

Hearing Date: To Be Determined

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

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

Chapter 11 Cases
Case No. 12-12900 (SCC)

(Jointly Administered)

**RUDD EQUIPMENT COMPANY'S MOTION FOR ENTRY OF AN
ORDER COMPELLING DEBTORS PATRIOT COAL CORPORATION
AND GRAND EAGLE MINING, LLC TO ASSUME OR
REJECT EXECUTORY CONTRACT PURSUANT TO 11 U.S.C. § 365
AND/OR LIFTING THE AUTOMATIC STAY TO COMPEL
DEBTORS TO TURNOVER LEASED EQUIPMENT**

Rudd Equipment Company ("Rudd") by and through its undersigned
counsel, respectfully represents:

REQUESTED RELIEF

By this motion, Rudd seeks entry of an Order: (i) compelling debtors
Patriot Coal Corporation and Grand Eagle Mining, LLC to assume or reject executory

contracts pursuant to 11 U.S.C. § 365; and/or (ii) lifting the automatic stay to compel the aforementioned debtors to turnover equipment that Rudd rented to them.

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a “core” proceeding pursuant to 28 U.S.C. § 157(d).

BACKGROUND

2. On July 9, 2012 (the “Petition Date”), debtor Patriot Coal Corporation (“Patriot”) and certain affiliates (collectively, the “Debtors”) filed their respective voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in this Court. The Debtors continue to operate their respective businesses and manage their respective assets as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Debtors’ cases are being jointly administered by the Court pursuant to this Court’s Joint Administration Order dated July 10, 2012 [Docket No. 30].

4. Rudd, Patriot and debtor Grand Eagle Mining, LLC (“Grand Eagle”) are parties to two Rudd Equipment Company – Rental Agreements dated September 2011 (the “Equipment Contracts”). See Certification of Corey Niemeier (“Niemeier Cert.”) ¶ 2 and attached Exs. A and B.

5. Pursuant to the Equipment Contracts, Rudd rented two Euclid-Hitachi Rigid Haulers (Serial Nos. 8R6BAN001011 and 8R6BAN001013) (the "Equipment")¹ to Patriot and Grand Eagle for a minimum rental term of six months commencing on September 12, 2011 and an indefinite maximum rental period. See Niemeier Cert. ¶ 3 and Ex. A, § 3; Ex. B, § 3. Under the terms of the Equipment Contracts, Patriot and Grand Eagle are obligated to make monthly payments to Rudd of \$78,000. for the continued use of the Equipment (one \$39,000. payment under each Equipment Contract). See id.

6. Pursuant to the terms of the Equipment Contracts, Patriot or Grand Eagle's violation of any of the Contracts' provisions constitutes an Event of Default, including without limitation any failure to make the monthly payments of \$78,000. to Rudd. See Niemeier Cert. ¶ 4 and Ex. A, § 10; Ex. B, § 10.

7. The Equipment Contracts further provide, among other things, that upon the occurrence of an Event of Default, Rudd may enter Patriot and Grand Eagle's premises and take possession of the Equipment without notice to Patriot and Grand Eagle. See Niemeier Cert. ¶ 5 and Ex. A, § 10; Ex. B, § 10. Moreover, the Equipment Contracts provide that Patriot and Grand Eagle shall be liable for all costs associated with the return of the Equipment. See Niemeier Cert. ¶ 5 and Ex. A, § 10; Ex. B, § 10.

8. Patriot and Grand Eagle defaulted on their obligations under the Equipment Contracts by failing to make the required monthly payments under each

¹ Rudd is the owner of the Equipment. See Niemeier Cert. ¶ 2.

contract in May 2012 (the “Default Date”). See Niemeier Cert. ¶ 6. On the Petition Date, Patriot and Grand Eagle were indebted to Rudd for four (4) delinquent monthly-payments (two (2) payments under each Equipment Contract) totaling \$156,000. See id.

9. Notwithstanding Patriot and Grand Eagle’s defaults under the Equipment Contracts, Patriot and Grand Eagle continue to possess the Equipment. See Niemeier Cert. ¶ 7.

10. For the reasons set forth below, Patriot and Grand Eagle should not be allowed continued use of the Equipment, unless and until the Equipment Contracts are assumed by Patriot and Grand Eagle pursuant to section 365(a) of the Bankruptcy Code.

DISCUSSION

A. This Court Should Establish a Deadline for Patriot and Grand Eagle to Assume or Reject the Equipment Contracts

11. Section 365(a) of the Bankruptcy Code provides that a debtor, “subject to the court’s approval, may assume or reject any unexpired lease of the debtor.” 11 U.S.C. § 365(a).

12. Section 365(d)(2) of the Bankruptcy Code provides that upon request of any party to an executory contract or unexpired lease, the court may order the debtor to determine within a specified period of time to assume or reject such contract or lease. 11 U.S.C. § 365(d)(2). What constitutes a reasonable time is left to the Bankruptcy Court’s discretion in light of the circumstances of each case. Theatre Holding Corp. v. Mauro, 681 F.2d 102, 105 (2d Cir. 1982). See, e.g., In re Merchants Plaza, Inc., 35 B.R.

888, 894 (Bankr. D. Tenn. 1983) (15 days); In re Will, 33 B.R. 843, 843 (Bankr. M.D. Fla. 1983) (30 days).

13. The purpose of section 365(d)(2) of the Bankruptcy Code is to “prevent parties in contractual or lease relationships with the debtor from being left in doubt concerning their status vis-à-vis the estate.” See H.R. REP. No. 95-595, 95th Cong. 1st Sess. 348-49 (1977).

14. In exercising its discretion and determining what constitutes reasonable time within which the debtor should act, a court should consider several factors, including: (i) the nature of the interests at stake, (ii) the balance of harm to the litigants, (iii) the good to be achieved, (iv) the safeguards afforded the parties, and (v) “whether the action to be taken is so in derogation of Congress’ scheme that the court may be said to be arbitrary.” Matter of Dunes Casino Hotel, 63 B.R. 939, 949 (D.N.J. 1986) (quoting In re GHR Energy Corp., 41 B.R. 668, 676 (Bankr. D. Mass. 1984) and In re Midtown Skating Corp., 3 B.R. 194, 198 (Bankr. S.D.N.Y. 1980)). See also In re Mayer Pollock Steel Corp., 157 B.R. 952, 965 (Bankr. E.D. Pa. 1993); In re Lionel Corp., 23 B.R. 224, 225 (Bankr. S.D.N.Y. 1982) (in fixing a date for the assumption or rejection of a lease after the expiration of a reasonable time, a court must review the particular circumstances before it). Application of each of the foregoing factors to the instant case militates in favor of granting Rudd’s Motion.

1. Nature of the Interests

15. Rudd is the owner of the Equipment. The Equipment Contracts provide for Debtors Patriot and Grand Eagle continued rental of the Equipment, provided that they make the required monthly payments. As Debtors Patriot and Grand Eagle are now in breach of Equipment Contracts because of their failure to make pre-petition contractual monthly payments, their continued possession and use of the Equipment is wrongful. Indeed, under the Equipment Contracts, Rudd is entitled to seek return of the Equipment immediately.

2. Balance of Harm to Litigants

16. Patriot and Grand Eagle are currently in default of their obligations because they failed to make pre-petition monthly payments under the Equipment Contracts. Because of these material defaults, they no longer have a contractual right to possess or use the Equipment. Thus, Patriot and Grand Eagle are not harmed if the Court compelled them to decide whether to assume or reject the Equipment Contracts. Conversely, Rudd continues to be harmed every month that Patriot and Grand Eagle possess and use the Equipment without payment. Indeed, as Patriot and Grand Eagle continue to wrongfully possess the equipment, Rudd is unable to now market the Equipment to other customers who would pay for use of the Equipment.

3. Safeguards Afforded the Parties

17. At present, Debtors Patriot and Grand Eagle have provided no safeguards to Rudd to assure payment for their continued post-petition use of the

Equipment. In addition, Patriot and Grand Eagle have not acknowledged whether they intend to assume or reject the Equipment Contracts. Moreover, Patriot and Grand Eagle have given Rudd no indication of whether or not they intend to return the Equipment to Rudd. Indeed, according to local news reports (see Niemeier Cert., Ex. C), debtors plan to close the mining facility where the Equipment is located. With the impending closure of this facility, Rudd has a specific concern that the Debtors may not properly maintain and preserve the Equipment until Rudd is able to recover it, with this Court's permission.

