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UNITED STATES BANKRUPTCY COURT

DISTRICT OF MISSOURI

Case No. 12-51502

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In the Matter of:

PATRIOT COAL CORPORATION, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
111 South 10th Street
4th Floor
St. Louis, Missouri

June 18, 2013
10:35 AM

B E F O R E:
HON. KATHY A. SURRETT-STATES
U.S. BANKRUPTCY JUDGE

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Motion for Authorization to (i) Assume or (ii) Reject Unexpired
Leases of Nonresidential Real Property by Debtor (1995)

Objection by Interested Party STB Ventures, Inc (2061)

Objection by Creditor Arch Coal, Inc (2068) - CONTINUED TO
7/23 AT 10AM

Objection by Creditor Penn Virginia Operating Co (2067) -
[Order submitted]

Objection by Creditor Lawson Heirs Incorporated (2055) -
Withdrawn (2858)

Objection by Creditor Payne-Gallatin Co (2056) - Under
Submission

Objection by Creditor Shonk Land Company LLC (2069) - [Order
(4039)]

Limited Objection by Creditor H.A. Robson Trust, PRC Holdings,
LLC, The Board of Trustees of Prichard School, The Trust with
A.M. Prichard, III, Sarah Ann Prichard and Lewis Prichard
(2180) - [Order (3332)]

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Motion for Relief from Stay to Allow Civil Litigation to
Proceed by Attorney Mark Alan Atkinson (Brown) (3203) - [Order
(4113)]

Motion for Relief from Stay by Casey & Jeffrey Ryan (3900) -
WITHDRAWN (4135)

Third Omnibus Objection to Claims 2272 and Others Filed by
Debtor (3992) NOTE: Objections to Claims 1562 & 2015 are
Continued to 7/23 at 10AM

Fourth Omnibus Objection to Claims 843 and Others Filed by
Debtor (4010)

Motion for Relief from Stay by Creditor Mary Bowles et al.
(4051)

Objection by Debtor (4134)

Reply by Creditor Mary Bowles (4147)

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Application to Employ Greenberg Traurig, LLP as Special Counsel
for the Debtors Nunc Pro Tunc to May 1, 2013. Filed by Debtor
(4079) - [Order submitted]

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P R O C E E D I N G S

THE CLERK: Please rise. United States Bankruptcy Court for the Eastern District of Missouri is now in session. The Honorable Kathy A. Surratt-States presiding.

THE COURT: good morning. Please be seated.

IN UNISON: Good morning, Your Honor.

THE COURT: I apologize for the delay that we've had with the telephone but I believe we've got the problem resolved. All right.

So, this is the status hearing in the Patriot Coal case. Let me get appearances first in the courtroom please.

MR. WALSH: Good morning, Brian Walsh from Bryan Cave for the debtors.

THE COURT: Good morning.

MR. WILLARD: Good morning, Your Honor, may it please the Court, Greg Willard from Carmody MacDonald on behalf of the Official Unsecured Creditors Committee. Also on the telephone is my co-counsel, Greg Plotko from Kramer Levin. Also in the courtroom, Your Honor, is my son John Willard, who is a summer associate with us at Carmody MacDonald this summer.

THE COURT: Oh, good morning and welcome.

MR. J. WILLIARD: Good morning, Your Honor.

MR. SINGER: Your Honor, Jim Singer for the United Mine Workers of America. I thought I heard Grant Crandall, the general counsel was on the conference call originally but then

1 I didn't hear him a second time. So, I may be the only one
2 here on for the UMWA.

3 THE COURT: All right. Mr. Halley, I don't think we
4 had -- did Mr. Crandall request the call-in information?

5 THE CLERK: I had not received a request from Mr.
6 Crandall to appear by telephone.

7 MR. SINGER: Okay. Then I am the only one.

8 THE COURT: All right. Thank you. Good morning.

9 MS. TOLEDO: Good morning, Your Honor. Laura Toledo,
10 Lathrop & Gage on behalf of Bank of America, the second DIP
11 agent. I believe Ana Alfonso of Wilke Farr is on the phone
12 today.

13 THE COURT: All right. Thank you and good morning.

14 MS. LONG: Good morning, Your Honor. Leonora Long on
15 behalf of the United States Trustee.

16 THE COURT: Good morning.

17 MR. GARTNER: Good morning, Your Honor. Matthew
18 Gartner of Husch Blackwell on behalf of Citibank, the first DIP
19 agents. On the phone, as well is Andrea Saavedra, of Weil,
20 Gotshal & Manges and in the courtroom with me is Justin Fezy
21 (ph.).

22 MR. SMOTKIN: Good morning, Your Honor. Howard
23 Smotkin, Stone Leyton & Gersman on behalf of Lawson Airs Inc.
24 and Payne-Gallatin Company.

25 THE COURT: Good morning.

1 MR. DOYLE: Good morning, Your Honor. Dan Doyle,
2 Lathrop & Gage for Caterpillar Financial Services and the
3 Caterpillar Global Mining entities. With me today is our
4 summer clerk, Brian Jaba (ph.) --

5 MR. JABA: Good morning.

6 MR. DOYLE: -- who is no relation to me whatsoever.

7 THE COURT: Good morning. Welcome, Mr. Jaba.

8 MR. SOSNE: Good morning, Judge. David Sosne
9 appearing on behalf of Mary Bowles and other similarly situated
10 plaintiffs in a lawsuit in West Virginia.

11 THE COURT: All right. Good morning.

12 MR. COUSINS: Good morning, Your Honor. Steven
13 Cousins of Armstrong Tisdale here today on behalf of Peabody
14 Energy. Thank you.

