

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

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In re	:	Chapter 11
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PATRIOT COAL CORPORATION, <i>et al.</i> ,	:	Case No. 12-51502-659
	:	
Debtors.	:	(Jointly Administered)
	:	
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	:	
EASTERN ROYALTY LLC f/k/a EASTERN ROYALTY CORP.,	:	
	:	
Plaintiff,	:	Adv. Pro. No. 12-04353-659
	:	
v.	:	
	:	
BOONE EAST DEVELOPMENT CO., PERFORMANCE COAL CO., AND NEW RIVER ENERGY CORP.,	:	
	:	
Defendants.	:	
	:	
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DESIGNATION OF RECORD AND STATEMENT OF ISSUES ON APPEAL

Boone East Development Co., Performance Coal Co., and New River Energy Corp. (collectively, the “Appellants”) hereby submit, in accordance with Rule 8006 of the Federal Rules of Bankruptcy Procedure (the “Federal Rules”) and Rule 8001 of the Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court for the Eastern District of Missouri (the “Local Rules”), the following statement of issues presented on appeal and designation of items for inclusion in the appellate record with respect to the appeal from the Order Granting Motion for Judgment on the Pleadings and Dismissing Counterclaim (Adv. D.I. 36) and the associated Findings of Fact and Conclusions of Law (Adv. D.I. 35) entered by the

United States Bankruptcy Court for the Eastern District of Missouri (the “Bankruptcy Court”) on November 14, 2013.

STATEMENT OF ISSUES ON APPEAL

1. Whether the Bankruptcy Court erred in finding that the Payment Agreement,¹ Assignments, and Boone Lease are clear and unambiguous as a matter of law where material ambiguities and inconsistencies exist on the face of the agreements.

2. Whether the Bankruptcy Court erred by weighing inferences it drew from the relevant provisions of the Payment Agreement, Assignments, Boone Lease, and Settlement Agreement in favor of ERC when the applicable legal standard required the Bankruptcy Court to view all reasonable inferences in favor of the Massey Entities.

3. Whether the Bankruptcy Court erred when it found that the Payment Agreement is not integrated with the Assignments or Boone Lease as a matter of law without allowing any discovery into the intent of the parties to resolve the material factual ambiguities regarding the integration of the agreements.

4. Whether the Bankruptcy Court erred when it held that the Settlement Agreement is not integrated with the Payment Agreement, Assignments, and Boone Lease as a matter of law without allowing any discovery into the intent of the parties to resolve the material factual ambiguities regarding the integration of the agreements.

5. Whether the Bankruptcy Court erred in failing to address the Appellants’ argument that ERC is bound by the terms of the Settlement Agreement under the doctrine of estoppel where ERC knowingly accepted the benefits of that Agreement.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plaintiff’s Memorandum of Law in Support of its Motion for Judgment on the Pleadings (Adv. D.I. 17).

6. Whether the Bankruptcy Court erred in dismissing the Defendants’ counterclaim without allowing any discovery into whether the parties intended the Payment Agreement, Assignment, and Boone Lease to be integrated as a single agreement.

DESIGNATION OF RECORD ON APPEAL

Appellants submit the following items for inclusion in the record on appeal, true and correct copies of which will be provided to the Clerk of the Bankruptcy Court for transmission pursuant to Federal Rule 8007(b) and Local Rule 8001. Each designated item shall also include any and all attachments and/or exhibits to such item.

Item No.	Description	Docket Date	Docket No.
1.	Motion for an Order (i) Confirming the Massey Payment Agreement is not an Executory Contract or, Alternatively, (ii) Approving Rejection of the Massey Payment Agreement ²	07/09/2012	24 (Case No. 12-51502-659) ³
2.	Statement of the Debtors Regarding the Motion for an Order (i) Confirming the Massey Payment Agreement is not an Executory Contract or, Alternatively, (ii) Approving Rejection of the Massey Payment Agreement	08/06/2012	282 (Case No. 12-51502-659)

² Certain supporting exhibits to the Motion for an Order (i) Confirming the Massey Payment Agreement is not an Executory Contract or, Alternatively, (ii) Approving Rejection of the Massey Payment Agreement (Item No. 1) were filed in redacted form on the Bankruptcy Court’s public docket. No sealing motion authorizing the filing of such exhibits in unredacted form was ever filed by the Debtors or addressed by the Bankruptcy Court, and the motion to which the exhibits related was subsequently withdrawn. While the relevant exhibits were separately addressed in the context of the Complaint for Declaratory Relief of Eastern Royalty LLC f/k/a Eastern Royalty Corp. against Boone East Development Co., Performance Coal Co., and New River Energy Co. (Item No. 3 in this Designation of Record), Appellants’ Designation of Record is thus limited to the redacted version of Item No. 1 filed on the public docket.

³ For the sake of consistency, this Designation of Record and Statement of Issues on Appeal cites only to the case numbers from the United States Bankruptcy Court for the Eastern District of Missouri even where a particular pleading predates the Order Transferring Venue of the Cases to the United States Bankruptcy Court for the Eastern District of Missouri.

