

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF MISSOURI
3 Lead Case No. 12-51502 Adv. Proc. No. 12-04355

4 - - - - -x

5 In the Matters of:

6 PATRIOT COAL CORPORATION, et al.,

7 Debtors.

8 - - - - -x

9 ROBIN LAND COMPANY, LLC,

10 Plaintiff,

11 - against -

12 STB VENTURES, INC. et al.,

13 Defendants,

14 - - - - -x

15
16 United States Bankruptcy Court

17 111 South 10th Street

18 4th Floor

19 St. Louis, Missouri

20

21 March 19, 2013

22 10:19 AM

23 B E F O R E:

24 HON. KATHY A. SURRETT-STATES

25 U.S. BANKRUPTCY JUDGE

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Motion for an Order Authorizing the Termination of Its
Nonqualified Deferred Compensation Plan and the Related Service
Agreement Pursuant to Section 363(b)(1) and 503(b)(1)(A) of the
Bankruptcy Code Filed by Debtor (2955)

Supplemental Application of the Debtors for Authority to Expand
the Scope of Employment and Retention of Ernst & Young LLP as
Independent Auditor to the Debtors Nunc Pro Tunc to February
26, 2013 Filed by Debtor (3068)

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

12-04355 ap Robin Land Company, LLC VS STB Ventures, Inc.
Emergency Motion to Dismiss Plaintiffs Motion for Judgment on
the Pleadings as Premature and in Violation of Federal Rule
12(c) as the Pleadings are not Closed Filed by Intervenor-
Defendants Arch Coal, Inc (50)

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P R O C E E D I N G S

THE CLERK: Please rise. Your Honor, we are back on the record.

THE COURT: All right, thank you. Be seated, please. All right, my 10 o'clock docket is the Patriot Coal status hearing date. Let me start first by getting appearances in the courtroom, please.

MR. MARTIN: Good morning, Your Honor. Jonathan Martin, from Davis Polk, for the debtors.

THE COURT: Good morning.

MR. WILLARD: Good morning, Your Honor. May it please the Court, Greg Willard and Angie Schisler from Carmody McDonald on behalf of the official creditors' committee, together with our co-counsel Mr. Tom Mayer, from the Kramer Levin firm.

THE COURT: Good morning.

MS. TOLEDO: Good morning, Your Honor. Laura Toledo on behalf of Bank of America as agent for the pre-petition secured lending group and the second out DIP lender. Also in the court today is Ana Alfonso from Willkie Farr, and on the phone are Margot Schonholtz and Penelope Jensen from Willkie Farr.

THE COURT: All right, thank you.

MR. TURNER: Good morning, Your Honor. Marshall Turner on behalf of Citibank as agent for the first out DIP

1 lenders. Also in the court is Andrea Saavedra from Weil,
2 Gotshal & Manges, lead counsel. Thank you.

3 THE COURT: Thank you.

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

6 THE COURT: Good morning.

7 MR. HALL: Good morning, Your Honor. John Hall on
8 behalf of defendants in an adversary, Arch Coal, Inc., Ark Land
9 Company, and Ark Land KH. Also here today is James Croft from
10 the Cleary Gottlieb firm.

11 MR. COUSINS: Good morning, Your Honor. Steven
12 Cousins of Armstrong Teasdale, counsel for Peabody Energy
13 Corporation, together with Jones Day. Thank you.

14 MR. PERILLO: Good morning, Your Honor. Frederick
15 Perillo on behalf of the United Mine Workers of America.

16 MS. HILLYER: Good morning, Your Honor. Rebecca
17 Hillyer from Morgan Lewis on behalf of the funds. And with me
18 in the courtroom is Rick Welsh from Mooney Green.

19 MR. SOSNE: Good morning, Judge. David Sosne
20 appearing on behalf of Alpha Natural Resources and affiliates.

21 MR. GOLDSTEIN: Good morning, Your Honor. Steve
22 Goldstein on behalf of Aurelius Capital.

23 MR. MARTIN: Your Honor, I failed to mention that with
24 me are Benjamin Kaminetzky and Elliott Moskowitz.

25 THE COURT: All right, thank you.

1 All right. Let's take the matter, I suppose, as they
2 appear on the docket. I believe the only matter that's left on
3 the docket is the emergency motion by Arch.

4 MR. MARTIN: That's correct, Your Honor.

5 THE COURT: All right. Then, Mr. Hall, that is your
6 motion to expedite and for hearing on the matter.

7 MR. HALL: Correct, Your Honor. We've requested an
8 expedited hearing on our underlying motion to dismiss the
9 motion for judgment on the pleadings filed by plaintiff Robin
10 Land in the adversary proceeding. So we will take up, I
11 presume, the motion to expedite.

