

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE 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:

November 12, 2013 at 4:00 p.m.

(prevailing Central Time)

Hearing Date:

November 19, 2013 at 10:00 a.m.

(prevailing Central Time)

Hearing Location:

Courtroom 7 North

**NOTICE OF THE DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING
ASSUMPTION OF CERTAIN UNEXPIRED LEASES AND GUARANTY AND
APPROVING SETTLEMENT OF CLAIMS OF GENERAL ELECTRIC CAPITAL
CORPORATION**

PLEASE TAKE NOTICE that this motion is scheduled for hearing on November 19, 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 THIS COURT BY 4:00 P.M. (PREVAILING CENTRAL TIME) ON NOVEMBER 12, 2013. A COPY MUST BE PROMPTLY SERVED UPON THE UNDERSIGNED. FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THIS 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.

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING ASSUMPTION
OF CERTAIN UNEXPIRED LEASES AND GUARANTY AND APPROVING
SETTLEMENT OF CLAIMS OF GENERAL ELECTRIC CAPITAL CORPORATION**

Patriot Coal Corporation (“**Patriot Coal**”) and its affiliated debtors (together with Patriot Coal, the “**Debtors**”), pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. 9019, respectfully file this Motion for Entry of an Order² Authorizing Assumption of Certain Unexpired Leases and Guaranty and Approving Settlement of Claims of General Electric Capital Corporation (this “**Motion**”). In support of this Motion, the Debtors show this Court as follows:

Relief Requested

1. By this Motion, the Debtors request that this Court enter an order, pursuant to 11 U.S.C. § 365(b) and Fed. R. Bankr. P. 9019, (i) authorizing Debtor Patriot Leasing Company LLC (“**Patriot Leasing**”) to assume certain leases under an unexpired equipment lease and lease schedules related thereto, (ii) authorizing Debtor Patriot Coal to assume certain related guaranties and (iii) approving the settlement of certain related claims of General Electric Capital Corporation (“**GE Capital**”).

Jurisdiction

2. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

² A copy of the proposed order granting the relief requested in this Motion (the “**Proposed Order**”) will be provided to the Core Parties (as defined below) and GE Capital. A copy of the Proposed Order will also be available at: www.patriotcaseinfo.com.

Background

4. On July 9, 2012 (the “**Petition Date**”), each Debtor other than Brody Mining, LLC and Patriot Ventures LLC (collectively, the “**Initial Debtors**”) 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 the Initial Debtors’ chapter 11 cases to this Court (the “**Transfer Order**”) [ECF No. 1789]. Subsequently, Brody Mining, LLC and Patriot Ventures LLC (together, the “**New Debtors**”) each commenced its chapter 11 case by filing a petition for voluntary relief with this Court on September 23, 2013. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Initial Debtors’ cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the Joint Administration Order entered on July 10, 2012 [ECF No. 30], and the New Debtors’ cases are being jointly administered with the Initial Debtors’ cases pursuant to Bankruptcy Rule 1015(b) and the Order Directing Joint Administration of Chapter 11 Cases entered by this Court on September 27, 2013 in each of the New Debtors’ chapter 11 cases.

The Agreements

5. GE Capital leases a variety of equipment to Patriot Leasing pursuant to two master equipment lease agreements.

6. By a Master Lease Agreement, dated August 25, 2008, by and between GE Capital, as lessor, and Patriot Leasing, as lessee, and the associated equipment schedules, Patriot Leasing leased the equipment identified on 13 equipment schedules (collectively, as amended pursuant to

that certain Amendment to Master Lease Agreement, dated as of July 1, 2013, the “**August 2008 Agreement**”).

7. By a Master Equipment Lease Agreement, dated as of May 15, 2008, made by and between The Fifth Third Leasing Company (“**Fifth Third Leasing**”), as lessor, and Patriot Leasing, as lessee, and two associated equipment schedules (the Master Equipment Lease and Schedule 14 and 16 thereto are collectively, the “**May 2008 Agreement**”), Patriot Leasing leased the equipment identified therein. By a Continuing Guaranty, dated May 15, 2008 (the “**May 2008 Guaranty**”), the payment and performance of all of Patriot Leasing’s obligations under the May 2008 Agreement were absolutely and unconditionally guaranteed by Patriot Coal.

