

STITES & HARBISON, PLLC  
250 W. Main Street  
Suite 2300  
Lexington, KY 40507  
Telephone: (859) 226-22300  
Facsimile: (859) 253-9144

*Counsel to Argonaut Insurance Company, Indemnity National Insurance Company,  
US Specialty Insurance, and Westchester Fire Insurance Company*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**

**PATRIOT COAL CORPORATION, *et al.*,**

**Debtors.**

**Chapter 11**

**Case No. 12-12900 (SCC)**

**(Jointly Administered)**

**Refers to Docket No. 136**

**SURETIES' JOINDER IN LIMITED OBJECTION OF GENERAL ELECTRIC  
CAPITAL CORPORATION TO DEBTORS' MOTION FOR APPROVAL OF  
PROCEDURES FOR THE REJECTION OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES AND FOR THE ABANDONMENT OF PERSONAL PROPERTY**

Argonaut Insurance Company (“Argonaut”), Indemnity National Insurance Company (“Indemnity National”), US Specialty Insurance (“US Specialty”), and Westchester Fire Insurance Company (“Westchester”) (together, “Sureties”), through counsel, join the Limited Objection of General Electric Capital Corporation (“GECC”) to Debtors’ Motion<sup>1</sup> For Approval of Procedures for the Rejection of Executory Contracts and Unexpired Leases and for the

<sup>1</sup> Debtors’ Motion is found at Docket No. 136.

Abandonment of Personal Property [Docket No. 188] (the “Limited Objection”). Sureties join the Limited Objection and request that the procedures requested by Debtors be modified as described herein. In further support of the Limited Objection, Sureties state as follows:

#### **INTRODUCTION**

1. Debtors’ Motion requests approval of procedures (the “Procedures”) to streamline the process for rejecting executory contracts and unexpired leases and sublease and for abandoning personal property associated with rejected leases. Sureties do not object to the concept of streamlining the rejection process, but agree with GECC that the Procedures must be clarified to ensure that Debtors comply with all applicable laws and regulations with regard to any discontinuance of mining operations or the abandonment of equipment that could effect the requirement. Sureties further object to the Procedures as they fail to ensure that many parties with interests in such properties including the Sureties will receive notice of Debtors’ decisions to reject a contract or lease or to abandon equipment that could directly impact Sureties.

#### **BACKGROUND**

2. Sureties are commercial surety companies that have issued reclamation and other surety bonds on behalf of one or more of the Debtor entities in support of the Debtors’ obligations under federal, state, and local laws related to coal mining. To secure Debtors’ obligations, Sureties have posted with the applicable regulatory agencies approximately \$70 million in surety bonds.

3. The Debtors’ extensive underground and surface coal mining operations are regulated under several state and federal environmental and mine safety laws, including the federal Surface Mining Control and Reclamation Act (“SMCRA”).<sup>2</sup> A central feature of

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<sup>2</sup> 30 U.S.C. §§ 1201 et seq.

SMCRA and its state counterparts is that mining and related operations may be conducted only under authority of a permit issued by the applicable regulatory authority.<sup>3</sup> Before Debtors could obtain their mining and related permits they had to provide acceptable financial assurance to secure “faithful performance of all of the requirements” of SMCRA.<sup>4</sup> The majority of the required financial assurance applies to Debtors’ obligations under SMCRA to reclaim the land disturbed by mining, that is, to restore the land to pre-mining or other acceptable condition in accord with the terms of the permit.<sup>5</sup> In very general terms, the required amount of financial assurance is supposed to be “sufficient to assure the completion of the reclamation plan if the work has to be performed by the regulatory authority in the event of forfeiture . . . .”<sup>6</sup>

4. Critical to the performance of Debtors’ regulatory obligations, and to preventing bond forfeitures and potential losses to the Sureties, is the right of access to the land to be reclaimed and equipment sufficient to conduct the necessary reclamation activities. Rejection of surface or mineral leases or subleases and abandonment of equipment can have impacts on parties beyond the counterparties to those agreements. In particular, if a mineral lease or sublease is rejected but the permit remains with the Debtors, the Debtor-permittee will no longer have the right of entry onto the property (which may be required to maintain a valid permit, see, e.g., 405 KAR 8:030 Section 4) and the state regulatory authority could revoke the permit and trigger bond forfeiture.

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<sup>3</sup> KRS 350.060(1)(a).

