

**DENIED  
WITHDRAWN**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

Jun 24, 2014

*Kathy A. Surratt - States*

KATHY A. SURRATT-STATES  
Chief United States Bankruptcy Judge

**In re:**

**PATRIOT COAL CORPORATION, *et al.*,**

**Debtors.**

**Chapter 11**

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

**(Jointly Administered)**

Hearing Date: June 24, 2014

Hearing Time: 10:00 a.m. Central

Location: Courtroom 7-N, St. Louis

**REORGANIZED DEBTORS' THIRTY-FOURTH OMNIBUS OBJECTION TO CLAIMS**  
**(Monsanto Plaintiffs Claims)**

Patriot Coal Corporation and its affiliated debtors (collectively, the “**Reorganized Debtors**”), pursuant to 11 U.S.C. § 502 and Fed. R. Bankr. P. 3007, respectfully file this Thirty-Fourth Omnibus Objection to Claims (the “**Objection**”). In support of this Objection, the Reorganized Debtors show the Court as follows:

**Relief Requested**

1. By this Objection, the Reorganized Debtors object to the claims listed on Exhibit A attached hereto (collectively, the “**Claims**”) because the Reorganized Debtors do not have any liability to the claimants on account of the Claims, as discussed below. The Reorganized Debtors request entry of an order, pursuant to Section 502 of the Bankruptcy Code and Fed. R. Bankr. P. 3007, disallowing the Claims.

2. **Parties receiving this Objection should locate their names on the attached exhibit.** Any response to this Objection should include, among other things, (i) an appropriate caption, including the title and date of this Objection; (ii) the name of the claimant, both the EDMO and GCG claim numbers of the claim that the Reorganized Debtors are seeking to disallow, and a description of the basis for the amount claimed; (iii) a concise statement setting

forth the reasons why the Court should not sustain this Objection, including, but not limited to, the specific factual and legal bases upon which the claimant relies in opposing this Objection; (iv) copies of any documentation and other evidence which the claimant will rely upon in opposing this Objection at a hearing; and (v) the name, address, telephone number and facsimile number of a person authorized to reconcile, settle or otherwise resolve the claim on the claimant's behalf. A claimant that cannot timely provide such documentation and other evidence should provide a detailed explanation as to why it is not possible to timely provide such documentation and other evidence.

### **Jurisdiction**

3. This Court has jurisdiction over this Objection under 28 U.S.C. § 1334. Venue of this proceeding is proper pursuant to 28 U.S.C. § 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

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

### **Background**

5. Ninety-nine of the Reorganized Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on July 9, 2012 in the United States Bankruptcy Court for the Southern District of New York.

6. On December 19, 2012, these Reorganized Debtors' cases were transferred to the United States Bankruptcy Court for the Eastern District of Missouri [Dkt. No. 1789].

7. The bar date for filing proofs of claim against these Reorganized Debtors was December 14, 2012 [Dkt. No. 1388].

8. On March 1, 2013, the Court entered its Order Establishing Procedures for Claims Objections [Dkt. No. 3021].

9. Reorganized Debtors Brody Mining, LLC and Patriot Ventures LLC filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on September 23, 2013 in this Court. The bar date for filing proofs of claim against these Debtors was October 24, 2013.

10. On December 18, 2013, the Court confirmed the Debtors' Fourth Amended Plan of Reorganization (the "**Plan**") [Dkt. No. 5169]. The Effective Date of the Plan occurred on December 18, 2013.

### **Objection and Argument**

11. The Reorganized Debtors object to the Claims identified on Exhibit A, incorporated herein by reference, because the Debtors have no liability in connection with these Claims.

12. The Claims concern the alleged harm caused to each claimant or his or her property by a "chemical waste dump on Manila Creek, WV." The basis of GCG Claims Nos. 2257, 2258, 2259, 2260, 2262, 2263, 2264, 2265, 2266, 2267 and 2268 (collectively, the "**Property Claims**") is the alleged "contamination of claimant's property," and the basis of the remaining Claims (collectively, the "**Personal Injury Claims**") is the personal injury allegedly suffered by the claimant.

