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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI

Case No. 12-51502

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In the Matter of:

PATRIOT COAL CORPORATION, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court  
111 South 10th Street  
4th Floor  
St. Louis, Missouri

September 24, 2013  
10:12 AM

B E F O R E:  
HON. KATHY A. SURRETT-STATES  
CHIEF U.S. BANKRUPTCY JUDGE

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Motion for Authorization to (i) Assume or (ii) Reject Unexpired  
Leases of Nonresidential Real Property by Debtor (1995)

Third Omnibus Objection to Claims by Debtor (3992)

Fifth Omnibus Objection to Claims 19 and other Filed by Debtor  
(4181)

Motion for Relief from Stay by Gary Hudson (4254)

Tenth Omnibus Objection to Claims 1288 and Others (Exh A) by  
Debtor (4331)

Motion to Assume Lease or Executory Contract by Debtor (4439)

Motion to Amend Proof of Claim, or Extension of the Deadline to  
Timely File Claim by Creditor Michelin North America, Inc.  
(4445)

Motion for Order Approving Settlement and Amendment to  
Equipment Lease and Authorizing Exercise of Early Buyout Option  
as Modified Therein Filed by Debtor (4455)

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Omnibus Objection to Claims 914 and Others Filed by Norfolk  
Southern Railway Co. Filed by Debtor (4525)

Fourteenth Omnibus Objection to Claims 539 and Others (Books  
and Records Objections) Filed by Debtor (4256)

Fifteenth Omnibus Objection to Claims 948 and Others (Redundant  
Claims) Filed by Debtor

Application and Motion for Entry of Stipulated Order  
Authorizing the Official Committee of Unsecured Creditors to  
Retain H5 as Ordinary Course Professionals Filed by Creditor  
Committee (4624)

Patriot Coal Corporation vs. Peabody Holding Company, LLC,  
Motion for Preliminary Injunction by Plaintiff (3)

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P R O C E E D I N G S

THE CLERK: Please rise. The United States Bankruptcy Court for the Eastern District of Missouri is now in session, the Honorable Kathy A. Surratt-States presiding.

THE COURT: Good morning. Please be seated.

IN UNISON: Good morning, Your Honor.

THE COURT: Good morning. All right. This is the status hearing in the Patriot Coal cases. Let me first get appearances in the courtroom, please.

MR. WALSH: Good morning, Your Honor. Brian Walsh and Laura Hughes for the debtors in the main case.

THE COURT: Good morning.

MR. WILLARD: Good morning, Your Honor, may it please the Court. Greg Willard and Angie Schisler on behalf of the official unsecured creditors' committee. Also, by phone, is Mr. Blank from the Kramer Levin firm. I will not be participating in motion 4624, Your Honor. Thank you.

THE COURT: All right, thank you, and good morning.

MS. LONG: Leonora Long on behalf of the United States Trustee.

THE COURT: Good morning.

MS. LONG: Good morning, Your Honor.

MR. COUSINS: Good morning, Your Honor. Steven Cousins of Armstrong Teasdale here today on behalf of Peabody Energy Corporation.

1 THE COURT: Good morning.

2 MR. COUSINS: Thank you.

3 MR. LEPPERT: Good morning, Your Honor, Matthew  
4 Leppert with Schuchat Cook & Werner on behalf of United Mine  
5 Workers of America.

6 THE COURT: Good morning.

7 MR. SCHERCK: Good morning, Your Honor. Randy Scherck  
8 of Lathrop & Gage, representing Bank of America as the agent  
9 for the second out DIP lender. On the phone is our lead  
10 counsel, Margot Schonholtz from the Willkie Farr & Gallagher  
11 firm.

12 THE COURT: Good morning.

13 MR. SCHERCK: Thank you.

14 THE COURT: Thank you. All right, and then on the  
15 phone we have Mr. Resnick and Mr. Reisman on behalf of the  
16 debtors.