18. For each of the above-mentioned reasons, the Court should enter an Order establishing a deadline by which Patriot and Grand Eagle must assume or reject the Equipment Contracts.

B. The Automatic Stay Should Be Lifted If the Equipment Contracts Are Not Deemed to Be Executory Contracts

19. Section 362(d)(1) of the Bankruptcy Code provides in pertinent part that the Court shall grant relief from the stay imposed by Section 362(a) "for cause." The determination of whether cause exists to permit a movant to proceed with a prior action is left to the court's discretion and is to be made based on the facts of the case. Laguna Assocs. Ltd v. Aetna Cas. & Sur. Co., 30 F.3d 734, 737 (6th Cir. 1994). The party opposing relief from the stay bears the burden of proof on all issues except for the debtor's equity in property. 11 U.S.C. § 362(g).

20. In determining whether cause exists, most courts "balance the hardship to the creditor, if he is not allowed to proceed with his lawsuit, against potential prejudice to the debtor, debtor's estate and other creditors." In re R.J. Groover Constr.,

LLC, 411 B.R. 460, 463-64 (Bankr. N.D. Ga. 2008). In carrying out this balancing test, courts have considered numerous factors, including:

- Whether relief would result in a partial or complete resolution of the issues;
- The lack of any connection with or interference with the bankruptcy case; and
- The impact of the stay on the parties and the balance of harms.

In re New York Medical Group, P.C., 265 B.R. 408, 413 (Bankr. S.D.N.Y. 2001)²; see also Sonnax Industries Inc. v. Tri Component Production Corp. (In re Sonnax Industries, Inc.), 907 F.2d 1280, 1286 (2d Cir. 1990); Goya Foods, Inc. v. Unanue-Casal, (In re Unanue-Casal), 159 B.R. 90, 96 (D.P.R. 1993) aff'd 23 F.3d 395 (1st Cir. 1994); In re Busch, 294 B.R. 137, 141 n.4 (10th Cir. B.A.P. 2003); In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). Instead of giving equal weight to each factor, courts instead consider those factors that are relevant to a particular case. In re Mazzeo, 167 F.3d 139, 143 (2d Cir. 1999). Here, if the Equipment Contracts are not deemed to be executory contracts, the Court should lift the automatic stay based upon several of the above-mentioned factors.

1. Lifting the Automatic Stay Would Resolve All Issues

21. Under the Equipment Contracts, upon default Rudd has the right to enter Patriot and Grand Eagle's premises and take possession of the Equipment without notice to Patriot and Grand Eagle. If the automatic stay were lifted and Rudd repossessed

² The additional factors listed in New York Medical Group are not listed, as they are inapplicable.

the Equipment, then all issues between Rudd and Patriot and Grand Eagle would be resolved, with the exception of resolving Rudd's proofs of claim, and payment of any remaining unpaid post-petition invoices.

2. Lifting the Automatic Stay Would Not Interfere with the Debtors Bankruptcy Cases

22. Rudd only seeks the return of the Equipment pursuant to the Equipment Contracts. The Equipment is not rare or unique. As such, Debtors Patriot and Grand Eagle should be able to rent haulers to replace the Equipment will little or no affect upon the Debtors' continued operations. Moreover, as the Debtors apparently plan to close the mining facility where the Debtors use the Equipment (see ¶ 17 above), it is likely that the Debtors will not need to rent haulers to replace Rudd's Equipment. Thus, lifting the automatic stay and compelling Patriot and Grand Eagle to turn-over the equipment would not interfere with the Debtors' bankruptcy cases.

3. A Balancing of the Harms Favors Lifting the Automatic Stay

23. As set forth above, if Patriot and Grand Eagle were compelled to return the Equipment to Rudd, the Debtors would be able to rent other haulers from another company. Thus, there would be little or no harm to Debtors, if Rudd's motion to lift the automatic stay were granted and Patriot and Grand Eagle were compelled to turn-over the Equipment. Indeed, as the Debtors apparently plan to close the mining facility where the Debtors use the Equipment, it is likely the Debtors will not need to rent replacement haulers. Conversely, Rudd continues to be harmed each month that Debtors continue to possess and use the Equipment without payment.

24. For each of the above-mentioned reasons, if the Equipment Contracts are not deemed to be executory contracts, this Court should lift the automatic stay and compel Debtors Patriot and Grand Eagle to turn-over the Equipment.

NO PRIOR REQUEST

25. No prior request has been made for the relief requested herein.

WHEREFORE, Rudd respectfully requests that the Court: (i) enter the proposed Order (attached as **Exhibit 1**) establishing a deadline by which Patriot and Grand Eagle must assume or reject the Equipment Contracts; or (ii) if the Equipment Contracts are not deemed to be executory contracts, to enter an Order lifting the automatic stay and compelling Debtors to return the Equipment to Rudd; and (iii) granting such other, further and different relief as the Court may deem just in this matter.

Dated: New York, New York
November 29, 2012

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

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

Chapter 11 Cases
Case No. 12-12900 (SCC)

(Jointly Administered)

**CERTIFICATION OF COREY NIEMEIER IN SUPPORT OF
RUDD EQUIPMENT COMPANY'S MOTION FOR ENTRY OF AN
ORDER COMPELLING DEBTORS PATRIOT COAL CORPORATION
AND GRAND EAGLE MINING, LLC TO ASSUME OR
REJECT EXECUTORY CONTRACT PURSUANT TO 11 U.S.C. § 365
AND/OR LIFTING THE AUTOMATIC STAY TO COMPEL
DEBTORS TO TURNOVER RENTED EQUIPMENT**

Corey Niemeier, pursuant to 28 U.S.C. § 1746, and under the penalties of perjury, declares:

1. I am Manager of Credit and Insurance for Rudd Equipment Company ("Rudd"). I make this certification based upon my review of information maintained by Rudd and my knowledge of particular Rudd practices and procedures.

2. Rudd, Patriot Coal Corporation ("Patriot") and debtor Grand Eagle Mining, LLC ("Grand Eagle") are parties to two Rudd Equipment Company – Rental

Agreements dated September 2011 (the "Equipment Contracts"). Rudd is the owner of the Equipment. Copies of the Equipment Contracts are attached hereto as **Exhibits A and B**, respectively.

3. Pursuant to the Equipment Contracts, Rudd rented two Euclid-Hitachi Rigid Haulers (Serial Nos. 8R6BAN001011 and 8R6BAN001013) (the "Equipment") to Patriot and Grand Eagle for a minimum rental term of six months commencing on September 12, 2011 and an indefinite maximum rental period. See Ex. A, § 3; Ex. B, § 3. Under the terms of the Equipment Contracts, Patriot and Grand Eagle are obligated to make monthly payments to Rudd of \$78,000. for the continued use of the Equipment (one \$39,000. payment under each Equipment Contract).

4. Pursuant to the terms of the Equipment Contracts, Patriot or Grand Eagle's violation of any of the Contracts' provisions constitutes an Event of Default, including without limitation any failure to make the monthly payments of \$78,000. to Rudd. See Ex. A, § 10; Ex. B, § 10.

5. The Equipment Contracts further provide, among other things, that upon the occurrence of an Event of Default, Rudd may enter Patriot and Grand Eagle's premises and take possession of the Equipment without notice to Patriot and Grand Eagle. See Ex. A, § 10; Ex. B, § 10. Moreover, the Equipment Contracts provide that Patriot and Grand Eagle shall be liable for all costs associated with the return of the Equipment. See Ex. A, § 10; Ex. B, § 10.

6. Patriot and Grand Eagle defaulted on their obligations under the Equipment Contracts by failing to make the required monthly payments under each contract in May 2012 (the "Default Date"). On the Petition Date, Patriot and Grand Eagle were indebted to Rudd for four (4) delinquent monthly-payments (two (2) payments under each Equipment Contract) totaling \$156,000.

7. Notwithstanding Patriot and Grand Eagle's defaults under the Equipment Contracts, Patriot and Grand Eagle continue to possess the Equipment.

8. Copies of news articles discussing the Debtors' plans to close mining facilities where Rudd believes the Equipment is located and used are attached hereto as **Exhibit C**.