15 THE COURT: Good morning.

16 MR. COUSINS: Good morning.

17 THE COURT: All right. And then on the phone we have
18 Mr. Plotko on behalf of the creditors committee.

19 MR. PLOTKO: That's correct. Good morning.

20 THE COURT: Good morning. And Ms. Alfonso on behalf
21 of Bank of America?

22 MS. ALFONSO: Yes, I am here. Good morning, Your
23 Honor.

24 THE COURT: Good morning. And Ms. Saavedra on behalf
25 of Citibank?

1 MS. SAAVEDRA: Yes, I am here, Your Honor. Good
2 morning.

3 THE COURT: Good morning. And Ms. Turner and Mr.
4 Meldrum on behalf of Argonaut Insurance.

5 MS. TURNER: Yes, Your Honor.

6 THE COURT: Good morning.

7 MR. MELDRUM: Good morning, Your Honor.

8 THE COURT: Good morning. All right. And I'll remind
9 all of the phone participants to please keep your phone on mute
10 except when speaking. All right. Then I think we can go down
11 the docket as it is written. So, the first matter that has not
12 -- well, Mr. Walsh, are there matters on the motion for
13 authorization to assume or reject unexpired leases of non-
14 residential property or has everything that's still remaining
15 been continued on that?

16 MR. WALSH: Your Honor, actually that's where I was
17 going to start in my notes, so that it works out well.

18 THE COURT: All right.

19 MR. WALSH: First, I should probably apologize, I
20 didn't bring a summer associate, in case anyone is reading the
21 transcript. The fault is entirely mine.

22 MR. HUEBNER: Mr. Walsh, this is Marshall Huebner.
23 I'm happy to be kept as your summer associate for today's
24 hearing.

25 MR. WALSH: All right.

1 THE COURT: Oh, Mr. Huebner. Thank you. They said
2 that you weren't on the phone. Good morning.

3 MR. HEUBNER: Good morning, Your Honor. I'm not --
4 I'm also not related to Mr. Walsh.

5 MR. WALSH: That is true, as far as I know. All
6 right.

7 THE COURT: Okay.

8 MR. WALSH: Your Honor, so there was -- one of the
9 adjourned matters relates to one of the assumption rejection
10 matters. We had submitted a proposed order resolving the
11 objection of Penn Virginia, the lessor and so the big picture,
12 Your Honor, is that with that, the debtors have resolved
13 approximately 1,000 lease assumptions and have paid tens of
14 millions of dollars in cure costs. And so, other than the few
15 matters that Your Honor has taken under submission, some in
16 adversaries, at least one in the main case if I recall
17 correctly, we are wrapped on the lease assumptions.

18 THE COURT: All right. Thank you.

19 MR. WALSH: So that -- I believe that answers your
20 question, Your Honor and if you let us know what order you
21 would like to take the others in, I think we can handle it any
22 way you like.

23 THE COURT: All right. Let's just go down the docket.
24 I believe the motion for relief filed by Mark Atkinson has been
25 resolved. That order has been entered. The motion for relief

1 by Casey and Jeffrey Ryan has been withdrawn. So, then that
2 brings us to the third omnibus objections to claims.

3 MR. WALSH: All right. Let me jump to that one, Your
4 Honor. Your Honor, the third omnibus objection involves 321
5 claims that the debtors have paid since the commencement of
6 this case. They were in three groups. There were some that
7 were paid under first day motions, authority granted by the New
8 York court in particular, a large group that were lease
9 assumptions and then another smaller group that was a grab bag
10 of settlements and some creditors that filed proofs of claim
11 for post-petition amounts that were paid in the ordinary
12 course; other items like that.

13 The debtors have agreed to continue this objection as
14 to four creditors or groups of creditors. Two of them, Mead
15 Johnson and Southern Indiana Gas have almost been fully paid
16 but those payments are being handled by a third-party and we
17 were informed that there's some trailing amounts that haven't
18 quite been processed yet. We expect that by the next hearing,
19 we will either have a stipulation or they may just withdraw
20 their claims when that final payment comes in.

21 THE COURT: All right.

22 MR. WALSH: Pocahontas Land Company has raised some
23 questions and has had some difficulty finding local counsel,
24 conflict-free and so we have agreed to continue that to the
25 next hearing, as well. I'm hopeful that we'll be able to

1 resolve that but if not, I think we'll have it teed up and
2 briefed for you by the time we're back in July.

3 THE COURT: All right.

4 MR. WALSH: And then a group of landlords known as the
5 LRPB Group is working with us on a stipulation. They have
6 about 100 claims on file. They're in pairs. Half of them are
7 fixed amounts. We're in agreement that those have been paid as
8 cure amounts. So our proposed order will disallow those
9 claims. The others are contingent claims and we're working
10 towards a stipulation with the LRPB Group and hope to have that
11 wrapped up well before the next hearing.

12 THE COURT: All right.

13 MR. WALSH: So, we're hopeful that there won't be
14 anything to be resolved. There were no objections on file. I
15 got a call from Mr. Smotkin yesterday on behalf of one his
16 clients. I believe that we have figured out this morning that
17 we're all taken care of there. I don't know if he wanted to
18 say anything. No, he's nodding -- he's shaking his head, so
19 that takes care of that, Your Honor.

20 THE COURT: All right.

21 MR. WALSH: So, except for those matters, there's no
22 dispute about the third omnibus objection and we request that
23 it be sustained, Your Honor.

24 THE COURT: All right. Then I will sustain the third
25 omnibus claim objections then to all of those other claims

1 except for the ones that have been continued.

