

Objection Deadline: December 7, 2012 at 4:00 p.m. (prevailing Eastern Time)  
Hearing Date (if necessary): To Be Determined

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

**In re:**

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

**Debtors.<sup>1</sup>**

**Chapter 11**

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

**(Jointly Administered)**

**EASTERN'S MOTION FOR AN ORDER APPROVING THE SETTLEMENT  
OF CERTAIN MSHA PROCEEDINGS**

Eastern Associated Coal, LLC ("**Eastern**") hereby submits this motion (the "**Motion**") pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") for entry of an order, substantially in the form attached hereto as Exhibit A, (the "**Proposed Order**") (a) approving the proposed settlement of the discrimination

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<sup>1</sup> The Debtors are the entities listed on Schedule 1 attached hereto. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

proceedings (collectively, the “**MSHA Proceedings**”)<sup>2</sup> currently pending in the Federal Mine Safety and Health Review Commission (the “**Commission**”) as agreed to at that certain mediation session between Eastern and William Mark Stewart held on June 12, 2012 (the “**Settlement**”) and (b) authorizing Eastern to take and perform such other actions as may be necessary or appropriate to implement and effectuate the Settlement. In support of the Motion, Eastern respectfully represents as follows:

### **Background and Jurisdiction**

1. On July 9, 2012 (the “**Petition Date**”), Patriot Coal Corporation and each of its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ cases are being jointly administered pursuant to Rule 1015(b) of the Bankruptcy Rules and the Court’s Joint Administration Order entered on July 10, 2012 [ECF No. 30].

2. Mr. Stewart was employed by Eastern at its Federal No. 2 Mine from April 9, 2007 until his termination on October 27, 2011, first as an hourly mechanic and later a maintenance foreman. In response to his termination, which Eastern alleges was based on excessive absenteeism, Mr. Stewart filed a discrimination complaint with the Secretary of Labor of the United States Department of Labor (the “**Secretary**”, and together with Eastern and Mr. Stewart, the “**Parties**”), pursuant to section 105(c) of the Federal Mine Safety and Health Act of

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<sup>2</sup> The MSHA Proceedings are captioned as *Hilda L. Solis, Secretary of Labor, United States Department of Labor and William Stewart v. Eastern Associated Coal, LLC*, Docket Nos. WEVA-2012-597-D; WEVA-2012-911-D; WEVA-2012-912-D; and WEVA-2012-1220-D, and MSHA Case Nos. MORG-CD-2012-02 and MORG-CD-2012-04. In connection with the Parties’ motion to approve the settlement, the Parties intend to seek consolidation of these dockets.

1977, 30 USC 801 *et seq.*, (“MSHA”), alleging that Mr. Stewart was wrongly terminated for engaging in safety-related activity protected by MSHA. On January 26, 2012, the Secretary filed an application for Mr. Stewart’s temporary reinstatement to his prior position. In order to avoid the cost and expense of a hearing on the issue of temporary reinstatement, but without in any way admitting liability or acknowledging that Mr. Stewart’s complaint was not frivolous, Eastern agreed to the entry of an order of temporary reinstatement until the merits of Mr. Stewart’s complaint were resolved. As a result, on February 27, 2012, Mr. Stewart was temporarily reinstated to his position as maintenance foreman at Eastern’s Federal No. 2 Mine.

3. On March 13, 2012, Mr. Stewart filed a second discrimination complaint with the Secretary, alleging that he was not placed in the same position that he held prior to his initial termination, and that Eastern was harassing him. On March 15, 2012, Eastern filed a motion with the Commission seeking to terminate Mr. Stewart’s temporary reinstatement, alleging that Mr. Stewart had engaged in alleged misconduct that would warrant discharge and relieve Eastern from its obligation under the temporary reinstatement order. The Secretary filed a complaint with the Commission on March 28, 2012, alleging claims against Eastern under section 105(c) of MSHA based on Eastern’s alleged discriminatory actions prior to Mr. Stewart’s initial termination. Additionally, the Secretary filed with the Commission, in Docket No. WEVA-2012-912-D, a second application for Mr. Stewart’s temporary reinstatement to his prior position. On March 28, 2012, it was ordered that Mr. Stewart’s temporary reinstatement be converted to an economic reinstatement whereby Eastern was ordered to pay Mr. Stewart his standard hourly wage for the position he held at the time of his termination. Eastern was also ordered to continue to pay Mr. Stewart his customary overtime pay and such current benefits and bonuses that he would have been entitled if he had remained Eastern’s employment. Lastly, on

