

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re:

PATRIOT COAL CORPORATION, et al.,

Debtors.<sup>1</sup>

Chapter 11

Case No.: 12-51502-659

Jointly Administered

Re: ECF Nos. 1995, 2056, 3870

**STIPULATION OF FACTS FOR PURPOSES OF A HEARING ON  
PAYNE-GALLATIN OBJECTION [DOC 2056] TO DEBTORS' MOTION  
FOR AUTHORIZATION TO (i) ASSUME OR (ii) REJECT UNEXPIRED  
LEASES OF NONRESIDENTIAL REAL PROPERTY [DOC 1995]**

Payne-Gallatin Company, a West Virginia corporation (“**PG**”) and Debtor Panther LLC (“**Panther**”) (collectively, the “**Parties**”) enter into this stipulation (the “**Stipulation of Facts**”) concerning the PG objection (the “**Objection**”) [ECF 2056] to Debtors’ Motion For Authorization To (i) Assume Or (ii) Reject Unexpired Leases Of Nonresidential Real Property (the “**Motion**”) [ECF 1995], and stipulate, without waiving objections to the relevance or materiality of any of the paragraphs below, that the following facts are true:

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1334.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. Venue is proper in this Court pursuant to 28 U.S.C. § 1408 and 1409.
4. PG is a West Virginia corporation, incorporated in 1925.

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<sup>1</sup> The Debtors are the entities listed on Schedule 1 attached to the Motion. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

5. Panther is a West Virginia limited liability company, organized in 1998.
6. PG, as lessor, and Panther, as lessee, are counterparties to a lease dated October 15, 1976 (the “**Lease**”).
7. The Lease parties were originally Payne-Gallatin Mining Company, a West Virginia corporation, to which PG is the successor by change of name, as lessor, and OCAMCO, a corporation, as lessee.
8. The Lease is recorded in the Office of the Clerk of the County Commission of Kanawha County, West Virginia (the “**Kanawha County Clerk’s Office**”) in Lease Book 198, at page 638. A true and complete copy of the Lease is attached as **Exhibit A**.
9. In 1999 Panther became the lessee under the Lease pursuant to an “**Assignment, Assumption, Consent and Release Agreement**” by and among PG, P-G&H Joint Venture, Panther Corporation, and Panther, made effective March 16, 1999 (the “**Panther Assignment**”), which is recorded in the Kanawha County Clerk’s Office in Assignment Book 182, at page 551. A copy of the Panther Assignment is attached as **Exhibit B**.
10. “Gross sales price” is defined in Lease Article II (p. 8) as:  
  
For the purpose of calculating the tonnage royalty as above provided, the term “gross sales price” as used herein shall mean the actual price paid for coal sold to a bona fide purchaser f.o.b. the loading plant after final preparation and loading, less any sales tax imposed thereon, but without any deduction for selling commissions, advertising, credit losses or other expenses, but with deductions for discounts or allowances actually allowed to arms-length wholesalers or middlemen.
11. Article II (p. 10) of the Lease provides that:  
  
Lessee shall pay to Lessor as wheelage royalty the sum of one-half of one percent (1/2%) of the gross sales price as hereinabove defined but in no event less than ten cents (10¢) per net ton of coal mined from other lands and transported over, through, under and upon the demised

premises or processed through a cleaning plant on the demised premises, payable at the same time and upon the same basis as tonnage royalties are hereinabove provided to be paid.

12. Coal mined by Panther from other lands is transported by a belt conveyer system through and over the “demised premises” (as defined in the Lease) to Panther’s Coal Clean Preparation Plant Complex (the “**Coal Clean Plant**”) located on the demised premises. The Coal Clean Plant encompasses raw and clean coal stockpiles, incoming and outgoing conveyor belt systems, a coal preparation plant and a truck loading facility.

13. At the Coal Clean Plant, the coal is crushed, washed and dried, then moved by a belt conveyor to a clean coal stockpile, then reclaimed via an underground belt conveyor system to a structure on the demised premises where it is loaded onto trucks.

14. The trucks then haul the coal to various sites off the demised premises.

IT IS SO STIPULATED AND AGREED, BY AND BETWEEN THE PARTIES HERETO, AS STATED ABOVE.

Dated: New York, New York  
May 6, 2013

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**SUMMARY OF EXHIBITS**

The following exhibits referenced in the Stipulation of Facts for Purposes of a Hearing on Payne-Gallatin Objection [Doc 2056] to Debtors' Motion for Authorization to (i) Assume or (ii) Reject Unexpired Leases of Nonresidential Real Property [Doc 1995] (the "**Exhibits**") will be served on the Court, the office of the U.S. Trustee, counsel to the official committee of unsecured creditors, counsel to the administrative agents for the Debtors' postpetition lenders, Thomas Persinger PLLC and Stone, Leyton & Gershman (collectively, the "**Service Parties**"). Copies of the Exhibits will be made available at [www.patriotcaseinformation/exhibits.php](http://www.patriotcaseinformation/exhibits.php) and will be made available for inspection at the hearing.

Exhibit A: Lease dated October 15, 1976

Exhibit B: Assignment, Assumption, Consent, and Release Agreement dated March 16, 1999

Dated: New York, New York  
May 6, 2013

By: /s/ Jonathan D. Martin  
Marshall S. Huebner  
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