17 MR. RESNICK: Good morning, Your Honor.

18 THE COURT: Good morning. And Mr. Blank on behalf of  
19 the creditors' committee.

20 MR. BLANK: Good morning, Your Honor.

21 THE COURT: Good morning. Ms. Schonholtz on behalf of  
22 Bank of America.

23 MS. SCHONHOLTZ: Good morning, Your Honor.

24 THE COURT: Good morning. Ms. Custodio on behalf of  
25 Citibank.

1 MS. CUSTODIO: Yes, good morning, Your Honor.

2 THE COURT: Good morning. And Mr. Peterson on behalf  
3 of Ernst & Young. Mr. Peterson? No. All right.

4 And Ms. Turner on behalf of Argonaut Insurance.

5 MS. TURNER: Good morning, Your Honor.

6 THE COURT: Good morning. And Mr. Gibbons on behalf  
7 of ACE America Insurance.

8 MR. GIBBONS: Good morning, Your Honor.

9 THE COURT: Good morning. All right. Then, Mr.  
10 Walsh, Ms. Hughes, we can proceed down the docket as it is  
11 printed.

12 All right. First then is the motion for authorization  
13 to assume or reject unexpired leases of nonresidential real  
14 property of the debtor.

15 MS. HUGHES: Yes, thank you, Your Honor. Pursuant to  
16 an agenda that the debtors filed on the 20th, which I guess was  
17 Friday, or maybe Thursday, that matter's going to be continued  
18 to October 22nd, please.

19 THE COURT: All right. We'll continue that matter to  
20 October 22nd. Thank you.

21 Then there's the third omnibus objection to claims by  
22 debtor.

23 MS. HUGHES: Yes, Your Honor. There there's one  
24 outstanding claim objection, and so as to that single creditor,  
25 which is Pocahontas Land we would request that the Court

1 continue the hearing to October 22nd.

2 THE COURT: All right.

3 MS. HUGHES: The remaining ones have been resolved.

4 And to the extent required we'll submit a supplemental order.

5 THE COURT: All right. Then I'll continue that matter  
6 then for the one remaining claim to October 22nd.

7 MS. HUGHES: Thank you.

8 THE COURT: Thank you. Then we have the fifth omnibus  
9 objections to claims.

10 MS. HUGHES: Yes. Similarly, several of these have  
11 been resolved and others will require to be continued to the  
12 October 22nd hearing, if that's okay.

13 THE COURT: All right.

14 MS. HUGHES: The remaining creditors would be Hulin  
15 Cook, David Cox and Continental Bank.

16 THE COURT: All right.

17 MS. HUGHES: And, again, to the extent that the others  
18 have been resolved we'll submit a supplemental order.

19 THE COURT: All right. And we'll continue then to  
20 those three matters and I'll look for an order then on the  
21 other claims.

22 MS. HUGHES: Thank you.

23 THE COURT: Thank you. Let's see, the motion for  
24 relief from stay by Gary Hudson, that order's already been  
25 entered.

1 MS. HUGHES: Yes.

2 THE COURT: Then there's the tenth omnibus objection  
3 to claims.

4 MS. HUGHES: Again, here, the Court entered an order  
5 sustaining the objections as to all the claims except one.  
6 That one that we received a response on we're attempting to  
7 negotiate a settlement of, so we'll ask that that be continued  
8 to October 22nd.

9 THE COURT: All right. Then I'll continue that matter  
10 to October 22nd.

11 Then there was a motion to assume lease or executory  
12 contracts; that order has been entered.

13 MS. HUGHES: Yes, Your Honor.

14 THE COURT: Then there's a motion for order approving  
15 settlement, an amendment to equipment lease. I think I just  
16 sent that order over yesterday, late in the evening, so that'll  
17 be entered.

18 MS. HUGHES: Yes, thank you.

19 THE COURT: All right, thank you.

20 Then that brings us to the omnibus objections to  
21 claims 914 and others.

22 MS. HUGHES: Yes. And so the single creditor there is  
23 Norfolk Southern Railway. And there we have reached a  
24 settlement, but we have not yet had a chance to agree on the  
25 form of a proposed order. So I would ask that the Court

1 continue that to the 22nd, but we expect to upload an order  
2 before then.

