

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

**Chapter 11
Case No. 12-51502-659
(Jointly Administered)**

Re: ECF No. 2821

**STIPULATION BETWEEN DEBTORS AND
CLAIMANT MODIFYING AUTOMATIC STAY**

Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) respectfully represent:

Background and Jurisdiction

1. On July 9, 2012 (the “**Petition Date**”), each Debtor commenced a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ cases (the “**Chapter 11 Cases**”) are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the Joint Administration Order entered on July 10, 2012 [ECF No. 30].

2. Additional information about the Debtors’ businesses and the events leading up to the Petition Date can be found in the Declaration of Mark N. Schroeder, filed on July 9, 2012 [ECF No. 4], which is incorporated herein by reference.

3. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and may be determined by the Bankruptcy Court.

Claimants' Claims

4. Tyler J. Jarrell (the "**Claimant**"), contends that he has claims (the "**Claims**") against Debtor Speed Mining LLC (the "**Debtor Defendant**" or "**Speed Mining**") arising from a post-petition work-related injury in Kanawha County, West Virginia that occurred during his employment with Thunder Contract Services, Inc. ("**Thunder**"). The Claimant has initiated a civil action (the "**Civil Action**") in the Circuit Court of Kanawha County, West Virginia against Speed Mining and Thunder. However, the Claimant has yet to serve Speed Mining with a complaint and summons in the Civil Action (the "**Complaint and Summons**"). The Claimant is informed and believes that Thunder has indemnity insurance coverage that indemnifies Speed Mining for any liability for the Claims and covers all costs and expenses of Speed Mining's defense of the Claims (the "**Available Coverage**"). The Claimant believes that in order to access the Available Coverage, the Claimant must serve the Complaint and Summons on Speed Mining. The Claimant seeks only to proceed against the Available Coverage.

5. On the Petition Date, the Claimant was automatically stayed under 11 U.S.C. § 362(a) (the "**Automatic Stay**") from commencing an action to seek recovery for alleged property damage or injury to the Claimant.

6. Given that the Claimant allegedly suffered a post-petition injury, the Claimant has not filed a Proof of Claim in the Chapter 11 Cases.

7. Pursuant to this stipulation (the “**Stipulation**”), the Claimant agrees to seek recovery solely from the Available Coverage. Accordingly, Speed Mining agrees to modify the Automatic Stay solely to the extent necessary to allow the Claimant to serve the Complaint and Summons on Speed Mining. The Claimant reserves the right, if any, to assert an administrative expense claim in the Chapter 11 Cases in the event of an excess verdict or a deficiency after application of all Available Coverage, and the Debtors and any other applicable party reserve their rights to object to any such claim.

8. The parties to the Stipulation have agreed to modify the Automatic Stay solely on the terms and conditions set forth herein.

9. The Debtors are authorized under the Order Authorizing and Approving Procedures for Settling and Allowing Certain Claims, Litigations and Causes of Action entered in the Chapter 11 Cases on February 13, 2013 [ECF No. 2821] (the “**Settlement Procedures Order**”) to enter into and submit this Stipulation to the Court.

It is hereby stipulated and agreed, subject to and in accordance with the Settlement Procedures Order, by and among the parties to this Stipulation, as follows:

10. The Automatic Stay is hereby modified solely to the limited extent necessary to enable the Claimant to serve the Complaint and Summons on Speed Mining and proceed against the Available Coverage.

11. It is expressly understood by the Claimant that (i) the automatic stay is hereby modified solely with respect to the specific Claims of the Claimant identified herein, (ii) the Claimant may seek satisfaction of the Claims only as set forth herein, and that in no event will the Debtors or their estates be liable to the Claimant in any way whatsoever with respect to the Claims, except as set forth herein and (iii) the Claimant

may not seek, and the automatic stay is not modified for the purposes of, payment of any costs of defending the Civil Action, including attorneys' fees, by the Debtors.

12. The agreement by the Debtors to the modification of the Automatic Stay on the terms and conditions set forth herein shall not be deemed an agreement by the Debtors to provide assistance to or to cooperate with the Claimant in any way in the efforts of the Claimant to prosecute the Claims or secure payment on the Claims under the Available Coverage.

13. Nothing contained herein shall be deemed an admission of liability or otherwise on the part of the Debtors or any applicable insurance carrier(s) with respect to the Claims.

14. Nothing in this Stipulation shall be deemed or construed to impact, impair, affect, determine, release, waive, modify, limit or expand: (i) the terms and conditions of any insurance policy, (ii) any of the rights, remedies, defenses to coverage and other defenses of any insurer under or in respect of any insurance policy (including the right of any insurer to disclaim coverage) or (iii) any claim or payment right of any insurer against any of the Debtors including, but not limited to, any claim or payment right for, on account of, arising from or related to any premium, deductible, reimbursement, self-insured retention or otherwise. All such rights, remedies, defenses, defenses to coverage, claims and payment rights are expressly reserved and preserved. All rights of subrogation and contribution also are expressly reserved and preserved. Furthermore, nothing in this Stipulation shall affect the existing obligations of any insurer to pay defense fees or expenses or the existing arrangements for the payment thereof.

15. The modification of the Automatic Stay as set forth herein shall have no effect as to parties that are not a party to this Stipulation, and the Automatic Stay shall remain in full force and effect with respect to such parties and their claims or causes of action, if any, against the Debtors and their estates.

16. Neither this Stipulation, nor any terms contained herein shall be offered or received in evidence or in any way referred to in any legal action or administrative proceeding among or between the parties hereto, other than as may be necessary: (a) to obtain approval of and to enforce this Stipulation, (b) to seek damages or injunctive relief in connection therewith or (c) to prove that the Automatic Stay has been modified to allow prosecution of the Claims in accordance with the terms hereof.

17. Nothing in this Stipulation is intended to bind any non-debtor defendant nor shall it be deemed to waive or release any claim against any non-debtor defendant in the Civil Action.

18. The United States Bankruptcy Court for the Eastern District of Missouri shall retain jurisdiction (and the parties consent to such retention of jurisdiction) with respect to any disputes arising from or other actions to interpret, administer or enforce the terms and provisions of this Stipulation.

19. This Stipulation may be signed in counterpart originals and delivered by facsimile, which, when fully executed, shall constitute a single original.

20. This Stipulation constitutes the entire agreement and understanding of the parties regarding the Stipulation and the subject matter thereof. The terms set forth in this Stipulation are part of a comprehensive compromise and each element is an integral aspect of the agreed settlement and is non-severable.

21. Each of the undersigned counsel represents that he/she is authorized to execute this Stipulation on behalf of his/her respective client.

22. This Stipulation is effective upon submission to the Court without further order of Court and shall not be modified, altered, amended or vacated without written consent of all parties hereto, subject to Court approval.

/s/ Spencer D. Elliott

Spencer D. Elliott
For the Claimant

/s/ Michelle M. McGreal

Michelle M. McGreal
For the Debtor Defendant

DATED: August 2, 2013
St. Louis, Missouri 63102
mtc

Kathy A. Surratt - States
KATHY A. SURRETT-STATES
Chief United States Bankruptcy Judge