

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)**

Re: ECF Nos. 449, 2821

**STIPULATION BETWEEN DEBTORS AND CERTAIN
CLAIMANTS MODIFYING AUTOMATIC STAY**

Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) respectfully represent:

Background and Jurisdiction

1. On July 9, 2012 (the “**Petition Date**”), each Debtor commenced a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ cases (the “**Chapter 11 Cases**”) are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the Joint Administration Order entered on July 10, 2012 [ECF No. 30].

2. Additional information about the Debtors’ businesses and the events leading up to the Petition Date can be found in the Declaration of Mark N. Schroeder, filed on July 9, 2012 [ECF No. 4], which is incorporated herein by reference.

3. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and may be determined by the Bankruptcy Court.

Claimants' Claims

4. Clinton H. Campbell, Thomas W. Dillion, Jerry Hershman, Steven D. Isaacs, Charles I. Martin, David S. Mcneely, David Miller, Jason Morris, Scotty Parsons, Matthew C. Taylor, Shawn Legg, Ronald H. Persinger, Jr., Marilla J. Mcneely, James M. Smith, Lisa Ann Smith, Wilma S. Parsons, Senate Parsons, Jr., Jessica H. Persinger, individually, M. E., an infant, by Jessica H. Persinger, mother and next friend of M. P.; R.P., an infant, by Jessica H. Persinger, mother and next friend of R. P., Margaret Martin, Lacey L. Martin, Melissa M. Hershman, Austin D. Hershman, Ashley M. Legg, D. L., an infant, by Shawn Legg, father and next friend of D.L., Lashawna K. Keeling, Kristen N. Rutledge, Marsha L. Isaacs, Steven S. Isaacs, Esther Marie Taylor, Jonathan Dakota Taylor, Deanna L. Miller, Brittany M. Miller, D. M., an infant, by Deanna L. Miller, mother and next friend of D. M., Tamera L. Campbell, Danielle N. Crouse, Shawn M. Morris, Ian S. Morris, E. M., an infant, by Shawn M. Morris, mother and next friend of E. M., and Jason S. Kise, L. K., an infant, by Jason S. Kise, father and next friend of L. K. (collectively, the “**Claimants**”), contend that they have claims (the “**Claims**”) against Brook Trout Coal, LLC, Magnum Coal Company, Magnum Coal Sales, LLC and Catenary Coal Company, LLC (collectively, the “**Debtor Defendants**”) arising from the following pre-petition civil actions pending before the Circuit Court of Boone County, West Virginia:

- (a) Clinton H. Campbell, et al., v. Brook Trout Coal, LLC, et al., v. Axis Surplus Insurance Company, Civil Action No. 07-C-209;
- (b) Ronald H. Persinger, Jr., v. Brook Trout Coal, LLC, et al., Civil Action No. 08-C-223;
- (c) Marilla J. Mcneely, et al. v. Brook Trout Coal, LLC, et al., Civil Action No. 09-C-43;
- (d) Wilma S. Parsons, et al, v. Brook Trout Coal, LLC, et al., Civil Action No. 09-C-44;
- (e) Jessica H. Persinger, et al., v. Brook Trout Coal, LLC, et al., Civil Action No. 09-C-45;
- (f) Margaret Martin, et al v. Brook Trout Coal, LLC, et al., Civil Action No. 09-C-46;
- (g) Melissa M. Hershman, et al. v. Brook Trout Coal, LLC, et al., Civil Action No. 09-C-47;
- (h) Ashley M. Legg, et al. v. Brook Trout Coal, LLC, et al., Civil Action No. 09-C-48;
- (i) Marsha L. Isaacs, et al. v. Brook Trout Coal, LLC, et al., Civil Action No. 09-C-49;
- (j) Esther Marie Taylor, et al. v. Brook Trout Coal, LLC, et al., Civil Action No. 09-C-50;
- (j) Deanna L. Miller, et al. v. Brook Trout Coal, LLC, et al., Civil Action No. 09-C-51;
- (k) Tamera L. Campbell, et al., v. Brook Trout Coal, LLC, et al., Civil Action No. 09-C-52;
- (l) Shawn M. Morris, et al., v. Brook Trout Coal, LLC, et al., Civil Action No. 09-C-53;
- (m) Jason S. Kise, et al., v. Brook Trout Coal, LLC, et al., v. Civil Action No. 09-C-234.

5. On the Petition Date, the Claimants were automatically stayed under 11 U.S.C. § 362(a) (the “**Automatic Stay**”) from commencing or continuing an action to seek recovery for alleged property damage or injury to the Claimants.

6. On or by December 11, 2012, the Claimants filed proofs of claim (Claim Nos. 1583-1682) in these chapter 11 cases (collectively, the “**Proofs of Claim**”).

7. Pursuant to this stipulation (the “**Stipulation**”), the Claimants agree to waive any and all claims against the Debtor Defendants related to the Claims and agree to seek recovery solely from the insurance coverage, if any, available under one or more insurance policies issued to the Debtor Defendants to satisfy the Claims (the “**Available Coverage**”).

8. The parties to the Stipulation have agreed to modify the Automatic Stay solely on the terms and conditions set forth herein.

9. The Debtors are authorized under the Order Authorizing and Approving Procedures for Settling and Allowing Certain Claims, Litigations and Causes of Action entered in these chapter 11 cases on February 13, 2013 (the “**Settlement Procedures Order**”) to enter into and submit this Stipulation to the Court.