3 THE COURT: All right. Then I'll continue that matter  
4 to October 22nd.

5 All right. Then we have the fourteenth omnibus  
6 objections to claims.

7 MS. HUGHES: Here, this is the first time this has  
8 come before the Court. We received a few objections from --  
9 I'm sorry, responses from creditors to the objection. And so  
10 expect as to those creditors that responded and we've not yet  
11 had a chance to negotiate a settlement of those claims, we  
12 would ask that the Court sustain the objection to the claims  
13 that are put into the pleading, but as to certain creditors,  
14 which are -- I'd like to announce them please.

15 THE COURT: Um-hum.

16 MS. HUGHES: Green Leaf, Lincoln Leasing, West  
17 Virginia Electric Industries, and CW Electric. As to the other  
18 claims involved we'd like the Court to sustain the objection.

19 THE COURT: All right. Then I'll sustain the  
20 objections except to those creditors that you have listed and  
21 then we'll continue as to those creditors listed, then, to  
22 October 22nd.

23 MS. HUGHES: Yes, thank you.

24 THE COURT: Thank you. Then we have the fifteenth  
25 omnibus objections to claims.

1 MS. HUGHES: Yes. And, again, there we've received a  
2 few responses from creditors, and so we'd ask that the Court  
3 sustain the objection except as to those that we'll continue  
4 and attempt to negotiate. And so for the creditors that we  
5 would ask that the Court not include in the order it is Alpha  
6 Engineering, CSX Transportation, Environmental Resources  
7 Management Consulting, Industrial Contracting of Fairmont,  
8 Incorporated, West Virginia Electric Industries, and Salem  
9 Electric Company.

10 THE COURT: All right. Then I'll sustain the  
11 objection except for those creditors that you announced here  
12 today. And we'll continue the matter to October the 22nd to  
13 those creditors.

14 MS. HUGHES: Thank you.

15 THE COURT: Thank you.

16 MS. HUGHES: And then --

17 THE COURT: Then we have the sixteenth omnibus  
18 objection to the claims.

19 MS. HUGHES: Yes. Again, this is the first time it's  
20 come before the Court. Here, we received no responses, and so  
21 I would just ask that the Court sustain the objection.

22 THE COURT: All right. And, likewise, the Court's  
23 seen no written responses to those objections, so we'll sustain  
24 those objections.

25 All right. Then we come to the supplemental

1 application to employ Ernst & Young.

2 MS. HUGHES: Yes. This is an expansion of the  
3 retention of Ernst & Young to include another audit. There  
4 have been no responses, and so we would request that the Court  
5 enter -- grant the --

6 THE COURT: All right.

7 MS. HUGHES: -- application.

8 THE COURT: I have just a couple of questions, Ms.  
9 Hughes. I believe you indicated that this is a different audit  
10 than the other auditing services that they're doing.

11 MS. HUGHES: It is. I believe that the previous one  
12 that the Court approved was for a nonunion plan and that this  
13 one is for a union plan.

14 THE COURT: All right. And then it contemplates that  
15 there might be some special audit-related projects. I gather  
16 from reading the engagement letter those are things that they  
17 don't know but that might come up in the process of the audit.

18 MS. HUGHES: That is my understanding that it would  
19 give the -- that it would give the people working on the  
20 project a little bit of freedom to do further investigations as  
21 needed, to support the findings in the audit. However, I  
22 believe that there is counsel for Ernst & Young on the phone  
23 and so I'm sure that he could be in a better position to answer  
24 these questions if the Court requires.

25 MR. PETERSON: Good morning, Your Honor. This is Lars

1 Peterson, counsel for Ernst & Young on the telephone. And,  
2 also, on the line this morning is Michael Hickenbotham, who is  
3 the partner at Ernst & Young, most knowledgeable about this  
4 engagement.

5 And the matter -- as an initial matter I'd like to say  
6 that we are having some difficulty hearing the Court on the  
7 telephone. I think I heard your comments to counsel a moment  
8 ago or your questions about the scope of the services.

9 THE COURT: Correct.

10 MR. PETERSON: But I'm not sure whether Mr.  
11 Hickenbotham was able to hear them as well.

12 THE COURT: My only question was about the -- they  
13 line out that there's some special audit-related projects that  
14 wouldn't be part of the flat fee in there, and it sounds as  
15 though those are things that may come up in the process of the  
16 audit that may need to be researched.