2 MR. WALSH: We will get an order into Your Honor.

3 THE COURT: All right. Thank you. The next -- that
4 brings us to the fourth omnibus objection to claims.

5 MR. WALSH: Yes, Your Honor. This one involves 218
6 claims. They were filed by beneficial holders of the debtors'
7 notes. There are two series of notes outstanding and the
8 indentured trustees for each series of notes have filed global
9 proofs of claim that cover the entire note issuance but there
10 are also 218 individual or institutional creditors that filed
11 their own claims. We're objecting to those to avoid the
12 duplication that would be in issue if all those claims were
13 allowed.

14 We received a number of phone calls from bondholders
15 and their brokers. We believe we have explained to everybody
16 adequately the nature of the objection and the fact that their
17 claims are covered by the global proofs of claim. We believe
18 everyone was satisfied by those explanations. No one has
19 objected and so therefore, we would ask that the Court sustain
20 this objection.

21 THE COURT: All right. And likewise, the Court has
22 seen no written responses to that objection. So, I will
23 sustain the objection.

24 All right. And then that brings us to the motion for
25 relief from stay filed by Mary Bowles.

1 MR. WALSH: And, Your Honor, this is Mr. Sosne's
2 motion, so I will yield to him.

3 THE COURT: All right. Mr. Sosne?

4 MR. SOSNE: Judge, I don't know whether you want me to
5 present or you want the objection first or how you want to
6 handle it.

7 THE COURT: I want to hear from you first.

8 MR. SOSNE: Okay. That's fine. Thank you, Judge. We
9 brought this motion on behalf of Mary Bowles and other
10 similarly situated plaintiffs. This arises out of a, what I
11 will call a mass tort, whereby various individuals in a town, I
12 believe it's called Seth, West Virginia, sustained or allegedly
13 sustained damages as a result of certain practices of some of
14 the debtors where there was a lot of illness and issues that as
15 a result of some of these horrific things that seemed to happen
16 from time-to-time in these coal mining areas.

17 There was a lawsuit that was initiated in West
18 Virginia State Court. The result was ultimately that in I
19 believe it was 2010, there was a settlement of the overall
20 obligations and a settlement agreement was entered into between
21 the parties.

22 There were a couple of loose-ended items because when
23 you're dealing with many plaintiffs as they were dealing with
24 here, you have as can be expected, there were certain Medicare
25 or Medicare payments or reimbursements and there were third-

1 party, what I'll call third-party administrators who were
2 involved in determining or evaluating what sort of Medicaid
3 reimbursements there might be. That's one of the loose ends
4 and maybe the only loose end but there may be a couple of
5 others that I am not aware of.

6 But what happened was is that in 2010, there was a
7 settlement and that settlement agreement specifically provided
8 that the -- and I quoted the language in a footnote on the
9 reply where the debtors and the insurers were going to pay the
10 sum, which by the way is -- it's not -- considering this case,
11 this is a very, very small sum here but nevertheless it is a
12 sum of about 37,500 dollars, to basically take care of the
13 remaining expenses in administering that Medicare reimbursement
14 and that that had not been paid back in 2010.

15 So, obviously we proceeded forward with the -- over
16 the years. Then the case was filed and it left a situation
17 where that money was still unresolved and still hadn't been
18 paid. Consequently, we filed the motion for relief from the
19 automatic stay seeking to be able to proceed to collect the
20 funds because we believed at the time -- at the time we filed
21 the motion, we were under the impression and under the belief
22 in good faith that there was insurance that was undisputed that
23 would cover that remaining balance. We thought that there
24 would be a stipulation and we could then proceed forward. Then
25 they can end up getting paid.

1 But what we have learned since and it was not in my
2 initial pleadings because I didn't know, but which I have
3 subsequently more -- mentioned in my reply in response to the
4 debtors' objection is that apparently what we have here is a
5 situation where there are numerous insurance companies involved
6 and they took the stance -- they took a stand so-to-speak to
7 indicate that there was not coverage for the insurance; that
8 there were certain exclusions or they were not required to
9 provide defense or indemnity or insurance coverage for the
10 settlement that took place and I assume that's the larger sum
11 that was -- or the sum that was resolved pursuant to the 2010
12 settlement.

13 And Patriot ended up filing a -- or the Patriot
14 debtors or various of the debtors, filed a lawsuit against the
15 insurance companies, all of a variety of them and we attached
16 as a copy to our pleading, some of the pleadings and a list of
17 certificate of service that identifies the myriad of parties
18 that were involved.

19 So, Patriot indicated that there was a claim for
20 insurance, that the claim sounded in negligence, that the
21 occurrences defined by the policies was reasonably susceptible
22 to being interpreted for coverage, that there had been panels
23 of litigation panels in West Virginia which had indicated in
24 similarly situated situations that there should be coverage of
25 et cetera, et cetera.

1 What ended up happening, as I understand it, is that
2 Patriot after entering into the 2010 agreement, ended up
3 settling with some -- some but not all of the insurance
4 companies, and pursuant to which Patriot then released the
5 insurance companies so that they were no longer on the hook for
6 providing any indemnity or further coverage in exchange for
7 some type of payment which has not been disclosed because there
8 are various confidentiality agreements.

9 And quite frankly, for 37,500 dollars, we didn't get
10 into a lengthy, prolonged issue in terms of discovery and all
11 this and that which would have cost a lot of money to proceed
12 to pursue. But apparently these insurance companies were let
13 off -- some of the insurance companies were let off the hook
14 and then if the insurance companies had to pay anything, the
15 debtors were to indemnify those particular insurance companies.
16 I was advised by debtors' counsel in New York that there were
17 other insurance companies that were still out there, that were
18 still potentially liable with regard to the insurance; exactly
19 where those negotiations are, where that litigation stands, I
20 don't know. But apparently some have been -- insurance
21 companies were let off the hook so-to-speak and others are
22 still on the hook. So, that's the basic background of this.

