

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re

PATRIOT COAL CORPORATION, et al.,

Debtors.

Chapter 11
Case No. 12-51502-659
(Jointly Administered)

**Objection Deadline: March 19, 2013 at
4:00 p.m. (prevailing Central Time)**

**RESPONSE OF CREDITORS CATERPILLAR GLOBAL MINING LLC,
CATERPILLAR GLOBAL MINING AMERICA LLC,
CATERPILLAR GLOBAL MINING FIELD SERVICES LLC,
AND CATERPILLAR GLOBAL MINING HIGHWALL MINERS LLC
TO DEBTORS' 503(b)(9) REPORT**

Caterpillar Global Mining LLC (“Global Mining”), Caterpillar Global Mining America LLC (“Global Mining America”), Caterpillar Global Mining Field Services LLC (“Field Services”), and Caterpillar Global Mining Highwall Miners LLC (“Highwall Miners”) (collectively, the “Global Mining Entities”), by and through their undersigned counsel, hereby submit their response (“Response”) to Debtors' 503(b)(9) Report [Dkt No. 3006] filed in the United States Bankruptcy Court for the Eastern District of Missouri, Eastern Division (the “Bankruptcy Court”) on February 27, 2013. In support of their Response the Global Mining Entities state as follows:

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 the United States Bankruptcy Court for the Southern District of New York (“SDNY Bankruptcy Court”) a voluntary case under chapter 11 of the Bankruptcy Code. On December 19, 2012, the SDNY Bankruptcy Court entered an order transferring the Debtors' chapter 11 cases to this Bankruptcy Court (the “Transfer Order”). [Dkt No. 1789]. Pursuant to the Transfer Order, all orders previously entered in these chapter 11 cases by the

SDNY Bankruptcy Court remain in full force and effect in accordance with their terms notwithstanding the transfer of venue.

2. The Debtors' cases are being jointly administered and the Debtors continue to operate their business as debtors in possession under Sections 1107 and 1108 of the Bankruptcy Code.

3. On August 2, 2012, the SDNY Bankruptcy Court entered the Order Approving Procedures for the Assertion, Resolution and Treatment of Reclamation Claims and Claims Asserted Pursuant to 11 U.S.C. § 503(b)(9) [Dkt. No. 261] (the "503(b)(9) Procedures Order"). The 503(b)(9) Procedures Order sets forth procedures for the assertion of claims pursuant to section 503(b)(9) of the Bankruptcy Code against the Debtors.

4. The Global Mining Entities are parties in interest in the above-captioned cases pursuant to their status as creditors and/or equipment lessors. The Global Mining Entities have significant claims and have been identified by the Debtors as among the largest unsecured creditors.

5. Pursuant to the 503(b)(9) Procedures Order, 503(b)(9) claims were required to be filed on or before the general claims bar date as determined by order of the SDNY Bankruptcy Court. Accordingly, pursuant to the Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof, entered by the SDNY Bankruptcy Court on September 18, 2012 ("Proof of Claims Deadline Order") [Dkt. No. 1388], which established the general bar date as December 14, 2012, all 503(b)(9) claims were required to be filed on or before December 14, 2012.

6. Thus, pursuant to the 503(b)(9) Procedures Order, and the Proof of Claims Deadline Order, on December 14, 2012, the Global Mining Entities filed the following fourteen proofs of claims in the total sum of \$1,360,741.75 for goods sold to and received by the Debtors

within twenty days prior to the Petition Date (collectively, the “503(b)(9) Claims” and each the “503(b)(9) Claim”):

- a. Claim No. 2872 filed by Global Mining America against Eastern Associated Coal, LLC¹ - \$57,203.71;
- b. Claim No. 2873 filed by Global Mining America against Dodge Hill Mining Company, LLC - \$3,657.63;
- c. Claim No. 2874 filed by Global Mining America against Black Stallion Coal Company, LLC - \$1,668.23;
- d. Claim No. 2876 filed by Global Mining America against Kanawha Eagle Coal, LLC - \$4,404.39;
- e. Claim No. 2877 filed by Global Mining America against Highland Mining Company, LLC - \$34,938.38;
- f. Claim No. 2878 filed by Global Mining America against Gateway Eagle Coal Company, LLC - \$1,158.68;
- g. Claim No. 2879 filed by Global Mining America against Speed Mining LLC - \$235,839.88;
- h. Claim No. 2881 filed by Global Mining America against Ohio County Coal Company, LLC - \$12,171.20;
- i. Claim No. 3610 filed by Global Mining America against Rivers Edge Mining, LLC - \$2,573.65;
- j. Claim No. 2870 filed by Field Services against Catenary Coal Company, LLC - \$1,655.10;
- k. Claim No. 2869 filed by Field Services² against Hobet Mining, LLC - \$164,193.25;
- l. Claim No. 2868 filed by Highwall Miners against Catenary Coal Company, LLC - \$39,215.38;
- m. Claim No. 2882 filed by Global Mining against Hobet Mining, LLC - \$789,553.85;

¹ In their 503(b)(9) Report, Debtors erroneously assert that Claim No. 2872 filed against Eastern Associated Coal, LLC was filed against Affinity Mining Company. [Dkt. No. 3006, at 14].