8. On or about June 29, 2010, Fifth Third Leasing assigned all of its rights and obligations under the May 2008 Agreement to Key Equipment Finance, Inc. (“**Key**”). Thereafter, on August 4, 2011, Key assigned all of its rights and obligations under the May 2008 Agreement to GE Capital. By reason of the foregoing, GE Capital, as successor in interest to Fifth Third Leasing and Key, is the lessor under the May 2008 Agreement. The August 2008 Agreement and the May 2008 Agreement are hereinafter collectively referred to as the “**Agreement**”.

9. Patriot Coal and GE Capital entered into that certain Corporate Guaranty, dated as of August 25, 2008 (the “**August 2008 Guaranty**”, and together with the May 2008 Guaranty and the Agreement, the “**Agreements**”), to guaranty payment of the obligations of Patriot Leasing under the Agreement.³

10. GE Capital has assigned the equipment schedules identified on Schedule 2 annexed hereto (hereinafter, the “**Assigned Schedules**”) to Flagstar Bank, FSB.

³ The May 2008 Guaranty and the August 2008 Guaranty are collectively referred to herein as the “**Guaranty**”.

11. On August 31, 2012, the Debtors filed a Notice of Rejection of Certain Executory Contracts and Unexpired Leases and the Abandonment of Expendable Property as Listed on Schedule “A” Attached Hereto [ECF No. 501] (the “**First Rejection Notice**”). Pursuant to the First Rejection Notice, Patriot Leasing sought to reject five (5) pieces of the equipment⁴ that were leased on one or more equipment schedules of the Agreement (the “**First Rejected Equipment Leases**”).

12. On October 12, 2012, the Debtors filed the Fourth Omnibus Notice of Rejection of Certain Executory Contracts and Unexpired Leases and the Abandonment of Expendable Property as Listed on Schedule “A” Attached Hereto [ECF No. 1212] (as amended on October 16, 2012 [ECF No. 1366] and October 25, 2012 [ECF No. 1487], the “**Fourth Rejection Notice**”). Pursuant to the Fourth Rejection Notice, Patriot Leasing sought to reject four (4) pieces of the equipment⁵ that were leased on one or more equipment schedules of the Agreement (the “**Fourth Rejected Equipment Leases**”).

13. On November 8, 2012, the Debtors filed the Sixth Omnibus Notice of Rejection of Certain Executory Contracts and Unexpired Leases and the Abandonment of Expendable Property as Listed on Schedule “A” Attached Hereto [ECF No. 1536] (the “**Sixth Rejection Notice**”). Pursuant to the Sixth Rejection Notice, Patriot Leasing sought to reject three (3) pieces of the equipment⁶ that were leased on one or more equipment schedules of the Agreement

⁴ Such equipment included (i) Mantrip 12 Passenger, MAC-12-AC-136, (ii) Mantrip-Electric, MAC-12-AC-137, (iii) Power Center 1500KVA Super Section w/Vacuum Switch, 36267-35652-1211, (iv) Joy 10SC32-56ABSH-5 Shuttle Car, ET17903 and (v) Cogar Feeder Breaker CF-56, A1-HD-DH, 08016.

⁵ Such equipment included (i) Stamler Feeder Breaker BF-14A-8-64C, Serial No. 98-SN14133, (ii) Stamler Feeder Breaker BF-14A-8-64C, Serial No. 14359, (iii) Brookville Tractor 15 Ton, Serial No. 9663 and (iv) Brookville Tractor 15 Ton, Serial No. 9664.

⁶ Such equipment included (i) Mining Control 600 KVA Belt Power Center, Serial No. 35485-88494-0808, (ii) ALLCO Forklist – Mini Trac, Serial No. 08-E9583 and (iii) Brookville Diesel Tractor 50 Ton, Serial No. 9667.

(the “**Sixth Rejected Equipment Leases**”, and together with the First Rejected Equipment Leases and the Fourth Rejected Equipment Leases, the “**Rejected Equipment Leases**”).