23 What we're -- we're caught in sort of a whipsaw type
24 situation where when you get these types of cases and you get
25 multiple insurance companies and you get this sort of

1 complexity, you never quite know what insurance there is and
2 what there isn't and trying to find it out.

3 But here's what we want. We want to be able to go
4 back to state court and under state relief, I don't have to
5 tell the Court what the grounds are for stay relief. The
6 debtors described the same test that I described, the same test
7 that the Court is fully aware of in terms of what the test is
8 for granting stay relief. And it's a balancing of all the
9 myriad of factors. And so here's what we want.

10 We want to be able to go back to state court to allow
11 the West Virginia counsel who is handling this case to be able
12 to proceed to -- to the extent that insurance covers and I'm
13 not saying that it does and I'm not saying that it doesn't but
14 to the extent that it does, that they can proceed to pursue
15 their claim to see that they can get their funds and to the
16 extent that insurance does not cover, then under those
17 circumstances, then they would have an unsecured claim for the
18 difference or if there's no insurance ultimately, then they
19 would have a full unsecured claim for the entire balance.

20 Now, we're dealing with state court issues. We're
21 dealing with some litigation that had been settled and courts
22 routinely retain jurisdiction to deal with these issues. We're
23 dealing with issues that are not particularly bankruptcy
24 related. They're -- all of the action took place in West
25 Virginia and the costs involved in quite frankly defending this

1 -- my pleading here is probably costing more money than had the
2 debtors just put some money on the table and said let's just
3 call it a day.

4 But nevertheless, what we want to be able to do is to
5 the extent that there might be a claim directly with regard to
6 the insurance companies because the settlement agreements
7 states that the insurers shall pay. Now granted, they'll point
8 out that the insurance company did not sign that settlement
9 paper but we don't know what happened behind the scenes. We
10 don't know -- we only see the tip of the iceberg. So, we don't
11 know that there is or is not a specific direct claim against
12 the insurance companies vis-a-vis -- of having to step forward,
13 even those that have been ultimately released but there may be
14 and it's -- you have creative counsel dealing with state law
15 issues and it's for them to address in a state court forum that
16 is better capable of dealing with the issue.

17 Number two is for those insurance companies, to the
18 extent that they have not settled, that we have a pleading that
19 we've attached that shows that apparently Patriot thought there
20 was insurance and there should be insurance and there are
21 panels that believe there should insurance and so we want to be
22 in a position to recoup that or get -- be in line to get that
23 if that falls out.

24 And then third, we don't know how much the insurance
25 companies have paid and what the total amount that the

1 insurance companies will ultimately pay in terms of reimbursing
2 or paying the debtors. So to the extent that they recoup and
3 get their money back, the debtors shouldn't get a windfall here
4 and while debtors may say well, we're never going to get that
5 fund or we'll never get that much money, we have no idea how
6 this is going to ultimately end.

7 A couple of just loose-ended items; first, the debtors
8 say well, we indemnified, we agreed to indemnify the insurance
9 companies if the insurance companies paid and that that might
10 be a post-petition claim but that sounds very much akin to when
11 an officer gets indemnified by a company, has to payout where
12 there's maybe payouts in post-petition and a lot of these
13 indemnity claims are prepetition claims to begin with.

14 So we think that when you look at the overall issues
15 here that we should be able to get stay relief to allow our
16 counsel to proceed forward. They're going -- they'll make the
17 decision of how far they can push the envelope or not push the
18 envelope and go forward and attempt to recoup from the
19 insurance company, which is what's there -- typically there to
20 provide for coverage for these issues. And then to the extent
21 that there is insufficient monies or insufficient insurance or
22 even if no insurance, then we have an unsecured claim for that
23 outstanding balance which I believe is not contested in terms
24 of dollar amount.

25 So I think that when you look through all these

1 various tests, the trial readiness, while we got a court that
2 has already reviewed this issue, the resolution of preliminary
3 bankruptcy issues, there's not a whole lot there, the success
4 on the merits; that's something we ultimately need to -- we
5 don't know at this point but we'll -- that's something to be
6 figured out at some point, the costs involved and the potential
7 burdens; I've described them, and the impact of litigation and
8 other creditors; it's not going to adversely affect other
9 people considering the massive amounts of money that's been
10 thrown around in this case.

11 So I think when you look at this as a whole in its
12 entirety, that we should be granted stay relief and to proceed
13 forward. Thank you.

14 THE COURT: Mr. Sosne, I have just a couple of
15 questions.

16 MR. SOSNE: For me?

17 THE COURT: For you.

18 MR. SOSNE: Okay. I'll try to answer them.

19 THE COURT: The first question that comes to mind when
20 I read the motion is what happened from 2010 to 2012 once the
21 settlement was entered into?

22 MR. SOSNE: Unfortunately, I was not trial counsel or
23 maybe fortunately, I was not trial counsel since I haven't
24 handled a personal injury case in God knows how many years, as
25 this court well knows.

1 But I think there's -- when you had -- I believe the
2 scope of the -- the number of plaintiffs, I think there are
3 over about 350, it's a small town. A lot of people in this
4 town were sickened as a result of this. There was all sorts of
5 Medicare and you deal with Medicare and Medicare reimbursement
6 and we hired a third-party entity called Garretson to go back
7 and forth with trying to figure out these reimbursement issues.
8 Some of these things take an inordinate amount of time. They
9 always take longer than they should.

10 Now what exactly happened here? What are the
11 specifics? I really don't know.

12 THE COURT: Okay.

13 MR. SOSNE: But obviously, they got caught and now
14 they're getting whipsawed as a result of this.

15 THE COURT: All right. And what exactly is it that
16 has to be done to figure out this Medicare stuff? And I guess
17 more of my question when you were making your argument is it
18 that the plaintiffs want to -- the movants want to file some
19 new suit? They want to file something in the settled suit?
20 What is --

21 MR. SOSNE: What I think --

22 THE COURT: It's hard for me to tell exactly what they
23 want to do.

24 MR. SOSNE: I think it's -- what's happened is I think
25 now as I understand that I think believe the Medicare dollar

1 amounts have been set.

