

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

**In re  
PATRIOT COAL CORPORATION, *et*  
*al.*,  
Debtors**

**Chapter 11**

**Case No. 12-51502-659**

**(Jointly Administered)**

**Hearing Date: December 17, 2013, Hearing  
Time: 9:00 a.m.  
(prevailing Central Time)**

**Hearing Location: Courtroom 7 North**

**Re: ECF Nos. 5089 and 5090**

**PAYNE-GALLATIN COMPANY, SOUTHERN LAND COMPANY LP  
AND DICKINSON PROPERTIES LP LIMITED OBJECTION TO  
DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
ASSIGNMENT OF CERTAIN ASSUMED UNEXPIRED LEASES [ECF NO. 5089]**

Payne-Gallatin Company, a West Virginia corporation ("Payne-Gallatin"), Southern Land Company LP, a West Virginia limited partnership ("Southern"), and Dickinson Properties LP, a West Virginia limited partnership ("Dickinson" and with Southern collectively "Southern-Dickinson", and Southern-Dickinson with Payne-Gallatin, collectively the "Southern-Dickinson Group") by counsel, pursuant to Bankruptcy Code (11 U.S.C. et seq.) §§ 105, 365, 1125, and 1129, respectfully file this limited objection (the "Objection") to Debtors' Motion For Entry Of An Order Authorizing Assignment Of Certain Assumed Unexpired Leases [ECF No. 5089] (the "Motion") as it relates to those certain leases from Southern-Dickinson (the "Southern-Dickinson Assigned Leases") and from Payne-Gallatin (the "Payne-Gallatin Assigned Leases") to various Debtors identified in Exhibit A to the Motion (the "Assigned Leases").

In support of this Objection, the Southern-Dickinson Group states as follows:

1. The Southern-Dickinson Assigned Leases have been assumed by the Debtors pursuant to the Order of the Court [ECF No. 2822] entered on February 13, 2013.

2. The Payne-Gallatin Assigned Lease has been assumed by the Debtors pursuant to the Order of the Court [ECF No. 4994] entered on November 14, 2013 and the Order of the Court [ECF No. 5095] entered December 5, 2013.

3. On December 4, 2013, Debtors' filed the Motion, which states that "the counterparties to the Assigned Leases will be provided adequate assurance of future performance by the Assignee Debtors because Debtor Patriot Coal or the Assignor Debtor will guarantee the Assignee Debtors' obligations under the Assigned Leases" (Motion, par. 19, p. 7).

4. However, the form of the proposed guarantee instrument was not included with the Motion, and was not been provided to the Southern-Dickinson Group or its counsel until approximately 10:16 A.M today.

5. In re Alipat, Inc. 36 B.R. 274 (Bankr. E.D. Mo. 1984), while stating that "the overwhelming majority of the opinions which have considered the question of adequate assurance has granted the debtor's (or the trustee's) request to approve an assignment," also recognizes that the rights of the lessor must be considered ("Indeed, in discussing the unenforceability of ipso facto clauses, Congress has directed that the Courts are to be sensitive to the rights of the non-debtor party.") H.R. Report No. 95-595, 95th Cong., 1st Sess. (1977); S. Rep. No. 95-989, 95th Cong., 2d Sess. (1978), U.S. Code Cong. & Admin. News 1978, p. 5787") 36 B.R. at 277-278.

6. The Southern-Dickinson Group, by its counsel, wishes to submit revisions to the proposed Guarantee instrument to Debtors' counsel and hopes to negotiate a mutually agreeable

instrument of guarantee with Debtors' counsel.

7. Accordingly, the Southern-Dickinson Group files this Limited Objection to the Motion.

8. The Southern-Dickinson Group respectfully reserves the right to supplement this Limited Objection.

WHEREFORE, Payne-Gallatin Company, a West Virginia corporation, Southern Land Company LP, a West Virginia limited partnership, and Dickinson Properties LP, a West Virginia limited partnership, respectfully request that the Court enter an order (a) denying the Motion as it relates to the Southern-Dickinson Group Leases or (b) conditioning approval of the Motion as it relates to the Southern-Dickinson Leases on a guarantee instrument mutual agreeable to the Debtors and the Southern-Dickinson Group and (c) granting such further relief as the Court may deem, equitable and just.

Dated: December 13, 2013  
Charleston, West Virginia

Respectfully submitted,

/s/ Thomas Persinger

Thomas Persinger WWSB No. 2874

Admission pro hac vice

THOMAS PERSINGER PLLC

P. O. Box 2828

Charleston, WV 25330-2828

Telephone number: (304) 343-0850

Telecopier number: (304) 343-1677

E: [mtplaw@frontier.com](mailto:mtplaw@frontier.com)

Counsel for Payne-Gallatin Company,

Southern Land Company LP, and

Dickinson Properties LP

Dated: December 13, 2013  
St. Louis, Missouri

/s/ Howard S. Smotkin  
Howard S. Smotkin - EDMO #36227MO  
E. Rebecca Case - EDMO #38010MO  
Stone, Leyton & Gershman  
A Professional Corporation  
7733 Forsyth Blvd., Suite 500  
St. Louis, Missouri 63105  
Telephone number: (314) 721-7011  
Facsimile number: (314) 721-8660  
E: [hsmotkin@stoneleyton.com](mailto:hsmotkin@stoneleyton.com)  
[rcase@stoneleyton.com](mailto:rcase@stoneleyton.com)  
Local Co-Counsel for  
Payne-Gallatin Company,  
Southern Land Company LP, and  
Dickinson Properties LP

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent via first class, United States mail, postage prepaid and/or electronic notice on December 13, 2013 to:

1. The parties on the Core Parties List No. 8 dated November 19, 2013 (D.E. #5015).
2. The parties on the Master Notice List No. 8 dated November 19, 2013 (D.E. #5015).
3. All creditors and parties in interest that are receiving electronic notice in this case.

/s/ Howard S. Smotkin  
Howard S. Smotkin