9. I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 29, 2012



COREY NIEMEIER

EXHIBIT A

RUDD EQUIPMENT COMPANY - RENTAL AGREEMENT

White - Original
Green - Customer Copy
Yellow - Salesman's Copy

THIS RENTAL AGREEMENT is made by and between RUDD EQUIPMENT COMPANY (hereinafter "RUDD") and Patriot Coal Corporation,
Grand Eagle Surface Mining, P. O. Box 66823, St. Louis, MO 63166

The parties agree as follows:

1. GRANT. Subject to the terms set out below, RUDD rents to CUSTOMER, and CUSTOMER rents from RUDD, all machinery, equipment and other property described in paragraph 2, including all component parts and accessory items (the "Equipment").
2. SCHEDULE OF EQUIPMENT.

Manufacturer	Model	Description	Serial Number	Replacement Value
Euclid-Hitachi	EH1700-3	Rigid Hauler	8R6BAN001011	\$1,087,677.00

3. SCHEDULE OF TERMS:

A. F. O. B.: Corbin, KY

B. Ship for use in following Operations: (X) Mining () Construction

() Other (Describe) _____ Job Site: _____

Name of Job or Project (at or near) _____

19060 Hwy 1078 So., Henderson, KY 42420

(Street)

(City, County, State, Zip)

E. Mail Invoice to:

Same as Above

(Name)

(Street)

(City, State, Zip)

F. Minimum Rental Period: 6 Months 0 Weeks, 2011. If this blank is not filled in, rental shall commence on the date CUSTOMER receives possession of the Equipment. Upon expiration of the Minimum Rental Period, the term hereof shall, at RUDD's discretion, continue for an indefinite period, and either RUDD or CUSTOMER may terminate this Rental Agreement upon five (5) days prior notice to the other. If CUSTOMER terminates this Rental Agreement prior to expiration of the Minimum Rental Period, it shall pay RUDD all the aggregated remaining rent due during the Minimum Rental Period.
CUSTOMER shall be liable for all transportation charges of returning the Equipment to RUDD.

4. CALCULATION OF RENTAL PERIOD. The rental period shall begin on and include the date of shipment to CUSTOMER and shall end on and include the date of return to RUDD's Designated Receiving Point. If the Equipment is kept longer than the specified Minimum Rental Period, the rental shall be involved to and paid by CUSTOMER on a pro rata basis.

5. RATES AND OVERTIME RATES. The rates provided for in this Rental Agreement are straight time rates based on eight (8) hours per day, five (5) days per week, or twenty-two (22) eight (8) hour days per month for a total of one hundred seventy-six (176) hours in any one thirty (30) consecutive day period. CUSTOMER shall receive no credit or offset against the monthly rent due hereunder if the Equipment is in actual use for less than one hundred seventy-six (176) hours in any one thirty (30) consecutive day period. Should the Equipment be used longer than the above specified hours in any specific period, the overtime rate shall be based on the figure in the blank above, or if it is not filled in, then on 1/176th of the monthly rate for each hour in excess of one hundred seventy-six (176) hours worked in any one thirty (30) consecutive day period (or if the specified rate is weekly, 1/40 of the weekly rate).

6. TITLE.

A. TRUE LEASE. Title to the Equipment (and to all replacements thereof or substitutions thereof) is and shall remain in RUDD. RUDD and CUSTOMER further acknowledge and agree that this Rental Agreement is intended as a true and actual lease between the parties and does not constitute a so-called "capital lease" or a "finance lease" under KRS 365.2A-103, intended as security. The filing by RUDD under the Uniform Commercial Code of one or more UCC forms evidencing the relationship hereby created shall not render this Rental Agreement a lease intended as security.

B. NO PURCHASE OPTION. This Rental Agreement contains no purchase option. If at any time during the Rental Period, CUSTOMER desires to purchase the Equipment, RUDD will enter into good faith negotiations, but neither party shall have any obligation to agree to a purchase.

7. RISK OF LOSS, SHIPMENT AND RECEIPT OF EQUIPMENT. Risk of loss shall pass to CUSTOMER upon the delivery of the Equipment to a carrier for delivery to CUSTOMER or upon delivery to CUSTOMER at RUDD's facility. Should the Equipment be damaged in transit, it shall be the obligation of CUSTOMER to have such repairs or replacements made to the Equipment as necessary to bring the Equipment to its condition when the risk of loss passed to CUSTOMER. The receipt and assumption of possession by CUSTOMER of the Equipment shall constitute acknowledgment that the Equipment has been accepted and found in proper working condition. Any use of the Equipment shall constitute a full, complete and irrevocable acceptance by CUSTOMER.

8. CUSTOMER'S OBLIGATIONS.

A. TIRE CLAUSE. During the rental period all repairs to tires or replacement of tires shall be the sole responsibility of CUSTOMER. Notwithstanding the condition of any tire on the Equipment at the time this Rental Agreement was executed, CUSTOMER agrees, as additional rent, to pay, upon return of the Equipment, the replacement value of any tire which RUDD, in its sole opinion, determines cannot be used again; and, CUSTOMER also agrees to pay upon return of the Equipment the entire recapping charge for any tire which RUDD determines, in its sole opinion, to be in need of recapping.

B. INSTRUCTION MANUAL AND OPERATION OF THE EQUIPMENT.

CUSTOMER acknowledges being furnished with an instruction manual governing safe operation of the Equipment and warrants that any person who uses the Equipment will operate the Equipment in accordance with the instruction manual. CUSTOMER agrees to use the Equipment only for its intended purpose and CUSTOMER agrees to comply with and conform to all municipal, state and federal

Via: Best Way

Shipping Date: ASAP

Freight Charges: customer pay freight/ assembly

C. RUDD's Designated Receiving Point: Evansville, IN

D. Rental Rate: Weekly @ \$ _____ per week.

Monthly @ \$39,000.00 per month.

Monthly Rate Shown for 400 Hours/Month.

Hourly Charge for Excess Hours \$ 97.50

Single Shift _____ Double Shift X

\$ _____ Deposit payable on execution, applicable

to First month's rental

to First month's rental

laws relating to the use and operation of the Equipment.

C. REPAIRS. CUSTOMER agrees, during the rental period, at its own cost and expense, to operate and maintain the Equipment with factory authorized parts and to make all necessary repairs to the Equipment. CUSTOMER agrees to return the Equipment to RUDD in the same condition as received by CUSTOMER, reasonable wear and tear excepted. RUDD reserves the right to inspect the Equipment upon return, and CUSTOMER agrees to pay all costs and expense of making all necessary repairs to the Equipment upon its return to RUDD. At CUSTOMER's request, RUDD may repair the Equipment upon its return to RUDD its regular charges for any material or labor furnished in making such repairs.

D. CASUALTY TO EQUIPMENT; IDENTIFICATION. CUSTOMER hereby agrees to indemnify RUDD for all losses and damages to the Equipment which are the result of any casualty or which may be an act of God, said indemnification to continue until the Equipment has been returned to the possession of RUDD and accepted by it. For the purpose of fixing the value of the Equipment in order to determine the loss, damage, or injury thereto, the Replacement Value, as stated in Paragraph 2 hereof, shall be deemed a true and just value, forming a basis for such adjustment. In making such adjustment, no rentals theretofore paid or due shall apply toward the payment of such loss.

E. SECURE OF THE EQUIPMENT. CUSTOMER represents and warrants to RUDD that the Equipment is not being rented for the purpose of and will not, during the Rental Period, be used for any purpose or in any manner which would violate any provision of any law which would allow the Equipment to be seized by any governmental agency. If the Equipment is used within the Commonwealth of Kentucky, CUSTOMER represents and agrees the Equipment will be used in compliance with any and all applicable laws and regulations, including, but not limited to, the provisions of Chapter 350 of the Kentucky Revised Statutes. Failure to fulfil this obligation on the part of CUSTOMER shall be deemed a default under the Rental Agreement.

F. LOCATION OF EQUIPMENT; LEVY; INSPECTION. CUSTOMER shall, whenever requested by RUDD, give RUDD the exact location of the Equipment and shall further give RUDD immediate notice if any levy is attempted upon the Equipment, or if the Equipment from any cause becomes liable to seizure, and shall indemnify RUDD against all loss and damages caused by any such action. RUDD shall have the privilege at all times of entering, for the purpose of inspection, any job, building, or location where the Equipment is being used, and reserves the privilege of removing the Equipment on twenty-four (24) hours notice if it is being overloaded or taxed beyond its capacity or in any manner abused, neglected or misused.

G. NO ENCUMBRANCE. CUSTOMER agrees that it will not subject the Equipment to any lien, encumbrance, security interest or claim of any kind other than the rights reserved to RUDD pursuant to this Rental Agreement or under law.