2 THE COURT: Okay.

3 MR. SOSNE: So, those have been set. There is -- it
4 took some time to get to those to fix the numbers. The
5 settlement agreement had a cap of forty-grand of which some
6 third-party entity paid like 2,500 or 2,300 --

7 THE COURT: Um-huh.

8 MR. SOSNE: -- leaving a maximum of about 37.5 which
9 is left open. And then there's the fee to pay Garretson for
10 the services that it rendered in connection with the third-
11 party administration and if this fee isn't paid, it comes out
12 of the hide of the claimants. That's what's happened.

13 So we think that the numbers have all been liquidated.
14 Now it's just a question of paying it or the money comes out of
15 the hide of the claimants' part of this group or class, if you
16 call it that.

17 THE COURT: So, the movants then are seeking this
18 money from these insurance companies to pay to the third-party
19 administrator, so that Medicare claims --

20 MR. SOSNE: Well, it will either be from the insurance
21 company or through an -- because a lot of insurance works as an
22 indemnity to pay as you do in many personal injury cases, that
23 would pass through, so that the debtor wouldn't go out-of-
24 pocket for that 37.5 but the insurance companies would go out-
25 of-pocket for that; to the extent of insurance. It's just like

1 you would if there was a car accident and is there insurance to
2 cover and if there's a shortfall, then they have an unsecured
3 claim for the difference.

4 THE COURT: Okay. So they want to file claims against
5 these insurance companies to say if --

6 MR. SOSNE: Well, either directly through the
7 insurance company or as I said, there are possibly three
8 approaches that I can think of and I'm not as creative as some
9 of the personal injury counsel, but there may be more ways to
10 approach it; one is to the extent are any of the insurance
11 companies directly liable? They may or may not. Two is
12 there's still potentially out there other insurance companies
13 where there's not an adjudication of whether they're obligated
14 to provide coverage and if they are, then we should be able to
15 monitor it and take action to protect our interests in order to
16 get that.

17 Third is is if for some reason there's the total
18 amount that was paid to the debtor, equaled or exceeded the
19 amount of the claims involved, then the debtor should not get a
20 windfall; the 37.5 or whatever the funds are, should be used to
21 pay for -- to pay these claimants which is what they bargained
22 for in the 2010 agreement which specifically provides that the
23 debtors and the insurers will provide coverage.

24 Interestingly, and parenthetically, the -- after that
25 agreement, it was the debtors who then released some of the

1 insurance companies without advising -- we had no idea that
2 they had been released. So you have an agreement that says
3 they're supposed to pay and then all of the sudden, boom,
4 they're off the hook.

5 So I'm not saying that anybody did anything that was
6 untoward but the consequences of it, because there may be
7 bigger issues because maybe the debtors said, you know, we have
8 this -- all these claims out there. They're going to
9 compromise and I assume they either gave very little thought to
10 these people or -- in other words, there was a casualty but
11 with larger dollars, one would be -- you would look at it in a
12 little bit more of a Machiavellian-type way. But in any event,
13 I think that is the process or that's the sequence of events as
14 far as I understand it.

15 THE COURT: All right. Thank you.

16 MR. SOSNE: Okay, thanks.

17 THE COURT: Mr. Walsh?

18 MR. WALSH: Good morning, Your Honor. Brian Walsh
19 again for the record. Your Honor, as you know, the burden is
20 on the plaintiffs to show cause for relief from the automatic
21 stay. So I want to start with the big picture, the balance of
22 the harms which is sort of what all of the various multi-factor
23 tests kind of boil down to.

24 Your Honor, if stay relief is denied here as Mr. Sosne
25 acknowledged, the plaintiffs will out of their hide, have to

1 pay roughly 37,000 dollars to a consultant to obtain releases
2 of Medicare and Medicaid liens and that means at least to the
3 extent of that resolution, the money will go to the plaintiffs,
4 rather than going to the government to reimburse the government
5 for what it already paid for treatment for various medical
6 issues.

7 So, if stay relief is denied, the plaintiffs have to
8 use some of the settlement proceeds to pay the consultant about
9 37,000 dollars. But the plaintiffs have the rest of the
10 settlement proceeds with which they can do that. The amount of
11 those proceeds is confidential. I'm not going to mention it on
12 the record. It's in Exhibit A that Your Honor has.

13 So, the result of taking it out of the plaintiff's
14 hide is that their recovery personally will be reduced
15 somewhat. Again, I can't say exactly how much but you can take
16 37,000 dollars and divide it by that other number and that's
17 the reduction.

18 If stay relief is granted on the other hand, there is
19 a very low likelihood that the plaintiffs recover anything from
20 these carriers which I'll discuss in a moment but the
21 bankruptcy estates of the debtors are likely to end up with
22 indemnification claims to multiple carriers and those, given
23 the nature of insurance litigation, those could easily exceed
24 37,000 dollars per carrier or a lot more than that by the time
25 this plays out.

1 Now Mr. Sosne mentioned that in his view, these
2 indemnification claims against the debtors should be
3 prepetition claims. I believe the debtors would take the same
4 position, as well. I believe the carriers would argue that
5 they're administrative claims that would need to be paid in
6 full and that would need to be hashed out here.

