

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11

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

Re: ECF Nos. 1995, 2069

**STIPULATION AND ORDER PURSUANT TO SECTIONS 105(a), 363(b)
AND 365(a) OF THE BANKRUPTCY CODE AUTHORIZING AND
APPROVING THE ASSUMPTION OF CERTAIN LEASES BY DEBTORS ROBIN
LAND COMPANY, LLC, WILDCAT, LLC AND PANTHER LLC**

WHEREAS, on July 9, 2012 (the “**Petition Date**”), each Debtor commenced with this Court a voluntary Chapter 11 case under Title 11 of the United States Code (the “**Bankruptcy Code**”) and 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;

WHEREAS, prior to the Petition Date, Debtors Robin Land Company, LLC, Wildcat, LLC and Panther LLC (the “**Applicable Debtors**”) and Shonk Land Company LLC (“**Shonk**”) entered into those certain leases, as set forth on Schedule A hereto (collectively the “**Assumed Leases**”);

WHEREAS, Shonk filed an objection on January 22, 2013 [ECF No. 2069] (the “**Objection**”) to the *Debtors’ Motion for Authorization to (i) Assume or (ii) Reject Unexpired Leases of Nonresidential Real Property* [ECF No. 1995] (the “**Motion**”);

¹ The Debtors are the entities listed on Schedule 1 attached to the Motion. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

WHEREAS, this Stipulation and Order will resolve the Objection and avoid any need for additional litigation among the parties regarding the Assumed Leases;

WHEREAS, the Applicable Debtors seek the entry of this Stipulation and Order pursuant to sections 105(a), 363 and 365(a) of the Bankruptcy Code and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure authorizing the assumption of the Assumed Leases;

WHEREAS the Applicable Debtors have determined in the exercise of their business judgment that entering into this Stipulation and Order is in the best interests of the Applicable Debtors, their estates and all creditors and parties in interest.

NOW, THEREFORE, IT IS HEREBY STIPULATED, ORDERED, AND AGREED, by and among the parties through their undersigned counsel, that:

1. The above recitals are incorporated herein as agreed and so-ordered.
2. Shonk agrees to withdraw the Objection, and agrees not to object to the Motion or any order authorizing the relief requested in the Motion, provided that the Applicable Debtors comply with the terms of this Stipulation and Order.
3. Subject to the reservations of rights set forth in this Stipulation and Order, the Applicable Debtors are authorized to assume the Assumed Leases,² and the Assumed Leases are hereby deemed assumed pursuant to section 365 of the Bankruptcy Code, effective as of the date that the Cure Amount is paid as provided in paragraph 7 of this Stipulation and Order.
4. Each Assumed Lease includes any modifications, amendments, addenda and/or supplements thereto and/or restatements thereof and/or any ancillary documents or agreements related thereto.

² The descriptions of the Assumed Leases included in Schedule A are provided for convenience only and are not intended to modify, or to represent the Debtors' interpretation of or a Court determination regarding, the terms of any Assumed Leases.

5. The Applicable Debtors' rights to assign any of the Assumed Leases, pursuant to section 365(f) of the Bankruptcy Code is expressly preserved, and the Applicable Debtors may assign any Assumed Lease in the future notwithstanding any provision of such Assumed Lease that prohibits, restricts or conditions the assignment of such Assumed Lease, *provided* that the conditions of section 365(f)(2) of the Bankruptcy Code are satisfied, and that any assignee assumes all of the lessee's obligations under an Assumed Lease, including, but not limited to, all post-petition obligations, unless such obligations have been satisfied by the Applicable Debtor at the time of the assignment.

6. The assumption of the Assumed Leases is an exercise of each Applicable Debtor's sound business judgment and is in the best interests of each Applicable Debtor and its estate.

