

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

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	:	
In re	:	
	:	
PATRIOT COAL CORPORATION, <i>et al.</i> ,	:	
	:	
Debtors.	:	
-----	X	
	:	
BOONE EAST DEVELOPMENT CO.,	:	
PERFORMANCE COAL CO., AND NEW	:	
RIVER ENERGY CORP.,	:	Case No. 4:13-cv-02429-AGF
	:	
Appellants,	:	
	:	
v.	:	
	:	
EASTERN ROYALTY LLC	:	
F/K/A EASTERN ROYALTY CORP.,	:	
	:	
Appellee.	:	
-----	X	

JOINT MOTION TO SET APPELLATE BRIEFING SCHEDULE

Counsel for Boone East Development Co., Performance Coal Co., and New River Energy Corp. (collectively, the “Massey Entities” or “Appellants”) and Eastern Royalty LLC f/k/a Eastern Royalty Corp. (“ERC” or “Appellee”) hereby stipulate and agree to the following:

- a. On November 27, 2013, Appellants filed a notice of appeal from the Order of the United States Bankruptcy Court for the Eastern District of Missouri granting ERC’s motion for judgment on the pleadings and dismissing the Massey Entities’ counterclaim (the “Bankruptcy Court Order”), entered by the Honorable Kathy A. Surratt-States on November 14, 2013. Thereafter, the appeal was assigned to the Honorable Audrey G. Fleissig.

b. On December 3, 2013, the Court entered an order that provided, among other things, that the Appellants would file their brief within fifteen days of the docketing of the appeal, which occurred on December 2, 2013; that the Appellee would file its brief within fifteen days after service the Appellants' brief; and that the Appellants would have the option to file a reply brief within ten days after service of the Appellee's brief.

c. Counsel for the parties have conferred and agree that a briefing schedule of 44 days for the Appellants' opening brief, 33 days for the Appellee's opposition brief, and 15 days for the Appellants' reply brief is reasonable under the circumstances.

d. This request for additional time is made to serve the interests of justice and not for the purpose of prejudicing any party or delaying these proceedings.

WHEREFORE, counsel for the parties request that this Court extend the briefing schedule set forth in its December 3, 2013 Order as follows:

- (a) The Appellants will file their opening brief on or before January 15, 2014;
- (b) The Appellee will file its opposition on or before February 17, 2014;
- (c) The Appellants will file their reply on or before March 4, 2014.

A proposed order is attached hereto as Exhibit A.

Dated: December 6, 2013

Respectfully Submitted,

Counsel for Appellants

SUMMERS COMPTON WELLS PC

/s/ David A. Sosne

David A. Sosne (#28365)

8909 Ladue Road

St. Louis, MO 63124

Tel. (314) 991-4999

Fax (314) 991-2413

*Local Counsel to Boone East Development Co.,
Performance Coal Co., and New River Energy Corp.*

-and-

CLEARY GOTTLIEB STEEN & HAMILTON LLP

James L. Bromley

Luke A. Barefoot

One Liberty Plaza

New York, NY 10006

Tel. (212) 225-2000

Fax (212) 225-3999

*Counsel to Boone East Development Co.,
Performance Coal Co., and New River Energy Corp.*

Counsel for Appellees

BRYAN CAVE LLP

/s/ Brian C. Walsh

Lloyd A. Palans (#22650)

Brian C. Walsh (#58091)

211 N. Broadway, Suite 3600

St. Louis, MO 63102

Tel. (314) 259-2000

Fax (314) 259-2020

*Local Counsel to Eastern Royalty LLC
f/k/a Eastern Royalty Corp.*

-and-

DAVIS POLK & WARDWELL LLP

Marshall S. Huebner

Brian M. Resnick

Jonathan D. Martin

450 Lexington Avenue

New York, NY 10017

Tel. (212) 450-4000

Fax (212) 607-7983

*Counsel to Eastern Royalty LLC f/k/a
Eastern Royalty Corp.*

Exhibit A

Proposed Order

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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Debtors.	:	
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BOONE EAST DEVELOPMENT CO.,	:	
PERFORMANCE COAL CO., AND NEW	:	
RIVER ENERGY CORP.,	:	Case No. 4:13-cv-02429-AGF
	:	
Appellants,	:	
	:	
v.	:	
	:	
EASTERN ROYALTY LLC	:	
F/K/A EASTERN ROYALTY CORP.,	:	
	:	
Appellee.	:	
-----	X	

ORDER

IT IS HEREBY ORDERED that the Joint Motion to Set Appellate Briefing Schedule is granted and the briefing schedule set forth in this Court’s December 3, 2013 Order shall be amended as follows:

- (a) The Appellants will file their opening brief on or before January 15, 2013;
- (b) The Appellee will file its opposition on or before February 17, 2013;
- (c) The Appellants will file their reply on or before March 4, 2013.

Dated this ____ day of December, 2013.

THE HONORABLE AUDREY G. FLEISSIG
United States District Judge