

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

In re:)	
)	
PATRIOT COAL CORPORATION, et al.,)	Case No. 12-51502-659
)	
Debtors in Possession.)	Chapter 11
)	
)	
SHANNON MCGHEE, and)	
BRITTANY MCGHEE,)	Hearing Date: May 21, 2013
)	
Movants,)	Hearing Time: 10:00 a.m.
)	
v.)	Courtroom 7 North
)	
PATRIOT COAL CORPORATION,)	Response Due: May 14, 2013
)	
Respondent.)	

**NOTICE OF HEARING AND
MOTION FOR RELIEF FROM AUTOMATIC STAY**

WARNING: ANY RESPONSE OR OBJECTION MUST BE FILED WITH THE COURT BY May 14, 2013 (SEE L.B.R. 9013-2). A COPY MUST BE PROMPTLY SERVED UPON THE UNDERSIGNED. FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THE COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE.

The Hearing, as stated above, will be held before the Honorable Judge Kathy A. Surratt-States, in Courtroom 7 North in the United States Bankruptcy Court, United States Courthouse, Thomas Eagleton US Courthouse, 111 S. 10th Street, St. Louis, Missouri 63102 on Monday, May 21, 2013 at 10:00 a.m.

COME NOW Movants Shannon McGhee and Brittany McGhee, by and through their undersigned counsel, and pursuant to 11 U.S.C. § 362(d) and Bankruptcy Rule 4001, move the Court for an order granting relief from automatic stay. In support thereof, Movants Shannon McGee and Brittany McGee state as follows:

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §1334 and 11 U.S.C. §362 and Bankruptcy Rule 4001(a).

2. On or about July 9, 2012, the Debtor and each of its affiliated companies (including Midland Trail Energy, LLC) filed for bankruptcy protection under Chapter 7 of the United States Bankruptcy Code, which case was assigned Bankruptcy Case No. 12-51502 after it was transferred to this Court from the United States Bankruptcy Court for the Southern District of New York.

3. Movants have claims for negligence, respondeat superior, and loss of consortium against Debtor, arising out of an employment related injury that incurred on or about April 8, 2011, while Movant Shannon McGhee was performing work on property owned by Midland Trail Energy, LLC, a wholly owned subsidiary of Debtor. As of July 9, 2012, when Debtor and its affiliated companies filed for bankruptcy protection, Movants had not yet filed a complaint against Debtor or its affiliated companies related to Movants' claims.

4. Movants are now prepared to file their Complaint against Debtor and Midland Trail Energy, LLC, in the Circuit Court of Kanawha County, West Virginia, and a copy of the proposed Complaint is attached hereto, marked as Exhibit A, and incorporated herein through this reference.

5. Among other relief sought in the Complaint, Movants will seek judgment against Debtor and the costs of their cause of action.

6. On information and belief, Debtor has available insurance coverage against liability for the claims in the Complaint. Movants seek relief from the automatic stay in order to file the Complaint and pursue their causes of action against Debtor in the Circuit Court of Kanawha County and/or to recover any insurance coverage.

7. Cause exists pursuant to 11 U.S.C. § 362(d)(1) to grant Movants relief from the automatic stay in order to allow Movants to pursue their causes of action against Debtor for

negligence, respondeat superior, and loss of consortium, and any underlying litigation with regard to said causes of action.

8. Movants seek relief from the automatic stay in order to file the Complaint and to determine Debtor's liability to Movants in the Circuit Court of Kanawha County. In the event that any monetary damages are awarded to the Movants, Movants shall seek to collect only the proceeds of any applicable insurance policy and will not collect said monetary judgment from the assets of the bankruptcy estate without first filing a claim and applying to this Court.

WHEREFORE, Movants Shannon McGhee and Brittany McGhee respectfully pray that this Court enter its Order terminating and/or modifying the automatic stay of 11 U.S.C. § 362 to allow Movants to pursue their causes of action against Debtor before the Circuit Court of Kanawha County, West Virginia for negligence, respondeat superior, and loss of consortium, and to determine Debtor's liability to Movants in said case, and that this Court grant such other and further relief as this Court deems proper under the law and circumstances.

Respectfully Submitted,

WALTRIP & SCHMIDT, LLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was served either through the Court's ECF system or by regular mail this 5th day of April 2013, on the following:

Office of the U.S. Trustee
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/s/ Michael A. Becker

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**SHANNON MCGHEE and
BRITTANEY MCGHEE, his wife,**

Plaintiff,

v.

CIVIL ACTION NO. 13-C-_____
Judge _____

**MIDLAND TRAIL ENERGY, LLC and
PATRIOT COAL CORPORATION,**

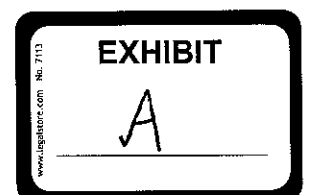
Defendants.