14. On November 20, 2012, the SDNY Bankruptcy Court entered (i) the Omnibus Order Approving the Rejection of Certain Executory Contracts and Unexpired Leases and the Abandonment of Certain Expendable Property [ECF No. 1607] (the “**First Rejection Order**”) and (ii) the Fourth Omnibus Order Approving the Rejection of Certain Executory Contracts and Unexpired Leases and the Abandonment of Certain Expendable Property [ECF No. 1608] (the “**Fourth Rejection Order**”). Pursuant to the First Rejection Order and the Fourth Rejection Order, the SDNY Bankruptcy Court approved the rejection of the First Rejected Equipment Leases and the Fourth Rejected Equipment Leases, respectively.

15. On December 5, 2012, the SDNY Bankruptcy Court entered the Omnibus Order Approving the Rejection of Certain Executory Contracts and Unexpired leases and the Abandonment of Certain Expendable Property [ECF No. 1676] (“**Sixth Rejection Order**”). Pursuant to the Sixth Rejection Order, the SDNY Bankruptcy Court approved the rejection of the Sixth Rejected Equipment Leases.

16. GE Capital filed two (2) proofs of claim, E.D. Mo. Claim Nos. 821-1 and 825-1; GCG Claim Nos. 1359 and 1365 (together, the “**Proofs of Claim**”), against Patriot Leasing and Patriot Coal, respectively. Each Proof of Claim asserts an unsecured claim of \$23,243,633.92 in respect of the equipment leased under the Agreement, for a total of \$46,485,267.84.

17. On September 19, 2012, Patriot Leasing filed its schedules of assets and liabilities, which included a general trade payable claim in the amount of \$15,754.78, of which \$11,900.35 is in respect of prepetition unpaid rental obligations owed to GE Capital [ECF No. 716] (the “**Prepetition Rent Claim**”).

Basis for Relief

18. The Debtors and GE Capital have negotiated a settlement of GE Capital's claims pursuant to which (i) Patriot Leasing will assume the leases for equipment under the Agreement, except the Rejected Equipment Leases, allowing them to retain certain equipment that is essential to their operations, (ii) Patriot Coal will reaffirm and assume the Guaranty, (iii) the Debtors will allow certain unsecured claims filed by GE Capital on account of rejection damages resulting from the Rejected Equipment Leases and (iv) Patriot Leasing will cure the Prepetition Rent Claim owed to GE Capital at a 50% discount.

19. Section 365(a) of the Bankruptcy Code permits a debtor-in-possession to assume an executory contract or unexpired lease in the exercise of its business judgment. *See Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Ry. Co.*, 318 U.S. 523, 550 (1942); *Mercantile Trust Co. v. Farmers' Loan & Trust Co.*, 81 F. 254, 259 (8th Cir. 1897); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n.16 (8th Cir. 1997); *In re Crystalin, L.L.C.*, 293 B.R. 455, 463-64 (B.A.P. 8th Cir. 2003). Patriot Leasing and Patriot Coal have exercised their business judgment prudently in this situation, electing to assume certain advantageous unexpired leases and certain related guaranties that are beneficial to their operations and in the best interest of their estates and obtaining a discounted cure obligation in negotiations with GE Capital.

20. Pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. 9019, the Debtors request that this Court approve the following settlement of GE Capital's claims, Patriot Leasing's assumption of the leases of equipment provided under the Agreement, except the Rejected Equipment Leases, and Patriot Coal's assumption of the Guaranty (the "**Settlement**"):

- (a) Patriot Leasing will assume all leases of equipment provided under the Agreement and all related lease schedules other than the Assigned

Schedules, except the Rejected Equipment Leases (collectively, the “**Assumed Equipment Leases**”), pursuant to 11 U.S.C. § 365.

- (b) Patriot Coal will reaffirm and assume the Guaranty pursuant to 11 U.S.C. § 365.
- (c) GE Capital will have an allowed general unsecured claim of \$1,742,485.00 against Patriot Leasing in respect of rejection damages for the Rejected Equipment Leases.
- (d) GE Capital will have an allowed general unsecured claim of \$1,742,485.00 against Patriot Coal in respect of rejection damages for the Rejected Equipment Leases.
- (e) Within ten days of entry of the Proposed Order, Patriot Leasing will pay \$5,950.18 in full satisfaction of GE Capital’s Prepetition Rent Claim.
- (f) GE Capital’s Proofs of Claim will be disallowed, except as provided for herein above.

