

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 No. 2821

**STIPULATION BETWEEN DEBTORS, STEVEN WHITE
AND KIMBERLY WHITE 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 other than Brody Mining, LLC and Patriot Ventures LLC (collectively, the “**Initial Debtors**”) commenced with the United States Bankruptcy Court for the Southern District of New York (the “**SDNY Bankruptcy Court**”) a voluntary case under Chapter 11 of the Bankruptcy Code. On December 19, 2012, the SDNY Bankruptcy Court entered an order transferring the Initial Debtors’ chapter 11 cases to this Court (the “**Transfer Order**”) [ECF No. 1789]. Subsequently, Brody Mining, LLC and Patriot Ventures LLC (together, the “**New Debtors**”) each commenced its Chapter 11 case by filing a petition for voluntary relief with this Court on September 23, 2013. 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 Initial Debtors’ cases are being jointly

administered pursuant to Bankruptcy Rule 1015(b) and the Joint Administration Order entered on July 10, 2012 [ECF No. 30], and the New Debtors' cases are being jointly administered with the Initial Debtors' cases pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* entered by this Court on September 27, 2013 in each of the New Debtors' Chapter 11 cases.

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' Claim

4. Steven White and Kimberly White (together, the "**Claimants**") contend that they have a claim (the "**Claim**") against Newtown Energy, Inc., Coventry Mining Services, LLC, and Kanawha Eagle Coal, LLC (collectively, the "**Debtor Defendants**") arising from a civil action on account of alleged property damage or injury to the Claimants initiated in Civil Action No. 12-C-158, in the Circuit Court of Boone County, West Virginia, captioned *Steven White and Kimberly White v. Newtown Energy, Inc., Coventry Mining Services, LLC, and Kanawha Eagle Coal, LLC*.

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 about December 13, 2012, the Claimants filed proofs of claim (EDMO Claims Nos. 3221-1, 3220-1, 3219-1; Claims Agent Claim Nos. 2160, 2161 and 2162) in these Chapter 11 cases against the Debtor Defendants (collectively, the “**Proofs of Claim**”).

7. Pursuant to this stipulation (the “**Stipulation**”), the Claimants agree to dismiss Debtor Defendants Coventry Mining Services, LLC and Kanawha Eagle Coal, LLC from the above-referenced Civil Action No. 12-C-158, in the Circuit Court of Boone County, West Virginia, and waive any and all claims against the Debtor Defendants related to the Claim, and agree to seek recovery solely from the insurance coverage, if any, available under one or more insurance policies issued to Debtor Defendant Newtown Energy, Inc. to satisfy the Claim (the “**Available Coverage**”). Accordingly, the Debtor Defendants agree to modify the Automatic Stay solely to the extent of 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:

11. The Automatic Stay is hereby modified solely to the limited extent necessary to enable (a) the Claim to proceed to final judgment or settlement and (b) the

Claimants to attempt to recover any liquidated final judgment or settlement on the Claim solely from Available Coverage, if any; *provided, however*, that any final judgment or settlement shall be reduced by 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 punitive damages.

12. It is expressly understood by the Claimants that (i) the automatic stay is hereby modified solely with respect to the specific Claim of the Claimants identified herein, (ii) the Claimants may seek satisfaction of the Claim 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 Claim 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.

13. 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 Claim (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.

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

15. 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 Claim or secure payment on the Claim under the Available Coverage.

16. 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 Claim.

17. 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.

18. 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.


19. 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 Claim in accordance with the terms hereof.

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.


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: October 18, 2013
St. Louis, Missouri
jjh

/s/ Matthew M. Hatfield

Matthew M. Hatfield
John J. Polak
For the Claimants

/s/ Michelle M. McGreal

Michelle M. McGreal
For the Debtor Defendants