17 MR. PETERSON: Yes, Your Honor. There are two parts  
18 to the fee structure. There's flat fee services that are  
19 described as the plan audit services, and then there are hourly  
20 fee services that are described as the special plan audit  
21 related services. And Mr. Hickenbotham, who is on the line,  
22 may be able to answer any questions about the distinction  
23 there.

24 THE COURT: All right. Mr. Hickenbotham, I'm just  
25 trying to make sure I understand the application.

1 MR. HICKENBOTHAM: Yes, Your Honor. As it was  
2 described just a moment ago, those are there in the event there  
3 is some investigation that needs to be done on special matters,  
4 but it's unlikely that that would take place, but that is the  
5 same structure as the nonunion 401(k) plan that was completed  
6 earlier this summer, and this is the union 401(k) plans that  
7 she described a moment ago.

8 THE COURT: All right, thank you.

9 All right. And then my only other question is, Ms.  
10 Hughes, in paragraph 14 of the supplemental application it  
11 talks about including any reasonable fees for Ernst & Young's  
12 legal counsel. However, the engagement letter only makes  
13 reference to recovery of attorney's fees and costs if there is  
14 a -- if Ernst & Young is subpoenaed or involved in some other  
15 legal process to produce documents. Is that what is  
16 contemplated in the application when it talks about reasonable  
17 fees and expenses for Ernst & Young's legal counsel?

18 MS. HUGHES: You know what, I think it's probably  
19 better to defer to Mr. Peterson on that.

20 THE COURT: All right. Mr. Peterson.

21 MR. PETERSON: Thank you, Your Honor. Yes, the  
22 description in the engagement letter would be the controlling  
23 letter which -- about what is envisioned there.

24 THE COURT: All right.

25 MR. PETERSON: In terms of expenses of legal counsel.

1 Ordinarily, those would not be part of the fee structure here,  
2 and it's solely under the circumstances that are described in  
3 the engagement letter that that could come into play.

4 THE COURT: All right, thank you.

5 All right, then I think that answers all of my  
6 questions then. Thank you, Mr. Peterson and Mr. Hickenbotham.  
7 And then I will approve the application.

8 MR. PETERSON: Thank you, Your Honor.

9 MR. HICKENBOTHAM: Thank you.

10 THE COURT: Thank you.

11 All right. Then next on the docket is the motion for  
12 2004 examination for Arch Coal, that order has been entered.  
13 And, likewise, the motion for 2004 examination of ArcLight  
14 Capital Partners LLC, and that order has been entered.

15 Then we have motion to expedite hearing and motion for  
16 entry of order approving the settlement with ACE Companies.

17 MS. HUGHES: Yes, Your Honor, this refers to  
18 litigation in Boone County, West Virginia, that the debtors  
19 have been able to settle. And, so, the debtors request that  
20 the Court approve the terms of the settlement, which are  
21 recited in the order -- I'm sorry, in the motion. And I  
22 suppose to the extent that the Court has questions, I would  
23 probably defer to our colleagues at Davis Polk.

24 THE COURT: No, I don't believe I have any questions  
25 on that matter. All right, then I will approve, or I will

1 grant the motion then approving that settlement.

2 And then there's a motion to expedite the hearing and  
3 motion -- the application and motion for entry of a stipulated  
4 order authorizing the retention of H5 as ordinary course  
5 professional.

6 MS. HUGHES: Yes. And there I believe that Davis Polk  
7 will be handling that, please, Your Honor.

8 THE COURT: Oh, all right. All right. Then on the  
9 phone Mr. Resnick or Mr. Reisman on that applica -- that  
10 motion.

