

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11

**Case No. 12-51502-659
(Jointly Administered)**

Objection Deadline:

**September 17, 2013 at 4:00 p.m.
(prevailing Central Time)**

Hearing Date (if necessary):

**September 24, 2013 at 10:00
a.m.
(prevailing Central Time)**

Hearing Location:

Courtroom 7 North

**NOTICE AND MOTION OF PATRIOT COAL CORPORATION,
PATRIOT LEASING COMPANY LLC AND CATENARY COAL
COMPANY, LLC FOR AUTHORIZATION TO ASSUME
CERTAIN EQUIPMENT LEASES PURSUANT TO 11. U.S.C. § 365**

PLEASE TAKE NOTICE that this motion is scheduled for hearing on September 24, 2013, at 10:00 a.m. (prevailing Central Time), in Bankruptcy Courtroom Seventh Floor North, in the Thomas F. Eagleton U.S. Courthouse, 111 South Tenth Street, St. Louis, Missouri 63102.

**WARNING: ANY RESPONSE OR OBJECTION TO THIS MOTION
MUST BE FILED WITH THE COURT BY 4:00 P.M. (PREVAILING CENTRAL
TIME) ON SEPTEMBER 17, 2013. 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.**

¹ The Debtors are the entities listed on Schedule 1 attached hereto. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

**MOTION OF PATRIOT COAL CORPORATION,
PATRIOT LEASING COMPANY LLC AND CATENARY COAL
COMPANY, LLC FOR AUTHORIZATION TO ASSUME
CERTAIN EQUIPMENT LEASES PURSUANT TO 11. U.S.C. § 365**

Patriot Coal Corporation (“**Patriot**”), Patriot Leasing Company LLC (“**PLC**”) and Catenary Coal Company, LLC (“**Catenary**,” and together with PLC, the “**Lessees**”), each a debtor and debtor in possession in these chapter 11 proceedings, respectfully represent:

Relief Requested

1. Pursuant to sections 105(a), 363 and 365(a) of the title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Rules**”), the Lessees hereby seek the entry of a stipulation and order (the “**Proposed Stipulation and Order**”)¹ authorizing the Lessees to assume the Leases (as defined below) and make certain payments in connection therewith.

Background and Jurisdiction

2. On July 9, 2012 (the “**Petition Date**”), each Debtor commenced with the United States Bankruptcy Court for the Southern District of New York (the “**SDNY Bankruptcy Court**”) a voluntary case under chapter 11 of the Bankruptcy Code. On December 19, 2012, the SDNY Bankruptcy Court entered an order transferring these chapter 11 cases to this Court (the “**Transfer Order**”) [ECF No. 1789].² The Debtors are authorized to operate their businesses and manage their properties as debtors in

¹ The Proposed Stipulation and Order granting the relief requested in this Motion will be provided to the Core Parties (as defined below). A copy of the Proposed Stipulation and Order will be available at www.patriotcaseinfo.com/orders.php.

² Pursuant to the Transfer Order, all orders previously entered in these chapter 11 cases remain in full force and effect in accordance with their terms notwithstanding the transfer of venue.

possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the SDNY Bankruptcy Court’s Joint Administration Order entered on July 10, 2012 [ECF No. 30].

3. Additional information about the Debtors’ businesses and the events leading up to the Petition Date can be found in the Declaration of Mark N. Schroeder pursuant to Local Bankruptcy Rule 1007-2 of the SDNY Bankruptcy Court, filed on July 9, 2012 [ECF No. 4], which is incorporated herein by reference.

4. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relevant Facts

5. Prior to the Petition Date, PLC and Siemens Financial Services, Inc. (“**Siemens**”) entered into a Master Equipment Lease Agreement dated November 10, 2009 together with thirty (30) individual Leasing Schedules that were entered into at different times (collectively, the “**PLC Leases**”), pursuant to which Siemens leases to PLC certain coal mining equipment described in the PLC Leases. All obligations of PLC under the PLC Leases were guaranteed by Patriot pursuant to forms of guaranty attached to each PLC Lease. Since the Petition Date, PLC rejected two (2) of the PLC Leases pursuant to an order entered on November 27, 2012 [ECF No. 1628] (the “**Rejected Leases**”), but has not yet assumed or rejected the remaining twenty-eight (28) PLC Leases (the “**Remaining PLC Leases**”), each of which is identified on Exhibit A to the Proposed Stipulation and Order.