May 31, 2012, the Secretary filed a second complaint with the Commission, in Docket No. WEVA-2012-1220-D, alleging claims under section 105(c) of MSHA based on Eastern's alleged discriminatory actions upon Mr. Stewart's temporary reinstatement

4. On June 12, 2012, Eastern and Stewart participated in a mediation session to explore a potential negotiated resolution. On that same date, the Parties agreed to the terms of the Settlement, which is intended to resolve all claims underlying the MSHA Proceedings. In advance of filing the Motion, Eastern provided the Parties with a copy of the Motion. Upon entry of the Proposed Order, the Parties will seek approval of the Settlement from the Commission. Upon such approval, the Parties will be bound to the terms herein.

#### **Terms of the Settlement**

5. The key provisions of the Settlement are summarized as follows:<sup>3</sup>
- (a) Eastern will pay directly to Mr. Stewart, with proof of payment to the Secretary, \$107,405 within ten business days of the approval of the Settlement by the Commission as follows:
    - i. \$48,270.35 on account of wages lost during the period after termination and prior to temporary reinstatement;
    - ii. \$13,846.15 on account of wages owed during period after temporary reinstatement;
    - iii. \$13,656.51 on account of future wages;
    - iv. \$18,000 on account of a tax penalty incurred for early withdrawal from Eastern's 401K plan;

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<sup>3</sup> Although Eastern is authorized to pay certain of these amounts and provide certain benefits to Mr. Stewart pursuant to the *Final Order Authorizing (i) Debtors to (a) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (b) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (ii) Employees and Retirees to Proceed with Outstanding Workers' Compensation Claims and (iii) Financial Institutions to Honor and Process Related Checks and Transfers* entered by this Court on August 2, 2012 [ECF No. 253], Eastern is nonetheless seeking this Court's approval of the whole Settlement.

- v. \$3,726.99 on account of lost matching contributions to Eastern's 401K plan;
  - vi. \$2,5000 on account of compensatory damages for pain and suffering; and
  - vii. \$7,405 dollars on account of medical expenses Mr. Stewart and his wife, Charlene Stewart, incurred after Mr. Stewart's October 27, 2011 termination.
- (b) Eastern will continue to pay Mr. Stewart's salary and benefits, including health insurance, per the terms of the temporary reinstatement order now in effect, until such date as the Commission dismisses the MSHA Proceedings.
  - (c) Eastern will continue to provide health insurance to Mr. Stewart until the end of the calendar month in which the Commission dismisses the MSHA Proceedings.
  - (d) If in the future any prospective employer of Mr. Stewart contacts Eastern or any of its agents regarding a job reference, Eastern and its agents will provide only the starting date and ending date of Mr. Stewart's employment at Eastern and will not disclose any information relating to the MSHA Proceedings including, but not limited to, the fact that Mr. Stewart filed a discrimination complaint against Eastern.
  - (e) Mr. Stewart agrees to waive any right to permanent reinstatement that he may have had by virtue of the claims underlying the MSHA Proceedings and to grant Eastern a full release of all claims that he could have brought against Eastern related to his prior employment or temporary reinstatement at the mine.
  - (f) Eastern will grant the Secretary an allowed, prepetition, general, nonpriority, unsecured claim against Eastern in the amount of \$10,000 on account of a civil penalty assessed in connection with the claims underlying the MSHA Proceedings, which claim will not be subject reclassification, objection, reconsideration under section 502 of the Bankruptcy Code or otherwise, subordination, reduction of any kind or nature whatsoever except payment under the Bankruptcy Code and shall be in full and complete satisfaction of any and all claims that the Secretary has or may have in connection with or relating to the claims underlying the MSHA Proceedings; *provided, however*, that nothing in the Settlement or any order approving the Settlement shall limit any valid right of setoff or recoupment of the Secretary regarding the civil penalty

assessed in connection with the claims underlying the MSHA Proceedings.

