it requests that the Court schedule mediation at any time before the legal issue with respect to interpretation of the Lease is adjudicated.

Dated: April 16, 2013  
New York, New York

Respectfully submitted,

DAVIS POLK & WARDWELL LLP

/s/ Jonathan D. Martin

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