6. Prior to the Petition Date, Catenary and Siemens entered into a Master Equipment Lease Agreement dated April 30, 2004 and a Leasing Schedule (together, the “**Catenary Lease**” and, together with the Remaining PLC Leases, the “**Leases**”), pursuant to which Siemens leases to Catenary certain equipment described in the Catenary Lease, which is summarized in Exhibit B to the Proposed Stipulation and Order.

7. Siemens and the Lessees have agreed that the amount to be paid to cure all prepetition defaults under the Leases shall be \$57,377.87,³ as more fully detailed in the Proposed Stipulation and Order.

8. By virtue of making the payments as and when due under the Proposed Stipulation and Order and otherwise complying with the terms of the Leases as amended by the Stipulation and Order, the Parties have satisfied all of their obligations under section 365(b)(1) of the Bankruptcy Code with respect to the assumption of the Leases.

Basis for Relief

9. The Lessees reviewed alternatives regarding the acquisition or leasing of replacement equipment and determined that entering into the Proposed Stipulation and Order would best serve their operational needs and provide the most value for the Lessees’ estates. Section 365(a) of the Bankruptcy Code provides that a debtor-in-possession may, upon Court approval, assume or reject executory contracts. 11 U.S.C. § 365(a). The assumption or rejection of an executory contract by a debtor is subject to review under the business judgment standard. *See In re Gateway Apparel, Inc.*, 210 B.R. 567, 570 (Bankr. E.D. Mo. 1997).

³ This amount does not include any rejection damages that Siemens believes are owed in connection with the Rejected Leases.

10. The business judgment standard is satisfied when a debtor shows that assumption or rejection of an executory contract will enhance the debtor's estate. *See In re Food Barn Stores, Inc.*, 107 F.3d 558, 567, n. 16 (8th Cir. 1997) ("Where the trustee's request is not manifestly unreasonable or made in bad faith, the court should normally grant approval '[a]s long as the [proposed action] appears to enhance [the] debtor's estate'"). Courts review the effects of assumption or rejection of an executory contract on the debtor, the implications to the counterparty, the benefit to unsecured creditors and the significance of the contract to the debtor's reorganization in determining whether the business judgment test has been satisfied. *See Gateway Apparel*, 210 B.R. at 570.

11. If the debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an executory contract. *See, e.g., NLRB v. Bildisco and Bildisco*, 465 U.S. 513, 523 (1984); *Group of Institutional Investors v. Chicago M. St. P. & P.R.R. Co.*, 318 U.S. 523 (1943); *Food Barn Stores*, 107 F.3d at 567, n. 16.

12. Under the Leases, the Lessees rent various pieces of coal mining equipment from Siemens that are critical to their business operations. After reviewing the Leases and their current and planned mining activities, the Lessees determined, in an exercise of their business judgment, that assumption of the Leases is necessary and appropriate at this time. The Proposed Stipulation and Order provides that the Lessees will pay 60% of the pre-petition amounts owed under the Leases, generating a savings to the Lessees of approximately \$40,000.

13. In addition, based on an analysis of their operational needs, the Debtors have determined to exercise the "early buyout" option with respect to certain of the

Leases, as detailed on Exhibits A and B to the Proposed Stipulation and Order (the “**Early Buyout Leases**”). The Proposed Stipulation and Order provides that the Lessees shall make certain payments in respect of the Early Buyout Leases within 5 days after entry of the Proposed Stipulation and Order (the “**Effective Date**”), and that certain other payments will be deferred to the first and second anniversaries of the Effective Date. In the aggregate, the Lessees expect to defer approximately \$1 million in payments (which amounts will be paid over three years) to Siemens pursuant to the Proposed Stipulation and Order.