- (g) Eastern will not unlawfully discriminate against any miner in its employ in the future for engaging in protected activity.
- (h) Upon issuance of a decision by the Commission approving the Settlement and for fourteen days thereafter, Eastern will post a notice stating that Eastern will not violate section 105(c) of MSHA on the mine bulletin board or in another conspicuous place where notices to employees are customarily posted.
- (i) Upon entry of the Proposed Order and completion of the payments described in paragraph (a), Mr. Stewart and/or the Secretary, on Mr. Stewart's behalf, shall seek dismissal of the MSHA Proceedings with prejudice.

### **Basis for Relief**

#### **I. The Settlement is in the Best Interests of Eastern's Estate and Should Be Approved**

##### **A. Standard to be Applied by the Court**

6. Section 105(a) of the Bankruptcy Code authorizes the court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). In practice, section 105(a) of the Bankruptcy Code grants bankruptcy courts broad statutory authority to enforce the Bankruptcy Code's provisions either under the specific statutory language of the Bankruptcy Code or under equitable common law doctrines. *See Momentum Mfg. Corp. v. Employee Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994) ("It is well settled that bankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.").

7. Bankruptcy Rule 9019(a) authorizes a debtor in possession to compromise and settle claims, subject to approval by the Bankruptcy Court. *See Fed. R. Bankr. P. 9109(a)* ("On motion by the [debtor in possession] and after notice and a hearing, the court may approve

a compromise or settlement.”). Compromises are favored in bankruptcy, *Collier on Bankruptcy* ¶ 9019.01 (16<sup>th</sup> ed. 2010), and are “a normal part of the process of reorganization.” *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (quoting *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)); *In re New York, New Haven and Hartford Railroad Co.*, 632 F.2d 955, 960 (2d Cir. 1980). The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. *Nellis v. Shugrue*, 165 B.R. 115, 122-23 (S.D.N.Y. 1994) (Sotomayor, J.).

8. In order to merit the approval of the bankruptcy court, a settlement must be “in the best interests of the estate.” *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 523 (S.D.N.Y. 1993). The bankruptcy court should form an informed and independent judgment as to whether a proposed compromise is fair and reasonable. *Nellis*, 165 B.R. at 122. In forming its judgment, the court may give weight to the “informed judgments of the . . . debtor-in-possession and their counsel that a compromise is fair and equitable, and consider the competency and experience of counsel who support the compromise.” *Vaughn v. Drexel Burnham Lambert Grp., Inc. (In re Drexel Burnham Lambert Grp., Inc.)*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991); *see also Nellis*, 165 B.R. at 122; *Purofied Down Prods.*, 150 B.R. at 522. The bankruptcy court should also exercise its discretion “in light of the general public policy favoring settlements.” *In re Hibbard Brown & Co.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998); *see Shugrue*, 165 B.R. at 123 (“The general rule [is] that settlements are favored and, in fact, encouraged in bankruptcy.”).

9. To approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact raised by the settlement, but rather should “canvass the issues and whether the settlement fall[s] below the lowest point in the range of reasonableness.” *Finkelstein v. W.T. Grant Co. (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (internal

quotation marks and citation omitted); *see also Purofied Down Prods.*, 150 B.R. at 522 (“[T]he court need not conduct a ‘mini-trial’ to determine the merits of the underlying [dispute].”). This standard “reflect[s] the considered judgment that little would be saved by the settlement process if bankruptcy courts could approve settlements only after an exhaustive investigation and determination of the underlying claims.” *In re Purofied Prods.*, 150 B.R. at 522-23.

10. In deciding whether a particular settlement falls within the “range of reasonableness,” courts consider the following “*Iridium*” factors:

- “the balance between the litigation’s possibility of success and the settlement’s future benefits;”
- “the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay;”
- “the paramount interests of creditors;”
- “whether other parties in interest support the settlement;”
- “the competence and experience of counsel supporting . . . the settlement;”
- “the nature and breadth of releases to be obtained by officers and directors,” and;
- “the extent to which the settlement is the product of arm’s length bargaining.”

*Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 462 (2d Cir. 2007) (internal quotation marks and citation omitted).

## **B. Application to the Settlement**

11. The Settlement falls well within the “range of reasonableness,” and is in the best interests of Eastern and its estate, thus warranting approval. The substantial benefits to Eastern and its estate and creditors clearly outweigh any potential costs.