12 First, Your Honor, we filed the motion on behalf of
13 Ark, Arch Coal, to dismiss plaintiff Robin Land Company's
14 procedurally improper motion for judgment on the pleadings. We
15 filed the motion out of necessity because their motion violates
16 the unambiguous and simple language of Federal Rule 12(c),
17 which says, "After the pleadings are closed, a party may move
18 for judgment on the pleadings." No qualifiers, no exceptions.

19 Here, because the pleadings are most definitely not
20 closed, the motion is improper and premature. The pleadings
21 are not closed, because we have a counterclaim that remains
22 pending today and to which no answer has been filed.

23 The law in this circuit is clear. Magistrate Judge
24 Nannette Baker of the Eastern District recently, September of
25 2011, under identical circumstances, as described in her

1 opinion, ruled that a motion for judgment on the pleadings was
2 improperly filed when pending counterclaims had not been
3 answered. The plaintiff cites no case law in their response
4 from this circuit to the contrary -- the law here is clear --
5 nor do any of the cases that they cite address the objection
6 that we raised today as to the procedural impropriety of their
7 motion for judgment on the pleadings.

8 Therefore, we are requesting the expedited hearing on
9 the matter because not only is plaintiff's motion procedurally
10 improper, plaintiff has purported to require us to respond to
11 the motion by March 25, 2013, Monday, even though the pleadings
12 are not closed. If the Court were to allow plaintiff to
13 proceed on this timetable and enforce the March 25th response
14 date, we would be highly prejudiced.

15 First, as the rule says, we cannot file a response
16 until the record is closed, nor should we be forced to by the
17 filing of their procedurally improper motion. There's an open
18 record here, and the open record is the fault of the plaintiff.
19 That's the reason that we asked them to consent to the
20 expedited hearing. They refused.

21 That we need resolution now cannot reasonably be
22 disputed, given the open record and given the timeframe within
23 which we supposedly have to respond, on Monday. Without this
24 Court's intervention today, Arch would be forced to file an
25 opposition that may never even be necessary. Plaintiff has

1 failed to file any answer to our counterclaims.

2 Until plaintiff answers our counterclaims, which go to
3 the heart of the issues raised in their actual complaint, and
4 until they answer those counterclaims as well as the
5 counterclaims of defendant STB, another defendant here who has
6 joined in our motion, the debtor itself won't even know whether
7 it still has a meritorious motion for judgment on the pleadings
8 to file at a procedurally proper time, nor will it know what
9 that motion would argue until the complete record has been
10 established.

11 We don't have a complete record here. We have
12 counterclaims pending. Yet plaintiff wants a decision without
13 having to answer those, much less without any discovery on
14 those.

15 It is the plaintiff, Your Honor, not us, that has
16 unduly prolonged these proceedings by filing the improper
17 motion, long prior to the time that that the rule specifically
18 provides for. We should not be forced to expend any additional
19 time responding to a motion that cannot be granted on its face
20 or under the Rules, especially one that may never have to be
21 litigated. This is not arguing form over substance. The rules
22 are there for a reason. The Court should not rule on a motion
23 for judgment on the pleadings until the Court has the full
24 record before it.

25 And even if plaintiff's motion had not been

1 procedurally proper (sic) on its face and even if plaintiff
2 wants to argue that this should be considered a Rule 56 motion
3 for summary judgment and that they would not change a word of
4 their motion, Arch would still be prejudiced by having to
5 respond to the motion without the full record on which to
6 respond. The law is clear. We would be entitled to discovery
7 on a summary judgment motion. Plaintiff should not be allowed
8 to deny us a right to the full record on which to respond, much
9 less deny us the right to discovery on facts that they allege
10 and which we dispute; facts which, as we will show, are both
11 inaccurate and incomplete in their complaint. In fact, they
12 have to rely on our very counterclaims to fill in the holes
13 that they left in their assertions in their complaint.

14 Far from any attempt to "ambush" the plaintiff, we
15 extended the Midwest courtesy, Your Honor, of contacting
16 plaintiff's counsel more than a week before our response was
17 due, pointing out the premature and procedurally improper
18 posture of their motion, and requesting them to withdraw it so
19 as to save all the parties the time and expense of a hearing
20 such as the one today. We further gave them copies of the
21 cases confirming the improper nature of their motion and asking
22 them to withdraw the motion.

23 Withdrawing the motion would have saved everybody the
24 time that we're spending here today. They would still retain
25 the right to file a motion for judgment on the pleadings at the

1 proper time. They could file a proper motion to dismiss as to
2 our counterclaims. But plaintiff refused. Not only did they
3 refused to withdraw, they refused to consent to a hearing on an
4 expedited basis. So by refusing to withdraw what the cases,
5 including a direct decision from this district state very
6 clearly is improper, plaintiff has forced this emergency
7 hearing. Absent an expedited hearing, we would be in an
8 impossible situation, responding to a motion before the motion
9 is even ripe under the explicit rules. We should not be forced
10 to do that.

