

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF MISSOURI
(ST. LOUIS)**

In Re:)
)
Patriot Coal Corporation,) Bankruptcy No.12-51502
)
Debtor.)

CREDITOR, HAWTHORN BANK’S, RESPONSE
TO THE DEBTOR’S FIFTH OMNIBUS OBJECTION
TO CLAIMS 27-1/27

COMES NOW Hawthorn Bank (hereinafter “Bank”), a creditor and party in interest, by and through its attorneys of record, and for its Response to the Claims Objection by the Debtor to Hawthorn Claim 27-1/27 in the amount of \$300,454.60, states to the Court as follows:

1. Debtor filed an objection to certain claims of Bank, which have been amended during the course of the bankruptcy proceeding claims 27-1/27 in the amount of \$300,454.60.
2. Bank originally filed these Claims based upon outstanding equipment leases with the Debtor by and through Somerset Capital Group Ltd. (hereinafter “Somerset”).
3. As part of the Claim attachments, Bank attached the Security Agreement from Somerset to Bank pledging the rights in the equipment as well as all rental payments and other amounts payable under the leases with Debtor for mining equipment. The documentation provided a security interest and an assignment that took place prior to the filing of bankruptcy.
4. Bank also was provided as of July 15, 2011 a Notice of Acknowledgment of Assignment indicating that payments under the leases would continue to Somerset subject to continuing payment by Debtor with Somerset disbursing to Bank unless or until there is a

default. A copy of the Notice and Acknowledgment is attached hereto as Exhibit "A" and made a part hereof by this reference. The Acknowledgment was executed by the Debtor and Somerset.

5. The sums owed to Bank are less than the amounts owed by Debtor to Somerset under the leases.

6. Bank acknowledges that Somerset has conveyed all monthly payments from Debtor as called for by the Acknowledgment and is current on the executory contracts.

7. Bank has a claim based upon the leases between Somerset and Debtor and the resulting security agreement and assignment and acknowledgment which is an obligation separate and apart from that of Somerset. In the event of default by Somerset, Bank has the right to collect directly from Debtors.

8. The Debtor's objection to the Claim of Bank is not appropriate in that Bank has rights based upon its documentation that are separate and apart from Somerset.

9. Debtor is bound by its Acknowledgment granted to Bank and cannot seek the expunging of this claim until Bank is paid in full.

10. Bank does not seek a double recovery and acknowledges that the payment by Debtor to Somerset results in the reduction of the claim of Bank; however, Bank has the right to maintain its claims, separate and apart from Somerset until Bank is paid in full.

11. Bank requests that the Court allow the Bank claim to remain, but show that it is to be reduced by all payments made by Debtor to Somerset and that are transferred to Bank. Bank asserts that application of payments in that fashion will give the Debtor proper credit and allow the claims of both Bank and Somerset and will recognize the fact that Somerset may have a resulting claim after Bank is paid in full.

12. A claim as defined in the Bankruptcy Code is to be given the broadest construction possible. See 11 U.S.C. § 101(5) and *Laws v. United Missouri Bank of Kansas City, N.A.*, 188 B.R. 263 (W.D.Mo. 1995).

13. An assignee of a lease has the right to assert a claim against the Debtor's estate. See *In re CP Holdings, Inc.*, 349 B.R. 189 (8th Cir. BAP (Mo.) 2006). An assignee, like a subrogee, has the right to stand in the shoes of the assignor and assert the claim. See *In re Lottes*, 226 B.R. 634 (Bkrcty.E.D.Mo. 1998). As such Bank stands in the shoes of Somerset and has the right to assert its claim up to the assigned value and Somerset can assert its claim for the same and any amount in excess of the amount assigned.

14. Bank requests that the Court deny the relief requested by the Debtor in the Fifth Omnibus Objection.

WHEREFORE, for the above and foregoing reasons Bank prays that the Court enter an Order overruling the claims objection by Debtors and for such other and further relief as the Court deems just in the premises.

LOWTHER JOHNSON, LLC

By: /s/ Lee J. Viorel
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*Attorneys for Creditor,
Hawthorn Bank*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by electronic notice or by United States Mail, First Class postage prepaid, this 1st day of July, 2013, to:

U.S. Trustee
Office of the U.S. Trustee
111 S. Tenth St., Ste. 6353
St. Louis, MO 63102

Debtor's Attorney
David Polk & Wardwell
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New York, NY 10017

Debtor's Attorney
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Creditor Committee
Carmody MacDonald P.C.
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/s/ Lee J. Viorel
Lee J. Viorel

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111 S. Tenth St., Ste. 6353
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