(i) **Probability of Success in the Litigation**

12. Entry into the Settlement will avoid the risk and expense of further litigation in the MSHA Proceedings. Eastern has undertaken a diligent analysis of the disputed claims and have concluded that, given the likelihood of success of those claims and the costs of litigating them, the benefits of the Settlement outweigh its costs. There are many disputed facts between the Parties, and neither Party concedes its ability to succeed at trial. Although Eastern believes it has strong arguments, the merits of the claims underlying the MSHA Proceedings are disputed, and the outcome cannot be predicted with any certainty. Thus, the Settlement reflects concessions by all of the Parties. As a result, Eastern maintains that the Settlement is reasonable and in the best interests of Eastern's estate.

(i) **Prospect of Complex and Protracted Litigation**

13. Absent approval of the Settlement, the Parties would be required to proceed before the Commission, which would require costly and time-consuming preparations, including discovery, post-trial briefing and potential appeals. Moreover, Eastern is currently paying Mr. Stewart his salary and providing him benefits, including health insurance, as required under the Commission's temporary reinstatement order. Eastern is required to continue these payments until the Commission hears and determines the MSHA Proceedings, which may not be for another twelve months. This may total approximately \$153,000. Further, in the event of any appeal, which may take an additional twelve months, Eastern may be required to continue making these payments, thereby expending another approximately \$153,000 on Mr. Stewart's salary and benefits. These costs are exclusive of the costs of litigation discussed above. Accordingly, approval of the Settlement will allow Eastern to avoid further expense and delay associated with the MSHA Proceedings.

**(ii) Interest of Creditors**

14. The Settlement resolves issues that have been distracting to Eastern and that are unlikely to be resolved in a timely and efficient manner absent the Settlement. The savings to Eastern's estate that will occur as a result of the Settlement far exceed the obligations of Eastern pursuant to the Settlement. Accordingly, Eastern submits that approval of the Settlement is in the best interests of their creditors.

**(iii) Extent that Settlement is the Product of Arms' Length Bargaining**

15. The Settlement was negotiated through mediation and is the result of good faith, arms' length bargaining among the Parties without collusion or fraud. All of the Parties were represented by experienced counsel, and the Settlement is the product of their judgment and negotiation. Among other things, the Settlement (i) provides for the full and final resolution of the MSHA Proceedings; (ii) releases all future claims that were or could have been brought against Eastern related to Mr. Stewart's prior employment or temporary reinstatement by Eastern; and (iii) represents a fair and equitable resolution for Eastern and its estate in a timely and efficient manner. All of the Parties are in favor of the Settlement, which, given the uncertainty of the outcome of the MSHA Proceedings, reflects concessions by all of the Parties. Thus, the Settlement is a fair and equitable compromise for all of the Parties.

16. Accordingly, Eastern respectfully requests the Court to approve the Settlement pursuant to its authority under section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

**II. CONCLUSION**

17. In sum, Eastern has determined, exercising their sound business judgment, that the settlement reached with the Parties is fair, reasonable and beneficial to Eastern's estate and creditors, and that the paramount interests of all parties in interest are best served by the

Court's entry of the Proposed Order. Accordingly, Eastern respectfully requests the Court to grant the relief requested herein in all respects.

**Notice**

18. Consistent with the Order Establishing Certain Notice, Case Management and Administrative Procedures entered by the Court on October 18, 2012 [ECF No. 1386] (the "**Case Management Order**"), the Debtors will serve notice of this Motion on (a) the Core Parties; (b) the Non-ECF Service Parties (as those terms are defined in the Case Management Order); and (c) the Parties to the Settlement. All parties who have requested electronic notice of filings in these cases through the Court's ECF system will automatically receive notice of this motion through the ECF system no later than the day after its filing with the Court. A copy of this Motion and any order approving it will also be made available on the Debtors' Case Information Website (located at *www.PatriotCaseInfo.com*). In light of the relief requested, the Debtors submit that no further notice is necessary. Pursuant to paragraph 22 of the Case Management Order, if no objections are timely filed and served in accordance therewith, an order granting the relief requested herein may be entered without a hearing.

