

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

In re:

PATRIOT COAL CORPORATION, *et al.*

Debtors.

**Chapter 11
Case No. 12-51502
(Jointly Administered)**

RE: ECF No. 1651

**OBJECTION OF TIRE CENTERS, LLC TO DEBTORS'
RECLAMATION REPORT**

Tire Centers, LLC (“TCI”), through its undersigned counsel, hereby files its Objection (“Objection”) to the Debtors’ Reclamation Report and Notice of Objection Procedures (the “Reclamation Report”). In support of its Objection, TCI would respectfully show the Court as follows:

1. TCI sells goods, primarily products related to servicing tires (the “goods”), to Patriot Coal Corporation and/or its subsidiaries (the “Debtors”).

2. On or about July 18, 2012, TCI timely filed its Notice of Reclamation Demand (the “Reclamation Demand”) pursuant to § 546(c) of the United States Bankruptcy Code (the “Bankruptcy Code”). The Reclamation Demand properly listed the goods that were received by the Debtors within forty-five (45) days prior to the date of the commencement of this bankruptcy case.

3. On December 19, 2012, the Debtors filed their Reclamation Report, which stated the rationale for the Debtors’ reduction or disallowance of TCI’s Reclamation Demand. The Debtors contend that the goods provided by TCI are not subject to reclamation because the goods were consumed or not identifiable and/or are subject to a prior security interest. The Debtors

further propose an administrative claim amount of “\$0” for the goods listed in the Reclamation Demand.

ARGUMENT

4. The right of reclamation is found in 11 U.S.C. § 546(c), which provides, in relevant part:

[E]xcept as provided in subsection (d) of this section and in section 507(c), and subject to the prior rights of a holder of security interest in such goods or the proceeds thereof, the rights and power of the trustee . . . are subject to the right of a seller of goods to the debtor, in the ordinary course of such seller’s business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of commencement of the case under this title

11 U.S.C. § 546(c)(1). Thus, to reclaim goods sold to a bankruptcy debtor, a creditor must demonstrate that: (a) that goods were sold in the ordinary course of the seller’s business; (b) the debtor received the goods while insolvent; (c) the debtor received goods within 45 days of the filing of the bankruptcy case; and (d) the creditor gave written demand to reclaim the goods (i) not later than 45 days after receipt, or (ii) not later than 20 days after the filing of the bankruptcy case, if the 45 days expired after the filing.

5. TCI has demonstrated all of the requirements to enforce its reclamation rights. Contrary to the Debtors’ position, § 546(c) of the Bankruptcy Code does not identify consumption or commingling of goods as valid defenses to a creditor’s reclamation claim. 11 U.S.C. § 546(c); *see also* James M. Sullivan & Gary O. Ravert, A Vendor’s Guide to Bankruptcy 505 (Bloomberg 2006) (“Prior bankruptcy law merely recognized a vendor’s state law reclamation rights, which were typically available under Article 2 of the U.C.C. The new [bankruptcy] law has . . . perhaps limited the defenses available to debtors.”). Thus, to the extent the Debtors seek to reject TCI’s Reclamation Demand on the basis of consumption or

commingling, TCI requests that the Court sustain this Objection with respect to the value of such goods.

6. Notwithstanding, even if the Debtors' defenses to TCI's Reclamation Demand are legitimate, which they are not, none of the defenses asserted by the Debtors are valid as they relate to the goods provided by TCI within 20 days of the commencement of the bankruptcy filing because such goods qualify for administrative expense treatment pursuant to § 503(b)(9). *See In re Commissary Operations, Inc.*, 421 B.R. 873, 877 (Bankr. M.D. Tenn. 2010) (asserting that a creditor's right to assert an administrative expense claim under § 503(b)(9) of the Bankruptcy Code is not conditioned on the creditor's right to assert a reclamation demand under § 546(c) of the Bankruptcy Code). To the extent that the Debtors rely on *In re Dana Corp.*, 367 B.R. 409, 411 (Bankr. S.D.N.Y. 2007), for the assertion that reclamation claims are valueless if the goods are subject to an existing lien, such reliance is misplaced. The *In re Dana Corp.* court explicitly stated that the defenses discussed in that case only applied to reclamation rights under § 546(c) of the Bankruptcy Code and not to a creditor's right to an administrative expense claim under § 503(b)(9) of the Bankruptcy Code. *See In re Dana Corp.*, 367 B.R. at 411. As such, to the extent the Court disallows any part of TCI's Reclamation Demand with respect to goods provided within 45 days of the bankruptcy filing, TCI requests that the Court order the Debtors to grant TCI an Allowed Reclamation Claim for the value of goods provided within 20 days of the bankruptcy filing pursuant to § 503(b)(9) of the Bankruptcy Code.

WHEREFORE, TCI respectfully requests that the Court sustain this Objection and that any order approving the Debtors' Reclamation Report specifically provide that it will have no effect on TCI's ability to recover an amount equal to the value of the goods as an allowed reclamation claim or an administrative expense claim under § 503(b)(9) of the Bankruptcy Code.

Dated: March 1, 2013.

Respectfully submitted,

ARMSTRONG TEASDALE LLP

By: /s/ Richard W. Engel, Jr.
Richard W. Engel, Jr. #34641MO
Joel O. Christensen #62797MO
7700 Forsyth Blvd., Suite 1800
St. Louis, MO 63105
314.621.5070
314.612.2318 (facsimile)
rengel@armstrongteasdale.com
jchristensen@armstrongteasdale.com

and

Melissa L. Gardner
(*Pro Hac Vice Pending*)
Sedgwick LLP
1717 Main Street, Suite 5400
Dallas, TX 75201
469.227.8200
469.227.8004 (facsimile)
Melissa.gardner@sedgwicklaw.com

Attorneys, for *Tire Centers, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this the 1st day of March, 2013, a true and correct copy of the above and foregoing has been served on counsel of record via the Court's ECF filing system and by regular U.S. mail, postage prepaid, or via facsimile as allowed by the Report, upon the following Notice Parties:

Patriot Coal Corporation
12312 Olive Blvd., Suite 400
St. Louis, MO 63141
Attn: Marguerite O'Connell
Reclamation Claims
Via Fax 314-275-3626

Patriot Coal Corporation
c/o GCG, Inc.
P.O. Box 9898
Dublin, OH 43017-5798
Via Fax 855-687-2627
Claims and Noticing Agent for Debtors

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
Attn: Brian M. Resnick and
Michelle McGreal
Via Fax 212-607-7983
Counsel for Debtor

Marcia Goldstein
Joseph Smolinsky
Weil Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
*Counsel for Administrative Agents for
Proposed Postpetition Lenders*

Margot B. Schonholtz
Ana Alfonso
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
*Counsel for Administrative Agents for
Proposed Postpetition Lenders*

Thomas Moers Mayer
Adam C. Rogoff
Gregory G. Plotko
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
*Counsel for Official Committee of
Unsecured Creditor*

W. Timothy Miller
Taft, Stettinius & Hollister
425 Walnut Street, Suite 1800
Cincinnati, OH 45202

Janice B. Grubin
Todtman, Nachamie, Spizz & Johns, P.C.
425 Park Avenue
New York, NY 10022
Counsel for J. H. Fletcher & Co.

/s/ Richard W. Engel, Jr.