20. The Settlement is in the best interests of the Debtors and should be approved pursuant to Bankruptcy Rule 9019. A debtor-in-possession’s settlement is governed by Bankruptcy Rule 9019(a), which provides, in relevant part, that “[o]n motion by the [debtor in possession] and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). This rule empowers bankruptcy courts to approve settlements “if they are in the best interests of the estate.” *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). A decision to accept a compromise or settlement is within the sound discretion of the court. *Tri-State Financial, LLC v. Lovald*, 525 F.3d 649, 654 (8th Cir. 2008) (citing *In re New Concept Housing, Inc.*, 951 F.2d 932, 939 (8th Cir. 1991) (“A

bankruptcy court's approval of a settlement will not be set aside unless there is plain error or abuse of discretion"). The proposed settlement need not result in the best possible outcome for the debtor, but it must not "fall beneath the lowest point in the range of reasonableness." *Tri-State Financial*, 525 F.3d at 654 (citing *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)); see also *Drexel Burnham Lambert Group*, 134 B.R. at 505.

21. The Settlement preserves the Debtors' access to coal mining equipment necessary to operate their businesses and reduces the associated cure obligations substantially. It represents a sound exercise of the Debtors' business judgment. This Court should approve the Settlement because it is in the best interests of the Debtors, their creditors, and the estates.

WHEREFORE, the Debtors respectfully request that this Court:

- (a) authorize Patriot Leasing to assume the Assumed Equipment Leases;
- (b) authorize Patriot Coal to assume the Guaranty;
- (c) grant GE Capital an allowed general unsecured claim of \$1,742,485.00 against Patriot Leasing;
- (d) grant GE Capital an allowed general unsecured claim of \$1,742,485.00 against Patriot Coal;
- (e) authorize a payment by Patriot Leasing of \$5,950.18 to GE Capital as the cure of the Prepetition Rent Claim;
- (f) disallow GE Capital's Proofs of Claim except as provided for hereinabove;
- (g) approve the Settlement; and
- (h) grant such other and further relief as is just and proper.

Notice

22. Consistent with the Order Establishing Certain Notice, Case Management and Administrative Procedures entered on March 22, 2013 [ECF No. 3361] (the “**Case Management Order**”) the Debtors will serve notice of this Motion on the Core Parties (as defined in the Case Management Order) and GE Capital. All parties who have requested electronic notice of filings in these cases through this Court’s ECF system will automatically receive notice of this Motion through the ECF system no later than the day after its filing with this 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 Order is available at www.patriotcaseinfo.com/orders.php (the “**Patriot Orders Website**”). The Proposed Order may be modified or withdrawn at any time without further notice. If any significant modifications are made to the Proposed Order, an amended Proposed 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.

Dated: October 29, 2013
New York, New York

Respectfully submitted,
DAVIS POLK & WARDWELL LLP

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

Schedule 2
Assigned Schedules

1. Mining and Quarry Equipment Schedule, Schedule No. 010 dated October 28, 2008 to Master Lease Agreement dated as of August 25, 2008
2. Mining and Quarry Equipment Schedule, Schedule No. 015 dated December 17, 2008 to Master Lease Agreement dated as of August 25, 2008
3. Mining and Quarry Equipment Schedule, Schedule No. 017 dated December 31, 2008 to Master Lease Agreement dated as of August 25, 2008
4. Mining and Quarry Equipment Schedule, Schedule No. 8683767-001 dated June 9, 2011 to Master Lease Agreement dated as of August 25, 2008
5. Mining and Quarry Equipment Schedule, Schedule No. 8683767-002 dated June 9, 2011 to Master Lease Agreement dated as of August 25, 2008
6. Mining and Quarry Equipment Schedule, Schedule No. 8683767-004 dated August 12, 2011 to Master Lease Agreement dated as of August 25, 2008
7. Mining and Quarry Equipment Schedule, Schedule No. 8683767-005 dated November 17, 2011 to Master Lease Agreement dated as of August 25, 2008