

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

Hearing Location:
Courtroom 7 North

Re: ECF No. 3091

**STIPULATION AND ORDER WITH REGARD TO MOTION
FOR RELIEF FROM THE AUTOMATIC STAY**

This Stipulation and Order (the “**Stipulation and Order**”) is made as of April 12, 2013 by and between Patriot Coal Corporation (“**Patriot**”) and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”), including, but not limited to, Heritage Coal Company, LLC (“**Heritage**”), on the one hand, and Artisan Contracting, Inc. (“**Artisan**”) (also referred to herein as “**Movant**”), on the other hand, through their respective duly authorized counsel of record. Movant and Debtors are collectively referred to herein 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. § § 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 or about January 22, 2009, Artisan entered into a Master Performance Agreement (“**MPA**”) with Patriot as agent for its subsidiary Heritage; and

WHEREAS, following the execution of the MPA, Artisan entered into various purchase orders with Heritage, and, as a result of such purchase orders, Artisan performed certain labor and provided materials for certain improvements on three parcels of property in which Heritage has an interest and which properties are known as the Camp Mine Office/Lab/Bathhouse and/or the McClure Chapel Road lot in Morganfield, Kentucky and the River Facility in Union Town, Kentucky (collectively, the “**Property**”); and

WHEREAS, the work performed by Artisan included the repair, re-fabrication and servicing of large equipment and machinery at the Property, and Artisan asserts that such work performed by Artisan is lienable under Kentucky law; and

WHEREAS, Artisan asserts that the total outstanding balance due and owing to Artisan for the work it performed for Heritage and for which it has not been paid is \$538,852.39; and

WHEREAS, Artisan filed its Proof of Claim on September 26, 2012 as Claim No. 264 in the principal sum of \$538,852.39 (the “**Proof of Claim**”); and

WHEREAS, on November 20, 2012, Artisan filed its Mechanic’s Lien Statement in the amount of \$538,852.39 (the “**Lien Amount**”) with the Union County Clerk as Document No. 001069400015 (the “**Mechanic’s Lien**”); and

WHEREAS, Artisan sent notice of the Mechanic’s Lien Statement to Heritage as required by Kentucky law; and

WHEREAS, on December 7, 2012, Artisan filed its Amended Proof of Claim solely to change its status from an unsecured creditor to a secured creditor as Claim No. 1242 (the “**Amended Proof of Claim**”); and

WHEREAS, on January 4, 2013, Artisan filed its Amended and Supplemental Verified Mechanic’s Lien with the Union County Clerk as Document No. 001077820007 (the “**Amended Mechanic’s Lien**”) to add the legal description of a small parcel of property that was not included in the Mechanic’s Lien; and

WHEREAS, on January 7, 2013, Artisan filed its Corrected Amended and Supplemental Verified Mechanic’s Lien with the Union County Clerk as Document No. 001077930007 (the “**Corrected and Amended Mechanic’s Lien**”), which was filed because two lines at the top of page two of the Amended Mechanic’s Lien were inadvertently cut off on the document filed with the Union County Clerk (the Mechanic’s Lien, as amended, corrected and supplemented by the Amended Mechanic’s Lien and the Corrected and Amended Mechanic’s Lien, is hereinafter referred to as the “**Artisan Mechanic’s Lien**”); and

WHEREAS, Artisan sent notice of the Corrected and Amended Mechanic’s Lien to Heritage as required by Kentucky law; and

WHEREAS, on March 7, 2013, Artisan filed its Motion for Relief from Automatic Stay [ECF No. 3091] (the “**Stay Relief Motion**”) seeking leave of the Bankruptcy Court to file an enforcement action in Kentucky state court to pursue and liquidate the Artisan Mechanic’s Lien; and

WHEREAS, Artisan asserts that Artisan has perfected its lien pursuant to applicable Kentucky state law and there is no need to provide the notice required under Section 546(b) of the Bankruptcy Code, but, nevertheless, out of an abundance of caution and in the event that a

court of competent jurisdiction later determines that such notice was, in fact, required, Artisan has requested entry of this Stipulation and Order; and

WHEREAS, the Parties believe that Section 108(c) of the Bankruptcy Code tolls and extends any statute of limitation or duration such as that contained in KY. STAT. §376.090 for Movant to file an action to enforce and foreclose the Artisan Mechanic's Lien; and

WHEREAS, Patriot and Heritage agree that they will not contest the contention that Section 108(c) of the Bankruptcy Code tolls and extends the time for Artisan to file an enforcement action in respect of the Artisan Mechanic's Lien as required by applicable Kentucky state law; and

WHEREAS, the Parties are interested in resolving 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. The Debtors, and any other applicable party in interest, reserve all their rights to review, evaluate and object to the Proof of Claim and Amended Proof of Claim, including on the basis of the validity or invalidity of the Artisan Mechanic's Lien.

2. Section 108(c) of the Bankruptcy Code tolls and extends the time for the Movant to file an action to enforce and foreclose the Artisan Mechanic's Lien as may be required under KY. STAT. §376.090 to enforce a properly perfected mechanic's lien. The time to file such an enforcement action shall be tolled and extended as provided by Section 108(c) of the Bankruptcy Code.

3. The Stay Relief Motion is withdrawn; *provided however*, that Movant reserves the right to seek additional relief regarding the issues addressed in the Stay Relief 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.

4. Pursuant to section 362(a) of the Bankruptcy Code, the Movant is stayed from the commencement or continuation of any proceeding, including a proceeding to enforce its lien under applicable Kentucky state law, against any of the Debtors, except upon further order of the Bankruptcy Court granting relief from the automatic stay.

5. 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 Artisan Mechanic's Lien, in lieu of commencement of a lawsuit within the time fixed by Kentucky law, to the extent such notice applies or is required. Notwithstanding the foregoing, such notice shall not constitute an admission by the Movant that such notice is required for the perfection, maintenance or continuation of perfection of the Artisan Mechanic's Lien.

6. The Movant reserves any and all rights to assert that the enforcement and foreclosure of the Artisan Mechanic's Lien 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 the Movant seeks to adjudicate and enforce the Artisan Mechanic's Lien in any forum other than the Bankruptcy Court. The failure to seek any abstention of the adjudication of the Artisan Mechanic's Lien at this time shall not be construed as being prejudicial to the Movant seeking such relief at a later date.

7. Nothing herein shall be deemed an acknowledgement of the validity or priority of the Artisan Mechanic's Lien.

8. 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.

9. 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 copy) shall for all purposes be deemed an original.

10. 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.

11. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Stipulation and Order.

12. Proper, timely, adequate and sufficient notice of this Stipulation and Order has been provided in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court for the Eastern District of Missouri, and no other or further notice of this Stipulation and Order shall be required.

13. Notwithstanding any Federal Rule of Bankruptcy Procedure that might otherwise delay the effectiveness of this Stipulation and Order, the terms and conditions of this Stipulation and Order shall be immediately effective and enforceable upon its entry.


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: April 19, 2013
St. Louis, Missouri
jjh

Dated: April 12, 2013

Dated: April 12, 2013

DAVIS POLK & WARDWELL LLP

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