7. The amount to be paid to cure all prepetition defaults under each Assumed Lease pursuant to section 365(b) of the Bankruptcy Code shall be the applicable cure amount, in the total amount of \$2,000,000.00 as set forth on the attached Schedule A (the "**Cure Amount**"); *provided* that the Applicable Debtors shall promptly, and in no event later than twenty (20) days after the entry of this Stipulation and Order, remit payment of the Cure Amount. The Cure Amount shall be remitted by the Applicable Debtors to Shonk by wire transfer to an account designated by Shonk. For the avoidance of doubt, the Cure Amount shall include all pre-petition amounts due and owing under the Assumed Leases, excepting the contingent claims arising from the mechanic's liens described in the following paragraph. The failure to remit payment of the Cure Amount as provided in this paragraph 7 shall cause the time to assume the Assumed Leases to expire and the Assumed Leases shall be deemed rejected pursuant to section 365(d)(4) of the Bankruptcy Code, and the Debtors shall immediately surrender the Assumed Leases to Shonk.

8. In performance of post-petition obligations under the applicable Assumed Leases, the Applicable Debtors agree to indemnify and hold harmless Shonk from any liability or obligations relating to or arising from contingent claims for the mechanic's liens filed by Strata Mine Services, LLC, as referenced on Schedule A, and from Shonk's reasonable, documented attorney fees and costs expended in defending against such liability or obligation, if any, and the Debtors shall pay or discharge such attorney fees and costs and any such liability or obligation without the necessity of further Order of this Court, and within ten (10) days after entry by a court of competent jurisdiction of a final non-appealable order determining Shonk's liability or obligation, if any, relating to or arising from said mechanic's liens. Shonk shall promptly provide to Debtors' counsel notice of any civil action instituted to enforce or perfect a mechanic's lien, and agrees that the Applicable Debtors may intervene and/or defend such civil action in the stead of Shonk and at the Applicable Debtors' sole cost and expense.

9. Upon payment of the Cure Amount, pursuant to the terms of the applicable Assumed Lease, there shall be no pre-petition defaults that preclude assumption under such Assumed Lease, and the Applicable Debtors that are party to such Assumed Lease shall have been deemed to have satisfied all of their pre-petition obligations under section 365(b)(1) of the Bankruptcy Code with respect to such Assumed Lease, excepting the contingent claims arising from the mechanic's liens described in the previous paragraph.

10. Upon payment of the Cure Amount, the counterparties to the Assumed Leases shall be forever barred and enjoined from asserting against the Applicable Debtors any claims for pre-petition cure costs under 11 U.S.C. § 365 other than the Cure Amount set forth on Schedule A hereto and the contingent claims arising from the mechanic's liens described in the paragraph 8 of this Stipulation and Order.

11. Except as set forth in this Stipulation and Order, the assumption of any Assumed Lease or payment of any Cure Amount does not represent a waiver by any party in interest, including the Debtors and Shonk, of any post-petition rights, claims or defenses in connection with or arising from any Assumed Lease, including but not limited to (i) contingent claims arising from the Applicable Debtors' indemnification obligations under an Assumed Lease with respect to pre-petition or post-petition mechanic's liens and (ii) claims for post-petition rents and/or wheelage and claims arising from or relating to the method of calculating post-petition royalties and/or wheelage due under an Assumed Lease.

12. Each Debtor's estate shall only be obligated under this Order to the extent that such Debtor entity was a guarantor or an existing party to the applicable Assumed Lease prior to the Petition Date and nothing in this Order and/or the assumption of an Assumed Lease shall obligate any Debtor entity that was not a guarantor of or an existing party to such Assumed Lease.

13. Upon entry of this Stipulation and Order, this Stipulation and Order becoming final and non-appealable, and payment within twenty (20) days of the entry of this Stipulation and Order of the Cure Amount, all of Shonk's prepetition claims relating to the Assumed Leases except those relating to the mechanic's liens described in paragraph 8 of this Stipulation and Order, whether or not evidenced by one or more proofs of claim filed by Shonk, are hereby disallowed and expunged in their entirety without further need for any action by the Debtors or further Bankruptcy Court approval.

14. The Applicable Debtors are hereby authorized to execute all documentation reasonably necessary to assume the Assumed Leases.

15. This Stipulation and Order shall govern renewals or modifications of the Assumed Leases that are done in the ordinary course of the Applicable Debtors' businesses and consistent with their past practices.

16. The Applicable Debtors are hereby authorized to pay their obligations under the Assumed Leases in accordance with the relevant terms of the Assumed Leases, without further order of this Court.

17. This Stipulation and Order shall inure to the benefit of and shall be binding on Shonk, the Applicable Debtors, and their respective successors in interest and assigns.