COMPLAINT

For their complaint against the defendants, the plaintiffs, Shannon McGhee and Brittany McGhee, his wife, (hereinafter "McGhee" or "Plaintiffs"), state and allege as follows:

PARTIES

1. Plaintiffs are and were, at all times relevant herein, citizens and residents of Huntington, Cabell County, West Virginia.
2. At all times pertinent hereto, Midland Trail Energy, LLC (hereinafter "Midland Trail"), was a West Virginia corporation doing business in the State of West Virginia, and whose principal local office is situated in Charleston, Kanawha County, West Virginia.
3. At all times pertinent hereto, Patriot Coal Corporation (hereinafter "Patriot"), was a Delaware corporation qualified to conduct business in the State of West Virginia and who actually conducted business in the State of West Virginia at all times relevant herein.



JURISDICTION AND VENUE

4. This Court has jurisdiction and venue over this action because the defendants conduct business in various counties in the State of West Virginia, including Kanawha County and because the personal injuries sustained herein were sustained in Kanawha County, West Virginia as a result of the defendants' actions/inactions, which also occurred in Kanawha County, West Virginia.

FACTUAL BACKGROUND

5. At all relevant times herein, plaintiff, Shannon McGhee, was employed by a mine labor contractor, Newhall Construction (hereinafter "Newhall"), as a roof bolt machine operator at defendant Midland Trail's BC No. 1 deep mine located in or near Campbell's Creek, Kanawha County, West Virginia (hereinafter "the mine"), with duties that required him to aid in the operation of underground coal mining production sections, including operating a roof bolt machine in the subject mine, among other things.

6. Defendant Patriot is the parent company of defendant Midland Trail and retains the right of control over Midland Trail's mining operations. As a result, defendant Patriot shares the same duties to employees and contractors working at the mine as defendant Midland Trail.

7. On or about April 8, 2011 and prior to that date, the defendants were operating a continuous mining room and pillar section ("the section") at the mine where Shannon McGhee was working.

8. Defendants, as supervisors and operators of its underground coal mines, including the subject mine, had a duty to operate the mine in a prudent and safe manner, this included the duty to follow all applicable safety regulations, laws and industry standards to insure, among other things, that the Roof Control Plan (hereinafter "the Plan") applicable to the mine was

complied with to minimize the risk of rock falls that pose a risk of serious injury or death to employees and contractors working in the mine, including Shannon McGhee.

9. On date and place mentioned above, and prior to, the mine was experiencing unstable, adverse conditions with the roof and walls of the mine.

10. On April 8, 2011, while operating a roof bolt machine for the defendants, plaintiff Shannon McGhee was struck on the head and face by a large rock which fell from the mine roof, causing him to suffer severe and permanent personal injuries.

CAUSE OF ACTION

11. Plaintiffs adopt and incorporate by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

12. Defendants had a duty pursuant to *West Virginia Code* § 21-3-1, among other statutes, regulations, industry standards and the common law to provide a safe workplace to the plaintiff, which included, but was not limited to, ensuring that adverse conditions of the roof and ribs in the mine were remedied by the use of supplemental support systems and proper mining methods.

13. Prior to and on April 8, 2011, defendants were negligent and exhibited a reckless disregard for the safety of underground workers on the section, including the plaintiff, by allowing the adverse condition of the roof and ribs to exist without utilizing proper support and mining methods.

14. Defendants are liable for the negligence of its supervisors and other employees through the doctrine of *respondeat superior*.

15. As a proximate result of the conduct of the Defendant described herein, the plaintiff, Shannon McGhee, suffered severe permanent injuries, including injuries to his head

and face and was otherwise injured. These injuries have resulted in great pain and suffering to his mind and body, have caused him to endure and incur medical procedures, medications and other medical expenses, lost wages and loss of enjoyment of life and will continue to suffer these damages in the future. Plaintiff's head injury is permanent and will become more disabling in the future.

16. As a further direct and proximate result of the conduct of the defendants described above, plaintiff, Brittaney McGhee, has suffered the loss of her husband's affection and kindly services, has otherwise been damaged and will suffer these damages in the future.

17. The actions of defendants, as described herein, were willful, wanton, reckless, grossly negligent and demonstrated a total lack of regard for the plaintiff's safety and the safety of other workers in the mine.

18. As a result of these actions by the Defendants, as described above, Plaintiff is entitled to punitive damages to the maximum extent allowable by West Virginia law.

PRAYER

WHEREFORE, plaintiffs demand judgment from and against the defendants, as follows:

- a. Medical expenses, past and future;
- b. Pain and suffering, past and future;
- c. Lost wages, past and future;
- d. Loss of the ability to enjoy life, past and future;
- e. Emotional distress and mental anguish, past and future;
- f. Annoyance and inconvenience, past and future;
- g. Scarring and disfigurement;

- h. Loss of consortium;
- i. Attorney fees, costs and expenses associated with prosecuting this action;
- j. Punitive damages;
- k. Pre-judgment and post-judgment interests; and,
- l. Any other relief to which the plaintiffs appear to be entitled.

A TRIAL BY JURY IS DEMANDED ON ALL ISSUES SO TRIABLE.

**SHANNON McGHEE and
BRITTANEY McGHEE, his wife,
Plaintiffs,**

By Counsel

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