11 MR. WILLARD: Your Honor --

12 THE COURT: Yes.

13 MR. WILLARD: -- if I may.

14 THE COURT: You may.

15 MR. WILLARD: Greg Willard for the committee.

16 This was a committee application, and I think Mr.  
17 Blank at Kramer Levin if Your Honor has any questions, there  
18 were no objections, but I'm not handling that -- I'm not  
19 appearing on that --

20 THE COURT: All right.

21 MR. WILLARD: -- but procedurally, Mr. Blank if you  
22 have any questions.

23 THE COURT: All right.

24 MR. WILLARD: Otherwise, the matter may be taken as  
25 submitted.

1 THE COURT: All right. I did have just a couple of  
2 questions. Mr. Blank.

3 MR. BLANK: Good morning, Your Honor.

4 THE COURT: Good morning. I wanted to know -- I  
5 wasn't clear from the application, you know, it calls for -- it  
6 talks about retention under the previous nunc pro tunc order  
7 for ordinary course professionals, and I wasn't sure what date  
8 are we trying to employ H5 as of.

9 MR. BLANK: Your Honor, I apologize, we were having  
10 trouble hearing you. Would Mr. Willard mind repeating the  
11 question into the microphone at the podium.

12 THE COURT: Uh-oh, what's wrong with my mic. Try to  
13 turn it.

14 THE CLERK: (Inaudible)

15 THE COURT: Okay, Mr. Blank, can you hear me any  
16 better now?

17 MR. BLANK: Perfectly clear now, Your Honor.

18 THE COURT: Okay. I'm sorry about that. Okay.

19 So, Mr. Blank, my question is, I could not tell from  
20 the application as of what date are we trying to employ H5?  
21 You know it makes reference back to the nunc pro tunc order  
22 that was entered previously in the case for ordinary course  
23 professionals, but I wasn't sure what date.

24 MR. BLANK: Understood, Your Honor. We were trying to  
25 retain the nunc pro tunc to the original dates because the

1 initial retention was in a limited capacity as agreed with the  
2 UST.

3 THE COURT: Okay. So back to the February 2013 date?

4 MR. BLANK: Yes, Your Honor.

5 THE COURT: Okay. And then my other questions were,  
6 in their -- what is that, in the questionnaire that they filled  
7 out where it asked for a range of hourly rate there is but one  
8 set amount 385 dollars. Is there only one person that's going  
9 to be working on this, and that's their hourly rate, or are  
10 there other parties that might be working on the matter?

11 MR. BLANK: Your Honor, my understanding is that's the  
12 blended rate they were going to be using; it was going to be  
13 425 dollars.

14 THE COURT: Okay. Okay. And so --

15 MR. BLANK: I'm sorry, Your Honor, does that address  
16 your question?

17 THE COURT: Well, yes it did, in a different kind of  
18 way.

19 All right, let me see, what other questions did I have  
20 here, okay. That answers that.

21 All right. Ms. Magnus, did you have -- that takes  
22 care of all the issues that we discussed?

23 THE CLERK: Yes, Judge.

24 THE COURT: All right, thank you. All right.

25 Okay. Probably -- okay. Let me then take a brief

1 recess and let me look at a couple of things and I'll come back  
2 in on that application. We'll be in temporary recess.

3 (Recess from 10:29 a.m. until 10:55 a.m.)

4 THE CLERK: Please rise. Your Honor, we are back on  
5 the record.

6 THE COURT: All right, thank you. Be seated, please.

7 All right. And first I failed to -- I need to grant  
8 the motion to expedite the hearing by the creditors' committee.

9 As for the application and motion to employ H5 I have  
10 a few problems. One, the procedures of the nunc pro tunc order  
11 dated August 2nd of 2012 have not been followed in that the  
12 declaration and retention questionnaire -- I'm sorry, the  
13 declaration and the retention questionnaire were not filed with  
14 the Court. And I don't know if H5 has been included on any  
15 quarterly statements that had been filed regarding payment to  
16 ordinary course professionals, which, again, is required by the  
17 order; the nunc pro tunc order dated August the 2nd, 2012.

18 My second problem is the application lists no hourly  
19 rate, and the questionnaire attached lists 385 dollars as the  
20 rate, but then I was told here in court that the rate is really  
21 a blended rate of 425 dollars.

22 Therefore, what I will do is I'll approve the  
23 application but at a rate of 385 dollars, since that is what  
24 was included with the attachment to that application.

