

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI**

In re:)	
)	
PATRIOT COAL CORPORATION, et al.,)	Case No. 12-51502-659
)	
Debtors in Possession.)	Chapter 11
)	
)	
JEFFREY D. RYAN, and)	
CASEY RYAN,)	Hearing Date: June 18, 2013
)	
Movants,)	Hearing Time: 10:00 a.m.
)	
v.)	Courtroom 7 North
)	
PATRIOT COAL CORPORATION,)	Response Due: June 11, 2013
)	
Respondent.)	

**NOTICE OF HEARING AND
MOTION FOR RELIEF FROM AUTOMATIC STAY**

WARNING: ANY RESPONSE OR OBJECTION MUST BE FILED WITH THE COURT BY June 11, 2013 (SEE L.B.R. 9013-2). A COPY MUST BE PROMPTLY SERVED UPON THE UNDERSIGNED. FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THE COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE.

The Hearing, as stated above, will be held before the Honorable Judge Kathy A. Surratt-States, in Courtroom 7 North in the United States Bankruptcy Court, United States Courthouse, Thomas Eagleton US Courthouse, 111 S. 10th Street, St. Louis, Missouri 63102 on Tuesday, June 18, 2013 at 10:00 a.m.

COME NOW Movants Jeffery Ryan and Casey Ryan, by and through their undersigned counsel, and pursuant to 11 U.S.C. § 362(d) and Bankruptcy Rule 4001, move the Court for an order granting relief from automatic stay. In support thereof, Movants Jeffery Ryan and Casey Ryan state as follows:

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §1334 and 11 U.S.C. §362 and Bankruptcy Rule 4001(a).

2. On or about July 9, 2012, the Debtor and each of its affiliated companies filed for bankruptcy protection under Chapter 7 of the United States Bankruptcy Code, which case was assigned Bankruptcy Case No. 12-51502 after it was transferred to this Court from the United States Bankruptcy Court for the Southern District of New York.

3. Movants have claims for negligence and loss of consortium against Debtor, arising out of an injury that incurred on or about May 9, 2011, while Movant Jeffery Ryan was a volunteer for a Patriot Coal mine rescue team. As of July 9, 2012, when Debtor and its affiliated companies filed for bankruptcy protection, Movants had not yet filed a complaint against Debtor related to Movants' claims.

4. Movants are filing or have now filed a Complaint against other defendants, arising out of the same occurrence.

5. Movants are now prepared to file their Amended Complaint against Debtor in the Circuit Court of Boone County, West Virginia, and a copy of the proposed Amended Complaint is attached hereto, marked as Exhibit A, and incorporated herein through this reference.

6. Among other relief sought in the Amended Complaint, Movants will seek judgment against Debtor and the costs of their cause of action.

7. On information and belief, Debtor has available insurance coverage against liability for the claims in the Complaint. Movants seek relief from the automatic stay in order to file the Amended Complaint and pursue their causes of action against Debtor in the Circuit Court of Boone County and/or to recover any insurance coverage.

8. Cause exists pursuant to 11 U.S.C. § 362(d)(1) to grant Movants relief from the automatic stay in order to allow Movants to pursue their causes of action against Debtor for

negligence and loss of consortium, and any underlying litigation with regard to said causes of action.

9. Movants seek relief from the automatic stay in order to file the Amended Complaint and to determine Debtor's liability to Movants in the Circuit Court of Boone County. In the event that any monetary damages are awarded to the Movants, Movants shall seek to collect only the proceeds of any applicable insurance policy and will not collect said monetary judgment from the assets of the bankruptcy estate without first filing a claim and applying to this Court.

WHEREFORE, Movants Jeffery Ryan and Casey Ryan respectfully pray that this Court enter its Order terminating and/or modifying the automatic stay of 11 U.S.C. § 362 to allow Movants to pursue their causes of action against Debtor before the Circuit Court of Boone County, West Virginia for negligence and loss of consortium, and to determine Debtor's liability to Movants in said case, and that this Court grant such other and further relief as this Court deems proper under the law and circumstances.

Respectfully Submitted,

WALTRIP & SCHMIDT, LLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was served either through the Court's ECF system or by regular mail this 30th day of April 2013, on the following:

Office of the U.S. Trustee
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/s/ Michael A. Becker

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

**JEFFERY D. RYAN and
CASEY RYAN, his wife,**

Plaintiff,

v.

CIVIL ACTION NO. 13-C-_____
Judge Thompson

**TOM MITCHELL;
LAUREL COAL CORP.,
a West Virginia Corporation; and,
PATRIOT COAL CORPORATION,**

Defendants.

AMENDED COMPLAINT

Come now the plaintiffs, Jeffrey D. Ryan and Casey Ryan, his wife, and for their Amended Complaint against Tom Mitchell (hereinafter "Mitchell" or "defendant"), Laurel Coal Corp. (hereinafter "Laurel" or "defendant") and Patriot Coal Corporation (hereinafter "Patriot"), state and allege as follows:

JURISDICTION AND BACKGROUND

1. Plaintiffs are and were, at all times relevant herein, citizens and residents of Madison, Boone County, West Virginia.
2. Upon information and belief, defendant, Tom Mitchell, is and was, at all times relevant herein, a citizen and resident of Oceana, Wyoming County, West Virginia.



