IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF MISSOURI (St. Louis)

In Re: PATRIOT COAL CORPORATION,

Debtor.

Bankruptcy Case No. 12-51502

CREDITOR, CONTINENTAL BANK'S, RESPONSE TO THE DEBTOR'S FIFTH OMNIBUS OBJECTION TO CLAIMS 2304/3674

COMES NOW Continental Bank (hereinafter "Bank"), a creditor and party in interest, by and through its attorneys of record, and for its response to the claims objection by the debtor to Continental Bank claim 2304/3674 in the amount of \$1,526,868.00, states to the Court as follows:

- 1. Debtor filed an objection to certain claims of Bank, claim number 2304/3674 in the amount of \$1,526,868.00.
- 2. The Bank is currently the owner of the equipment identified in Exhibit A attached hereto.
- 3. The sequence of events which proceeded creditor's ownership of the collateral is as follows. On or about May 15, 2008, the Fifth Third Leasing Company leased certain equipment to Patriot Leasing Company, Inc. pursuant to the terms of a Master Equipment Lease Agreement. As part of the transaction involving Fifth Third Leasing Company, Debtor, Patriot Coal Corporation, executed a Guaranty in favor of Fifth Third Equipment Company. Thereafter, on or about July 20, 2009, the Fifth Third Leasing Company, pursuant to a Master Assignment Agreement, assigned the Lease and the Leased equipment to SG Equipment Financing ("SG"). Thereafter on or about May 27, 2011 SG Equipment Financial, sold the lease and the leased equipment to Somerset Capital Group, LTD. ("Somerset").

- 4. Thereafter, Somerset sold the income stream from the Lease to a third-party bank.

 Thereafter, Somerset sold the Lease and the leased equipment to Continental Bank, but not the income stream from the Lease.
- 5. As a result of the foregoing described transactions, Continental Bank is the current owner of the equipment and owes the residual interest in the collateral after the third-party bank is satisfied in full.
- 6. The Bank has a claim based upon the residual value of the collateral, which is an obligation separate and apart of the lease transaction between Somerset and debtor. Somerset is the successor in interest to Fifth Third Leasing Company.
- 7. The debtor's objection to the claim of Bank is not appropriate in that bank has rights based upon its documentation that are separate and apart from Somerset and Fifth Third Leasing Company.
- 8. Debtor is bound by the terms of the leased documents and cannot seek to expunge the claim until Bank is paid in full.
- 9. Bank has the right to maintain its claims, separate and apart from Somerset or third-party lender until Bank is paid in full.
 - 10. Bank requests that the court allow the Bank's claim to remain.
- 11. Bank requests the Court deny the relief requested by the Debtor in the Fifth Omnibus objection.

WHEREFORE, for the above and foregoing reasons, Bank prays that the Court enter an Order overruling the claims objection by Debtor and for such other and further relief as the Court deems just and equitable.

Respectfully submitted,

HOLBROOK & OSBORN, P.A.

By: /s/ Kurt S. Brack

Kurt S. Brack, MO #37598 7400 S. 110th Street, Suite 600 Overland Park, KS 66210 Telephone: (913) 342-2500

Facsimile: (913) 342-2500 Facsimile: (913) 342-0603

Email: Kbrack@holbrookosborn.com

Attorneys for Creditor Continental Bank

CERTIFICATE OF SERVICE

There undersigned hereby certified that a copy of the foregoing was served by electronic notice or by United States Mail, first class postage prepaid, this <u>Ite</u>Th day of July, 2013 to:

U.S. Trustee Office of the U.S. Trustee 111 S. Tenth St., Suite 6353 St. Louis, MO 63101

Debtor's Attorney Robert G. McLusky Jackson Kelly PPLC 500 Lee St. E., Suite 1600 Charleston, WV 25301-3202

Debtor's Attorney Steven J. Reisman Curti, Mallet-Prevost, Colt & Mosle, LLP 101 Park Ave. New York, NY 10178-0061

Creditor Committee Carmody MacDonald P.C. 120 S. Central Ave., Suite 1800 St. Louis, MO 63105 Debtor's Attorney David Polk & Wardwell 450 Lexington Ave. New York, NY 10017

Debtor's Attorney Bryan Cave LLP 211 N. Broadway, Suite 3600 St. Louis, MO 63102

Creditor Committee Kramer Levin Naftalis & Frankel LLP 1177 Avenue of the Americas New York, NY 10036

/s/ Kur	tS.	Brack	

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