25 And let me just say again, counsel knows the

1 bankruptcy rules and the procedural orders that have been  
2 entered in this case that must be followed. In the future  
3 applications to employ professionals need to be filed with the  
4 Court prior to the professionals beginning their work.

5 MR. BLANK: Thank you, Your Honor.

6 THE COURT: All right, thank you.

7 All right then, I believe that takes care of  
8 everything on the docket today. The other matter in the  
9 adversary with the motion for the preliminary injunction has  
10 been continued by agreement of the parties to this Thursday at  
11 2 p.m.

12 All right, Mr. Walsh or Ms. Hughes, anything else on  
13 behalf of the debtors?

14 MR. WALSH: No, Your Honor, thank you.

15 THE COURT: All right, thank you.

16 Or, Mr. Resnick and Mr. Reisman, anything else from  
17 New York on behalf of the debtors?

18 MR. RESNICK: Not from me, Your Honor, thank you.

19 THE COURT: All right, thank you. All right, any  
20 other parties in the courtroom, any other matters?

21 All right, any other parties on the phone have any  
22 other matters?

23 All right, thank you. Then we'll be in recess. Thank  
24 you.

25 (Whereupon these proceedings were concluded at 10:57 AM)

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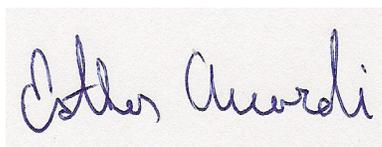
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C E R T I F I C A T I O N

I, Esther Accardi, certify that the foregoing transcript is a true and accurate record of the proceedings.



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ESTHER ACCARDI (CET\*\*D-485)  
AAERT Certified Electronic Transcriber  
eScribers  
700 West 192nd Street, Suite #607  
New York, NY 10040

Date: September 25, 2013

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UNITED STATES BANKRUPTCY COURT  
Eastern District of Missouri  
Thomas F. Eagleton U.S. Courthouse  
111 South Tenth Street, Fourth Floor  
St. Louis, MO 63102

In re: Debtor(s):  
Patriot Coal Corporation

Case No.: 12-51502 -A659

CHAPTER 11

**Notice of Filing of Transcript and of Deadlines Related to Restriction and Redaction**

To: All Persons of Record at Hearing

A transcript of the proceeding held on September 24, 2013 was filed on September 25, 2013.

The following deadlines apply:

If you wish to have personal data identifiers redacted from the transcript, a *Request for Transcript Redaction* must be filed within 7 days of the date of this notice: October 2, 2013. Personal data identifiers **include: social security numbers, financial account numbers, names of minor children, and dates of birth**. If no such request is filed within the allotted time, the Court will presume redaction of personal data identifiers is not necessary.

Any party seeking redaction shall file a *Statement of Transcript Redactions* identifying the location of the personal data identifiers sought to be redacted within 21 days of the date of this notice: October 16, 2013. The party filing the statement shall serve it by regular mail upon all parties at the hearing and shall include a Certificate of Service listing the date and parties served. The *Statement of Transcript Redactions* event will be restricted from public view and cannot be served electronically through the CM/ECF system. If no *Statement of Transcript Redactions* is filed within the allotted time, the Court will presume redaction of personal identifiers is not necessary.

Any party may file a response in opposition to the Statement within 7 days of the date the Statement is filed using the *Response to Statement of Transcript Redactions* event. If a response in opposition to the Statement is filed, the Court will rule on the matter. If a hearing is needed, the Court will send notice of hearing.

If a request for redaction is filed, the redacted transcript is due within 31 days of the date of this notice: October 28, 2013.

The transcript may be made available for remote electronic access upon expiration of the restriction period, which is 90 days from the date of filing of the transcript: December 24, 2013, unless extended by court order. However, during this 90-day period the transcript is available for viewing only during normal business hours at the Clerk's office.

Any questions regarding the transcript process should be directed to Matt Parker, Director of Courtroom Services, at (314) 244-4801.

FOR THE COURT:

/s/Dana C. McWay  
Clerk of Court

Dated: 9/25/13

**Copies Mailed To:**

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Rev. 12/10