11 Further, plaintiff would suffer no prejudice from this
12 expedited hearing. They filed a fifteen-page response, Your
13 Honor. Furthermore, if the matter is decided today, then we
14 have the positive effect of saving at least a month on a
15 determination of this motion thirty days from now.

16 It must also be noted that, as I mentioned earlier,
17 defendant STB Ventures has joined our motion. Not only did STB
18 join our motion, but they've already served discovery on the
19 plaintiff, discovery which has not been responded to. There is
20 no ambush here. The fact is, we have done nothing of that
21 sort. If we wanted to ambush, we could have filed our motion
22 to dismiss on the day of their response date, March 25th. But
23 we extended the courtesy, of not only reaching out to
24 plaintiff, but providing our argument and cases more than a
25 week before the response deadline.

1 The point is that the plaintiff has filed a
2 procedurally improper motion, refused to withdraw it in the
3 face of clear authority in this district, and tried to corner
4 us into filing a response on a partial, at best, record. We
5 need the expedited relief, and at a minimum, Your Honor, our
6 time to respond, which is currently purportedly set for March
7 25th, that time to respond should be stayed in any event,
8 pending any determination of the underlying motion to dismiss.

9 Consequently, we're requesting the expedited hearing
10 today.

11 THE COURT: All right, thank you.

12 Mr. Martin?

13 MR. MARTIN: Good morning, Your Honor. Jonathan
14 Martin, from Davis Polk, for the debtor Robin Land. Your
15 Honor, I'll keep my comments brief, because I think we can cut
16 through this pretty quickly. But I would like to start with
17 Robin Land's motion, because the significance of that motion is
18 its substance not its procedure.

19 The substance of the motion is the predicate legal
20 issue that must be decided by the Court before anything else
21 happens in this case. This case is about a contract which is
22 called the STB override. It is a payment obligation that is
23 imposed on Robin Land. We pay STB. STB does nothing in
24 return. By definition, is not an executory contract under
25 Section 365, and we are not authorized to pay it.

1 We brought this action to elicit any arguments to the
2 contrary so that we could resolve them quickly and efficiently.
3 In their answers, the defendants contend that the STB override
4 is made executory by a number of contracts. Those contracts
5 are attached to the pleadings in this case.

6 Now, they also assert counterclaims if -- if the Court
7 concludes that the STB override is executory. Those
8 counterclaims can go forward only if that predicate legal issue
9 is decided in their favor.

10 The necessary first step in this action, Your Honor,
11 is for the Court to look at the contracts. This is a matter of
12 plain contract law. The Court must decide whether there is a
13 plausible argument based on the face of the contracts, that the
14 contracts identified by the defendants make the STB override
15 executory. That is the point of Robin Land's motion. It
16 presents that predicate legal issue to the Court. And we
17 contend in that motion that it is clear as a matter of law,
18 based on the unambiguous language of those contracts, that are
19 now before the Court, that the STB override is not an executory
20 contract.

21 The contracts are the record on which the motion has
22 to be decided. It is a question of law for the Court. The
23 Court will look at the contracts and if the contracts
24 unambiguously provide that the STB override is not an executory
25 contract, we can't pay it, and their counterclaims fail to

1 state a claim.

2 Our motion is very simple, Your Honor. Point 1 is
3 titled "The STB Override is not an Executory Contract". It's
4 two sentences long. That's because there's no dispute between
5 us and the defendants that standing alone, the STB override is
6 not an executory contract.

7 Point 2 is titled "No Other Contract Makes the STB
8 Override Executory". Again, it's focused just on the
9 contracts. And we go through each one identified by the
10 defendants. So the next step here, Your Honor, is for the
11 defendants to respond with their arguments on that legal issue.
12 It is a legal question. It is not a question of fact for which
13 discovery is necessary. It is a question of law. And the
14 defendants have to respond on that legal issue which was teed
15 up, Your Honor, by their answers.

16 Our declaratory judgment claim is now closed on the
17 pleadings with their answers. We are seeking a judgment on the
18 declaratory judgment claim alone. And they have known for
19 months that we were going to file this motion as soon as they
20 filed their answers. And that's why we're here today. The
21 defendants don't want to respond because they lose on the face
22 of the contracts.

23 We all know the saying, if you don't have the facts,
24 argue the law. If you don't have the law, argue the facts. If
25 you don't have the facts or the law, argue procedure. That's

1 why we're here.

