

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE: Chapter 11
Case No. 12-51502-659
PATRIOT COAL CORPORATION, et al., (Jointly Administered)
Debtors.

RESPONSE OF WEST VIRGINIA STATE TAX DEPARTMENT
TO DEBTORS MOTION OF REORGANIZED DEBTORS CATENARY
COAL COMPANY, LLC, COYOTE COAL COMPANY, LLC, AND PANTHER, LLC
FOR AN ORDER ENFORCING CLAIM SETTLEMENT AGREEMENT

COMES NOW the West Virginia State Tax Department, by counsel, Eric Wilson, by way of Response to the motion to enforce settlement agreement and states as follows:

Background and Jurisdiction

1. Patriot Coal has generally outlined the background of the bankruptcy case and the Settlement Agreement in the *Motion to Compel*. The Tax Department does not dispute the general terms of the background as set forth in the motion.
2. The Tax Department states that jurisdiction before the Bankruptcy Court for the Eastern District of Missouri is proper with regard to enforcement of the Settlement Agreement.

The Refund Claims and the Settlement Agreement

3. Notwithstanding the language of the letter of January 30, 2015 from Mark Morton, Esq. to G. Kurt Dettinger, Esq., the West Virginia State Tax Department has concluded that if Patriot Coal is due a tax refund under West Virginia law, the Settlement Agreement does not preclude issuing such refunds.

4. According to the *Motion to Compel*, Patriot Coal entities claim to be entitled to severance tax refunds for the tax years of 2011 and 2012 for Panther Coal in the combined amount of \$2,371,176, Coyote Coal in the combined amount of \$284,310, and Catenary Coal in the combined amount of \$1,219,083. See *Motion to Compel* at Para. 9. (All numbers represent severance tax only. According to W. Va. Code § 11-10-17(d), statutory interest must be paid on any tax refund and will be added to any refund issued by the State.)

5. According to the Tax Department's records, neither Panther Coal or Coyote Coal have filed claims for refund, much less claims for refund in the amounts alleged in the *Motion to Compel*.

6. According to W. Va. Code § 11-10-14(c), no refund shall be issued unless a taxpayer timely files a claim for refund.

7. On or about February 20, 2015, the Tax Department engaged in discussions with Patriot Coal concerning these claims for refund. In that conversation, Patriot Coal alleged that such refund claims have been on file with the Tax Department for some time.

8. By email on February 20, 2015, Patriot Coal submitted documentation to the Tax Department alleging the amount of refund they are claiming. See Exhibit 1.

9. They submitted a 2011 tax return showing a claim for refund for Catenary Coal in the amount of \$1,219,083.45.

10. They submitted a 2012 tax return showing a credit carryforward claim for Panther Coal in the amount of \$871,154.11, and evidence of a payment with the original return in the amount

\$268,679.55. No claim for refund has been received for 2012 for Panther Coal, and they have not overpaid in the amount they claim in the Motion to Compel.

11. They submitted a 2012 tax return showing a balance of tax due for Coyote Coal in the amount of \$343,748.58, and evidence of a payment with the original return in the amount \$365,344.38. No claim for refund has been received for 2012 for Coyote Coal, and they have not overpaid in the amount they claim in the Motion to Compel.

12. They submitted a spreadsheet document purporting to contain the actual tax liability for Severance tax for May and June 2012 for both Coyote Coal and Panther Coal as compared to the Estimated Liability submitted by the West Virginia State Tax Department.

13. They submitted a document purporting to be a Patriot Coal Corporation "WV Severance Tax Refund Claims". This document contains a purported claim for refund for Panther Coal for 2012 in the amount of \$2,371,176.78 and for Coyote Coal for 2012 in the amount of \$785,771.56.

Objection to Motion to Compel

14. Patriot Coal only arrives at the amount of refund it is due by taking credit for payments it never made. As Appendix 5 makes clear, they take credit for \$1,231,343.12 of payments for Panther Coal and \$764,175.86 of payments for Coyote Coal that should be "deemed paid". This, apparently, in contrast to payments that are actually paid.

15. The Tax Department objects to the calculation of any overpayment that includes within it any amounts that were not actually paid. Therefore, the Tax Department disputes the amounts claimed by Patriot Coal in the *Motion to Compel*.

16. The Tax Department demands strict proof of the refunds claimed by Patriot Coal in the *Motion to Compel*.

17. The Tax Department has sought counsel from the West Virginia Attorney General in this matter due to the complexities of the refund issues. Counsel needs an opportunity to review the voluminous background information and to explore the legal issues in the bankruptcy case.

18. The Tax Department argues that the hearing scheduled for March 2, 2015 should be continued to allow the parties an opportunity to resolve the refund issues related to these claims.