H. PUBLIC LIABILITY; IDENTIFICATION. CUSTOMER hereby agrees to indemnify RUDD against all loss, damage, expense, and penalty arising from any action on account of any death or injury to person or property of any character whatsoever occasioned by the operation, handling, or transportation of the Equipment during the rental period or while the Equipment is in the possession or under the custody and control of CUSTOMER, including without limitation, the death or injury, to any employees of CUSTOMER.

I. INSURANCE. CUSTOMER further agrees to protect RUDD with full all risk insurance (causes of loss - special form) naming RUDD as an additional insured and loss payee covering all losses and damages listed in the previous Paragraphs 8D and H hereof and agrees to submit to RUDD a copy of the Certificate of Insurance demonstrating it has complied with this subparagraph. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by

Independent instrument furnished to RUDD, that it will give RUDD thirty (30) days written notice before the policy in question shall be amended or canceled. CUSTOMER hereby assigns to RUDD all proceeds from such insurance, conveys an equitable lien in said proceeds, directs any insurer to pay said proceeds to RUDD, and appoints RUDD its attorney-in-fact to make claims for, receive payment of, and execute and endorse all documents, checks or drafts for, loss or damages under said insurance policy. RUDD may at its option and at its own expense insure its own interest in the Equipment. If RUDD does obtain its own insurance, CUSTOMER shall have no interest whatsoever in such insurance. In addition, CUSTOMER shall maintain comprehensive public liability insurance in an amount of not less than One Million Dollars (\$1,000,000) per occurrence naming RUDD as an additional insured.

J. TAXES. CUSTOMER shall pay all legal assessments, taxes, fees or use taxes or public charges, either local, municipal, state, or federal, which may be levied on the Equipment while in the possession of CUSTOMER. Nothing in this paragraph is to be construed as meaning that CUSTOMER is to pay the personal property tax levied against the Equipment rented when said Equipment is located within the home state of RUDD. Any and all taxes assessed against the Equipment, including personal property taxes, while the Equipment is outside of the home state of RUDD, are to be paid by CUSTOMER. The term "home state" means any state in which the RUDD has its home office or branch.

K. FAILURE TO PAY INSURANCE OR TAXES. If CUSTOMER fails to procure and maintain insurance under Paragraph H above or to pay taxes under Paragraph J above, RUDD shall have the right, but not the obligation, to effect such insurance or pay such taxes and the cost thereof shall be reimbursed to RUDD by CUSTOMER with the next installment of rent.

L. LABOR UNIONS AND FORCE MAJEURE. CUSTOMER shall pay any charges for work or inspection required by any labor union. RUDD may, at its option, refuse to do any repair work on Equipment in line of strike or in violation of any union or governmental rule affecting the Equipment or in the event RUDD is prevented from doing so by a cause beyond its control. RUDD reserves the right to remove the Equipment from a job site at any time when, in RUDD's opinion, the Equipment is in danger because of strikes or any other condition.

8. RUDD'S OBLIGATIONS.

A. NO WARRANTY GIVEN. RUDD IS NOT THE MANUFACTURER OF THE EQUIPMENT HEREIN RENTED, NOR THE AGENT OF THE MANUFACTURER OF SAID EQUIPMENT, AND RUDD GIVES NO EXPRESS WARRANTY AGAINST PATENT OR LATENT DEFECTS IN MATERIAL, WORKMANSHIP, OR CAPACITY, OR THAT SAID EQUIPMENT WILL MEET THE REQUIREMENTS OF ANY LAW, RULES, SPECIFICATIONS, OR CONTRACTS WHICH PROVIDE FOR SPECIFIC MACHINERY OR APPARATUS OR SPECIAL METHODS. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE ARE HEREBY EXCLUDED. THE EQUIPMENT SHALL BE DEEMED USED EQUIPMENT AND IS RENTED ON AN "AS IS - WHERE IS" BASIS. RUDD SHALL NOT BE LIABLE IN ANY EVENT TO CUSTOMER FOR ANY LOSS, DELAY OR DAMAGE OF ANY KIND OR CHARACTER RESULTING FROM DEFECTS IN, OR INEFFICIENCY OF, THE EQUIPMENT, NOR SHALL RUDD BE LIABLE FOR ACCIDENTAL BREAKAGE THEREOF, NOR SHALL CUSTOMER BE ENTITLED TO RECOVER CONSEQUENTIAL OR INCIDENTAL DAMAGES.

B. EXCLUSIVE REMEDY AGAINST RUDD. IN THE EVENT CUSTOMER ACCEPTS THE EQUIPMENT, AS HEREIN PROVIDED, AND THEREAFTER THE EQUIPMENT PROVES DEFECTIVE IN DESIGN, MATERIALS, WORKMANSHIP, CAPACITY OR FOR ANY OTHER REASON, OR IS UNFIT FOR USE BECAUSE OF ANY ACCIDENT OR OTHERWISE, CUSTOMER'S EXCLUSIVE REMEDY SHALL BE TO RETURN THE EQUIPMENT TO RUDD AND TERMINATE THIS RENTAL AGREEMENT; PROVIDED, HOWEVER, CUSTOMER SHALL BE LIABLE FOR THE TRANSPORTATION CHARGES ON RETURNING THE EQUIPMENT.

C. CONDITION AND INSPECTION OF EQUIPMENT. RUDD shall use reasonable care to see that the Equipment is in proper working condition before shipment to CUSTOMER. CUSTOMER acknowledges that it has inspected the Equipment prior to executing this Rental Agreement.

10. DEFAULT. Should any of the provisions of this Rental Agreement, including the payment of rent, be violated by CUSTOMER, the remaining rental for the Minimum Rental Period shall become forthwith due and payable, and RUDD or its agents may, without notice, enter the premises occupied by CUSTOMER without being a trespasser thereon and take possession of and remove the Equipment. All freight, demurrage, storage, labor, or other charges required to return the Equipment to RUDD's Designated Receiving Point shall be borne by the CUSTOMER. In the event RUDD incurs reasonable attorney's fees or other costs due to CUSTOMER's default, CUSTOMER agrees to pay same to RUDD, in addition to all other costs, charges and damage.

11. TERMINATION. After the expiration of the Minimum Rental Period this Rental Agreement may be terminated.

ALL THE ABOVE TERMS AND CONDITIONS HAVE BEEN READ AND ARE THOROUGHLY UNDERSTOOD. THIS RENTAL AGREEMENT DOES NOT CONTAIN A PURCHASE OPTION UNLESS SET FORTH IN A SEPARATE WRITTEN AMENDMENT. CUSTOMER ACKNOWLEDGES RECEIPT OF A COPY OF THIS RENTAL AGREEMENT.

A. by RUDD, by making demand for the return of the Equipment which CUSTOMER, at its expense, shall forthwith return to RUDD's Designated Receiving Point set forth in Paragraph 3C hereof.

B. by CUSTOMER, in accordance with Paragraph 3F hereof and by returning the Equipment to RUDD's Designated Receiving Point set forth in Paragraph 3C hereof.

12. BANKRUPTCY. Neither this Rental Agreement nor any interest therein is assignable or transferrable by operation of law. If any proceeding under the Bankruptcy Code, Title 11 of U.S.C., as amended, is commenced by or against CUSTOMER, or if CUSTOMER is adjudged insolvent, or if CUSTOMER makes any assignment for the benefit of its creditors, or if a receiver is appointed in any proceeding or action to which CUSTOMER is a party, this Rental Agreement shall, at the option of RUDD, without notice, immediately terminate and shall not be treated as an asset of CUSTOMER.

13. MODIFICATION OF RENTAL AGREEMENT. No modification of this Rental Agreement shall be binding upon the parties or either of them unless such modification is in writing and duly accepted in writing.

14. RELATIONSHIP OF PARTIES. Nothing in this Rental Agreement shall render RUDD in any manner a partner, agent, joint venturer, or associate of CUSTOMER in the operation and use of the Equipment or subject RUDD to any obligation, loss, charge or expense in connection with or arising from the operation or use of the Equipment.

15. PLACE OF MAKING. RUDD's location set forth in Paragraph 3C shall be the place of making of this Rental Agreement, and any and all disputes arising hereunder shall be settled at RUDD's location, whether such settlement be arrived at, or be attempted, by negotiation, litigation, or otherwise.

16. APPLICABLE LAW; SEVERABILITY. The law of the state of RUDD's location set forth in Paragraph 3C hereof shall apply to this Rental Agreement and the construction hereof. To the extent any provision or clause in this Rental Agreement is prohibited by any law or is deemed unenforceable, such prohibition or unenforceability shall not invalidate any of the remaining provisions or clauses hereof.