2 But their procedural argument, Your Honor, is
3 baseless. And when you don't have the facts or the law or
4 procedure, you try to get the judge to think that the sky is
5 falling. The sky is not falling here, Your Honor. Let's be
6 clear about what Arch is arguing.

7 Arch does not dispute that the substance of this
8 motion is improper. They don't dispute that the Court has to
9 decide this predicate legal issue in the first instance, or
10 they can't dispute it if they are. And they don't dispute all
11 of the relevant contracts are now before the Court in the
12 pleadings. And they don't dispute that they have known for two
13 months that we planned to file this motion as soon as they
14 filed their answers, so that the predicate legal question could
15 be put to the Court for a decision promptly and efficiently.

16 Arch's only argument is that we put the wrong label on
17 the motion. They say because of some purported peculiarity of
18 Rule 12(c) that the motion must be denied and we have to start
19 over. As we explained in our papers, their argument is flat
20 wrong. The pleadings are closed on our declaratory judgment
21 claim, and a Rule 12(c) motion is proper directed at that claim
22 alone.

23 The procedure used here in this motion has been used
24 many times over in federal courts, and we cite those cases in
25 our papers. And they are misreading the State Farm case. I

1 won't get into it. I won't rehash what we have in our papers.
2 But they are misreading that case.

3 But to be clear, Your Honor, the Court doesn't need to
4 decide whether Arch's bizarre reading of Rule 12(c) is correct.
5 And to be clear, their position is breathtakingly wrong. But
6 the Court doesn't need to reach the issue, because there's a
7 clear solution here that moots their arguments. The procedure
8 here is irrelevant. The importance of the motion is its
9 substance, not its procedure. Nothing here turns on the
10 procedure of the motion. Nothing.

11 The practical fix here, Your Honor, to just moot their
12 arguments, is to treat our motion for judgment on the pleadings
13 under Rule 56. The fix for their emergency is to replace in
14 the introductory paragraph of our brief, 12(c) with 56. We
15 don't change a word of the brief. We change a number and a
16 letter. That's because the standard stays the same. The
17 motion can be granted, if there's no material issue of fact as
18 to whether the STB override is executory or not. Point 1 stays
19 the same. Point 2 stays the same.

20 Alternatively, the Court could decide the same
21 predicate legal issue in the context of ruling on our motion to
22 dismiss their counterclaims, which is point 3 of our brief,
23 that the legal issue is a predicate for the counterclaims as
24 well, which is why their argument about Rule 12(c) is so
25 absurd. The very counterclaims that they say block our ability

1 to bring this motion now, require resolution of the predicate
2 legal issue presented in that motion before the counterclaims
3 can proceed.

4 We move to dismiss the counterclaims on the grounds
5 that they seek recovery on a pre-petition, nonexecutory
6 contract, that Robin Land is not authorized to pay. Mr. Hall
7 agreed today that the Court could rule on this issue on the
8 counterclaims. So the Court could rule on that issue, point 3
9 of our brief, dismiss the counterclaims. On their view of the
10 world, the pleadings for the entire case would be closed, and
11 then the Court could apply that to our declaratory judgment
12 claim.

13 The point here, Your Honor, is that there are a number
14 of procedural alternatives that just moot Arch's arguments.
15 And there is no prejudice to the defendants in responding to
16 this legal issue now. The defendants have known for a long
17 time that this exact legal issue would be presented to the
18 Court as soon as they filed their answers.

19 I e-mailed them, the defendants, Your Honor, on
20 January 11th of this year, which I said, "In an effort to
21 resolve" -- and this is Exhibit A to our motion, Your Honor, or
22 our response. "In an effort to resolve the action as
23 expeditiously as possible, we intend to file a motion for
24 judgment on the pleadings on RLC's declaratory judgment claim
25 promptly after the answers are filed. We believe that the

1 declaratory judgment claim can be decided by the Court as a
2 matter of law based on the unambiguous terms of the contracts
3 at issue."

4 They then agreed to a schedule to address that legal
5 issue. They've been thinking about that legal issue for two
6 months now. They've had our brief in hand for over two weeks.
7 I submit, Your Honor, that they're stumped. They are not
8 prejudiced. They have no answer to our motion. But that's not
9 prejudice.

10 They should be required to respond on the schedule
11 they agreed to. And there is nothing to the notion that
12 discovery has to precede a decision on this predicate legal
13 question. As a matter of contract law, the only way discovery
14 can become relevant or even admissible is if the Court finds an
15 ambiguity in the contracts. The Court can't determine whether
16 there's an ambiguity in the contracts until the Court looks at
17 the contracts. And that's the point of our motion, is to get
18 that predicate legal question decided. If they can persuade
19 you that there's an ambiguity in the contracts, we'll need to
20 take discovery to flesh that out. But only then will discovery
21 be relevant.