It is hereby stipulated and agreed, subject to and in accordance with the Settlement Procedures Order, by and among the parties to this Stipulation, as follows:

10. The Automatic Stay is hereby modified solely to the limited extent necessary to enable (a) the Claims to proceed to final judgment or settlement and (b) the Claimants to attempt to recover any liquidated final judgment or settlement on the Claims solely from Available Coverage, if any; *provided, however*, that any final judgment or settlement shall be reduced by (x) the amount of any applicable deductible or self-insured

retention under the applicable insurance policy and (y) any share of liability under the applicable insurance policy of any insolvent or non-performing insurer or co-insurer (or any reinsurer of any insolvent or non-performing insurer or co-insurer); and *provided further*, that the Automatic Stay shall not be modified for purposes of permitting the Claimants to attempt to recover from any party for intentional conduct or punitive damages, except to the extent of the Available Coverage.

11. It is expressly understood by the Claimants that (i) the automatic stay is hereby modified solely with respect to the specific Claims of the Claimants identified herein, (ii) the Claimants may seek satisfaction of the Claims only as set forth herein, and that in no event will the Debtors, their estates or any other Debtor Defendant be liable to the Claimants in any other way whatsoever with respect to the Claims and (iii) the Claimants may not seek, and the automatic stay is not modified for the purposes of, payment of any costs of defending the Action, including attorneys' fees, by the Debtors.

12. In connection with this modification of the Automatic Stay, the Claimants on behalf of themselves, their heirs, representatives and assigns, do hereby fully, finally and forever waive, release and/or discharge the Debtors, their estates, the Debtor Defendants and their respective heirs, successors, assigns, affiliates, officers, directors, shareholders, associates, parents, subsidiaries, predecessors, successors, employees, attorneys and agents from the Claims (whether prepetition unsecured, priority or administrative) and from all related actions, causes of action, suits, debts, obligations, liabilities, accounts, damages, defenses, or demands whatsoever, known or unknown, that arise from the Claim, except to the extent of the Available Coverage.

13. The Proofs of Claim are hereby deemed to be disallowed with prejudice without further order of Court, and the Debtors' claims and noticing agent is authorized and directed to remove Claim Nos. 1583-1682 and any and all other claims arising from the Claims filed by or on behalf of Claimants from the Debtors' claims register; *provided, however,* that the withdrawal of any proof of claim shall not prejudice Claimants' ability to collect on the Claims from any Available Coverage.

14. The agreement by the Debtors to the modification of the Automatic Stay on the terms and conditions set forth herein shall not be deemed an agreement by the Debtors to provide assistance to or to cooperate with the Claimants in any way in the efforts of the Claimants to prosecute the Claims or secure payment on the Claims under the Available Coverage.

15. Nothing contained herein shall be deemed an admission of liability or otherwise on the part of the Debtors or their insurance carriers with respect to the Claims.

16. Nothing in this Stipulation shall be deemed or construed to impact, impair, affect, determine, release, waive, modify, limit or expand: (i) the terms and conditions of any insurance policy, (ii) any of the rights, remedies, defenses to coverage and other defenses of any insurer under or in respect of any insurance policy (including the right of any insurer to disclaim coverage) or (iii) any claim or payment right of any insurer against any of the Debtors including, but not limited to, any claim or payment right for, on account of, arising from or related to any premium, deductible, reimbursement, self-insured retention or otherwise. All such rights, remedies, defenses, defenses to coverage, claims and payment rights are expressly reserved and preserved. All rights of subrogation and contribution also are expressly reserved and preserved. Furthermore,

nothing in this Stipulation shall affect the existing obligations of any insurer to pay defense fees or expenses or the existing arrangements for the payment thereof.

17. The modification of the Automatic Stay as set forth herein shall have no effect as to parties that are not a party to this Stipulation, and the Automatic Stay shall remain in full force and effect with respect to such parties and their claims or causes of action, if any, against the Debtors and their estates.

18. Neither this Stipulation, nor any terms contained herein shall be offered or received in evidence or in any way referred to in any legal action or administrative proceeding among or between the parties hereto, other than as may be necessary: (a) to obtain approval of and to enforce this Stipulation, (b) to seek damages or injunctive relief in connection therewith or (c) to prove that the Automatic Stay has been modified to allow prosecution of the Claims in accordance with the terms hereof.

19. Nothing in this Stipulation is intended to bind any non-debtor defendant nor shall it be deemed to waive or release any claim against any non-debtor defendant in the state court actions.

20. The United States Bankruptcy Court for the Eastern District of Missouri shall retain jurisdiction (and the parties consent to such retention of jurisdiction) with respect to any disputes arising from or other actions to interpret, administer or enforce the terms and provisions of this Stipulation.

21. This Stipulation may be signed in counterpart originals and delivered by facsimile, which, when fully executed, shall constitute a single original.

22. This Stipulation constitutes the entire agreement and understanding of the parties regarding the Stipulation and the subject matter thereof. The terms set forth in

this Stipulation are part of a comprehensive compromise and each element is an integral aspect of the agreed settlement and is non-severable.

23. Each of the undersigned counsel represents that he/she is authorized to execute this Stipulation on behalf of his/her respective client.

24. This Stipulation is effective upon submission to the Court without further order of Court and shall not be modified, altered, amended or vacated without written consent of all parties hereto, subject to Court approval.

Kathy A. Surratt - States
KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: April 10, 2013
St. Louis, Missouri
jjh

/s/ Spencer D. Elliott

Spencer D. Elliott
For the Claimants

/s/ Michelle M. McGreal

Michelle M. McGreal
For the Debtor Defendants