17. MISCELLANEOUS. No waiver of a breach of any provision of this Rental Agreement shall constitute a waiver of any other breach of the same or any other provision. Time is of the essence of this Rental Agreement.

18. NO ASSIGNMENT OR SUBLETTING BY CUSTOMER. CUSTOMER shall not assign, sell, sublet, encumber or otherwise transfer this Rental Agreement or the Equipment or any right therein without the prior written consent of RUDD.

19. ASSIGNMENT BY RUDD. RUDD may assign its rights hereunder to any person, partnership or corporation, either with or without recourse, and upon receipt of notice of any such assignment, CUSTOMER shall be obligated to RUDD's assignee to the same extent that it is obligated to RUDD, and the assignee, either in its own name or in RUDD's name, shall have the full and complete right to assert all of the rights granted RUDD hereunder. All representations, warranties and agreements of CUSTOMER set forth herein shall be deemed made to the assignee with the same force and effect as if said assignee were RUDD. Further, upon assignment of this Rental Agreement by RUDD, RUDD will not be assignee's agent for any purpose, and CUSTOMER's obligations and liabilities hereunder to the assignee will be absolute and unconditional and will not be subject to any abatement, reduction, recoupment, defense, setoff or counterclaim available to CUSTOMER against RUDD.

20. SUBJECT TO RUDD'S ACCEPTANCE. This Rental Agreement is subject to acceptance by RUDD and shall not be binding upon RUDD until signed by RUDD's authorized representative. Acceptance shall be executed by RUDD on the attached Acknowledgment Copy which shall be returned to CUSTOMER by United States Mail.

21. UCC-1. CUSTOMER appoints RUDD as its attorney in fact to execute and file any UCC-1 financing statements deemed appropriate by RUDD to protect its ownership or other interests hereunder.

22. ENTIRE UNDERSTANDING. RUDD'S SALESMEN AND/OR OTHER EMPLOYEES MAY HAVE MADE ORAL OR WRITTEN STATEMENTS ABOUT THE EQUIPMENT. SUCH STATEMENTS DO NOT CONSTITUTE WARRANTIES, SHALL NOT BE RELIED UPON BY CUSTOMER AND ARE NOT A PART OF THIS RENTAL AGREEMENT. THE ENTIRE UNDERSTANDING OF THE PARTIES IS EMBODIED IN THIS RENTAL AGREEMENT. THIS RENTAL AGREEMENT, SIGNED AND DATED BY BOTH PARTIES, CONSTITUTES A FINAL WRITTEN EXPRESSION OF TERMS OF THIS AGREEMENT AND IS A COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. EVIDENCE OF COURSE OF DEALING, USAGE OF TRADE OR COURSE OF PERFORMANCE SHALL NOT BE ADMITTED INTO EVIDENCE IN ANY LAWSUIT IN AN ATTEMPT TO EXPLAIN THE MEANING OF ANY TERM IN THE RENTAL AGREEMENT.

RUDD-EQUIPMENT COMPANY

By: [Signature]
Title: Vice President
Date: 7/19/11

CUSTOMER: Patrol Coil Corporation

Circle Corporation Partnership Individual.
By: [Signature]
Title: As Director/Manager
Date: August 22, 2011
Witness: [Signature]
(Salesman sign here as witness)

Performance and payment of CUSTOMER's obligations up to a maximum of \$ _____, or the total amount which is payable by CUSTOMER under this Rental Agreement (whichever is greater) is personally guaranteed by:

By: _____
Title: _____
Date: _____

EXHIBIT B

RUDD EQUIPMENT COMPANY - RENTAL AGREEMENT

White - Original
Green - Customer Copy
Yellow - Salesman's Copy

THIS RENTAL AGREEMENT is made by and between RUDD EQUIPMENT COMPANY (hereinafter "RUDD") and Patriot Coal Corporation,
Grand Eagle Surface Mining, P. O. Box 66823, St. Louis, MO 63166

The parties agree as follows:

1. GRANT. Subject to the terms set out below, RUDD rents to CUSTOMER, and CUSTOMER rents from RUDD, all machinery, equipment and other property described in paragraph 2, including all component parts and accessory items (the "Equipment").

2. SCHEDULE OF EQUIPMENT.

Manufacturer	Model	Description	Serial Number	Replacement Value
Euclid-Hitachi	EH1700-3	Rigid Hauler	SR6BAN001013	\$1,087,677.00

3. SCHEDULE OF TERMS:

A. F. O. B.: Corbin, KY

B. Ship for use in following Operations: Mining Construction

() Other (Describe) _____ Job Site: _____

Name of Job or Project (at or near) _____

19060 Hwy 1078 So., Henderson, KY 42420

(Street)

(City, County, State, Zip)

E. Mail Invoice to:

Same as Above

(Name)

(Street)

(City, State, Zip)

F. Minimum Rental Period: 6 Months _____ Weeks

Rental shall commence on 2011. If this blank is not filled in, rental shall commence on the date CUSTOMER receives possession of the Equipment. Upon expiration of the Minimum Rental Period, the term hereof shall, at RUDD's discretion, continue for an indefinite period, and either RUDD or CUSTOMER may terminate this Rental Agreement upon five (5) days prior notice to the other. If CUSTOMER terminates this Rental Agreement prior to expiration of the Minimum Rental Period, it shall pay RUDD all the aggregated remaining rent due during the Minimum Rental Period.

CUSTOMER shall be liable for all transportation charges of returning the Equipment to RUDD.

4. CALCULATION OF RENTAL PERIOD. The rental period shall begin on and include the date of shipment to CUSTOMER and shall end on and include the date of return to RUDD's Designated Receiving Point. If the Equipment is kept longer than the specified Minimum Rental Period, the rental shall be invoiced to and paid by CUSTOMER on a pro rata basis.

5. RATES AND OVERTIME RATES. The rates provided for in this Rental Agreement are straight time rates based on eight (8) hours per day, five (5) days per week, or twenty-two (22) eight (8) hour days per month for a total of one hundred seventy-six (176) hours in any one thirty (30) consecutive day period. CUSTOMER shall receive no credit or offset against the monthly rent due hereunder if the Equipment is in actual use for less than one hundred seventy-six (176) hours in any one thirty (30) consecutive day period. Should the Equipment be used longer than the above specified hours in any specific period, the overtime rate shall be based on the figure in the blank above, or if it is not filled in, then on 1/1176th of the monthly rate for each hour in excess of one hundred seventy-six (176) hours worked in any one thirty (30) consecutive day period (or if the specified rate is weekly, 1/40 of the weekly rate).

6. TITLE.

A. TRUE LEASE. Title to the Equipment (and to all replacements thereof or substitutions therefor) is and shall remain in RUDD. RUDD and CUSTOMER further acknowledge and agree that this Rental Agreement is intended as a true and actual lease between the parties and does not constitute a so-called "capital lease" or as a "finance lease" under KRS 355.2A-103, intended as security. The filing by RUDD under the Uniform Commercial Code of one or more UCC forms evidencing the relationship hereby created shall not render this Rental Agreement a lease intended as security.

B. NO PURCHASE OPTION. This Rental Agreement contains no purchase option. If at any time during the Rental Period, CUSTOMER desires to purchase the Equipment, RUDD will enter into good faith negotiations, but neither party shall have any obligation to agree to a purchase.

7. RISK OF LOSS; SHIPMENT AND RECEIPT OF EQUIPMENT. Risk of loss shall pass to CUSTOMER upon the delivery of the Equipment to a carrier for delivery to CUSTOMER or upon delivery to CUSTOMER at RUDD's facility. Should the Equipment be damaged in transit, it shall be the obligation of CUSTOMER to have such repairs or replacements made to the Equipment as necessary to bring the Equipment to its condition when the risk of loss passed to CUSTOMER. The receipt and assumption of possession by CUSTOMER of the Equipment shall constitute acknowledgment that the Equipment has been accepted and found in proper working condition. Any use of the Equipment shall constitute a full, complete and irrevocable acceptance by CUSTOMER.

8. CUSTOMER'S OBLIGATIONS.

A. TIRE CLAUSE. During the initial period all repairs to tires or replacement of tires shall be the sole responsibility of CUSTOMER. Notwithstanding the condition of any tire on the Equipment at the time this Rental Agreement was executed, CUSTOMER agrees, as additional rent, to pay, upon return of the Equipment, the replacement value of any tire which RUDD, in its sole opinion, determines cannot be used again; and, CUSTOMER also agrees to pay upon return of the Equipment the entire recapping charge for any tire which RUDD determines, in its sole opinion, to be in need of recapping.