22 So I submit, Your Honor, that the motion should be
23 denied. At the very least it should just be continued to April
24 23rd. They can make whatever arguments they want in response
25 to our motion. And we can respond to them, and you can decide

1 them in the course of deciding our motion. Thank you, Your
2 Honor.

3 THE COURT: Thank you.

4 Mr. Hall?

5 MR. HALL: First, Your Honor, I take it, by that, that
6 they have now consented to our request to hear this on an
7 expedited basis. And therefore, I will respond to the
8 substance of the arguments and the points raised in our motion
9 to dismiss.

10 First, in response, what the plaintiff is asking the
11 Court to do is to look at, again, the incomplete record that
12 they have presented. They point to the STB override agreement
13 and claim that it's not executory. They discount the fact that
14 we have asserted in our counterclaim, in approximately fifty
15 paragraphs, the whole picture. And in that counterclaim -- or
16 to that counterclaim, they have not responded, yet they're
17 asking for this Court to make a determination on that record
18 because they don't want to answer our counterclaims.

19 And it's our counterclaims, Your Honor, that fill in
20 the gaps and the holes that they left out of their complaint.
21 They left out contracts that were directly pertinent to these
22 transactions, that explain the integrated nature of these
23 transactions.

24 It should also be noted that Robin Land was not a
25 party to the STB override. The original parties to that

1 agreement agreed as to the purpose and intent of that
2 agreement. It's only the latecomer to the agreement, Robin
3 Land, that's disputing that at this point.

4 If nothing else, Your Honor, there's going to be an
5 issue as to the intent of the parties as to the integration of
6 the contracts and the nature of the contracts. Yet, what Robin
7 Land is seeking to do now is to have a determination made prior
8 to any determination of that issue.

9 The fact is that we have answered. We have provided
10 essentially a response. That's our counterclaim. They will
11 not answer that, and they have jumped the gun as explicitly set
12 out by Rule 12(c) to ask the Court to make that determination
13 now. The rule is explicit. We do not have a peculiar reading
14 of the rule. We read the rule. We read the rule the same way
15 that Judge Baker in State Farm stated in no unambiguous terms,
16 that says, as long as a Rule 12 motion is pending as to a
17 counterclaim, pleadings are not considered closed, because a
18 party against whom a counterclaim is asserted, must file an
19 answer to the counterclaim if a Rule 12 motion is denied.

20 They have not answered. The pleadings are not closed.
21 A 12(b) motion is not a pleading. This matter remains open.
22 The rule is explicit. The law here is explicit. We've read it
23 explicitly. And they've cited nothing to the contrary in this
24 district.

25 They've reached outside of this district to cite some

1 cases from New York and Michigan and Illinois, none of which
2 stand for the proposition that a Rule 12(c) motion for judgment
3 on the pleadings is appropriate under the circumstances that we
4 have here and under an objection such as one that we are
5 raising here. And even if the cases gave plaintiff any leg to
6 stand on, the fact that there may be a case from other
7 jurisdictions would not allow plaintiff's manipulation of these
8 rules, and it does not change the fact that it is not allowable
9 in this district. Judge Baker's acknowledged that while some
10 courts elsewhere have determined that they might be able to
11 exercise some discretion to rule on a motion for judgment on
12 the pleadings prior to certain pleadings being closed, that is
13 against the plain language of the Federal Rules of Civil
14 Procedure and the overwhelming weight of authority on this
15 issue, quoting Judge Baker. The simple and overwhelming weight
16 of authority simply says, not surprisingly, that the motion is
17 improper and premature.

18 So plaintiff wanted to talk about the STB override and
19 how we got to the point we are today. Well, the only way they
20 get from their pleadings to where we are today is by using our
21 counterclaim to fill in the gaps. It would be improper to
22 require us to respond to a motion for the judgment on the
23 pleadings when it's our pleadings on which they rely to get to
24 where we are today.

25 It should also be noted that after plaintiff filed its

1 adversary against STB, STB moved to dismiss, because plaintiff
2 filed to join Arch as a necessary party. It was by agreement
3 of the parties that Arch was permitted to intervene as
4 defendants. We filed our answer and counterclaim in February.
5 A very cursory reading of our counterclaims shows that our
6 counterclaims go to the central issue the plaintiff wants to
7 raise in its complaint and on its declaratory judgment action:
8 is the STB override executory or not, and can it be rejected?