14. The Proposed Stipulation and Order does not affect any claims filed by Siemens on account of rejection damages for the Rejected Leases, and such claims and any related defenses are expressly preserved.

15. In light of the foregoing and the savings realized by the Lessees from the assumption of the Leases, the Lessees submit that entering into the Proposed Stipulation and Order is a proper exercise of the Lessees’ business judgment and is in the best interests of their estates.

Objections

16. Any objection to the relief requested in this Motion must be filed on or before 4:00 p.m. Central Time on September 17, 2013 (the “**Objection Deadline**”) and served on (a) the Chambers of the Honorable Kathy A. Surratt-States, United States Bankruptcy Court for the Eastern District of Missouri, 111 South 10th Street, 4th Floor, St. Louis, Missouri 63102, (b) counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick, (c) conflicts counsel to the Debtors, Curtis, Mallet-Prevost, Colt & Mosle

LLP, 101 Park Avenue, New York, New York 10178, Attn: Steven J. Reisman and Michael A. Cohen, (d) local counsel to the Debtors, Bryan Cave, 211 North Broadway, Suite 3600, St. Louis, Missouri, Attn: Lloyd A. Palans and Brian C. Walsh, (e) the Office of the United States Trustee for the Eastern District of Missouri, 111 South 10th Street, Suite 6.353, St. Louis, Missouri 63102, Attn: Leonora S. Long and Paul A. Randolph, (f) Kramer, Levin, Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Thomas Moers Mayer, Adam C. Rogoff and Gregory G. Plotko, counsel to the official committee of unsecured creditors in these cases (the “**Committee**”), (g) local counsel to the Committee, Carmody MacDonald P.C., 120 South Central Avenue, St. Louis, Missouri 63105-1705, Attn: Gregory D. Willard and Angela L. Schisler; (h) the Debtors’ authorized claims and noticing agent, Patriot Coal Corporation, c/o GCG, Inc., P.O. Box 9898, Dublin, Ohio 43017-5798; (i) counsel for the administrative agents for the Debtors’ postpetition lenders, (1) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia Goldstein and Joseph Smolinsky and (2) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Margot B. Schonholtz and Ana Alfonso; (j) counsel to Siemens, Reed Smith LLP, 2500 One Liberty Place, 1650 Market Street, Philadelphia, Pennsylvania 19103, Attn: Claudia Z. Springer.

Notice

17. Consistent with the Order Granting Debtors’ Motion for an Order Establishing Certain Notice, Case Management and Administrative Procedures entered on March 22, 2013 [ECF No. 3361] (as may be amended, the “**Case Management Order**”), the Debtors will serve notice of this Motion on (a) the Core Parties and (b) the

Non-ECF Service Parties (as those terms are defined in the Case Management Order). All parties who have requested electronic notice of filings in these cases through the Court's ECF system will automatically receive notice of this motion through the ECF system no later than the day after its filing with the Court. A copy of this Motion and any order approving it will also be made available on the Debtors' Case Information Website (located at www.patriotcaseinfo.com). A copy of the Proposed Stipulation and Order will be provided to the Core Parties, and will be available at www.patriotcaseinfo.com/orders.php (the "**Patriot Orders Website**"). The Proposed Stipulation and Order may be modified or withdrawn at any time without further notice. If any significant modifications are made to the Proposed Stipulation and Order, an amended Proposed Stipulation and Order will be made available on the Patriot Orders Website, and no further notice will be provided. In light of the relief requested, the Debtors submit that no further notice is necessary. Pursuant to paragraph 14 of the Case Management Order, if no objections are timely filed and served in accordance therewith, the relief requested herein may be entered without a hearing.

No Prior Request

18. The Debtors have not previously sought the relief requested herein from this or any other court.

19. WHEREFORE the Debtors respectfully request the Court grant the Debtors the relief requested herein and such other and further relief as is just and proper.

