

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**In re:**

**PATRIOT COAL CORPORATION, *et al.*,**

**Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 12-51502-659**

**(Jointly Administered)**

**Objection Deadline:**

**November 12, 2013 at 4:00 p.m.**

**(prevailing Central Time)**

**Hearing Date:**

**November 19, 2013 at 10:00 a.m.**

**(prevailing Central Time)**

**Hearing Location:**

**Courtroom 7 North**

**NOTICE OF THE DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
ASSUMPTION OF EXECUTORY CONTRACT AND APPROVING SETTLEMENT OF  
CLAIM OF MICHELIN NORTH AMERICA, INC.**

PLEASE TAKE NOTICE that this motion is scheduled for hearing on November 19, 2013, at 10:00 a.m. (prevailing Central Time), in Bankruptcy Courtroom Seventh Floor North, in the Thomas F. Eagleton U.S. Courthouse, 111 South Tenth Street, St. Louis, Missouri 63102.

**WARNING: ANY RESPONSE OR OBJECTION TO THIS MOTION MUST BE FILED WITH THIS COURT BY 4:00 P.M. (PREVAILING CENTRAL TIME) ON NOVEMBER 12, 2013. A COPY MUST BE PROMPTLY SERVED UPON THE UNDERSIGNED. FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THIS COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE.**

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<sup>1</sup> The Debtors are the entities listed on Schedule 1 attached hereto. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING ASSUMPTION  
OF EXECUTORY CONTRACT AND APPROVING SETTLEMENT OF CLAIM OF  
MICHELIN NORTH AMERICA, INC.**

Patriot Coal Corporation and its affiliated debtors (the "**Debtors**"), pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. 9019, respectfully file this Motion for Entry of an Order<sup>2</sup> Approving Assumption of Executory Contract and Settlement of Claims of Michelin North America, Inc. (this "**Motion**"). In support of this Motion, the Debtors show this Court as follows:

**Relief Requested**

1. By this Motion, the Debtors request that this Court enter an order, pursuant to 11 U.S.C. § 365(b) and Fed. R. Bankr. P. 9019, authorizing Debtor Patriot Coal Services, LLC ("**PCS**") to assume a certain tire supply agreement and approving the settlement of certain related claims of Michelin North America, Inc. ("**Michelin**").

**Jurisdiction**

2. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

**Background**

4. 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

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<sup>2</sup> A copy of the proposed order granting the relief requested in this Motion (the "**Proposed Order**") will be provided to the Core Parties (as defined below) and Michelin. A copy of the Proposed Order will also be available at: [www.patriotcaseinfo.com](http://www.patriotcaseinfo.com).

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.

#### **The Tire Supply Agreement**

5. Prior to the Petition Date, Michelin and PCS entered into an agreement (the “**Supply Agreement**”) under which Michelin supplies and PCS purchases, as agent for various affiliated mining companies, certain of Michelin’s tire products. The term of the Supply Agreement is from July 1, 2011 through December 31, 2016.

6. On July 13, 2012, Michelin filed a proof of claim, EDMO Claim No. 7, GCG Claim No. 2 (the “**Proof of Claim**”), against PCS in the amount of \$837,167.94, asserting that PCS owed Michelin such amount for goods that were delivered prepetition under the Supply Agreement.<sup>3</sup> The Proof of Claim did not assert any priority or administrative status.

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<sup>3</sup> The Proof of Claim was filed in duplicate, and the duplicate proof of claim, EDMO Claim No. 25, GCG Claim No. 21, was expunged by order of the Bankruptcy Court dated May 22, 2013 [ECF No. 4041].

7. On December 13, 2012, Michelin submitted a Reclamation Claim Form, EDMO Claim No. 2270-1, GCG Claim No. 3615 (the “**Reclamation Claim**”), against PCS in the amount of \$860,158.26, asserting that PCS owed Michelin such amount for unpaid invoices relating to tires and accessories shipped to PCS within 45 days of the Petition Date.

8. On August 8, 2013, Michelin filed a Motion for Leave to Amend Its Proof of Claim, or, in the Alternative, for Extension of the Deadline to Timely File Claim Under Bankruptcy Code Section 503(b)(9) in the Case of Debtor Patriot Coal Services, LLC, Case No. 12-52102 [ECF No. 4445] (the “**Motion to Amend**”).