9 Our counterclaim is very careful and goes into great
10 detail to set out facts showing that the STB override was part
11 of a carefully integrated transaction. It included a lease of
12 mining property and the corresponding royalty obligations that
13 go with it. But plaintiff wants to argue that notwithstanding
14 the facts that we allege in the counterclaim, the STB override
15 must be considered independent of all these other agreements
16 and independent of the intent of the original parties to that
17 agreement, notwithstanding the fact that the STB override
18 agreement itself specifically acknowledges and integrates other
19 contracts.

20 We also note that as plaintiff effectively admits by
21 its response, plaintiff's adversary complaint contains certain
22 omissions and mistakes. I would not submit that the Court --
23 the Court should not be considering a motion for judgment on
24 the pleadings on an incomplete record in any event, and
25 particularly one where there are omissions in the very

1 documents that the plaintiff wants you to rely upon. In
2 particular, plaintiff's complaint asserts that certain original
3 lease -- the two original leases were assigned pursuant to a
4 single agreement. That is not the case. Those leases were
5 assigned pursuant to separate agreements, a number of separate
6 agreements. They only fill in that gap by relying on our
7 counterclaim to which they have not answered.

8 The assignments were raised for the first time in our
9 counterclaims. Essentially, plaintiff admits by relying on our
10 counterclaims, that they missed that in their complaint. They
11 acknowledge both the partial assignments and additional
12 assignments of these leases in their motion for judgment on the
13 pleadings only after we raised them. That shows the plaintiff
14 is, in fact, relying on our counterclaims in their motion. So
15 plaintiff cannot have it both ways. It cannot argue that our
16 counterclaims are ill-relevant to their motion for judgment on
17 the pleadings, while at the same time relying on our
18 counterclaims to fill in the holes in their complaint.

19 So to try to overcome their procedural problem on
20 their motion for judgment on the pleadings, plaintiffs argue
21 that they could make the same arguments in a motion to dismiss
22 or conversion to a motion for summary judgment under Rule 56.
23 That's just not correct and it fails to cure their defects.
24 Their motion is, in all substance, a motion for judgment on the
25 pleadings.

1 They throw in a few paragraphs at the end regarding a
2 motion to dismiss. But what they want to do, Your Honor, is
3 deny us the right to any discovery on all these transactions,
4 all these transactions that we've set out in our counterclaims,
5 all the agreements that have brought Robin Land before the
6 Court today. Ignore that, Your Honor, they want to say, let us
7 point to one contract. Let us point to this isolated contract
8 before looking at anything else.

9 So as a consequence, the plaintiffs point to the
10 stipulation that was entered earlier. But what they fail to
11 mention in the response in their draft stipulation that they
12 cite in their response, is that they really wanted a stay of
13 all discovery in this case. But we were clear that we wouldn't
14 agree to that, and they eventually agreed to take that out of
15 the stipulation. They then filed the instant motion that we're
16 here for on today, and threw in the motion to dismiss
17 allegations with the corresponding stay of discovery that would
18 go with that, forcing the discovery stay that we had indicated
19 we would not agree to and that was not part of the stipulation.

20 So why are they fighting so hard to prevent the
21 parties any discovery and any opportunity to present the
22 complete record to Your Honor for determination? We suggest,
23 Your Honor, that it is because they know what the full record
24 will show, and that is that the parties to the STB override and
25 the other integrated contracts would demonstrate that they

1 intended the STB override to be integrated with the numerous
2 other contracts that continue to this day and thus is
3 executory.

4 Plaintiff also argues that the Court can treat the
5 motion simply as a Rule 56 motion and should not have to
6 replead the same motion at some later time. But this points
7 out what a complete waste of time the instant motion is. This
8 is a motion for judgment on the pleadings, and that's how it
9 should be treated. And to think really practically about this,
10 Your Honor, the appropriate thing to do would be to dismiss
11 their motion, let the parties move forward with some limited
12 discovery, and then, if either side has a viable Rule 56 motion
13 for summary judgment, they could move at that time. But they
14 don't want to allow that. They don't want to give us that
15 opportunity. They want a determination now on an important
16 issue, substantive issue, as to which at least limited
17 discovery is necessary.

18 So it's the plaintiff, not us, Your Honor, that's
19 wasting the time with procedural games because of their
20 premature motion. If they had filed it at the appropriate
21 time, different story. They did not. Absent their motion, we
22 could be well on the way, right now, to completing discovery.
23 As we've pointed out, this is a dispute about an agreement that
24 was originally set up without the plaintiff as a party.

25 And finally, looking at the bare bones of their

1 complaint and their refusal to answer the much more complete
2 counterclaims that we have asserted, as well as their wholesale
3 attempt to preclude any discovery, it's clear they want to
4 avoid letting the Court know the reality behind the agreement.
5 And rather, they want to force the Court to rule on a partial
6 record, just as they want us to respond on a partial record.