Dated: August 7, 2013
New York, New York

Respectfully submitted,

DAVIS POLK & WARDWELL LLP

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-and-

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Schedule 1
(Debtor Entities)

1. Affinity Mining Company
2. Apogee Coal Company, LLC
3. Appalachia Mine Services, LLC
4. Beaver Dam Coal Company, LLC
5. Big Eagle, LLC
6. Big Eagle Rail, LLC
7. Black Stallion Coal Company, LLC
8. Black Walnut Coal Company
9. Bluegrass Mine Services, LLC
10. Brook Trout Coal, LLC
11. Catenary Coal Company, LLC
12. Central States Coal Reserves of Kentucky, LLC
13. Charles Coal Company, LLC
14. Cleaton Coal Company
15. Coal Clean LLC
16. Coal Properties, LLC
17. Coal Reserve Holding Limited Liability Company No. 2
18. Colony Bay Coal Company
19. Cook Mountain Coal Company, LLC
20. Corydon Resources LLC
21. Coventry Mining Services, LLC
22. Coyote Coal Company LLC
23. Cub Branch Coal Company LLC
24. Dakota LLC
25. Day LLC
26. Dixon Mining Company, LLC
27. Dodge Hill Holding JV, LLC
28. Dodge Hill Mining Company, LLC
29. Dodge Hill of Kentucky, LLC
30. EACC Camps, Inc.
31. Eastern Associated Coal, LLC
32. Eastern Coal Company, LLC
33. Eastern Royalty, LLC
34. Emerald Processing, L.L.C.
35. Gateway Eagle Coal Company, LLC
36. Grand Eagle Mining, LLC
37. Heritage Coal Company LLC
38. Highland Mining Company, LLC
39. Hillside Mining Company
40. Hobet Mining, LLC
41. Indian Hill Company LLC
42. Infinity Coal Sales, LLC
43. Interior Holdings, LLC
44. IO Coal LLC
45. Jarrell's Branch Coal Company
46. Jupiter Holdings LLC
47. Kanawha Eagle Coal, LLC
48. Kanawha River Ventures I, LLC
49. Kanawha River Ventures II, LLC
50. Kanawha River Ventures III, LLC
51. KE Ventures, LLC
52. Little Creek LLC
53. Logan Fork Coal Company
54. Magnum Coal Company LLC
55. Magnum Coal Sales LLC
56. Martinka Coal Company, LLC
57. Midland Trail Energy LLC
58. Midwest Coal Resources II, LLC
59. Mountain View Coal Company, LLC
60. New Trout Coal Holdings II, LLC
61. Newtown Energy, Inc.
62. North Page Coal Corp.
63. Ohio County Coal Company, LLC
64. Panther LLC
65. Patriot Beaver Dam Holdings, LLC
66. Patriot Coal Company, L.P.
67. Patriot Coal Corporation
68. Patriot Coal Sales LLC
69. Patriot Coal Services LLC
70. Patriot Leasing Company LLC
71. Patriot Midwest Holdings, LLC
72. Patriot Reserve Holdings, LLC
73. Patriot Trading LLC
74. PCX Enterprises, Inc.
75. Pine Ridge Coal Company, LLC
76. Pond Creek Land Resources, LLC
77. Pond Fork Processing LLC
78. Remington Holdings LLC
79. Remington II LLC
80. Remington LLC
81. Rivers Edge Mining, Inc.
82. Robin Land Company, LLC
83. Sentry Mining, LLC
84. Snowberry Land Company
85. Speed Mining LLC
86. Sterling Smokeless Coal Company, LLC
87. TC Sales Company, LLC
88. The Presidents Energy Company LLC
89. Thunderhill Coal LLC
90. Trout Coal Holdings, LLC
91. Union County Coal Co., LLC
92. Viper LLC
93. Weatherby Processing LLC
94. Wildcat Energy LLC
95. Wildcat, LLC
96. Will Scarlet Properties LLC
97. Winchester LLC
98. Winifrede Dock Limited Liability Company
99. Yankeetown Dock, LLC