<sup>4</sup> 30 U.S.C. § 1259(a); KRS 350.064; WV Code § 22-3-11(a).

<sup>5</sup> See, e.g., 30 U.S.C. § 1258; KRS 350.090(1); WV Code § 22-3-10; Natural Resources and Environmental Protection Cabinet v. Whitley Development Corp., 940 S.W.2d 904, 907 (Ky. Ct. App. 1997).

<sup>6</sup> 30 C.F.R. § 800.14(b).

5. Moreover, rejection of a lease that makes the permit invalid destroys the value of the permit and makes it unlikely that the permit could be transferred to another party.

#### LIMITED OBJECTION

6. Under their proposed Procedures, Debtors will provide notice of their intention to reject a contract or lease or to abandon expendable property. This notice will provide the following information: “(i) the identity of the Debtor parties to each of the Contracts and Leases proposed to be rejected, (ii) the identity of the known counterparties to each such Contract and Lease, (iii) for any Leases of nonresidential real property proposed to be rejected, the location of the real property at issue, (iv) for Expendable Property proposed to be abandoned, a description and the location of the Expendable Property and to whom such property will be abandoned and (v) the date the rejection of each Contract or Lease will become effective.” (Motion, ¶ 12).

7. Debtors will file notice with the Court and will serve the notice on the following individuals: “(a) the known counterparties to the Contracts and Leases to be rejected, (b) any additional parties entitled to notice pursuant to the terms of the rejected Contracts and Leases, (c) for Expendable Property, all parties known to the Debtors as having a direct interest in any Expendable Property proposed to be abandoned, (d) the Office of the United States Trustee for the Southern District of New York (the “U.S. Trustee”), (e) attorneys for the administrative agents for the Debtors’ postpetition lenders and (f) attorneys for any official committee of unsecured creditors then appointed in these cases.” (Motion, ¶ 13).

8. As described above, the rejection of mineral leases and subleases or the abandonment of property can have significant impact on the ability of a permittee to complete its reclamation obligations and avoid bond forfeiture. It is possible under the Procedures proposed by the Debtors for the Debtors to reject contracts and abandon equipment that directly affect the Sureties without the Sureties receiving sufficient notice of Debtors’ planned actions.

9. Accordingly, Sureties request that the notice provisions in the Procedures be modified such that Debtors (1) include identification of the mining permits associated with the contracts or leases to be rejected or equipment to be abandoned and (2) serve counsel for Sureties with such notices.

10. Sureties reserve the right to modify or supplement this Limited Objection based upon any discovering any additional information regarding the Procedures.

Lexington, Kentucky

Dated: July 26, 2012

*/s/ William T. Gorton III*  
By: William T. Gorton III  
W. Blaine Early  
Elizabeth Lee Thompson  
Chrisandrea Turner

STITES & HARBISON, PLLC  
250 West Main Street  
Suite 2300  
Lexington, KY 40507  
Telephone: (859) 226-2300  
Facsimile: (859) 253-9144

*Counsel to Argonaut Insurance Company,  
Indemnity National Insurance Company,  
US Specialty Insurance, and Westchester Fire  
Insurance Company*

**CERTIFICATE OF SERVICE**

Pursuant to the provisions of the Order Establishing Certain Notice, Case Management and Administrative Procedures [Doc. No. 84], I, Chrisandrea L. Turner, hereby certify that on July 26, 2012, I caused a true and correct copy of the foregoing to be sent by the Court's ECF System and by first class mail, postage prepaid, on the parties listed below:

Marshall S. Huebner  
Damian S. Schaible  
Brian M. Resnick  
Michelle M. McGreal  
David Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
*Debtors' Counsel*

Steven J. Reisman  
Michael A. Cohen  
Curtis, Mallet-Prevost, Colt & Mosle LLP  
101 Park Avenue  
New York, NY 10178  
*Debtors' Counsel*

Paul K. Schwartzberg  
Office of the United States Trustee  
33 Whitehall Street  
Suite 2100  
New York, NY 10004  
*United States Trustee*

/s/Chrisandrea L. Turner  
Chrisandrea L. Turner  
STITES & HARBISON, PLLC  
250 West Main Street  
Suite 2300  
Lexington, KY 40507-1758  
Telephone: (859) 226-2300  
Fax: (859) 253-9144  
Email: [clturner@stites.com](mailto:clturner@stites.com)

Dated: July 26, 2012  
Lexington, Kentucky

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