7 The most efficient thing to do is to dismiss the
8 motion for judgment on the pleadings, let us have some limited
9 discovery. Considering the motion only as a 12(b) motion does
10 not adjudicate any of these claims in full. At most, it would
11 dismiss certain counterclaims but it would not prove their
12 complaint.

13 Why not have some discovery so complete, full, and
14 accurate, and proper motions could be brought before the Court
15 that are not in direct contradiction to the explicit rule upon
16 which they seek to rely? They've refused. They fight any
17 discovery of any sort. And they argue essentially only in the
18 negative, while failing to point out the very agreements by
19 which they became a party to these proceedings.

20 Therefore, Your Honor, we ask that the Court dismiss
21 their motion. In the meantime, while the Court considers our
22 request, the plaintiff's stated response date for our motion --
23 for our response is March 25th, this upcoming Monday. At a
24 minimum, Your Honor, we would ask for a stay of that response
25 date while the Court entertains our request to dismiss.

1 THE COURT: Thank you. Mr. Martin, briefly.

2 MR. MARTIN: Just very quickly, Your Honor.

3 Mr. Hall just said that in their counterclaims they
4 set forth a theory for how these contracts that are currently
5 before the Court can be viewed to turn the STB override into an
6 executory contract. That's exactly the argument that they
7 should put into the response to our motion. They've thought
8 about it. He's drafted it. They should respond on March 25th.
9 Okay?

10 There is nothing unusual about what we are seeking to
11 do here. We've all seen this movie before in the Eastern
12 Royalty action. We brought the exact same motion. We brought
13 it because it raises the predicate legal issue that has to be
14 decided by the Court. The only way you get to discovery is if
15 the Court determines that there's an ambiguity in the
16 contracts. The contracts are now before the Court on our
17 motion. Mr. Hall and his clients have theories about how those
18 contracts make the STB override executory. They should make
19 their arguments. We'll respond to them. We'll see you on
20 April 23rd. Thank you, Your Honor.

21 THE COURT: Thank you. All right. I'm going to take
22 a brief recess and then I'll come back in and rule on that.
23 But before I go, let me apologize, I forgot to get my
24 appearances on the telephone. So let me just do that right
25 quick.

1 Mr. Huebner for the debtor, you're on the phone with
2 us this morning.

3 MR. HUEBNER: I am, Your Honor, although I've been
4 working on other things in the background, so I hope it was
5 appropriate.

6 THE COURT: All right, thank you. Ms. Schonholtz is
7 on the phone and Ms. Jensen, for Bank of America?

8 MS. SCHONHOLTZ: Yes, Your Honor. Thank you.

9 THE COURT: Good morning. And Brian Meldrum on behalf
10 of Argonaut Insurance?

11 MR. MELDRUM: Yes, Your Honor. Good morning.

12 THE COURT: Good morning. David Barney on behalf of
13 Alexis Cook, et al.

14 MR. BARNEY: Yes, Your Honor.

15 THE COURT: Good morning.

16 MR. BARNEY: Present.

17 THE COURT: And Mark Moedritzer on behalf -- and
18 Joseph Bunn on behalf of STB Ventures?

19 MR. MOEDRITZER: Yes, Your Honor, thank you.

20 THE COURT: All right. Thank you. I apologize for
21 not putting that on the record earlier.

22 All right. I'll take a very brief recess, and I'll
23 come back in and rule.

24 (Recess from 11:00 a.m. until 11:35 a.m.)

25 THE CLERK: Your Honor, we are back on the record.

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

2 All right. I have reviewed the expedited motion --
3 emergency motion of Arch Coal and the response. And I have
4 determined that under Federal Rule of Civil Procedure 7(a) an
5 answer is a pleading; and the Federal Rules 12(a)(1)(B)
6 requires that a party serve an answer to a counterclaim. And
7 while Rule 12(a)(4)(A) typically operates to toll when an
8 answer must be filed, Rule 12(c) specifically states that a
9 Rule 12(c) motion cannot be made until the pleadings are
10 closed.

11 However, the plaintiff is correct that under Rule
12 54(b) a court can direct entry of final judgment as to one or
13 more claims when there are more than one claim involved in a
14 suit, be it a claim, a counterclaim, a cross claim or a third-
15 party claim. Therefore, because defendants have filed numerous
16 counterclaims, the Court may adjudicate plaintiff's motion for
17 judgment on the pleadings.

18 However, additionally, the parties have entered into a
19 stipulation which indicated that plaintiff intended to file a
20 motion for judgment on the pleadings, but it also indicated
21 that plaintiffs shall respond to any counterclaims asserted by
22 defendants within twenty-eight days after this stipulation is
23 entered.