7 But I want to talk about the merits of the claim
8 against the carriers also because the chance of success on the
9 merits is one of the critical factors in stay relief analysis.
10 And we need to keep in mind, this is not a typical insurance
11 stay relief motion. There's a big, big difference here. A
12 plaintiff with a tort claim frequently gets relief from the
13 automatic stay to pursue the claim solely for the purposes of
14 collecting from insurance. It typically will waive any
15 recovery against the estate as a bit of a quid pro quo to get
16 that stay relief.

17 The reason that works is because the carrier has an
18 obligation to defend the claim and to indemnify the debtor
19 defendant on account of the claim. The key difference here is
20 there is no tort claim and more precisely, there has not been a
21 tort claim since 2010. There was a tort claim that was
22 asserted in state court before then. That's the reason the
23 debtors are pursuing the insurance companies on coverage issues
24 but these tort claims brought by the plaintiffs were settled
25 and released in 2010. There are no tort claims anymore. There

1 is a contract between plaintiffs and the debtors.

2 Insurers do not provide coverage for breach of
3 contract. I think the Bowles' plaintiffs would argue that the
4 debtors have breached the settlement agreement. I don't know
5 whether we need to characterize it that way but that's the
6 nature of the claim that they would assert. That the debtors
7 did not fully perform their obligations under the settlement
8 agreement. It's a breach of contract claim.

9 And the carriers, as Mr. Sosne alluded to, are not
10 parties to this contract. It is a settlement agreement between
11 the plaintiffs and the debtors' period. So there is no direct
12 claim for breach of contract against the carriers. There is no
13 tort claim for which the carriers are obligated to provide
14 coverage to the plaintiffs.

15 The debtors have a breach of contract claim against
16 the insurers for failing to provide the coverage while this was
17 a live suit. Some of that is going on. Some of that has been
18 settled. But these pieces can't be put together to give the
19 plaintiffs a right against the insurance company and that's
20 what makes this different from a typical stay relief motion.
21 There simply is no valid claim for the plaintiffs to pursue
22 here.

23 The reply brief and portions of Mr. Sosne's argument
24 are more or less, if I can characterize it as we should be able
25 to give it a try and see if we can come up with something and I

1 think that's revealing. Given the amount of money at issue
2 here the only economic reason to try to pursue these carriers
3 is to put economic pressure on the debtors to settle this with
4 more cash out of the bankruptcy estate. And that is not an
5 appropriate reason for relief from the automatic stay in this
6 context.

7 Again, I'm not being pejorative. I certainly
8 understand why the plaintiffs would want to pursue this claim
9 but I think the numbers suggest that their real hope here is to
10 get the debtors to say, you know what, never mind, here's a
11 bunch of cash and let's call this a day. And that's not why we
12 ought to be granted relief from the stay in this context, I
13 submit.

14 Mr. Sosne also mentioned that there is a theoretical
15 at least possibility that the debtors might recover more in
16 their coverage actions than they agreed to pay in the
17 settlement agreement. Without getting into the details because
18 they're confidential, I can represent to the Court that that
19 has not occurred yet and it is a long way from occurring. It
20 is unlikely ever to occur but the more important point is that
21 that really happens in every bankruptcy case. In every case
22 there are situations where suppliers of raw materials don't get
23 paid and yet the debtor receives the raw materials, creates a
24 finished good, sells it and collects from a customer in full.
25 That doesn't mean that the unpaid suppliers get relief from the

1 automatic stay. That doesn't mean that the unpaid suppliers
2 get the proceeds of that sale.

3 To grant stay relief on that basis, Your Honor, I
4 think would turn the automatic stay on its head. One of the
5 purposes of the breathing spell is to allow the debtors to call
6 a halt to litigation, to call a halt to prepetition claims,
7 even if the debtors achieve somewhat of an economic advantage
8 because of the timing of the date on which the petition is
9 filed. They may collect all of their receivables in full.
10 They may pay their suppliers a little or nothing but that's how
11 bankruptcy works.

12 So, Your Honor, for these reasons we would submit that
13 the plaintiffs have not established cause for relief from the
14 automatic stay and request that the motion be denied.

15 THE COURT: All right. Thank you, Mr. Walsh. I do
16 have one question for you.

17 MR. WALSH: Yes. Yes, Your Honor.

18 THE COURT: Kind of along what Mr. Sosne said, it is
19 kind of a smaller sum of money compared to some of the other
20 things. I was curious to know why this issue hadn't just been
21 resolved.

22 MR. WALSH: I don't know for sure, Your Honor, but I
23 think that the issue is that it is a small amount of money
24 relative to other amounts of money that are in the papers that
25 I believe you're looking at, Your Honor and here's one way to

1 look at it. These plaintiffs got paid. They got paid outside
2 the preference period. They're going to keep that money. I
3 can't think of any reason they wouldn't be able to keep that
4 money. Let's put it that way. And relative to a lot of other
5 creditors who are dealing with a debtor in financial distress,
6 they have had a pretty good result here.

7 I did not participate myself in the discussions prior
8 to the filing of this motion but I believe that the thinking
9 probably was that this is not something that calls for the
10 expenditure of further cash by the debtors' estates and if we
11 can resolve it, keeping the -- if we can reach a resolution by
12 Your Honor, keeping the legal fees to a minimum, that is
13 probably a better result for the debtors' estates.

14 THE COURT: All right. Thank you. Mr. Sosne?

15 MR. SOSNE: Just a couple of things. First, I don't
16 think it's the way Mr. Walsh characterizes it just as a
17 contract claim and not as a tort claim. There was an agreement
18 to pay the overall settlement and part of that included the fee
19 with regard to the Medicare -- to pay the Medicare which is by
20 the way been paid. So, the government, I don't believe, is out
21 money but also the fee to pay the third-party administrator as
22 well which would come out of the hide of the plaintiffs.

23 If there is an indemnity or a requirement for the
24 insurance company to provide coverage with regard to a
25 settlement or litigation, that's typically covered as part of

1 insurance. That's number one.