18. This Stipulation and Order shall only relate to the matters specifically referenced herein.

19. Notwithstanding the possible applicability of any Bankruptcy Rule, the terms and conditions of this Stipulation and Order shall be immediately effective and enforceable upon its entry.


20. This Stipulation and Order may be signed in counterparts and by facsimile, with each signed counterpart being deemed a part of the original document.

21. This Stipulation and Order may not be modified, altered or amended except by a writing signed by the parties hereto.

22. The Debtors, the Debtors' claims and noticing agent, GCG, Inc., and the Clerk of this Court are authorized to take all such actions as are necessary or appropriate to implement the terms of this Stipulation and Order.

23. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Stipulation and Order.

24. Proper, timely, adequate and sufficient notice of this Stipulation and Order has been provided in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court for the Eastern District of Missouri, and no other or further notice of this Stipulation and Order shall be required.


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: May 22, 2013
St. Louis, Missouri
jjh

Dated: May 17, 2013

By: /s/ Christopher S. Smith
Christopher S. Smith
WV State Bar #3457

By: /s/ Michelle M. McGreal
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AND

*Counsel to the Debtors
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Attorneys for Creditor Shonk Land Company, LLC

Schedule A

Debtors' Contract ID	Debtor Parties to the Contracts and Leases to be Assumed	Counterparties to the Contracts and Leases to be Assumed	Date of Contract or Lease	Location and Description of Real Property that is the Subject of a Lease to be Assumed	Cure Amount ¹	Claims Agent Claim No.
LND 322	WILDCAT, LLC ²	SHONK LAND COMPANY LLC	12/1/2003	WILDCAT AREA; 2360-000002-00 : COAL LEASE, AS AMENDED; AGREEMENT OF LEASE EFFECTIVE 12/1/03 BETWEEN SHONK LANK COMPANY, LLC (LESSOR) AND WILDCAT, LLC (LESSEE)	\$27,377.01 ³	1201
LND 324	PANTHER LLC ⁴	SHONK LAND COMPANY LLC	1/1/1998	PANTHER AREA; 2365-000002-00 : COAL LEASE, AS AMENDED; AGREEMENT OF LEASE DATED 1/5/98 BETWEEN SHONK LAND COMPANY, LP (LESSOR) AND PANTHER COAL COMPANY, INC. (LESSEE)	\$232,245.08 ⁵	1204
LND 330	PANTHER LLC	SHONK LAND COMPANY LLC	10/31/1991	PANTHER AREA; 2365-000010-00 : COAL LEASE, AS AMENDED; SECOND AMENDED AND RESTATED LEASE AGREEMENT DATED 10/31/91, EFFECTIVE 7/1/91, BETWEEN SHONK LAND COMPANY, LTD. (LESSOR) AND PG&H, A WEST VIRGINIA JOINT VENTURE (LESSEE)	\$6,313.32 ⁶	1202
LMS2543	ROBIN LAND COMPANY, LLC	SHONK LAND COMPANY LLC	1/1/2006	CABIN CREEK AREA; 2350-000001-00 : COAL LEASE	\$1,734,064.59 ⁷	1203

¹ All property taxes are for amounts incurred from January 1, 2012 through and including June 30, 2012.

² Subject to a guaranty agreement between Panther LLC and Shonk dated December 1, 2003.

³ Consisting of property taxes.

⁴ Subject to a guaranty agreement between Magnum Coal Company LLC and Shonk dated March 15, 2006.

⁵ Consisting of (i) pre-petition tonnage royalties in the amount of \$141,284.89; (ii) pre-petition tonnage and wheelage royalties in the amount of \$8,780.13; and (iii) Kanawha County property taxes in the amount of \$82,180.06. Excludes contingent claims for mechanic's liens described in paragraph 8 of the Stipulation and Order.

⁶ Consisting of property taxes.

⁷ Consisting of (i) Samples Lease tonnage royalty and wheelage in the amount of \$211,409.97; (ii) Winchester Lease tonnage royalty and wheelage in the amount of \$1,233,573.26; (iii) Boone County property taxes in the amount of \$170,177.92; (iv) Kanawha County property taxes in the amount of \$95,256.57; and (v) pre-petition Winchester Lease production royalty calculation adjustments in the amount of \$23,646.87.