B. INSTRUCTION MANUAL AND OPERATION OF THE EQUIPMENT. CUSTOMER acknowledges being furnished with an instruction manual governing safe operation of the Equipment and warrants that any person who uses the Equipment will operate the Equipment in accordance with the instruction manual. CUSTOMER agrees to use the Equipment only for its intended purpose and CUSTOMER agrees to comply with and conform to all municipal, state and federal

Via: Best Way

Shipping Date: ASAP

Freight Charges: customer pay freight/ assembly

C. RUDD's Designated Receiving Point: Evanville, IN

D. Rental Rate: Weekly @ \$ _____ per week.

Monthly @ \$39,000.00 per month.

Monthly Rate Shown for 400 Hours/Month.

Hourly Charge for Excess Hours \$ 97.50

Single Shift _____ Double Shift X

\$ _____ Deposit payable on execution, applicable

to First month's rental

to First month's rental

laws relating to the use and operation of the Equipment.

C. REPAIRS. CUSTOMER agrees, during the rental period, at its own cost and expense, to operate and maintain the Equipment with factory authorized parts and to make all necessary repairs to the Equipment. CUSTOMER agrees to return the Equipment to RUDD in the same condition as received by CUSTOMER, reasonable wear and tear excepted. RUDD reserves the right to inspect the Equipment upon return, and CUSTOMER agrees to pay all costs and expenses of making all necessary repairs to the Equipment upon its return to RUDD. At CUSTOMER's request, RUDD may repair the Equipment for CUSTOMER, using reasonable diligence to make such repairs, and CUSTOMER shall pay RUDD its regular charges for any material or labor furnished in making such repairs.

D. CASUALTY TO EQUIPMENT; INDEMNIFICATION. CUSTOMER hereby agrees to indemnify RUDD for all losses and damages to the Equipment which are the result of any casualty or which may be an act of God, said indemnification to continue until the Equipment has been returned to the possession of RUDD and accepted by it. For the purpose of fixing the value of the Equipment in order to determine the loss, damage, or injury thereto, the Replacement Value, as stated in Paragraph 2 hereof, shall be deemed a true and just value, forming a basis for each adjustment. In making such adjustment, no rentals therefore paid or due shall apply toward the payment of such loss.

E. SEIZURE OF THE EQUIPMENT. CUSTOMER represents and warrants to RUDD that the Equipment is not being rented for the purpose of and will not, during the Rental Period, be used for any purpose or in any manner which would violate any provision of any law which would allow the Equipment to be seized by any governmental agency. If the Equipment is used within the Commonwealth of Kentucky, CUSTOMER represents and agrees the Equipment will be used in compliance with any and all applicable laws and regulations, including, but not limited to, the provisions of Chapter 350 of the Kentucky Revised Statutes. Failure to fulfil this obligation on the part of CUSTOMER shall be deemed a default under the Rental Agreement.

F. LOCATION OF EQUIPMENT; LEVY; INSPECTION. CUSTOMER shall, whenever requested by RUDD, give RUDD the exact location of the Equipment and shall further give RUDD immediate notice if any levy is attempted upon the Equipment, or if the Equipment from any cause becomes liable to seizure, and shall indemnify RUDD against all loss and damages caused by any such action. RUDD shall have the privilege at all times of entering, for the purpose of inspection, any job, building, or location where the Equipment is being used, and reserves the privilege of removing the Equipment on twenty-four (24) hours notice if it is being overloaded or taxed beyond its capacity or in any manner abused, neglected or misused.

G. NO ENCUMBRANCE. CUSTOMER agrees that it will not subject the Equipment to any lien, encumbrance, security interest or claim of any kind other than the rights reserved to RUDD pursuant to this Rental Agreement or under law.

H. PUBLIC LIABILITY; INDEMNIFICATION. CUSTOMER hereby agrees to indemnify RUDD against all loss, damage, expense, and penalty arising from any action on account of any death or injury to person or property of any character whatsoever occasioned by the operation, handling, or transportation of the Equipment during the rental period or while the Equipment is in the possession or under the custody and control of CUSTOMER, including without limitation, the death or injury, to any employees of CUSTOMER.

I. INSURANCE. CUSTOMER further agrees to protect RUDD with full at risk insurance (causes of loss - special form) naming RUDD as an additional insured and loss payee covering all losses and damages listed in the previous Paragraphs H and I hereof and agrees to submit to RUDD a copy of the Certificate of Insurance demonstrating it has complied with this subparagraph. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by

Independent instrument furnished to RUDD, that it will give RUDD thirty (30) days written notice before the policy in question shall be amended or canceled. CUSTOMER hereby assigns to RUDD all proceeds from such insurance, convey an assignable in said proceeds, directs any insurer to pay said proceeds to RUDD, and appoints RUDD its attorney-in-fact to make claims for, receive payment of, and accept and endorse all documents, checks or drafts for, loss or damages under said insurance policy. RUDD may at its option and at its own expense insure its own interest in the Equipment. If RUDD does obtain its own insurance, CUSTOMER shall have no interest whatsoever in such insurance. In addition, CUSTOMER shall maintain comprehensive public liability insurance in an amount of not less than One Million Dollars (\$1,000,000) per occurrence naming RUDD as an additional insured.

J. TAXES. CUSTOMER shall pay all legal assessments, taxes, sales or use taxes or public charges, other local, municipal, state, or federal, which may be levied on the Equipment while in the possession of CUSTOMER. Nothing in this paragraph is to be construed as meaning that CUSTOMER is to pay the personal property tax levied against the Equipment rented when said Equipment is located within the home state of RUDD. Any and all taxes assessed against the Equipment, including personal property taxes, while the Equipment is outside of the home state of RUDD, are to be paid by CUSTOMER. The term "home state" means any state in which the RUDD has its home office or branch.

K. FAILURE TO PAY INSURANCE OR TAXES. If CUSTOMER fails to procure and maintain insurance under Paragraph E) above or to pay taxes under Paragraph J) above, RUDD shall have the right, but not the obligation, to effect such insurance or pay such taxes and the cost thereof shall be reimbursed to RUDD by CUSTOMER with the next installment of rent.

L. LABOR UNIONS AND FORCE MAJEURE. CUSTOMER shall pay any charges for work or inspection required by any labor union. RUDD may, at its option, refuse to do any repair work on Equipment in line of strikes or in violation of any union or governmental rule affecting the Equipment or in the event RUDD is prevented from doing so by a cause beyond its control. RUDD reserves the right to remove the Equipment from a job site at any time when, in RUDD's opinion, the Equipment is in danger because of strikes or any other condition.

M. RUDD'S OBLIGATIONS.
N. NO WARRANTY GIVEN. RUDD IS NOT THE MANUFACTURER OF THE EQUIPMENT HEREIN RENTED, NOR THE AGENT OF THE MANUFACTURER OF SAID EQUIPMENT, AND RUDD GIVES NO EXPRESS WARRANTY AGAINST PATENT OR LATENT DEFECTS IN MATERIAL, WORKMANSHIP, OR CAPACITY, OR THAT SAID EQUIPMENT WILL MEET THE REQUIREMENTS OF ANY LAW, RULES, SPECIFICATIONS, OR CONTRACTS WHICH PROVIDE FOR SPECIFIC MACHINERY OR APPARATUS OR SPECIAL METHODS. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE ARE HEREBY EXCLUDED. THE EQUIPMENT SHALL BE DEEMED USED EQUIPMENT AND IS RENTED ON AN "AS IS - WHERE IS" BASIS. RUDD SHALL NOT BE LIABLE IN ANY EVENT TO CUSTOMER FOR ANY LOSS, DELAY OR DAMAGE OF ANY KIND OR CHARACTER RESULTING FROM DEFECTS IN, OR INEFFICIENCY OF, THE EQUIPMENT, NOR SHALL RUDD BE LIABLE FOR ACCIDENTAL BREAKAGE THEREOF, NOR SHALL CUSTOMER BE ENTITLED TO RECOVER CONSEQUENTIAL OR INCIDENTAL DAMAGES.