3. At all times pertinent hereto, Laurel Coal Corp. was a West Virginia corporation, doing business in the State of West Virginia, including Boone County, and whose principal office is situated in Madison, Boone County, West Virginia.

4. At all times pertinent hereto, Patriot Coal Corporation was a Delaware corporation qualified to conduct business in the State of West Virginia and who actually conducted business in the State of West Virginia, including Boone County, at all times relevant herein.

5. On or about May 9, 2011, plaintiff Jeff Ryan was employed by Panther Branch Coal Company d/b/a Long Branch Energy (hereinafter "Long Branch") as a foreman at Long Branch's Number 25 underground coal mine located in or near Wharton, Boone County, West Virginia.

6. While employed by Long Branch, plaintiff, along with another Long Branch employee, volunteered to participate on one of defendant Patriot Coal Corporation's mine rescue team comprised of volunteers from a number of coal mine companies.

7. The Patriot mine rescue team had regular meetings on the second Monday of every month and would visit a mine site or other location to practice mine rescue techniques and drills.

8. The mine rescue team utilized a van to travel to the various mine sites or other locations as described above.

9. Defendant Patriot's mine rescue team, as described herein, was supervised by its agent, employee and servant, David Blankenship.

10. On or about May 9, 2011, the mine rescue team, including the plaintiff, had traveled to a Boone County mine site to conduct mine rescue drills.

11. Upon arriving at the mine site, plaintiff exited the van and was standing behind it, while defendant Mitchell was unloading equipment from the van and otherwise using the van.

12. When Defendant Mitchell unloaded a self-contained self-rescuer (hereinafter “SCSR”) from the back of the van, he took hold of a rope hanger attached to the SCSR and pulled the rope hanger, causing the SCSR to sling backward on the rope and strike the plaintiff, causing serious bodily injury.

13. Defendant Mitchell and the other mine rescue team members were acting under the direction and control of Patriot’s employee, David Blankenship.

14. Defendant Patriot is liable for the negligence of its employee, David Blankenship, through the doctrine of *respondeat superior*.

15. At all times herein, Defendant Mitchell was an employee, agent and servant of Defendant Laurel.

16. Defendant Laurel is liable for the negligence of its employees through the doctrine of *respondeat superior*.

CAUSE OF ACTION

17. Plaintiff adopts and incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

18. At all times pertinent hereto, defendant Mitchell had a duty to unload equipment and otherwise use the mine rescue van in a safe and prudent manner so as to prevent injury to others around him.

19. Defendant Mitchell breached the duty of care he owed to the plaintiff by negligently and recklessly unloading an SCSR from the mine rescue van by taking hold of the

rope hanger attached to the SCSR and pulling it from the van and toward the plaintiff instead of safely unloading the SCSR by gripping the unit itself.

20. At all times pertinent hereto, defendant Laurel was responsible for and had a duty to ensure that its employees, including defendant Mitchell, was properly trained to unload equipment and otherwise work in a safe and prudent manner so as to prevent injury to others, including the plaintiff.

21. Defendant Laurel breached this duty of care by failing to properly train defendant Mitchell in how to safely unload equipment and otherwise work in a safe and prudent manner so as to prevent injury to others, including the plaintiff.

22. At all times pertinent hereto, defendant Patriot was responsible for and had a duty to ensure that its employee, David Blankenship, ensured that the mine rescue van was loaded, unloaded and otherwise used in a safe and prudent manner so as to prevent injury to others, including the plaintiff.

23. Defendant Patriot breached this duty of care when its employee, David Blankenship, failed to ensure that the mine rescue van was loaded, unloaded and was otherwise used in a safe and prudent manner so as to prevent injury to others, including the plaintiff.

24. As a direct and proximate result of defendants' negligence, as described above, plaintiff Jeffery D. Ryan suffered severe bodily injuries. These injuries have resulted in great pain and suffering to plaintiff's mind and body; have caused him to endure medical procedures, operations, medications and incur other medical expenses, lost wages and loss of enjoyment of life and will cause him to continue to suffer these damages in the future. Plaintiff's injuries are permanent and will become more disabling in the future.

25. As a further direct and proximate result of the conduct of the defendants, as described above, plaintiff Casey Ryan, has suffered the loss of her husband's affection and kindly services, has otherwise been damaged and will suffer these damages in the future.

PRAYER

WHEREFORE, plaintiffs, Jeffery D. Ryan and Casey Ryan, his wife, demand judgment from and against the defendants, as follows:

- a. Medical expenses, past and future;
- b. Pain and suffering, past and future;
- c. Lost wages, past and future;
- d. Loss of the ability to enjoy life, past and future;
- e. Emotional distress and mental anguish, past and future;
- f. Annoyance and inconvenience, past and future;
- g. Scarring and disfigurement;
- h. Attorney's fees, costs and expenses associated with prosecuting this action;
- i. Punitive damages;
- j. Pre-judgment and post-judgment interests; and,
- k. Any other relief to which the plaintiff appears to be entitled.

A TRIAL BY JURY IS DEMANDED ON ALL ISSUES SO TRIABLE.

**JEFFERY D. RYAN and
CASEY RYAN, his wife,
Plaintiffs,**

By Counsel

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