**No Previous Request**

19. No previous request for the relief sought herein has been made by Eastern to this or any other court.

20. WHEREFORE, Eastern respectfully requests the Court grant the relief requested herein and such other and further relief as is just and proper.

New York, New York  
Dated: November 27, 2012

By: /s/ Michelle M. McGreal  
Marshall S. Huebner  
Brian M. Resnick  
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Debtors in Possession*

**SCHEDULE 1**  
(Debtor Entities)

1. Affinity Mining Company
2. Apogee Coal Company, LLC
3. Appalachia Mine Services, LLC
4. Beaver Dam Coal Company, LLC
5. Big Eagle, LLC
6. Big Eagle Rail, LLC
7. Black Stallion Coal Company, LLC
8. Black Walnut Coal Company
9. Bluegrass Mine Services, LLC
10. Brook Trout Coal, LLC
11. Catenary Coal Company, LLC
12. Central States Coal Reserves of Kentucky, LLC
13. Charles Coal Company, LLC
14. Cleaton Coal Company
15. Coal Clean LLC
16. Coal Properties, LLC
17. Coal Reserve Holding Limited Liability Company No. 2
18. Colony Bay Coal Company
19. Cook Mountain Coal Company, LLC
20. Corydon Resources LLC
21. Coventry Mining Services, LLC
22. Coyote Coal Company LLC
23. Cub Branch Coal Company LLC
24. Dakota LLC
25. Day LLC
26. Dixon Mining Company, LLC
27. Dodge Hill Holding JV, LLC
28. Dodge Hill Mining Company, LLC
29. Dodge Hill of Kentucky, LLC
30. EACC Camps, Inc.
31. Eastern Associated Coal, LLC
32. Eastern Coal Company, LLC
33. Eastern Royalty, LLC
34. Emerald Processing, L.L.C.
35. Gateway Eagle Coal Company, LLC
36. Grand Eagle Mining, LLC
37. Heritage Coal Company LLC
38. Highland Mining Company, LLC
39. Hillside Mining Company
40. Hobet Mining, LLC
41. Indian Hill Company LLC
42. Infinity Coal Sales, LLC
43. Interior Holdings, LLC
44. IO Coal LLC
45. Jarrell's Branch Coal Company
46. Jupiter Holdings LLC
47. Kanawha Eagle Coal, LLC
48. Kanawha River Ventures I, LLC
49. Kanawha River Ventures II, LLC
50. Kanawha River Ventures III, LLC
51. KE Ventures, LLC
52. Little Creek LLC
53. Logan Fork Coal Company
54. Magnum Coal Company LLC
55. Magnum Coal Sales LLC
56. Martinka Coal Company, LLC
57. Midland Trail Energy LLC
58. Midwest Coal Resources II, LLC
59. Mountain View Coal Company, LLC
60. New Trout Coal Holdings II, LLC
61. Newtown Energy, Inc.
62. North Page Coal Corp.
63. Ohio County Coal Company, LLC
64. Panther LLC
65. Patriot Beaver Dam Holdings, LLC
66. Patriot Coal Company, L.P.
67. Patriot Coal Corporation
68. Patriot Coal Sales LLC
69. Patriot Coal Services LLC
70. Patriot Leasing Company LLC
71. Patriot Midwest Holdings, LLC
72. Patriot Reserve Holdings, LLC
73. Patriot Trading LLC
74. PCX Enterprises, Inc.
75. Pine Ridge Coal Company, LLC
76. Pond Creek Land Resources, LLC
77. Pond Fork Processing LLC
78. Remington Holdings LLC
79. Remington II LLC
80. Remington LLC
81. Rivers Edge Mining, Inc.
82. Robin Land Company, LLC
83. Sentry Mining, LLC
84. Snowberry Land Company
85. Speed Mining LLC
86. Sterling Smokeless Coal Company, LLC
87. TC Sales Company, LLC
88. The Presidents Energy Company LLC
89. Thunderhill Coal LLC
90. Trout Coal Holdings, LLC
91. Union County Coal Co., LLC
92. Viper LLC
93. Weatherby Processing LLC
94. Wildcat Energy LLC
95. Wildcat, LLC
96. Will Scarlet Properties LLC
97. Winchester LLC
98. Winifrede Dock Limited Liability Company
99. Yankeetown Dock, LLC