O. EXCLUSIVE REMEDY AGAINST RUDD. IN THE EVENT CUSTOMER ACCEPTS THE EQUIPMENT, AS HEREIN PROVIDED, AND THEREAFTER THE EQUIPMENT PROVES DEFECTIVE IN DESIGN, MATERIALS, WORKMANSHIP, CAPACITY OR FOR ANY OTHER REASON, OR IS UNFIT FOR USE BECAUSE OF ANY ACCIDENT OR OTHERWISE, CUSTOMER'S EXCLUSIVE REMEDY SHALL BE TO RETURN THE EQUIPMENT TO RUDD AND TERMINATE THIS RENTAL AGREEMENT; PROVIDED, HOWEVER, CUSTOMER SHALL BE LIABLE FOR THE TRANSPORTATION CHARGES ON RETURNING THE EQUIPMENT.

P. CONDITION AND INSPECTION OF EQUIPMENT. RUDD shall use reasonable care to see that the Equipment is in proper working condition before shipment to CUSTOMER. CUSTOMER acknowledges that it has inspected the Equipment prior to executing this Rental Agreement.

Q. DEFAULT. Should any of the provisions of this Rental Agreement, including the payment of rent, be violated by CUSTOMER, the remaining rental for the Minimum Rental Period shall become forthwith due and payable, and RUDD or its agents may, without notice, enter the premises occupied by CUSTOMER without being a trespasser thereon and take possession of and remove the Equipment. All freight, demurrage, storage, labor, or other charges required to return the Equipment to RUDD's Designated Receiving Point shall be borne by the CUSTOMER. In the event RUDD incurs reasonable attorney's fees or other costs due to CUSTOMER's default, CUSTOMER agrees to pay same to RUDD, in addition to all other costs, charges and damage.

R. TERMINATION. After the expiration of the Minimum Rental Period this Rental Agreement may be terminated:

A. by RUDD, by making demand for the return of the Equipment which CUSTOMER, at its expense, shall forthwith return to RUDD's Designated Receiving Point set forth in Paragraph 3C hereof.

B. by CUSTOMER, in accordance with Paragraph 8F hereof and by returning the Equipment to RUDD's Designated Receiving Point set forth in Paragraph 3C hereof.

12. BANKRUPTCY. Neither this Rental Agreement nor any interest herein is assignable or transferable by operation of law. If any proceeding under the Bankruptcy Code, Title 11 of U.S.C., is commenced, is commenced by or against CUSTOMER, or if CUSTOMER is subjected to insolvency, or if CUSTOMER makes any assignment for the benefit of its creditors, or if a receiver is appointed in any proceeding or action to which CUSTOMER is a party, this Rental Agreement shall, at the option of RUDD, without notice, immediately terminate and shall not be treated as an asset of CUSTOMER.

13. MODIFICATION OF RENTAL AGREEMENT. No modification of this Rental Agreement shall be binding upon the parties or either of them unless such modification is in writing and duly accepted in writing.

14. RELATIONSHIP OF PARTIES. Nothing in this Rental Agreement shall render RUDD in any manner a partner, agent, joint venturer, or associate of CUSTOMER in the operation and use of the Equipment or subject RUDD to any obligation, loss, charge or expense in connection with or arising from the operation or use of the Equipment.

15. PLACE OF MAKING. RUDD's location set forth in Paragraph 3C shall be the place of making of this Rental Agreement, and any and all disputes arising hereunder shall be settled at RUDD's location, whether such settlement be arbitrated, or be attempted, by negotiation, litigation, or otherwise.

16. APPLICABLE LAW; SEVERABILITY. The law of the state of RUDD's location set forth in Paragraph 3C hereof shall apply to this Rental Agreement and the construction thereof. To the extent any provision or clause in this Rental Agreement is prohibited by any law or is deemed unenforceable, such prohibition or unenforceability shall not invalidate any of the remaining provisions or clauses hereof.

17. MISCELLANEOUS. No waiver of a breach of any provision of this Rental Agreement shall constitute a waiver of any other breach of the same or any other provision. Time is of the essence of this Rental Agreement.

18. NO ASSIGNMENT OR SUBLICITING BY CUSTOMER. CUSTOMER shall not assign, sell, sublet, encumber or otherwise transfer this Rental Agreement or the Equipment or any right hereof without the prior written consent of RUDD.

19. ASSIGNMENT BY RUDD. RUDD may assign its rights hereunder to any person, partnership or corporation, either with or without recourse, and upon receipt of notice of any such assignment, CUSTOMER shall be obligated to RUDD's assignee to the same extent that it is obligated to RUDD, and the assignee, either in its own name or in RUDD's name, shall have the full and complete right to assert all of the rights granted RUDD hereunder. All representations, warranties and agreements of CUSTOMER set forth herein shall be deemed made to the assignee with the same force and effect as if said assignee were RUDD. Further, upon assignment of this Rental Agreement by RUDD, RUDD will not be assignee's agent for any purpose; and CUSTOMER'S obligations and liabilities hereunder to the assignee will be absolute and unconditional and will not be subject to any abatement, reduction, mitigation, defense, setoff or counterclaim available to CUSTOMER against RUDD.

20. SUBJECT TO RUDD'S ACCEPTANCE. This Rental Agreement is subject to acceptance by RUDD and shall not be binding upon RUDD until signed by RUDD's authorized representative. Acceptance shall be executed by RUDD on the attached Acknowledgment Copy which shall be returned to CUSTOMER by United States Mail.

21. UCC-1. CUSTOMER appoints RUDD as its attorney in fact to execute and file any UCC-1 financing statements deemed appropriate by RUDD to protect its ownership or other interests hereunder.

22. ENTIRE UNDERSTANDING. RUDD'S SALESMEN AND/OR OTHER EMPLOYEES MAY HAVE MADE ORAL OR WRITTEN STATEMENTS ABOUT THE EQUIPMENT. SUCH STATEMENTS DO NOT CONSTITUTE WARRANTIES, SHALL NOT BE RELIED UPON BY CUSTOMER AND ARE NOT A PART OF THIS RENTAL AGREEMENT. THE ENTIRE UNDERSTANDING OF THE PARTIES IS EMBODIED IN THIS RENTAL AGREEMENT. THIS RENTAL AGREEMENT, SIGNED AND DATED BY BOTH PARTIES, CONSTITUTES A FINAL WRITTEN EXPRESSION OF TERMS OF THIS AGREEMENT AND IS A COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. EVIDENCE OF COURSE OF DEALING, USAGE OF TRADE OR COURSE OF PERFORMANCE SHALL NOT BE ADMITTED INTO EVIDENCE IN ANY LAWSUIT IN AN ATTEMPT TO EXPLAIN THE MEANING OF ANY TERM IN THE RENTAL AGREEMENT.

ALL THE ABOVE TERMS AND CONDITIONS HAVE BEEN READ AND ARE THOROUGHLY UNDERSTOOD. THIS RENTAL AGREEMENT DOES NOT CONTAIN A PURCHASE OPTION UNLESS SET FORTH IN A SEPARATE WRITTEN AMENDMENT. CUSTOMER ACKNOWLEDGES RECEIPT OF A COPY OF THIS RENTAL AGREEMENT.

RUDD EQUIPMENT COMPANY

By: [Signature]
Title: Vice President
Date: 11/29/12

CUSTOMER

[Signature]
Circle One: Corporation Partnership Individual
Title: [Signature]
Date: 11/29/12
Witness: [Signature]
(Salesman (or here as witness))

Performance and payment of CUSTOMER'S obligations up to a maximum of \$ _____, or the total amount which is payable by CUSTOMER under this Rental Agreement (whichever is greater) is personally guaranteed by:

By: _____
Title: _____
Date: _____

EXHIBIT C

Local

Saturday, November 3, 2012



NOON
UE WOMEN VS. USI

4PM
UE MEN VS.
UI-SPRINGFIELD

Patriot will close Bluegrass

■ Surface mine may be a victim of falling demand

By Chuck Stinnett
Scripps newspapers

Patriot Coal Corp., which last summer closed its Freedom underground mine in eastern Henderson County, Ky., plans now to also close its 89-employee surface mine near Hebardsville.

The struggling St. Louis-based company said the Bluegrass Mine Complex will close by the end of the year.

Approximately 196 people lost their jobs when

Freedom closed.

The Bluegrass complex includes the Patriot Surface Mine, which is expected to produce approximately 1.2 million tons of thermal coal this year, and the Grand Eagle Preparation Plant.

"Reclamation work will continue as the site is restored to meet regulatory requirements," the company said in an announcement early Thursday evening.

Patriot didn't cite a reason for the closure, and a

spokesman said the company had no further comment.

