IN THE UNITED STATES BANKRUPTCY COURT FOR THE 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: January 28, 2014 Hearing Time: 10:00 a.m. Central Location: Courtroom 7-N, St. Louis

NOTICE OF PETTRY CLAIMANTS' MOTION FOR RECONSIDERATION OF ORDER SUSTAINING DEBTORS' SEVENTEENTH OMNIBUS OBJECTION TO CLAIMS (Pettry Litigation Claims)

PLEASE TAKE NOTICE that this motion is scheduled for hearing on January 28, 2014, at 10:00 a.m. (prevailing Central Time), in the Bankruptcy Courtroom of the Honorable Kathy A. Surratt-States, Chief United States Bankruptcy Judge, 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 CONSISTENT WITH THE COURT'S GUIDELINES ESTABLISHED IN ITS "ORDER ESTABLISHING CERTAIN NOTICE, CASE MANAGEMENT AND ADMINISTRATIVE PROCEDURES" [DOCKET 3361]. FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THIS COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE.

PETTRY CLAIMANTS' MOTION FOR RECONSIDERATION OF ORDER SUSTAINING DEBTORS' SEVENTEENTH OMNIBUS OBJECTION TO CLAIMS
(Pettry Litigation Claims)

Pettry Litigation Claimants (the "Pettry Claimants"), pursuant to 11 U.S.C. § 502(j) and/or Fed. R. Bankr. P. 3008, respectfully move the court for reconsideration of its "Order Sustaining Debtorsô Seventeenth Omnibus Objection To Claims," entered on November 8, 2013 [Docket 4977], because the equities of the matters at issue warrant the court's further consideration, particularly with respect to the court's erroneous findings regarding the authority of the West Virginia state court to determine the scope and reach of this court's automatic stay. The court not only failed to set forth any legal authority for its ruling on this issue, but failed to set forth legal authority for any of its rulings, which rulings are contrary to well-established case law cited by the Pettry Claimants in "Claimants' Omnibus Response In Opposition To Debtorsô Seventeenth Omnibus Objection To Claims." [Docket 4791.] For these and other reasons, explained more fully below, the Pettry Claimants respectfully request that the court reconsider its order, set it aside and overrule the Debtor's objections to the claims of the Pettry Claimants.

Justification for Reconsideration and Legal Argument

1. Federal bankruptcy law permits an interested party to file a motion for reconsideration following a bankruptcy court ruling that either overrules or sustains an objection to a claim. 11 U.S.C. § 502(j). The statute provides, in relevant part: "A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case." There is no specific time limit within which such a motion must be filed. *In re Payless Cashways, Inc.,* 230 B.R. 120, 137 (B.A.P. 8th Cir. 1999) *aff'd sub nom. In re Payless Cashways*, 203 F.3d 1081 (8th Cir. 2000)(citing *Employment Sec. Div. v. W.F. Hurley, Inc.* (*In re W.F. Hurley, Inc.*), 612 F.2d 392, 394 (8th Cir.1980).

2. A party that pursues a motion for reconsideration is entitled to a hearing on such a motion: "A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order." Fed. R. Bankr. P. 3008(emphasis added).

3. Rule 60 of the Federal Rules of Civil Procedure is used as a guide by bankruptcy courts faced with a motion for reconsideration. *In re Kirwan,* 164 F.3d 1175, 1177 (8th Cir. 1999). In the context of bankruptcy cases, Rule 60 "may be liberally construed to do substantial justice to allow parties to air meritorious claims in the absence of fault or prejudice." *Id.* (citing *MIF Realty L.P. v. Rochester Assocs.,* 92 F.3d 752, 756ï 57 (8th Cir.1996). Rule 60 provides, in relevant part, that:

> **(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
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> **. . .**
>
> **(4)** the judgment is void;
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> . . .
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> **(6)** any other reason that justifies relief.

Fed. R. Civ. P. 60(b). Subparts (b)(4) and (b)(6) are the most relevant for the subject motion. The equities present here in this contested matter, created by the Debtor's Omnibus Objection to the proofs of claim filed by the Pettry Claimants, weigh heavily in favor of granting the subject motion for reconsideration of the court's order.

4. First, and foremost, the court failed to acknowledge anywhere in its order of November 8 that the West Virginia state court openly admitted that it did not have the authority to dismiss the claims of the Pettry Claimants against the Debtor due to the existence of this court's automatic stay; yet, the West Virginia state court stated it was dismissing those claims

anyway and its decision could simply be appealed. (Docket 4791-2; Ex. B, excerpts from Tr. of Hrg. held in Pettry Litigation on 3/26/13.) Inexplicably, the bankruptcy court ignored this intentional violation of its automatic stay order by the West Virginia state court that was in clear contravention of federal bankruptcy law. The court's refusal to acknowledge the West Virginia state court's violation of the automatic stay renders that portion of this court's judgment void, which is a basis for reconsideration under F.R.C.P 60(b)(4). *In re Levoy,* 182 B.R. 827, 831 (B.A.P. 9th Cir. 1995)("There is no discretion to refuse vacating a judgment if it is void").