24 Therefore, to resolve this matter, I will order that
25 the plaintiff shall file an answer or responsive pleading to

1 the counterclaims by April the 2nd. Defendant shall file a
2 response to the motion for judgment on the pleadings by April
3 the 9th. Plaintiffs may file a reply by April the 6th (sic).
4 And then we'll take all the matters up on April the 23rd.

5 All right. Mr. Hall, any other requests, then,
6 regarding that matter?

7 MR. HALL: No, Your Honor.

8 THE COURT: All right, thank you. Mr. Martin,
9 anything else?

10 MR. MARTIN: Just a clarification of the reply date,
11 Your Honor. I think you said April 6th, but I think you meant
12 April 16, maybe?

13 THE COURT: Hold on, what'd I say? April 16th, yes.
14 I'm sorry. April 16th. April 2nd for the responsive pleading
15 to the counterclaim, April the 16th for the response to the
16 motion for judgment on the pleadings -- I'm sorry, for the
17 reply to the response by April 9th. And a reply by April 16th.

18 All right, then. I believe that concludes everything
19 that would be on the printed docket. Are there any other
20 requests by any parties in the courtroom?

21 MR. WILLARD: Your Honor, I guess in the nature of an
22 informal matter. This adversary proceeding that was just
23 addressed is a good example. The United States Trustee and the
24 committee both have statutory standing. With respect to
25 adversary proceedings, from time to time, the UST or the

1 committee may wish to appear and be heard. We would not intend
2 to file and burden the Court with motions to intervene, but
3 rather we would intend to simply appear and ask to be heard as
4 the committee's interests or the United States Trustee's
5 interest might appear.

6 I've spoken to debtors' counsel about this approach,
7 but I wanted to bring it to Your Honor's attention that that is
8 how we would intend, the committee to intend to approach
9 appearances and hearings in adversary proceedings.

10 THE COURT: All right. That would be fine, Mr.
11 Willard. Ms. Long?

12 MS. LONG: Your Honor, that's similar with the U.S.
13 Trustee. For example, there are times in adversary proceedings
14 where there are motions to keep documents under seal, where the
15 U.S. Trustee may not have a position with regard to the
16 underlying aspect of the adversary; we may take a position with
17 regard to a motion to have something under seal, because it
18 doesn't meet the statutory standard. And so it is similar,
19 that the U.S. Trustee would appear on that matter. Thank you.

20 THE COURT: All right, thank you.

21 MR. WILLARD: Thanks very much, Judge.

22 THE COURT: Thank you. All right, any other requests
23 by any of the parties in the courtroom?

24 All right. Are there any other requests by any of the
25 parties on the telephone?

1 All right. Then hearing none, I would like to
2 acknowledge that to date I have received over 780 letters. I
3 have read them all, placed them on the record as
4 correspondence. As those letters continue to arrive, I will
5 continue to read them and place them on the record. I thank
6 all of those who have taken time to address the Court and share
7 their thoughts.

8 Our future Patriot Coal status hearing dates would be
9 April the 23rd at 10 o'clock; May the 21st at 10 o'clock; and
10 June 18th at 10 o'clock.

11 And finally, I'd like to address appearances in the
12 court. As I have said in the past, all parties that have
13 entered their appearance in this case are welcome to appear in
14 person in court or request to appear by telephone at our court
15 hearings. If you are requesting to appear by telephone, please
16 do so not later than three business days before the hearing, to
17 my courtroom deputy, John Howley.

18 And please note, when you are provided with the call-
19 in information, as is noted on Mr. Howley's e-mail, you are not
20 to share this information with anyone else. If it comes to my
21 attention that call-in information is being shared with other
22 parties, in particular parties that have not been approved and
23 authorized to appear by telephone, all appearances by telephone
24 will be discontinued.

25 All right. Then, if there's nothing further, we'll be

1 in recess. I believe I have some parties I'll be meeting with
2 informally afterwards. But thank you all for your appearance
3 today.

4 (Whereupon these proceedings were concluded at 11:41 AM)

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

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

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

Date: March 21, 2013

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Form transap

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: Patriot Coal Corporation
Debtor

Case No.: 12-51502 – A659

Robin Land Company, LLC
Plaintiff
v.
STB Ventures, Inc.
Defendant

Adv. Proc. No. 12-04355 – 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 March 19, 2013 was filed on March 22, 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: March 29, 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: April 12, 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: April 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: June 20, 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:

Dated: 3/22/13

/s/Dana C. McWay
Clerk of Court

Copies Mailed to:

Brian C. Walsh, Bryan Cave LLP, 211 N. Broadway, Suite 3600, St. Louis, MO 63102
Rev. 12/10