When Patriot announced plans in April to close the Freedom Mine, it cited weakness in market demand for coal. Demand has been hurt by falling natural gas prices and the unusually mild weather last winter that left large inventories of unused coal at power plants.

Patriot last spring also cited "challenging environmental regulations affecting the cost of pro-

ducing and using coal, and weaker international and domestic economies."

The company continues to operate the Highland and Dodge Hill underground mines in Union County as well as several mines in West Virginia.

After losing nearly \$239 million over a 27-month period, Patriot filed for Chapter 11 bankruptcy reorganization in July, saying it would seek a financial restructuring.

The United Mine Workers of America has

accused Peabody Energy Corp. of having created an unsustainable company when it spun off Patriot as a separate entity in 2007 and left it responsible for pension and health care costs for 6,036 retired miners, spouses and dependents from former Peabody Coal mines in the eastern U.S.

The UMW has filed a federal class-action lawsuit in West Virginia against Peabody Energy and another company, Arch Coal, seeking to hold them responsible for the health and pension benefits of retirees.

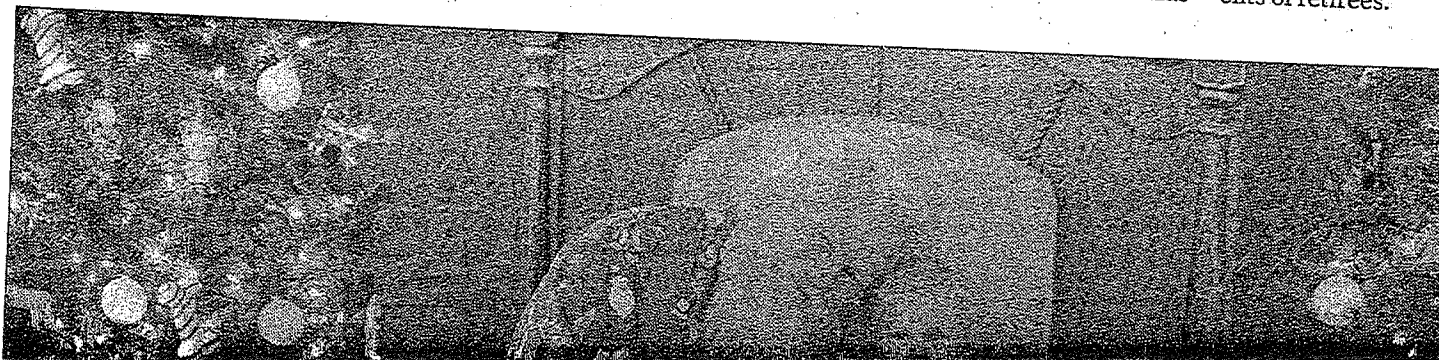
Officials: Peeping case still brewing

By Richard Gootee
gooteer@courierpress.com
812-464-7431

It's been month since Andrew Emmons resigned from his position as a Boonville Middle School science teacher following his September arrest on a preliminary charge of voyeurism after a camera was found inside a faculty restroom at the school.

But Emmons still faces no formal charges stemming from the incident and the subsequent investigation, which revealed he is suspected of filming multiple people without their consent, according to authorities.

Emmons, 30, was a science teacher when he resigned his teaching position on Oct. 4, though



MINES

Patriot to shut Bluegrass complex; Alpha closes Still House Branch

Eastern US producer Patriot Coal plans to shut its Bluegrass thermal coal mine complex in western Kentucky by the end of 2012, the company said Thursday.

Bluegrass, which currently employs about 89 people, includes the Patriot Surface Mine, which is expected to produce about 1.2 million st of thermal coal in 2012, and the Grand Eagle Preparation Plant, both in Henderson County, Kentucky.

The St. Louis, Missouri-based company, which entered Chapter 11 bankruptcy reorganization in July, did not give a reason for the planned idlings.

But Patriot said in its third-quarter earnings results, released Tuesday, it has been shutting production, particularly metallurgical coal production, due to weakened demand (*PCT 11/1*).

Fellow Kentucky miner, Alpha Natural Resources has closed the Still House Branch steam coal mine in Harlan County, Kentucky.

The move will cost the jobs of 40 miners while another 40 will be transferred to Alpha's other mines in the area.

Rick Nida, spokesman for the Bristol, Virginia-based company, said Thursday that Alpha has started to execute a plan unveiled in October to shut some 10 metallurgical and steam coal mines. Still House Branch, which closed on October 29, was among the first to go down.

"Between now and the first of 2013, we'll have several mine closures and production curtailments with the idea that we'll decrease production by a certain number of tons, about 16 million tons, about half in the East and half in the West," Nida said.

He blamed the mine's shutdown on economic reasons. Some US power plants have been burning less coal because of low natural gas prices and more stringent pollution control rules. The mild winter of 2011-12 also led to large coal inventories at many plants that, while since reduced, have not been totally drawn down.

The US Mine Safety and Health Administration shows no listing for Still House Branch. MSHA lists, however, a

Stillhouse No. 1 mine in Harlan County that is owned by Alpha. That mine produced 348,749 short tons of coal in the first three quarters of 2012 and 596,499 st in 2011.

— Steve Hooks, Bob Maty

SUPPLIERS

Alliance Q3 earnings down, eschewing metallurgical coal

Despite record coal sales and production in the third quarter, Alliance Resource Partners said its Q3 earnings dropped, largely because of the August 29 idling of the Pontiki underground mine in Martin County, Kentucky.

Although never a big metallurgical coal producer, the Tulsa, Oklahoma-based company is staying out of the met market until prices improve appreciably, company officials said during an October 26 earnings call.

For Q3, Alliance earned \$60.5 million, down from \$104.1 million a year ago. Joseph Craft III, Alliance president and CEO, blamed \$24.1 million in losses and charges on Pontiki's idling after the US Mine Safety and Health Administration cited a failure of a belt line between two coal stacking tubes.

"At Pontiki, we expect repairs will begin shortly and be completed by the end of the year to resume production," he said.

Craft said Alliance produced 9 million short tons in the latest quarter and recorded coal sales exceeding 8.9 million st.

The record coal volumes drove the company's coal sales revenues to \$499 million in the quarter, a 5.3% increase from Q3 2011.

Much of the increase was credited to the new Tunnel Ridge longwall mine in Washington County, Pennsylvania, and Ohio County, West Virginia. The steam coal mine continues to ramp up to its eventual peak of 6.5 million st a year. The company also cited increases at the Onton underground mine in Hopkins County, Kentucky, it acquired earlier this year.

Alliance now expects to produce 34 million to 39 million st in 2012, Craft said. Essentially all of Alliance's coal is sold for 2012 and more than 95% is committed and priced for 2013.

Construction continues, meanwhile, at the new Gibson South underground mine and White Oak No. 1 longwall mine in Gibson County, Indiana, and Hamilton County, Illinois, respectively. Gibson South is targeted to start production in the fourth quarter of 2014 or early 2015. Initial output at White Oak could commence next year, with the bulk of production coming in 2014 and 2015.

Craft, in response to an analyst's question, said Alliance "will not be participating in the met market definitely in the fourth quarter and most likely in the first and even the sec-

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

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

Chapter 11 Cases
Case No. 12-12900 (SCC)

(Jointly Administered)

**[PROPOSED] ORDER MOTION FOR ENTRY OF AN
ORDER COMPELLING DEBTORS PATRIOT COAL CORPORATION AND GRAND
EAGLE MINING, LLC TO ASSUME OR REJECT RUDD EQUIPMENT COMPANY'S
EXECUTORY CONTRACTS PURSUANT TO 11 U.S.C § 365(d)(2)**

Upon the accompanying Motion of party in interest Rudd Equipment Company ("Rudd") for an Order, pursuant to 11 U.S.C. § 365(d)(2), establishing a deadline by which Patriot Coal Corporation and Grand Eagle Mining, LLC must assume or reject two Rudd Equipment Company – Rental Agreements dated September 2011 (the "Equipment Contracts") and granting such other and further relief as this Court may deem proper; and after due deliberation, and for good cause shown, it is

ORDERED that Debtors' are directed to assume or reject the Equipment Contracts pursuant to 11 U.S.C. § 365 on or before _____, 201_; and it is further

ORDERED that if Debtors' reject the Equipment Contracts, the automatic stay shall be lifted pursuant to 11 U.S.C. § 362 to direct Debtors' to return the equipment leased pursuant to the Equipment Contracts.

Dated: _____, 2012

HON. _____
UNITED STATES BANKRUPTCY JUDGE