

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 12-51502-659

Jointly Administered

**RESPONSE OF ALPHA ENGINEERING SERVICES, INC. TO
DEBTORS' FIFTEENTH OMNIBUS OBJECTION TO CLAIMS
AS REDUNDANT CLAIM**

Now comes Alpha Engineering Services, Inc. (Alpha), by counsel, and for its response to the Debtors' Objection to Alpha's claim, asserts the following:

1. Alpha performed pre-petition engineering services for the design and construction of an underground coal mining complex consisting of several mines of several seams of coal at a location in Kanawha and Boone Counties, West Virginia. Alpha's unpaid, prepetition claim is \$214,010.28.

2. Alpha has filed a mechanic's lien against the mine complex, and Alpha has filed proofs of claim, asserting secured claims, in both the Patriot Coal Corporation case 12-51502 (claim no. 948-2) and the Kanawha Eagle Coal LLC case 12-52077 (claim no. 460-2).

3. Debtors' objection contends that no legal or factual basis exists for Alpha's claim against Patriot Coal Corporation, and that Alpha's claim should only be allowed in the Kanawha Eagle case.

4. In response, Alpha relies upon the "Master Performance Agreement", attached to Alpha's proof of claim, dated October 5, 2007 between Patriot Coal Corporation and Alpha. The Master Performance Agreement (MPA) identifies Patriot

Coal Corporation (on behalf of itself and its subsidiaries) as the “Owner”, and Alpha as the “Contractor” and provides that Alpha shall be performing work for Patriot Coal Corporation, upon the issuance of a Purchase Order. (See MPA, pg 1, Paragraph 1).

5. In its capacity as the Owner under the MPA, Patriot Coal Corporation has complete control over any work performed by Alpha under the MPA, including the following rights and powers in the Terms and Conditions, at page 2 of the MPA:

- a. Right to inspect the work (§ 5)
- b. Order changes in the work and price (§ 6)
- c. Terminate the work (§ 8)
- d. Determine, through the Owner’s Representative, when and how much should be paid to Alpha for its work (§ 13)
- e. Review, inspect and approve final bills (§ 15)
- f. Approve bonds (§ 16)
- g. Audit Alpha’s records and recover any overpayments that Owner determines to have been paid to Alpha (§ 20).

6. The purchase orders issued to Alpha instructed Alpha to invoice to:

*Kanawha Eagle Coal, LLC
A subsidiary of
Patriot Coal Corporation
P.O. Box 66823
St. Louis, MO 63166-6823*

And to ship to:

*“Kanawha Eagle Coal, LLC
Kanawh Eagle warehouse
235 Joe’s Branch Road
Comfort, WV 25049*

7. Neither the MPA nor the Purchase Orders nor the on-line terms and

conditions of the Purchase Orders limit liability for work performed to Kanawha Eagle. Alpha reasonably believed that Patriot Coal Corporation was a party to Alpha's contract, that Patriot Coal Corporation had substantial control over Alpha's work, and that Patriot Coal Corporation was responsible for payment of Alpha's invoices.

Alpha Engineering Services, Inc.

By counsel

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