

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
GROVE GERACE MODIFYING DISCHARGE INJUNCTION**

Patriot Coal Corporation and its affiliates in these proceedings (collectively, the “**Debtors**” or the “**Reorganized Debtors**”) respectfully represent:

Background and Jurisdiction

1. On July 9, 2012 (the “**Petition Date**”), each Debtor other than Brody Mining, LLC and Patriot Ventures LLC (collectively, the “**Initial Debtors**”) commenced with the United States Bankruptcy Court for the Southern District of New York (the “**SDNY Bankruptcy Court**”) a voluntary case under Chapter 11 of the Bankruptcy Code. On December 19, 2012, the SDNY Bankruptcy Court entered an order transferring the Initial Debtors’ chapter 11 cases to this Court [ECF No. 1789] (the “**Transfer Order**”).¹ Subsequently, Brody Mining, LLC and Patriot Ventures LLC (together, the “**New Debtors**”) each commenced its Chapter 11 case by filing a petition for voluntary relief with this Court on September 23, 2013 (the “**Subsequent Petition Date**”). The

¹ Pursuant to the Transfer Order, all orders previously entered in these Chapter 11 cases remain in full force and effect in accordance with their terms notwithstanding the transfer of venue.

Initial Debtors' cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the Joint Administration Order entered on July 10, 2012 [ECF No. 30], and the New Debtors' cases are being jointly administered with the Initial Debtors' cases pursuant to Bankruptcy Rule 1015(b) and the Order Directing Joint Administration of Chapter 11 Cases entered by this Court on September 27, 2013 in each of the New Debtors' Chapter 11 cases.

2. The Fourth Amended Joint Plan of Reorganization of the Reorganized Debtors (the "**Plan**") [ECF No. 5139] was confirmed on December 17, 2013 and became effective on December 18, 2013.

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.

Claimant's Claim

4. Grove Gerace (the "**Claimant**") contends that he has a claim (the "**Claim**") against Brody Mining, LLC (the "**Debtor Defendant**") arising from a civil action on account of alleged injury to the Claimant initiated in the Circuit Court of Boone County West Virginia, *Grove Gerace v. Brody Mining, LLC*, Civil Action No. 13-C-25.

5. Under the Plan and 11 U.S.C. §§ 542(a)(2) and 1141(d)(1) (the "**Discharge Injunction**"), the Claimant is enjoined from commencing or continuing an action to seek recovery of the Claim as a personal liability of the Debtor Defendant.

6. Pursuant to this stipulation (the "**Stipulation**"), the Claimant agrees to waive any and all claims against the Debtor Defendant related to the Claims and agrees

seek recovery solely from the insurance coverage, if any, available under one or more insurance policies issued to Newhall Contracting, Inc. and Brody Mining, LLC, less any deductible or self-insured retention, to the extent such policies provide liability coverage and defense costs to the Debtor Defendant (the “**Available Coverage**”). Likewise, the Debtor Defendant agrees to a modification of the Discharge Injunction solely to the extent of the Available Coverage (the “**Available Coverage**”).

7. The parties to the Stipulation have agreed to modify the Discharge Injunction solely on the terms and conditions set forth herein.

8. The Debtors are authorized under the Order Authorizing and Approving Procedures for Settling and Allowing Certain Claims, Litigations and Causes of Action entered in these Chapter 11 cases on February 13, 2013 [ECF No. 2821] (the “**Settlement Procedures Order**”) and Section 8.2 of the Plan 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:

11. The Discharge Injunction is hereby modified solely to the limited extent necessary to enable (a) the Claim to proceed to final judgment or settlement and (b) the Claimant to attempt to recover any liquidated final judgment or settlement on the Claim solely from Available Coverage, if any; *provided, however*, that any final judgment or settlement shall be reduced by (x) the amount of any applicable deductible or self-insured retention under the applicable insurance policy and (y) any share of liability under the applicable insurance policy of any insolvent or non-performing insurer or co-insurer (or any reinsurer of any insolvent or non-performing insurer or co-insurer); and *provided*

further, that the Discharge Injunction shall not be modified for purposes of permitting the Claimant to attempt to recover from any Reorganized Debtor or any other party for intentional conduct or punitive damages, except to the extent of the Available Coverage.

12. It is expressly understood by the Claimant that (i) the Discharge Injunction is hereby modified solely with respect to the specific Claim of the Claimant identified herein, (ii) the Claimant may seek satisfaction of the Claim only as set forth herein, and that in no event will the Reorganized Debtors, their estates or any other Debtor Defendant be liable to the Claimant in any other way whatsoever with respect to the Claim and (iii) the Claimant may not seek, and the Discharge Injunction is not modified for the purposes of, payment of any costs of defending the Action, including attorneys' fees, from the Reorganized Debtors.

13. In connection with this modification of the Discharge Injunction, the Claimant on behalf of himself, his heirs, representatives and assigns, does hereby fully, finally and forever waive, release and/or discharge the Debtors, their estates, the Reorganized Debtors, the Debtor Defendant and their respective heirs, successors, assigns, affiliates, officers, directors, shareholders, associates, parents, subsidiaries, predecessors, successors, employees, attorneys and agents from the Claim (whether prepetition unsecured, priority or administrative) and from all related actions, causes of action, suits, debts, obligations, liabilities, accounts, damages, defenses, or demands whatsoever, known or unknown, that arise from the Claim, except to the extent of the Available Coverage.

14. Any Proof of Claim that has been filed or which may be subsequently filed by Claimant arising from the Claim is hereby deemed to be disallowed with

prejudice without further order of Court, and the Clerk of the Court and the Debtors' claims and noticing agent are each authorized and directed to reflect the disallowance of any Proof of Claim and any and all other claims arising from the Claim filed by or on behalf of Claimant in the Debtors' claims register; *provided, however*, that the withdrawal of any proof of claim shall not prejudice Claimant's ability to collect on the Claim from any Available Coverage.

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

16. Nothing contained herein shall be deemed an admission of liability or otherwise on the part of the Reorganized Debtors or their insurance carriers with respect to the Claim.

17. 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 Reorganized 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.

18. The modification of the Discharge Injunction as set forth herein shall have no effect as to parties that are not a party to this Stipulation, and the Discharge Injunction 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.

19. 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 Discharge Injunction has been modified to allow prosecution of the Claim in accordance with the terms hereof.


20. 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.

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

22. 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.

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

24. 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.


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: February 11, 2014
St. Louis, Missouri
jjh

/s/ Karen S. Hatfield
Pamela A. Lambert (WVSB #2128)
Karen S. Hatfield (WVSB #12217)
For the Claimant, Grove Gerace

/s/ Cy A. Hill, Jr.
Cy A. Hill, Jr.
For the Debtor Defendant,
Brody Mining, LLC