**EXHIBIT A**  
**Proposed Order**

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

**In re:**

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

**Debtors.<sup>1</sup>**

**Chapter 11**

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

**(Jointly Administered)**

**ORDER APPROVING THE SETTLEMENT OF  
CERTAIN MSHA PROCEEDINGS**

Upon the motion dated November 27, 2012 (the “**Motion**”)<sup>2</sup> of Patriot Coal Corporation and its subsidiaries, as debtors and debtors in possession (collectively, the “**Debtors**”), for entry of an order pursuant to section 105(a) of the Bankruptcy Code, and Bankruptcy Rule 9019(a); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 19, 1984 (Ward, Acting C.J.), as amended by Standing Order M-431, dated February 1, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding that the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion having been provided in accordance with the Case Management Order; and it appearing

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<sup>1</sup> The Debtors are the entities listed on Schedule 1 attached hereto. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion.

that no other or further notice need be provided; [and there being no objections to the Motion;] and the Court having reviewed the Motion; [and having held a hearing with appearances of parties in interest noted in the transcript thereof (the “**Hearing**”)]; and the relief requested in the Motion being in the best interests of Eastern and its respective estate and creditors; and Eastern having articulated good, sufficient and sound business justifications and compelling circumstances for the Settlement; and the settlement and compromise reflected by the Settlement being both fair and reasonable to all of the Parties; and the Court having determined that the legal and factual bases set forth in the Motion [and at the Hearing] establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the relief requested in the Motion is hereby granted as set forth herein; and it is further

ORDERED that the Settlement as set forth in the Motion is hereby approved pursuant to Bankruptcy Rule 9019; and it is further

ORDERED that the claim granted to the Secretary pursuant to the Settlement shall constitute, pursuant to Section 502 of the Bankruptcy Code, an allowed prepetition, general, nonpriority unsecured claim that is not subject reclassification, objection, reconsideration under section 502 of the Bankruptcy Code or otherwise, subordination, reduction of any kind or nature whatsoever except payment under the Bankruptcy Code (such claim, the “**Allowed Claim**”); and it is further



ORDERED that Eastern is authorized to execute and deliver any documents or other instruments that may be necessary to consummate the resolution contemplated by the Settlement; and it is further

ORDERED that Eastern is authorized to take and perform such other actions as may be necessary or appropriate to implement and effectuate the Settlement; and it is further

ORDERED that payment to Mr. Stewart pursuant to the Settlement shall be in full and complete satisfaction of any and all claims that Mr. Stewart has or may have against the Debtors in connection with or relating to the MSHA Proceedings; and it is further

ORDERED that, except for payment to Mr. Stewart pursuant to the Settlement, as set forth herein, upon entry of this Order, Mr. Stewart, on behalf of himself and his successors and assigns, does hereby fully, finally and forever mutually waive, release and/or discharge the Debtors and their respective heirs, successors, assigns, affiliates, officers, directors, shareholders, associates, parents, subsidiaries, predecessors, successors, employees, attorneys and agents from any claim (whether pre-petition unsecured, secured, priority or administrative) and from all related actions, causes of action, suits, debts, obligations liabilities, accounts, damages, defenses, or demands whatsoever, known or unknown, arising out of or relating to the MSHA Proceedings; and it is further

ORDERED that the Allowed Claim shall be in full and complete satisfaction of any and all claims that the Secretary has or may have against the Debtors in connection with or relating to the MSHA Proceedings; and it is further

ORDERED that, except for the Allowed Claim, upon entry of this Order, the Secretary, on behalf of itself and its successors and assigns, does hereby fully, finally and forever mutually waive, release and/or discharge the Debtors and their respective heirs, successors, assigns, affiliates, officers, directors, shareholders, associates, parents, subsidiaries, predecessors, successors, employees, attorneys and agents from any claim (whether pre-petition unsecured, secured, priority or administrative) and from all related actions, causes of action, suits, debts, obligations liabilities, accounts, damages, defenses, or demands whatsoever, known or unknown, arising out of or relating to the MSHA Proceedings; and it is further

ORDERED that, notwithstanding the possible applicability of Bankruptcy Rules 4001(d), 6006(d), 7062, 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: November \_\_, 2012  
New York, New York

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THE HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE