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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
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PATRIOT COAL CORPORATION, *et al.*, : Case No. 12-12900 (SCC)
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Debtors. : (Jointly Administered)
:
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: **Hearing Date: September 11-12, 2012**
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**POST-HEARING SUBMISSION OF CATERPILLAR INC.,
CATERPILLAR FINANCIAL SERVICES CORPORATION AND
CATERPILLAR GLOBAL MINING LLC CONCERNING THE MOTIONS TO
TRANSFER VENUE FILED BY (i) THE UNITED MINE WORKERS OF AMERICA,
(ii) CERTAIN SURETIES AND (iii) THE UNITED STATES TRUSTEE**

TO: THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Caterpillar Inc., Caterpillar Financial Services Corporation and Caterpillar Global Mining LLC (collectively, the “CAT Creditors”), hereby make this post-hearing submission in opposition to (i) the Motion of the United Mine Workers of America to Transfer the Case to the Southern District of West Virginia [Dkt No. 116, 127] (the “UMWA Motion”), (ii) the Sureties’ Motion to Transfer Jointly Administered Cases to Southern District of West Virginia [Dkt. No. 287] (the “Sureties’ Motion”), and (iii) the United States Trustee’s Motion, Pursuant to 28 U.S.C. § 1412 and Fed. R. Bankr. P. 1014(a)(1), to Transfer Venue of These Cases [Dkt. No. 406] (together with the UMWA Motion and the Sureties’ Motion, and together with all joinders thereto, the “Motions,” and the UMWA, the Sureties, the Trustee and all joining parties, the “Movants”).

THE MOTIONS SHOULD BE DENIED

1. As set forth in the CAT Creditors’ Joinder in the Oppositions to the Motions (the “Joinder”), the CAT Creditors are parties in interest in the above-captioned cases pursuant to their status as creditors, equipment lessors and/or an issuer of certain letters of credit (now rolled up into the DIP facility). The CAT Creditors have significant claims and have been identified by the Debtors as among both the largest secured and the largest unsecured creditors.¹

2. The CAT Creditors appeared, through their counsel, for both days of the hearing on the Motions. As stated on the record thereon, the CAT Creditors filed their Joinder with the belief, understanding and expectation that it would be considered and would carry the same weight as if a full objection had been submitted instead. In fact, pursuant to the schedule set by the parties in conjunction with the Court, the CAT Creditors believed, understood and expected

¹ Concurrently herewith, the Debtors are filing proposed findings of fact, which set forth the scheduled amounts of the CAT Creditors’ claims. The CAT Creditors continue to investigate all amounts owed and reserve their right to file a claims notice on or before the bar date as appropriate.

that all timely filed joinders – whether for or against the Motions – would carry the same weight as if full papers had been submitted instead.

3. The CAT Creditors are not incorporated nor are their principal places of business in New York. Thus, their decision to oppose a transfer of venue had nothing to do with any particular connection to the Southern District of New York.

4. Rather, the CAT Creditors' decision to oppose a transfer of venue was based both upon its own determination that (a) the Southern District of New York was a more convenient forum for it and, (b) the interests of justice favor retaining venue here. The CAT Creditors were particularly concerned that the UMWA had based its Motion not on what venue would better lead to an efficient and effective reorganization or on what venue would be better able to address the interests of all of the Debtors' constituents, but rather on the unionized workers' perception that the Southern District of West Virginia would be a more advantageous forum for them and for them alone. Indeed, this concern was realized when the UMWA:

- a. stated in its reply papers that “judges in the Southern District of West Virginia live near coal miners, grew up with them, worship with them and break bread with them,” *see* Dkt. No. 506 at 24;
- b. admitted at the Hearing that “the members who make the ultimate decision on whether they will accept any negotiated agreement are very fearful and distrustful and would not – do not perceive that it would be fair to them if the case is not decided in West Virginia,” *see* Transcript of Hearing, September 12, 2012 at 415; and
- c. further stated at the Hearing that the union members' perception that they are not be treated fairly by the court system will make negotiations between them and the Debtors “much more difficult,” *see* Transcript of Hearing, September 12, 2012 at 414.

The CAT Creditors note that this theme was later echoed in a letter submission, which enclosed inflammatory articles concerning the union's view the Debtors' choice of venue and signaling acts of retribution. *See* Dkt. No. 790. The CAT Creditors viewed the Sureties, none of whom are located in West Virginia, as essentially piggy-backing on the UMWA Motion and position.

5. While the unionized workers and retirees understandably desire to protect their health care and other benefits and want their voices to be heard, and to be heard loudly, these bankruptcies are not and should not be only about only their interests. The CAT Creditors' voices should also be heard. And all constituents should have the ability to participate in a forum with no particular bias (or perceived bias) toward one constituent or another.

6. The CAT Creditors join in the post-hearing submissions being filed by the Debtors and the Creditors' Committee and will not repeat those arguments at length herein. However, the CAT Creditors submit that, however the interests of justice are defined, it is not in the interests of justice to transfer venue to satisfy the desires of one constituent over the objections of many others, including the CAT Creditors, especially when one movant has acknowledged that its motion is primarily premised upon emotion and perception.

7. The CAT Creditors also submit that the interests of justice analysis should not begin and end with the simplistic fact that the "Debtors formed both PCX and Patriot Beaver Dam to ensure that the provisions of Section 1408(1) of the Bankruptcy Code [*sic*] were satisfied, and for no other purpose." Dkt. No. 546 at 3.d. Rather, a court should consider all relevant facts and circumstances, including a party's good faith, reasons and justification for filing in a particular venue and, from a creditors' perspective, whether a change of venue would give the *appearance* that one particular constituent will be favored over many others and whether retaining jurisdiction would promote an efficient and effective reorganization.

8. Finally, the CAT Creditors submit that, whether under an interests of justice or a convenience analysis, the Movants failed to present sufficient evidence to meet their burden of proof.

WHEREFORE, Caterpillar Inc., Caterpillar Financial Services Corporation and Caterpillar Global Mining LLC respectfully request that this Court deny the Motions.

DATED: New York, New York
October 5, 2012

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By: /s/ Kristi A. Davidson

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**CERTIFICATE OF SERVICE OF POST-HEARING SUBMISSION OF
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