2 Number two, there are -- so there are those existing
3 claims against these third-party -- these insurers which if
4 they are obligated to provide coverage, we submit, should be
5 responsible to provide coverage for the outstanding amounts
6 that were paid pursuant to a case that was -- that sounded in
7 and was in fact in tort. So, I think that's out there in terms
8 of these -- the direct claims.

9 So that's -- there are multiple paths here to get
10 there and that's why we wanted to be able to have the state
11 court issue and let it do its thing to determine exactly how it
12 falls out.

13 In terms of why the debtors haven't been putting
14 anything on the table, well I don't know if you want my
15 editorial but nevertheless, I will say this, before I filed the
16 motion, I approached the debtors and said we would like to do
17 the stipulation in accordance with insurance that they had --
18 they had set up certain procedures.

19 We were told that no, they wouldn't do it because that
20 the debtors had to indemnify the insurance companies that
21 settle. What I didn't know is that the insurance -- that not
22 all the insurance companies had settled.

23 Two, I wanted informally some of the documents, so
24 that I would be able to figure it out to navigate through these
25 things and ultimately we got some but not all.

1 Third, we had a situation where when we were told that
2 there was an indemnity, we were not told that the insurance --
3 some of the insurance companies had been released. So, in good
4 faith, we then proceeded to file and we think we have a good
5 claim for stay relief.

6 Suffice it to say that some of our brethren in other
7 parts of the country perhaps are not as -- take a little harder
8 stand in terms of things and end up as I would point out in the
9 papers, spend a lot more money than perhaps it's worth to reach
10 an accommodation. Granted, they can make the legal conclusion
11 or business decision whether or not they want to throw money at
12 something or to resolve a claim or this or that. I mean,
13 that's their business decision. I have opinions on that. I am
14 sure a lot of people have opinions on that given the type of
15 dollars involved here.

16 Sure, there could have been a solution here. There
17 wasn't and we felt compelled that when there was nothing put
18 forward, that we would come forward and see if we can carry the
19 day. We think we make a -- that when you look at all the cause
20 factors, look at -- and balance the tests and balance the
21 interests here, there appears to be some insurance out there
22 and we don't want to be denied coverage simply because somebody
23 says that no, there is no coverage. You cannot get there.
24 You'll never get there. Or just -- or in a situation where we
25 might be able to get there.

1 And it's not a game of simply holding up the debtors
2 to throw more money on the table. This is, I guess at this
3 point in part principle that they thought that these parties
4 should have come forward and paid. And so we proceed on that
5 basis. So it's not a question of hold-up.

6 And if the debtors decided not to put money on the
7 table and to fight this issue for I guess we're making this
8 lovely argument in front of a small group of people,
9 nevertheless it is important to my client. It is important to
10 the counsel that I am dealing with and they felt strongly about
11 it. Thank you.

12 THE COURT: All right. Thank you. All right. Let me
13 take a brief recess and then I'll come back in and rule on the
14 motion for relief and see if there are any other matters
15 pending. The last thing -- oh, the application to employ
16 Greenberg Traurig, before we take the -- I'm sorry -- there's
17 been an order submitted on that, I believe, Mr. Walsh.

18 MR. WALSH: There is, Your Honor. There were no
19 objections.

20 THE COURT: Mr. Walsh, my only question on that was
21 there is some -- a small outstanding amount to Greenberg that
22 was owed prepetition. I assume that's being waived.

23 MR. WALSH: Your Honor, I don't know. The Greenberg
24 lawyer was not authorized to appear telephonically. So I don't
25 think they're in a position to answer right at the moment

1 either. I would have to check on that Your Honor.

2 THE COURT: All right.

3 MR. WALSH: I believe they are -- they're not being
4 retained as 327(a) counsel, Your Honor. They are special
5 counsel. So, I don't know that they would need to waive that
6 claim to be 327(e) counsel. They just need to not have a
7 conflict of interest on the matters on which they are engaged.
8 So, I didn't look specifically at what that number is to see
9 whether it's material but I don't think they would be obligated
10 to waive that under 327(e). But I can chase down that answer
11 and get it to your chambers if you would like, Your Honor.

12 THE COURT: I would.

13 MR. WALSH: Okay, I'll do that.

14 THE COURT: If you would please. All right. Then
15 we'll be in temporary recess.

16 MR. WALSH: Thank you, Your Honor.

17 THE COURT: Thank you.

18 (Recess from 11:16 a.m. until 11:35 a.m.)

19 THE CLERK: We're back on the record.

20 THE COURT: All right. Thank you. Be seated, please.

21 MR. SOSNE: Judge, the -- Mr. Walsh is --

22 THE COURT: We lost Mr. Walsh?

23 MR. SOSNE: We've lost Mr. Walsh and --

24 THE COURT: Mr. Willard says he will get him; not a
25 problem.

1 MR. SOSNE: -- if you could just hold on one sec,
2 please.

3 THE COURT: Yes.

4 MR. WILLARD: If Mr. Huebner can be his summer
5 associate, I can be his handler.

6 THE COURT: Right. All right.

7 I have considered the motion for relief, the response,
8 the reply and the argument of counsel here today and I will
9 find that no cause exists, especially as to the fifth factor,
10 the cost of defense and other burden to the bankruptcy estate
11 because the only way to determine the liability of any
12 remaining insurance companies the debtor has not settled with
13 will involve expense to the debtors. Therefore, I will deny
14 the motion for relief.

15 Mr. Sosne, any other requests then on behalf of Mary
16 Bowles and the other plaintiffs in the case?

17 MR. SOSNE: I'm sorry?

18 THE COURT: Any other request at this point?

19 MR. SOSNE: The only other request is if it's being
20 denied, what I would like is to be able to deal with a proof of
21 claim for a general unsecured claim for the 37.5.