Item No.	Description	Docket Date	Docket No.
3.	Complaint for Declaratory Relief of Eastern Royalty LLC f/k/a Eastern Royalty Corp. against Boone East Development Co., Performance Coal Co., and New River Energy Co. ⁴	08/06/2012	1 (Adv. Pro. 12-04353-659)
4.	Plaintiff's Motion for an Order Authorizing Plaintiff to File under Seal the Agreements as Exhibits to Plaintiff's Complaint for Declaratory Relief	08/06/2012	2 (Adv. Pro. 12-04353-659)
5.	Order Authorizing Plaintiff to File under Seal the Agreements as Exhibits to Plaintiff's Complaint for Declaratory Relief	08/23/2012	9 (Adv. Pro. 12-04353-659)
6.	Report of Rule 26(f) Meeting	08/30/2012	11 (Adv. Pro. 12-04353-659)
7.	Defendants' Rule 7.1 Disclosure Statement	09/07/2012	13 (Adv. Pro. 12-04353-659)
8.	Boone East Development Co., Performance Coal Co., and New River Energy Co.'s Answer to the Complaint for Declaratory Relief and Counterclaim against Eastern Royalty LLC f/k/a Eastern Royalty Corp.	09/07/2012	14 (Adv. Pro. 12-04353-659)
9.	Notice of Plaintiff's Motion for Judgment on the Pleadings Pursuant to Rule 12(c)	09/21/2012	16 (Adv. Pro. 12-04353-659)
10.	Plaintiff's Memorandum of Law in Support of its Motion for Judgment on the Pleadings Pursuant to Rule 12(c)	09/21/2012	17 (Adv. Pro. 12-04353-659)
11.	Transcript of Hearing Held on September 25, 2012	09/25/2012	19 (Adv. Pro. 12-04353-659)

⁴ Pursuant to the order designated as Item No. 5 herein, certain unredacted exhibits to the Complaint for Declaratory Relief of Eastern Royalty LLC f/k/a Eastern Royalty Corp. against Boone East Development Co., Performance Coal Co., and New River Energy Co. (Item No. 3) were filed under seal. In designating this record, Appellants intend to maintain the confidentiality of exhibits that were sealed by order of the Bankruptcy Court so that redacted designated exhibits are uploaded to the public docket on appeal, while unredacted and sealed copies of exhibits containing confidential information will remain only available to the Court and the parties. Concurrently with this Designation of Record and Statement of Issues on Appeal, Appellants have filed a motion for leave to file unredacted versions of Item No. 3 under seal (the "Motion to Seal") with the United States District Court for the Eastern District of Missouri (the "District Court"). Upon approval of the Motion to Seal, both the redacted and unredacted version of the exhibits will be transmitted to the District Court.

Item No.	Description	Docket Date	Docket No.
12.	Defendants' Memorandum of Law in Opposition to Plaintiff's Motion for Judgment on the Pleadings	10/18/2012	20 (Adv. Pro. 12-04353-659)
13.	Plaintiff's Reply Memorandum of Law in Further Support of its Motion for Judgment on the Pleadings	11/01/2012	22 (Adv. Pro. 12-04353-659)
14.	Order Transferring Venue of the Cases to the United States Bankruptcy Court for the Eastern District of Missouri	12/19/2012	1789 (Case No. 12-51502-659); 26 (Adv. Pro. 12-04353-659)
15.	Debtors' Motion for Authorization to (i) Assume or (ii) Reject Unexpired Leases of Non-Residential Real Property	01/15/2013	1995 (Case No. 12-51502-659)
16.	Stipulation and Order Extending Time under 11 U.S.C. § 365(d)(4) for Leases of Non-Residential Real Property with Alpha Natural Resources, Inc.	01/24/2013	2781 (Case No. 12-51502-659)
17.	Transcript of Hearing Held on February 26, 2013 regarding the Motion for Judgment on the Pleadings Pursuant to Rule 12(c) by Plaintiff	02/27/2013	2979 (Case No. 12-51502-659)
18.	Debtors' Renewed Motion for Authorization to Assume Unexpired Leases of Nonresidential Real Property	10/28/2013	4882 (Case No. 12-51502-659)
19.	Objection of Alpha Natural Resources, Inc. and Certain of its Subsidiaries to Debtors' Renewed Motion for Authorization to Assume Unexpired Leases of Nonresidential Real Property	11/12/2013	4989 (Case No. 12-51502-659)
20.	Findings of Fact and Conclusions of Law	11/14/2013	31 (Adv. Pro. 12-04353-659)
21.	Order Granting Motion for Judgment on the Pleadings and Dismissing Counterclaim	11/14/2013	32 (Adv. Pro. 12-04353-659)

Item No.	Description	Docket Date	Docket No.
22.	Notice of Appeal of Boone East Development Co., Performance Coal Co., and New River Energy Corp.	11/27/2013	35 (Adv. Pro. 12-04353-659)
23.	Appellants' Election that Appeal Be Heard by the United States District Court	11/27/2013	36 (Adv. Pro. 12-04353-659)

Dated: December 11, 2013
St. Louis, Missouri

Respectfully Submitted,

/s/ David A. Sosne
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CERTIFICATE OF SERVICE

I, David A. Sosne, hereby certify that on December 11, 2013, I served a copy of the foregoing upon all CM/ECF participants via the electronic filing system.

/s/ David A. Sosne