13. The Reorganized Debtors believe that all the Claims concern the same transaction and occurrence or series of transactions and occurrences, which were the subject of a number of lawsuits filed against debtor Apogee Coal Company LLC ("**Apogee**"), Monsanto Company ("**Monsanto**") and a number of other defendants for alleged exposure to dioxins produced at a former chemical plant in Nitro, West Virginia and dioxin-contaminated waste allegedly dumped and incinerated at a dump site known as the Manila Creek landfill. These lawsuits include:

- (a) *Robert C. Carter v. Monsanto Chemical Company, Solution, Inc., the City of Nitro, Amherst Coal Company, Arch of West Virginia, Inc., Arch of Illinois, Inc., and Apogee Coal Company*, Civil Action No. 00-C-300, Circuit Court of Putnam County, West Virginia, a class action filed on behalf of owners of property adjoining Manila Creek alleging the contamination of their property (the “**Carter Class Action**”);
- (b) *Allen et al. v. Monsanto Co., Pharmacia Corp., Azko Nobel Chemicals, Inc.; Akzo Nobel Services, Inc., Akzo Chemicals, Inc., Flexsys America Co., Flexsys America L.P., Flexsys International, L.P. and Flexsys International Co.*, Civil Action No. 04-C-065, Circuit Court of Putnam County, West Virginia, a class action filed on behalf of current owners of property and persons who resided, worked full time or attended school full time in one or more of the communities surrounding the former chemical plant in Nitro, West Virginia beginning in 1949, for alleged damage to property and injury to health (the “**Bibb Class Action**”); and
- (c) Numerous individual lawsuits filed against Monsanto, Apogee and additional defendants in the Circuit Court of Putnam County, West Virginia for personal injury allegedly caused by exposure to dioxin-contaminated waste from the plant in Nitro, West Virginia and the Manila Creek landfill (the “**Personal Injury Actions**” and, together with the Carter Class Action and the Bibb Class Action, the “**Lawsuits**”).

14. To the extent Apogee was named in the Lawsuits, Apogee was alleged to be liable as the successor to a company that owned and/or controlled the Manila Creek landfill, and is fully indemnified by Monsanto in connection with the claims asserted in the Lawsuits.

15. Each of the Lawsuits has been dismissed or definitively resolved and, accordingly, the Debtors have no liability in respect of the Claims. The Carter Class Action was voluntarily dismissed by the plaintiffs on December 29, 2009. On January 20, 2012, the plaintiffs in the Bibb Class Action, the plaintiffs in the Personal Injury Actions and Monsanto, by their respective counsel, entered into a memorandum of understanding (the “MOU”) to comprehensively settle the Bibb Class Action and the Personal Injury Actions. Pursuant to the MOU, Apogee does not have any liability with respect to the Personal Injury Actions or the Bibb Class Action.

16. Each of the Personal Injury Action settlements was made contingent on court approval of the settlement of the Bibb Class Action and the exhaustion of appeals with respect thereto. The settlement in the Bibb Class Action was approved by the Circuit Court of Putnam County, West Virginia on January 25, 2013, and all appeals were exhausted on May 2, 2014 when those challenging the settlement failed to apply to the Supreme Court for a rehearing of their petition for a writ of certiorari. The effective date of the Personal Injury Action settlements and the Bibb Class Action occurred on May 5, 2014. Therefore, it has been determined with finality that Apogee does not have any liability with respect to the Lawsuits.

17. Because Apogee does not have any liability with respect to the Lawsuits, and because the Claims provide no other basis for liability, the Claims should be disallowed.

WHEREFORE, the Reorganized Debtors respectfully request that this Court:

- (a) disallow the Claims; and
- (b) grant such other and further relief as is just and proper.

Dated: May 27, 2014  
New York, New York

Respectfully submitted,

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