² In their 503(b)(9) Report, Debtors erroneously assert that Claim No. 2869 against Hobet Mining, LLC was filed by Highwall Miners. [Dkt. No. 3006, at 14].

- n. Claim No. 2883 filed by Global Mining against Catenary Coal Company, LLC - \$12,508.42.

Each 503(b)(9) Claim included copies of the invoices upon which the 503(b)(9) Claims are based. Debtors concede that the Global Mining Entities timely filed their 503(b)(9) Claims in accordance with the 503(b)(9) Order.

7. On February 27, 2013, Debtors filed their 503(b)(9) Report representing that Debtors have completed their review as required under the 503(b)(9) Procedures Order. Debtors have objected to certain of the Global Mining Entities' 503(b)(9) Claims and seek to reduce the allowed amount of 503(b)(9) Claims filed by the Global Mining Entities as follows: (a) Global Mining America's 503(b)(9) Claim from \$351,042.10 to \$236,749.00; (b) Field Services' 503(b)(9) Claim from \$165,848.35 to \$0.00; (c) Highwall Miners' 503(b)(9) Claim from \$39,215.38 to \$31,062.00; and (d) Global Mining's 503(b)(9) Claim from \$802,042.27 to \$559,644.00.³

8. It is well-settled in this Circuit and under the Federal Rules of Bankruptcy Procedure that a properly filed proof of claim is considered *prima facie* evidence of the validity and amount of the claim. *See* Fed. R. Bank. P. 3001(f); *see also In re Be-Mac Transport Co., Inc.*, 83 F.3d 1020, 1026 (8th Cir. 1996); *see also In re McDaniel*, 264 B.R. 531, 532-533 (8th Cir. 2001) (overruling debtor's objection to properly filed proof of claim where debtor failed to carry burden of producing evidence to support contention that claim was overstated).

9. In order to overcome a claim's presumptive validity, an objection to a proof of claim must contain a substantial factual basis to support its allegation of impropriety. *See In re McDaniel*, 264 B.R. at 532-533. Thus, the objecting party bears the burden of producing

³ Debtors have not objected to the following claims which, therefore, are deemed allowed per Order of the Bankruptcy Court in accordance with the proposed amount set forth in Debtors 503(b)(9) Report: (a) Claim No. 2873; (b) Claim No. 2874; (c) Claim No. 2878; and (d) Claim No. 3610.

sufficient evidence to rebut the presumptive validity of a proof of claim. *Id.* It is not until the debtor satisfies its obligation that the burden then shifts back to the creditor “to prove the validity of the claim by a preponderance of the evidence.” *See* 4 Collier on Bankruptcy ¶ 502.02[3][f] (15th ed. Rev. 2007).

10. By filing their proofs of claims, in compliance with the 503(b)(9) Procedures Order and providing copies of the invoices upon which the 503(b)(9) Claims are based, the Global Mining Entities have established *prima facie* evidence of the existence of the Debtors’ debt to each of the Global Mining Entities, which shifts the burden of persuasion to the Debtors to assert any pertinent defenses to the 503(b)(9) Claims. As the party objecting to the 503(b)(9) Claims, the Debtors bear the burden of proof as to the invalidity of the 503(b)(9) Claims.

11. Here, Debtors’ 503(b)(9) Report has failed to offer any evidence in support of the Debtors’ objections to the 503(b)(9) Claims. The Debtors simply seek to reduce the 503(b)(9) Claims: (i) without specifying which invoices provided by the Global Mining Entities they object to; (ii) without providing any proof of payment; (iii) without providing documentation of their contention that goods were delivered outside of the 20-day window; (iv) without providing documentation of their contention that the claimed amount is based upon services, not goods; and (v) without stating the reason on which Debtors dispute the claim or evidence in support of that position. Debtors have, therefore, failed to meet their burden of proof as to the reduction of the amount of the Global Mining Entities’ 503(b)(9) Claims, which should be allowed in their entirety.

WHEREFORE, for the reasons set forth in this Response, the Global Mining Entities respectfully request that this Court enter an Order overruling Debtors’ objections to the Global Mining Entities’ 503(b)(9) Claims set forth by Debtors in their 503(b)(9) Report and allowing Global Mining Entities’ 503(b)(9) Claims, and granting such further relief as

is just and proper.

Dated: New York, New York
March 19, 2013

BUCHANAN INGERSOLL & ROONEY PC

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