

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

| | | |
|---|---|-----------------------------------|
| ----- | X | |
| | : | |
| In re | : | Chapter 11 |
| | : | |
| PATRIOT COAL CORPORATION, <i>et al.</i> , | : | Case No. 12-51502-659 |
| | : | |
| Debtors. | : | (Jointly Administered) |
| | : | |
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| | : | |
| EASTERN ROYALTY LLC f/k/a EASTERN | : | |
| ROYALTY CORP., | : | |
| | : | |
| Plaintiff, | : | Adv. Pro. No. 12-04353-659 |
| | : | |
| v. | : | |
| | : | |
| BOONE EAST DEVELOPMENT CO., | : | |
| PERFORMANCE COAL CO., AND NEW | : | |
| RIVER ENERGY CORP., | : | |
| | : | |
| Defendants. | : | |
| | : | |
| ----- | X | |

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Defendants Boone East Development Co., Performance Coal Co., and New River Energy Corp. hereby appeal under 28 U.S.C. § 158 to the United States District Court for the Eastern District of Missouri from the final order entered by the United States Bankruptcy Court for the Eastern District of Missouri in the above-referenced adversary proceeding on November 14, 2013 (the "Order"). The names of all parties to the Order appealed from and the names, addresses, and telephone numbers of their respective attorneys are:

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Luke A. Barefoot

-and-

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Laura Uberti Hughes (# 60732)

Counsel for Eastern Royalty LLC f/k/a Eastern Royalty Corp.

Dated: November 27, 2013
St. Louis, Missouri

Respectfully Submitted,

/s/ David A. Sosne

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JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Boone East Development Co., Performance Coal Co., and New River Energy Co.

(b) County of Residence of First Listed Plaintiff Kanawha County, WV
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

See attachment

DEFENDANTS

Eastern Royalty LLC, f/k/a Eastern Royalty Corp.

County of Residence of First Listed Defendant Kanawha County, WV
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

See attachment

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|---|---|--|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY - Med. Malpractice <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | <input checked="" type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Acts <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | | |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | | |

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

11 U.S.C. s. 385; 28 U.S.C. s. 158

Brief description of cause:

Appeal of final bankruptcy order granting motion for judgment on the pleadings

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/27/2013

SIGNATURE OF ATTORNEY OF RECORD

/s/ David A. Sosne

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

Civil Cover Sheet (cont'd)

Ic Attorneys for Appellant

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Brian C. Walsh (# 58091)

Laura Uberti Hughes (# 60732)

Form aploblap

**UNITED STATES BANKRUPTCY COURT
Eastern District of Missouri
Thomas F Eagleton U.S. Courthouse
111 South Tenth Street, Fourth Floor
St. Louis, MO 63102**

In Re: Patriot Coal Corporation
Debtor

Case No.: 12-51502 – A659

Adv. Proc. No. 12-04353 – A659

Eastern Royalty LLC F/K/A Eastern Royalty Corp.
Plaintiff

v.
Boone East Development Co., Performance Coal Co., And
New River Energy Corp.
New River Energy Corp.
Boone East Development Co.
Performance Coal Co.

Chapter 11

Defendant

Appellant

Boone East Development Co., Performance Coal Co., and
New River Energy Corp.

NOTICE OF APPELLANT'S OBLIGATIONS

Notice is given to the Appellant, that the Appellant shall, within 14 days of 11/27/2013, file the following with the Clerk of the United States Bankruptcy Court:

1. A designation of the items to be included in the record on appeal and serve a copy upon the appellee;
2. A statement of the issues to be presented and serve a copy upon the appellee; and
3. A written request for the transcript and deliver a copy to the court where the record designated includes a transcript of any proceeding or a part thereof.
4. Per Federal Rule of Bankruptcy Procedure 8006, any party designating items to be included in the record, shall provide the Clerk a copy of items designated or the Clerk shall prepare the copies at the expense of the party. Copies of designated items for the record on appeal may be requested from our Court, by calling (314) 244-4500 or by fax request at (314) 244-4990.

Dated: 11/27/13

Dana C. McWay
Clerk, U.S. Bankruptcy Court

Marcia Klocke
Deputy Clerk

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

| | | |
|---|---|-----------------------------------|
| ----- | X | |
| | : | |
| In re | : | Chapter 11 |
| | : | |
| PATRIOT COAL CORPORATION, <i>et al.</i> , | : | Case No. 12-51502-659 |
| | : | |
| Debtors. | : | (Jointly Administered) |
| | : | |
| ----- | X | |
| | : | |
| EASTERN ROYALTY LLC f/k/a EASTERN | : | |
| ROYALTY CORP., | : | |
| | : | |
| Plaintiff, | : | Adv. Pro. No. 12-04353-659 |
| | : | |
| v. | : | |
| | : | |
| BOONE EAST DEVELOPMENT CO., | : | |
| PERFORMANCE COAL CO., AND NEW | : | |
| RIVER ENERGY CORP., | : | |
| | : | |
| Defendants. | : | |
| | : | |
| ----- | X | |

**APPELLANT'S ELECTION THAT APPEAL
BE HEARD BY THE UNITED STATES DISTRICT COURT**

Appellants, Boone East Development Co., Performance Coal Co., and New River Energy Corp., hereby elect, pursuant to 28 U.S.C. § 158(c)(1)(A), to have this appeal heard by the United States District Court for the Eastern District of Missouri.

Dated: November 27, 2013

/s/ David A. Sosne
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*Counsel for Boone East Development Co., Performance
Coal Co., and New River Energy Corp.*

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

| | |
|------------------------------|----------------------------------|
| In Re: |) Chapter 11 |
| |) Case No. 12-51502-659 |
| PATRIOT COAL CORPORATION, |) Jointly Administered |
| <i>et al.</i> , |) Honorable Kathy Surratt-States |
| _____ Debtors. |) |
| |) |
| EASTERN ROYALTY LLC |) |
| f/k/a EASTERN ROYALTY CORP., |) |
| |) Adv. Proc. No. 12-04353-659 |
| Plaintiffs, |) |
| v. |) |
| |) |
| BOONE EAST DEVELOPMENT CO., |) |
| PERFORMANCE COAL CO. and |) |
| NEW RIVER ENERGY CORP., |) |
| _____ Defendants. |) |

CERTIFICATE OF SERVICE

I, David A. Sosne, hereby certify that on the 27th day of November, 2013, I served a copy of the Appellant’s Election That Appeal Be Heard by the United States District Court, upon the Appellees and all CM/ECF participants via the electronic filing system.

SUMMERS COMPTON WELLS LLC

Date: November 27, 2013

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