

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF MISSOURI
(ST. LOUIS)**

In Re:)
)
Patriot Coal Corporation,) Bankruptcy No.12-51502
)
Debtor.)

CREDITOR, HAWTHORN BANK’S, RESPONSE
TO THE DEBTOR’S FIFTH OMNIBUS OBJECTION
TO CLAIMS 31-1/23

COMES NOW Hawthorn Bank (hereinafter “Bank”), a creditor and party in interest, by and through its attorneys of record, and for its Response to the Claims Objection by the Debtor to Hawthorn Claim 31-1/23 in the amount of \$435,625.76, states to the Court as follows:

1. Debtor filed an objection to certain claims of Bank, which have been amended during the course of the bankruptcy proceeding claims 31-1/23 in the amount of \$435,625.76.
2. Bank originally filed these Claims based upon outstanding equipment leases with the Debtor by and through Somerset Capital Group Ltd. (hereinafter “Somerset”).
3. As part of the Claim attachments, Bank attached the Security Agreement from Somerset to Bank pledging the rights in the equipment as well as all rental payments and other amounts payable under the leases with Debtor for mining equipment. The documentation provided a security interest and an assignment that took place prior to the filing of bankruptcy.
4. Bank also was provided as of July 15, 2011 a Notice of Acknowledgment of Assignment indicating that payments under the leases would continue to Somerset subject to continuing payment by Debtor with Somerset disbursing to Bank unless or until there is a

default. A copy of the Notice and Acknowledgment is attached hereto as Exhibit "A" and made a part hereof by this reference. The Acknowledgment was executed by the Debtor and Somerset.

5. The sums owed to Bank are less than the amounts owed by Debtor to Somerset under the leases.

6. Bank acknowledges that Somerset has conveyed all monthly payments from Debtor as called for by the Acknowledgment and is current on the executory contracts.

7. Bank has a claim based upon the leases between Somerset and Debtor and the resulting security agreement and assignment and acknowledgment which is an obligation separate and apart from that of Somerset. In the event of default by Somerset, Bank has the right to collect directly from Debtors.

8. The Debtor's objection to the Claim of Bank is not appropriate in that Bank has rights based upon its documentation that are separate and apart from Somerset.

9. Debtor is bound by its Acknowledgment granted to Bank and cannot seek the expunging of this claim until Bank is paid in full.

10. Bank does not seek a double recovery and acknowledges that the payment by Debtor to Somerset results in the reduction of the claim of Bank; however, Bank has the right to maintain its claims, separate and apart from Somerset until Bank is paid in full.

11. Bank requests that the Court allow the Bank claim to remain, but show that it is to be reduced by all payments made by Debtor to Somerset and that are transferred to Bank. Bank asserts that application of payments in that fashion will give the Debtor proper credit and allow the claims of both Bank and Somerset and will recognize the fact that Somerset may have a resulting claim after Bank is paid in full.

12. A claim as defined in the Bankruptcy Code is to be given the broadest construction possible. See 11 U.S.C. § 101(5) and *Laws v. United Missouri Bank of Kansas City, N.A.*, 188 B.R. 263 (W.D.Mo. 1995).

13. An assignee of a lease has the right to assert a claim against the Debtor's estate. See *In re CP Holdings, Inc.*, 349 B.R. 189 (8th Cir. BAP (Mo.) 2006). An assignee, like a subrogee, has the right to stand in the shoes of the assignor and assert the claim. See *In re Lottes*, 226 B.R. 634 (Bkrcty.E.D.Mo. 1998). As such Bank stands in the shoes of Somerset and has the right to assert its claim up to the assigned value and Somerset can assert its claim for the same and any amount in excess of the amount assigned.

14. Bank requests that the Court deny the relief requested by the Debtor in the Fifth Omnibus Objection.

WHEREFORE, for the above and foregoing reasons Bank prays that the Court enter an Order overruling the claims objection by Debtors and for such other and further relief as the Court deems just in the premises.

LOWTHER JOHNSON, LLC

By: /s/ Lee J. Viorel
Lee J. Viorel, #36886MO
901 St. Louis Street, 20th Floor
Springfield, MO 65806
Office: (417) 866-7777
Fax No: (417) 866-1752
lviorel@lowtherjohnson.com

*Attorneys for Creditor,
Hawthorn Bank*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by electronic notice or by United States Mail, First Class postage prepaid, this 1st day of July, 2013, to:

U.S. Trustee
Office of the U.S. Trustee
111 S. Tenth St., Ste. 6353
St. Louis, MO 63102

Debtor's Attorney
David Polk & Wardwell
450 Lexington Ave.
New York, NY 10017

Debtor's Attorney
Robert G. McLusky
Jackson Kelly PPLC
500 Lee St. E., Ste. 1600
Charleston, WV 25301-3202

Debtor's Attorney
Bryan Cave LLP
211 N. Broadway, Ste. 3600
St. Louis, MO 63102

Debtor's Attorney
Steven J. Reisman
Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue
New York, NY 10178-0061

Creditor Committee
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036

Creditor Committee
Carmody MacDonald P.C.
120 S. Central Ave., Ste. 1800
St. Louis, MO 63105

/s/ Lee J. Viorel
Lee J. Viorel

NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

RE: Equipment Schedule Nos. 001, 002, 003, 004, 005 and 006 to the Master Lease Agreement dated May 15, 2009 ("the "Lease") between PATRIOT LEASING COMPANY LLC as Lessee ("Lessee") and SOMERSET CAPITAL GROUP, LTD. as Lessor ("Lessor").