WHEREFORE, the West Virginia State Tax Department prays the Court continue the hearing scheduled for March 2, 2015, for 45 days in order to allow Patriot Coal and the Tax Department to resolve the issues related to the severance tax refunds. In the alternative, the Tax Department prays the Court deny the *Motion to Compel* and for such additional relief as the Court deems proper.

Respectfully submitted by:



Eric Wilson, Esquire (WVSB # 9755)
Counsel for the West Virginia State Tax Department
Legal Division
P.O. Box 1005
Charleston, WV 25324-1005

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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)

CERTIFICATE OF SERVICE

I, Eric M. Wilson, Esq., Counsel for West Virginia State Tax Department, hereby certify that a copy of the foregoing *Response of the West Virginia State Tax Department To Motion of Reorganized Debtors Catenary Coal Company, LLC, Coyote Coal Company, LLC, and Panther, LLC For an Order Enforcing Claim Settlement Agreement* was sent by US Mail postage prepaid to the following:



Eric Wilson, Esquire (WVSB # 9755)
Counsel for the West Virginia State Tax
Department
Legal Division
P.O. Box 1005
Charleston, WV 25324-1005

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA
EASTERN DISTRICT

Case No. 12-51502
Doc No. 5585
Filed 02/23/15

In re: [Illegible]

DECLARATION

I, the undersigned, am a member of the Eastern District of Columbia Bar and am duly qualified to practice law in this District. I am the attorney for the party herein named as the declarant. I declare that the facts and circumstances set forth in the accompanying documents are true and correct to the best of my knowledge and belief.



[Illegible typed text, likely name and title of the signatory]

**IN THE UNITED STATE BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

In re:

Patriot Coal Corporation, et al.

Case No. 12-51502-659
Chapter 11

CERTIFICATE OF SERVICE

I HEREBY certify that true and correct copy of the foregoing ***RESPONSE OF WEST VIRGINIA STATE TAX DEPARTMENT TO DEBTORS MOTION OF REORGANIZED DEBTORS CATENARY COAL COMPANY, LLC, COYOTE COAL COMPANY, LLC, AND PANTHER, LLC FOR AN ORDER ENFORCING CLAIM SETTLEMENT AGREEMENT*** was served via CM/ECF on February 23, 2015, upon all counsel of record.

/s/ Eric M. Wilson
Eric M. Wilson, WWSB 9755

Exhibit 1

Email Dated February 23, 2015

Mounts, Kristin L

From: Hartsog, Kent <ehartsog@patriotcoal.com>
Sent: Friday, February 20, 2015 7:57 PM
To: Mounts, Kristin L
Cc: Kurt Dettinger (kurt.dettinger@steptoe-johnson.com); Hoffman, Richard; Ojeda, Stephanie; Coco, Kevin J. (kevin.coco@davispolk.com); Craig Griffith (Craig.Griffith@steptoe-Johnson.com)
Subject: FW: Severance Tax Refund Claims
Attachments: 20140213_105916.pdf; 20140213_164554.pdf; 20140213_165449.pdf; copier@patriotcoal.com_20150220_143408.pdf; WV Severance Tax Refund Summary 2011 & 2012.pdf

Kristin, attached is the information we discussed earlier today.

The first three files are the y/e returns, amendments. After spending some time with them this afternoon I can see why this is so confusing. Patriot had to basically adjust how we were filing at the end of 2012 (as I understand we received verbal instructions on how to handle) due to the bankruptcy and May/June not being paid, but paying the rest of the months. An unusual situation for your computers to handle, for sure. This does make the returns confusing and someone just picking them up without knowing what happened would have difficulty piecing what happened together.

The next scanned file is the comparison I reviewed with Jan Mudrinich in 2013 that provides the claims filed by the State vs. the Actual amount for the two months. The actual amount was what was settled and included in the settlement agreement. You can tie this schedule to the settlement agreement and was the basis for part of what was settled in the settlement agreement.

Because the 2012 claims are confusing the way they needed to be presented (due to the bankruptcy) in order to flow thru the State Tax system, Rich prepared the last file today which is a summary for all three claims, showing the tax liability, cash payments, amount settled and refund due. Note that the Coyote claim is about \$500k higher than included on our prior schedule. If we need to submit the returns a different way, please let me know. The refunds identified on this schedule, plus statutory interest are the amounts we are expecting. If you find where we have missed anything, please let me know and we will do our best to assist in reconciling, changing or otherwise facilitating a resolution.

Thank you for your assistance today in helping to advance a resolution. We look forward to providing you with any additional information you would need. Please give me a call if you should have any questions at my number below.

Have a good weekend.

Kent Hartsog
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Cell: 304-546-3593