

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)
#3419

**AGREED SCHEDULING STIPULATION AND PROPOSED ORDER UPON
THE DEBTORS' MOTION TO ASSUME LEASES AND CURE DEFAULTS
AND THE OBJECTION OF PAYNE-GALLATIN COMPANY**

This matter is before the Court on the Debtors' Motion for Authorization to Assume Leases and Cure Defaults (the "**Motion**") [Doc. No. 1995], the Payne-Gallatin Objection to Debtors' Motion For Authorization To (i) Assume Or (ii) Reject Unexpired Leases Of Nonresidential Real Property With Respect To Contract ID LND 323 (the "**PG Objection**") [Doc. No. 2056], and the Payne-Gallatin Company Motion For Order (a) Directing Debtors To File A Response To The Payne-Gallatin Company Objection To Debtors' Motion For Authorization To (i) Assume Or (ii) Reject Unexpired Leases Of Nonresidential Real Property With Respect To Contract Id Lnd 323, And (b) Scheduling Mediation And Hearing (the "**PG Scheduling Motion**") [Doc. No. 3419]. Debtor Panther LLC ("**Panther**") and the Payne-Gallatin Company ("**Payne-Gallatin**", and together with Panther, the "**Parties**") have agreed to a briefing schedule for the Motion, the PG Objection, and PG Scheduling Motion; and this Court, having considered the parties' proposal, now ORDERS the following in this contested matter:

1. The Motion and the PG Objection shall be heard on **May 21, 2013 at 10:00 A.M. (prevailing Central time)** in the United States Bankruptcy Court, **Courtroom 7 North**, Thomas F. Eagleton Courthouse, 111 South Tenth Street, St. Louis, Missouri 63102 (the "**Lease**

Interpretation Hearing”). The Lease Interpretation Hearing shall be limited to determining the deductions that Panther may take in calculating wheelage royalties under the meaning of the term “gross sales price” in the lease executed on October 15, 1976 by and between Payne-Gallatin Mining Company and Ocamco (the “**Lease**”), which was initially subleased to Panther on May 1, 1996 and subsequently assigned to Panther as lessee on March 16, 1999 (the “**Lease Interpretation Issue**”).

2. The Parties shall make reasonable efforts to agree on and jointly prepare and submit to the Court, on or before May 3, 2013 at 4:00 P.M. (prevailing Central time), a joint stipulation of fact regarding the coal loading process and the Lease. The Parties reserve the right to state their positions separately where agreement is not possible.

3. On or before May 8, 2013 at 4:00 P.M. (prevailing Central time), Panther and Payne-Gallatin may each submit a brief in support of their respective positions regarding the Lease Interpretation Issue, which brief shall be limited to 10 pages.

4. On or before May 14, 2013 at 4:00 P.M. (prevailing Central time), Panther and Payne-Gallatin may each submit a reply brief in support of their respective positions regarding the Lease Interpretation Issue, which brief shall be limited to 10 pages.

5. Upon this Court’s issuance of an order regarding the Lease Interpretation Issue (the “**Lease Interpretation Order**”):

(a) Panther shall, within 10 days after entry of the Lease Interpretation Order submit a stipulation and proposed order to the Court (the “**Assumption Order**”) that is mutually acceptable to Payne-Gallatin and Panther and that provides for the assumption of the Lease and the cure of any outstanding defaults or amounts owed under the Lease, in each case subject to paragraph 5(c) hereunder.


(b) Panther shall: (i) within 10 days after entry of the Lease Interpretation Order, pay to Payne-Gallatin any undisputed post-petition wheelage royalties or other undisputed post-petition amounts owed under the Lease and (ii) within 10 days after entry of the Assumption Order, pay to Payne-Gallatin any undisputed pre-petition amounts owed under the Lease.

(c) If, and to the extent that, the Parties are unable to consensually resolve any disputed amount(s) owed by the respective Parties under the Lease pursuant to the Lease Interpretation Order (the “**Damages Issue**”):

i. The Court shall conduct a hearing to resolve the Damages Issue (the “**Damages Hearing**”).

ii. The Parties shall promptly confer and in consultation with the Court determine a date for the Damages Hearing.

iii. The Parties shall submit to the Court a proposed Damages Hearing scheduling order setting deadlines for (A) discovery, if any, to be completed, (B) the Parties to prepare and file a joint stipulation of fact, (C) the filing of trial briefs, and (D) the exchange of witness lists, exhibit lists, and deposition designations.


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: April 30, 2013
St. Louis, Missouri
jjh

IN WITNESS WHEREOF, a duly authorized representative of each party hereby stipulates to entry of this order as of the date first written above.

PANTHER LLC

PAYNE-GALLATIN COMPANY

By: /s/ Michelle M. McGreal
Marshall S. Huebner
Brian M. Resnick
Jonathan D. Martin
Michelle M. McGreal
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017

*Counsel to the Debtors and Debtors in
Possession*

By: /s/ Thomas Persinger
Thomas Persinger, WVSB No. 2874
Admission pro hac vice
THOMAS PERSINGER PLLC
P. O. Box 2828
Charleston, WV 25330-2828

Counsel for Payne-Gallatin Company

By: /s/ Howard S. Smotkin
Howard S. Smotkin - EDMO #36227MO
E. Rebecca Case - EDMO #38010MO
Stone, Leyton & Gershman
A Professional Corporation
7733 Forsyth Blvd., Suite 500
St. Louis, Missouri 63105

*Local Co-Counsel for
Payne-Gallatin Company*