5. Second, the court erroneously ruled that since the West Virginia state court's dismissal of the claims of the Pettry Claimants "were ultimately in favor of Debtor Eastern Associated Coal, the automatic stay does not apply." [Docket 4977 at 3.] Yet, the court cited to no legal authority for this ruling and it is in direct conflict with well-settled case law cited by the Pettry Claimants in their response in opposition to the Debtor's Omnibus Objection, as well as, specific case law on point in the Eighth Circuit. *See e.g., Farley v. Henson,* 2 F.3d 273, 274-76 (8th Cir. 1993)(holding that even an appeal taken by a debtor that was defendant in trial court, that might result in ultimate benefit to debtor, is still stayed unless a party seeks relief from automatic stay to pursue it). Since the automatic stay was not lifted by the bankruptcy court prior to the West Virginia state court dismissing the claims of the Pettry Claimants against Debtor Eastern, the dismissal of those claims had no legal effect, being void *ab initio* because of its violation of the automatic stay. *In re Vierkant,* 240 B.R. 317, 320 (B.A.P. 8th Cir. 1999)(state court's entry of default judgment was void *ab initio* because it was entered in violation of automatic stay and, therefore, bankruptcy court erred as a matter of law by giving state court's entry of default judgment collateral estoppel effect). The bankruptcy court's ruling here, with

respect to failing to recognize the void nature of the West Virginia state court's actions in dismissing the claims of the Pettry Claimants is no less erroneous than the error in *In re Vierkant.*

6. Third, the court erroneously ruled that "it was within the purview of the West Virginia Court to determine whether and to what extent the automatic stay applies." [Docket 4977 at 3.] Again, the bankruptcy court cited to no legal authority for this conclusory ruling and it is in stark contrast to black letter bankruptcy law cited by the Pettry Claimants. *E.g., In re Vierkant*, 240 B.R. at 320-21(ñThe automatic stay cannot be waived. Relief from the stay can be granted only by the bankruptcy court having jurisdiction over a debtor's caseò); *In re Raboin,* 135 B.R. 682, 684 (Bankr.D.Kan.1991)(ñ[T]his court has exclusive jurisdiction to determine the extent and effect of the stay, and the state court's ruling to the contrary does not bar the debtor's present motionò). By improperly dismissing the claims of the Pettry Claimants against Debtor Eastern while the automatic stay was in effect, the West Virginia state court violated the automatic stay (by its own admission) and provided an improper benefit to the Debtor. Such an action is contrary to law, void *ab initio* and without legal effect. *Id.* In addition, by permitting the Pettry litigation to go forward when non-debtor defendants had alleged cross claims for indemnity and contribution against Debtor Eastern, the West Virginia state court further violated the automatic stay. Yet, this court failed to address these substantive issues and failed to explain why it did not find that the West Virginia state court, by its own admission, had violated the automatic stay (at least with respect to the dismissal of the claims of the Pettry Claimants against Debtor Eastern Associated Coal).

7. Fourth, the court completely ignored the long-established exception to the Rooker-Feldman Doctrine that the Pettry Claimants discussed in their response to the Debtor's Omnibus Objection that was operative in this matter - that state court rulings can be collaterally attacked when the state court does not have jurisdiction in the first instance to render rulings that violate a bankruptcy court's

automatic stay. That was at the heart of the arguments made by the Pettry Claimants, but it was ignored and left unaddressed by this court. The court merely made a conclusory statement about the Rooker-Feldman Doctrine as if it has no exceptions, which view is contrary to well-settled bankruptcy law.

8. Finally, the court ignored the plain language of the Federal Bankruptcy Rules with respect to what is considered a proper objection to be included in an Omnibus Objection. Again, the court completely ignored the arguments set forth by the Pettry Claimants in this regard and failed to explain why the relief that was sought by the Debtor in its Omnibus Objection was not the equivalent of a request for declaratory judgment regarding the scope and reach of this court's automatic stay and the actions of the West Virginia state court taken in violation of the automatic stay.

9. The five conclusory rulings of the bankruptcy court all stand in stark contrast to well-settled bankruptcy law and, as such, are void and form the proper foundation for a motion for reconsideration. The equities of the case weigh heavily in favor of the Pettry Claimants who simply seek the protections that the law provides in this equitable forum of bankruptcy. *In re Levoy,* 182 B.R. at 831 ("A bankruptcy court abuses its discretion if it bases its ruling upon an erroneous view of the law or a clearly erroneous assessment of the evidence").

WHEREFORE, for the reasons set forth herein, and any others appearing to the court, the Pettry Claimants respectfully request that the court grant their motion for reconsideration, set aside its order of November 8 [Docket 4977], deny the Debtors' Seventeenth Omnibus Objection to Claims and provide whatever further relief the court deems just and proper.

Respectfully submitted,

/s/ Thomas F. Basile
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Counsel for the Pettry Claimants

Certificate of Service

I, Thomas F. Basile, hereby certify that on the 16th day of December, 2013, a true and exact copy of the foregoing ***"Pettry Claimants' Motion for Reconsideration of Order Sustaining Debtors' Seventeenth Omnibus Objection to Claims"*** was filed with the Court using the CM-ECF system, which will electronically serve the same to all parties entitled to receive electronic notice of these bankruptcy proceedings who have registered with the CM-ECF system, including the Core Parties.

/s/ Thomas F. Basile
Thomas F. Basile, Esq. (WVSB # 6116)