

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI AT ST. LOUIS**

IN RE:

PATRIOT COAL CORPORATION, et al.,

Debtors.

CASE NO. 12-51502-659

CHAPTER 11

(Jointly Administered)

OBJECTION TO DEBTORS' 503(b)(9) REPORT AND NOTICE OF OBJECTION PROCEDURES

Industrial Supply Solutions, Inc. (hereinafter "ISSI"), by and through counsel, hereby objects to the Debtors' 503(b)(9) Report and Notice of Objection Procedures (hereinafter "503(b)(9) Report") (docket #3006). In support thereof, ISSI respectfully shows the Court as follows:

1. ISSI sells goods (hereinafter "goods") utilized by Patriot Coal Corporation and/or its affiliates in the normal course of their business operations.

2. On or about December 12, 2012, ISSI timely filed its Claims (hereinafter "503(b)(9) Demand") requesting pursuant to § 503(b)(9) of the United States Bankruptcy Code (hereinafter "Bankruptcy Code"). The 503(b)(9) Demand properly listed the value of the goods that were received by the Debtors within twenty (20) days before the date of the commencement of this bankruptcy case.

3. On February 27, 2013, the Debtors filed their 503(b)(9) Report and Notice of Objection Procedures, which stated the rationale for the Debtors' reduction or disallowance of 503(b)(9) Demand. The Debtors contend in part, that the goods provided by ISSI are not subject to 503(b)(9) Claim treatment for various reasons including that some goods were received outside the twenty (20) day period and/or are disputed claims. The Debtors further propose administrative claims totally \$271,342.00 for the goods listed in the 503(b)(9) Demand.

ARGUMENT

4. 503(b)(9) Claims is found in 11 U.S.C. § 503(b)(9), which provides, in part, after notice and a hearing, there shall be allowed administrative expenses, including the value of any goods received by the Debtor within twenty (20) days before the date of commencement of a case under this

title in which the goods have been sold to the Debtor in the ordinary course of such debtor's business. Thus, for an administrative expense claim, a creditor must demonstrate that: (a) that value goods received by the Debtor within twenty (20) days before the commencement of the case; and (b) the goods were sold to the Debtor in the ordinary course of such debtor's business.

5. ISSI timely filed various § 503(b)(9) Claims which claims are listed on Exhibit A to the 503(b)(9) Report and Notice of Objection Procedures and which Exhibit is incorporated herein by reference.

6. Notwithstanding, even if the Debtors' defenses to ISSI's 503(b)(9) Demand are legitimate, which ISSI contends otherwise, none of the defenses asserted by the Debtors are valid as they relate to the goods provided by ISSI within twenty (20) days of the commencement of the bankruptcy filing because such goods qualify for administrative expense treatment pursuant to § 503(b)(9). See *In re Commissary Operations, Inc.*, 421 B.R. 873, 877 (Bankr. M.D. Tenn. 2010) (asserting that a creditor's right to assert an administrative expense claim under § 503(b)(9) of the Bankruptcy Code is not conditioned on the creditor's right to assert a reclamation demand under § 546(c) of the Bankruptcy Code). To the extent that that Debtors rely on *In re Dana Corp.*, 367 B.R. 409,411 (Bankr. S.D.N.Y. 2007), for the assertion that reclamation claims are valueless if the goods are subject to an existing lien, such reliance is misplaced. The *In re Dana Corp.* court explicitly stated that the defenses discussed in that case only applied to reclamation rights under § 546(c) of the Bankruptcy Code and not to a creditor's right to an administrative expense claim under § 503(b)(9) of the Bankruptcy Code. See *In re Dana Corp.*, 367 B.R. at 411. As such, to the extent the Court disallows any part of ISSI's Reclamation Demand with respect to goods provided within forty five (45) days of the bankruptcy filing, ISSI requests that the Court order the Debtors to grant ISSI an Allowed 503(b)(9) Claim for the value of goods provided within twenty (20) days of the bankruptcy filing pursuant to § 503 (b)(9) of the Bankruptcy Code.

WHEREFORE, ISSI respectfully requests that the Court sustain this Objection, that the 503(b)(9) Claims of ISSI be allowed as filed, that the Court conduct a hearing on the matter and for such other and further relief as is just and proper.

This the _____ day of March, 2013.

By/s/William Walt Pettit
William Walt Pettit
NC Bar No.: 9407
P.O. Box 12497
Charlotte, N.C. 28220-2497
Telephone: (704) 362-9255
Telecopier: (704) 357-6233
Email: walt.pettit@hskplaw.com

SOUTH & ASSOCIATES, P.C.
Attorneys for Conveying Solutions, LLC

By: /s/Daniel A. West
Daniel West
800 Market Street, Suite 1660
St. Louis, MO 63101
Telephone: (314) 655-7001
Telecopier: (314) 655-7004
Email: DanW@southlaw.com

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI AT ST. LOUIS**

IN RE:

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PATRIOT COAL CORPORATION, et al.,
Debtors.

CASE NO. 12-12900-659
CHAPTER 11
(Jointly Administered)

CERTIFICATE OF SERVICE

I, as attorney of record for Industrial Supply Solutions, Inc., hereby certify that on the 18th day of March, 2013, I served a copy of the Objection to Debtors' § 503(b)(9) Report and Notice of Objection Procedures and Certificate of Service by either electronic notice in accordance with the local rules or by depositing the same, enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service, said envelope being addressed as follows:

Patriot Coal Corporation
12312 Olive Boulevard
Suite 400
Saint Louis, MO 63141
Attn: Marguerite O'Connell
503(b)(9) Claims
Via Fax: (314) 275-3626

Margot B. Schonholtz
Ana Alfonso
Willkie Farr & Gallagher, LLP
787 Seventh Avenue
New York, NY 10019
*Counsel for Administrative Agents for
Proposed Postpetition Lenders*

Patriot Coal Corporation
c/o GCG, Inc.
P.O. Box 9898
Dublin, OH 43017-5798
Via Fax: (855) 687-2627
Claims and Noticing Agent for Debtors

Thomas Moers Mayer
Adam C. Rogoff
Gregory G. Plotko
Kramer Levin Naftalis & Frankel, LLP
1177 Avenue of the Americans
New York, NY 10036
*Counsel for Official Committee of Unsecured
Creditor*

Davis Polk & Wardwell, LLP
450 Lexington Avenue
New York, NY 10017
Attn: Michelle McGreal
Via Fax: (212) 607-7983
Counsel for Debtors

Gregory D. Willard
Angela L. Schisla
Carmondy MacDonald, P.C.
120 South Central Avenue
St. Louis, MO 63105-1705

Lloyd A. Palans
Brian C. Walsh
211 North Broadway, Suite 3600
St. Louis, MO 63102
Local Counsel for Debtors

By/s/William Walt Pettit.
William Walt Pettit
NC Bar No.: 9407
P.O. Box 12497
Charlotte, N.C. 28220-2497

Telephone: (704) 362-9255
Telecopier: (704) 357-6233
Email: walt.pettit@hskplaw.com

SOUTH & ASSOCIATES, P.C.
Attorneys for Conveying Solutions, LLC

By: /s/Daniel A. West
Daniel West
800 Market Street, Suite 1660
St. Louis, MO 63101
Telephone: (314) 655-7001
Telecopier: (314) 655-7004
Email: DanW@southlaw.com