22 THE COURT: I think you could file your claim.

23 MR. SOSNE: Okay.

24 THE COURT: And then the debtors will respond and put
25 in whatever response they deem. I certainly think you can file

1 a claim.

2 MR. SOSNE: I was trying to avoid having to then seek
3 leave out of after the bar date but we will file the claim as
4 need be.

5 THE COURT: All right. Then that takes care of
6 everything on the docket. Mr. Walsh, are there any other
7 requests then this morning on behalf of the debtors?

8 MR. WALSH: Your Honor, I did have a chance during the
9 break to speak with the lawyers at Greenberg Traurig. I don't
10 know if you want to take that up now or in a phone call that
11 might include them but you tell me how you would like the
12 report, the latest I know on Greenberg Traurig.

13 THE COURT: What's the latest you know and then I'll
14 determine --

15 MR. WALSH: The latest I know is that as I indicated,
16 they do not believe the disinterestedness test applies to a
17 327(e) retention. I agree with that. They are permitted, I
18 believe, to have a claim against the estate as long as they
19 don't have a conflict of interest on the matters on which
20 they're engaged which were litigation matters.

21 They do provide services to the estate at a very
22 substantial discount from their regular rates. It is important
23 to the debtors to have counsel with the depth of knowledge in
24 the black lung matters which is a very complex situation. I,
25 among others in the room, would go nowhere near a black lung

1 case, Your Honor but for example, one of the lead partners on
2 the engagement, his regular rate is normally in the 700s and he
3 handles these cases for 305 dollars an hour. So, Greenberg
4 Traurig believes that they've already taken a substantial
5 discount and should not be required to further waive their
6 prepetition claim which does not -- which is not required under
7 the disinterestedness standard, Your Honor.

8 THE COURT: All right. Then I will consider that. If
9 I have any other questions or anything, I will have Mr. Halley
10 contact you but I think that answers my question.

11 MR. WALSH: Very good. Thank you, Your Honor.

12 THE COURT: All right. Thank you. All right. Any
13 other requests by any of the other parties present in the
14 courtroom?

15 UNIDENTIFIED SPEAKER: No, Your Honor.

16 THE COURT: All right. Any other request by any of
17 the parties on the phone? All right.

18 And as always, I would like to acknowledge that to
19 date I have received over 950 letters. I have read them and
20 placed them all in the record as correspondence. As such
21 letters continue to arrive, I will continue to read them and
22 place them on the record. I thank all of those who have taken
23 the time to address the Court and share their thoughts.

24 Mr. Walsh, the next dates that I have down are for the
25 Patriot Coal status hearing would be July 23rd, August the

1 20th, and I think we can add that September the 24th.

2 MR. WALSH: We will update the notices, Your Honor.

3 THE COURT: All right. Thank you. Then if there's
4 nothing else, we will be in recess until Thursday morning at 10
5 a.m. Thank you.

6 IN UNISON: Thank you, Judge.

7 (Whereupon these proceedings were concluded at 11:39 AM)

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C E R T I F I C A T I O N

I, Linda Ferrara, certify that the foregoing transcript is a true and accurate record of the proceedings.

Linda Ferrara

June 19, 2013

LINDA FERRARA

DATE

AAERT Certified Electronic Transcriber CET**D 656

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UNITED STATES BANKRUPTCY COURT
Eastern District of Missouri
Thomas F. Eagleton U.S. Courthouse
111 South Tenth Street, Fourth Floor
St. Louis, MO 63102

In re: Debtor(s):
Patriot Coal Corporation

Case No.: 12-51502 -A659

CHAPTER 11

Notice of Filing of Transcript and of Deadlines Related to Restriction and Redaction

To: All Persons of Record at Hearing

A transcript of the proceeding held on June 18, 2013 was filed on June 20, 2013.

The following deadlines apply:

If you wish to have personal data identifiers redacted from the transcript, a *Request for Transcript Redaction* must be filed within 7 days of the date of this notice: June 27, 2013. Personal data identifiers **include: social security numbers, financial account numbers, names of minor children, and dates of birth**. If no such request is filed within the allotted time, the Court will presume redaction of personal data identifiers is not necessary.

Any party seeking redaction shall file a *Statement of Transcript Redactions* identifying the location of the personal data identifiers sought to be redacted within 21 days of the date of this notice: July 11, 2013. The party filing the statement shall serve it by regular mail upon all parties at the hearing and shall include a Certificate of Service listing the date and parties served. The *Statement of Transcript Redactions* event will be restricted from public view and cannot be served electronically through the CM/ECF system. If no *Statement of Transcript Redactions* is filed within the allotted time, the Court will presume redaction of personal identifiers is not necessary.

Any party may file a response in opposition to the Statement within 7 days of the date the Statement is filed using the *Response to Statement of Transcript Redactions* event. If a response in opposition to the Statement is filed, the Court will rule on the matter. If a hearing is needed, the Court will send notice of hearing.

If a request for redaction is filed, the redacted transcript is due within 31 days of the date of this notice: July 22, 2013.

The transcript may be made available for remote electronic access upon expiration of the restriction period, which is 90 days from the date of filing of the transcript: September 18, 2013, unless extended by court order. However, during this 90-day period the transcript is available for viewing only during normal business hours at the Clerk's office.

Any questions regarding the transcript process should be directed to Matt Parker, Director of Courtroom Services, at (314) 244-4801.

FOR THE COURT:

/s/Dana C. McWay
Clerk of Court

Dated: 6/20/13

Copies Mailed To:

Brian Walsh, 211 N. Broadway, #3600, St. Louis MO 63102
Rev. 12/10