Lessor hereby gives notice to Lessee that Schedule Nos. 001, 002, 003, 004, 005 and 006 to the Lease have been assigned by Lessor, and a security interest has been granted in the Equipment all as collateral security for the payment of certain indebtedness owed by Lessor to the Lender identified below.

Hawthorn Bank
321 W. Battlefield
Springfield, MO 65807

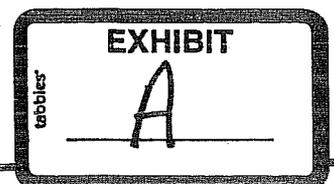
Lessee hereby acknowledges that:

- (i) the Lease is in full force and effect and Lessee is not in default thereunder;
- (ii) Lessee's obligation to make all payments as set forth in the Lease is unconditional as to the Lender and that it will make all of said payments without any right of setoff, defense or counterclaims;
- (iii) Lender shall enjoy all of Lessor's right and privileges under the Lease but shall not be chargeable with any obligations or liabilities under the Lease;
- (iv) any notice which Lessee is required to give Lessor under the Lease shall be sent to Lessor with a copy to Lender;
- (v) Lessee will not permit the Lease, Schedule Nos. 001, 002, 003, 004, 005 and 006 or any Riders or Amendments to the Lease or any Riders or Amendments to the Lease or any of the provisions contained therein to be amended without the prior written consent of Lender which consent shall not be unreasonably withheld or delayed; and

This Notice and Acknowledgement of Assignment is executed for the purpose of stating the terms and conditions upon which Lessor's right, title and interest in and to the Lease, Schedule Nos. 001, 002, 003, 004, 005 and 006 and the Equipment, the Rent or any other sums due or to become due by Lessee under the Lease, and any security interest or other encumbrance thereon, may be assigned and further for the purpose of inducing the Lender to make the loan.

The assignment referred to herein shall not be deemed to relieve Lessor from any of its obligations under the Lease. The parties hereto agree that this Notice and Acknowledgement of Assignment may be executed in counterparts.

Lender hereby agrees that it will not disturb the Lessee's quiet and peaceful possession of the Equipment that is the subject of the Lease and its unrestricted use of such Equipment for its intended purposes under the terms of the Lease so long as Lessee shall not be in default of any of the provisions of the Lease and shall not be in default of its obligations hereunder to make payment of all Rent to Lessor.



Lessor hereby agrees to continue to invoice Lessee for all monies due or to become due under Schedule Nos. 001, 002, 003, 004, 005 and 006 and Lessee hereby agrees to continue to make payments of any and all monies due or to become due to Lessor thereunder, until Lender instructs Lessee otherwise in writing.

Regarding Schedule No. 001, as of July 15, 2011 there are 28 payments of \$27,226.61 due to Lender.

Regarding Schedule No. 002, as of July 15, 2011 there are 28 payments of \$3,109.67 due to Lender.

Regarding Schedule No. 003, as of July 15, 2011 there are 28 payments of \$11,850.56 due to Lender.

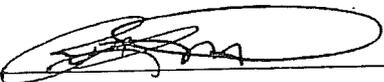
Regarding Schedule No. 004, as of July 15, 2011 there are 28 payments of \$20,030.32 due to Lender.

Regarding Schedule No. 005 as of July 15, 2011 there are 28 payments of \$6,700.26 due to Lender.

Regarding Schedule No. 006, as of July 15, 2011 there are 28 payments of \$5,737.54 due to Lender.

IN WITNESS WHEREOF, the parties have executed this Notice and Acknowledgement of Assignment as of this 15th day of July, 2011.

LESSEE:
PATRIOT LEASING COMPANY LLC

BY: 

NAME: Robert L. Mead
Vice-President & Treasurer

TITLE: _____

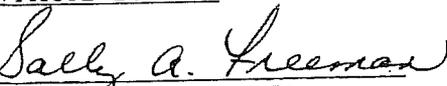
LESSOR:
SOMERSET CAPITAL GROUP, LTD.

BY: 

NAME: Keely J. Woronick
Assistant Corporate Secretary

TITLE: _____

LENDER:
HAWTHORN BANK

BY: 

NAME: SALLY A. FREEMAN

TITLE: SENIOR VICE-PRESIDENT