9. In the Motion to Amend, Michelin asserted that \$604,710.26 of the amount asserted in its Proof of Claim was for goods delivered within the 20-day period preceding the Petition Date, requested to be permitted to file an amended proof of claim in order to assert the priority status under section 503(b)(9) of the Bankruptcy Code for the \$604,710.26 in respect of goods that were delivered within the 20-day period preceding the Petition Date (the “**503(b)(9) Claim**”), and to re-assert the remaining \$232,457.68 as a general unsecured claim (the “**General Unsecured Claim**”) against PCS, or, in the alternative, Michelin requested to be granted an extension of the deadline within which to file a claim under section 503(b)(9) of the Bankruptcy Code.

#### **Basis for Relief**

10. The Debtors and Michelin have negotiated a settlement of Michelin’s claims whereby PCS will (i) assume the Supply Agreement as amended on or as of October 29, 2013 (the “**Amended Supply Agreement**”), allowing it to retain steady access to Michelin’s tire products that are essential to certain of its operations, and (ii) cure the prepetition amounts owed to Michelin at an over 30% discount.

11. Section 365(a) of the Bankruptcy Code permits a debtor-in-possession to assume an executory contract or unexpired lease in the exercise of its business judgment. *See Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Ry. Co.*, 318 U.S. 523, 550 (1942); *Mercantile Trust Co. v. Farmers' Loan & Trust Co.*, 81 F. 254, 259 (8th Cir. 1897); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n.16 (8th Cir. 1997); *In re Crystalin, L.L.C.*, 293 B.R. 455, 463-64 (B.A.P. 8th Cir. 2003). PCS has exercised its business judgment prudently in this situation, electing to amend and assume an advantageous executory contract that is beneficial to its operations and in the best interest of its estate and obtaining a discounted cure obligation in negotiations with Michelin.

12. Pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. 9019, the Debtors request that this Court approve the following settlement of Michelin's claim and PCS's assumption of the Amended Supply Agreement (the "**Settlement**"):

- (a) PCS will assume the Amended Supply Agreement pursuant to 11 U.S.C. § 365.
- (b) On or before December 20, 2013, PCS will deliver a cashier's check, bank check or wire transfer in the amount of \$502,200.00 (the "**Settlement Payment**") to Michelin in full satisfaction of Michelin's prepetition claim pursuant to 11 U.S.C. § 365(b)(1)(A).
- (c) Upon payment of the Settlement Payment, Michelin's Proof of Claim will be disallowed.
- (d) Upon payment of the Settlement Payment, Michelin's Reclamation Claim will be disallowed.

- (e) Upon payment of the Settlement Payment, the Motion to Amend will be withdrawn.
- (f) In the event that PCS fails to deliver the Settlement Payment to Michelin on or before December 20, 2013 (any “**Default**”), PCS shall have seven (7) calendar days following the receipt of a notice of Default from Michelin (the “**Cure Period**”) to deliver the Settlement Payment to Michelin. Any such notice of Default described hereunder shall be sent to Robert L. Mead at robert\_mead@patriotcoal.com and Wayne Elkins at welkins@patriotcoal.com, with a copy to Kevin J. Coco at kevin.coco@davispolk.com.
- (g) In the event that PCS fails to deliver the Settlement Payment before or within the Cure Period, Michelin shall be entitled without further notice or opportunity for a hearing to an order allowing Michelin’s 503(b)(9) Claim in the amount of \$604,710.26 as a priority claim pursuant to 11 U.S.C. § 503(b)(9) and Michelin’s General Unsecured Claim in the amount of \$232,457.68 upon the filing of an affidavit of the Default along with a proposed order allowing Michelin’s 503(b)(9) Claim as a priority claim pursuant to 11 U.S.C. § 503(b)(9) and Michelin’s General Unsecured Claim as set forth herein.

13. The Settlement is in the best interests of the Debtors and should be approved pursuant to Bankruptcy Rule 9019. A debtor-in-possession’s settlement is governed by Bankruptcy Rule 9019(a), which provides, in relevant part, that “[o]n motion by the [debtor in possession] and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P.

9019(a). This rule empowers bankruptcy courts to approve settlements “if they are in the best interests of the estate.” *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). A decision to accept a compromise or settlement is within the sound discretion of the court. *Tri-State Financial, LLC v. Lovald*, 525 F.3d 649, 654 (8th Cir. 2008) (citing *In re New Concept Housing, Inc.*, 951 F.2d 932, 939 (8th Cir. 1991) (“A bankruptcy court’s approval of a settlement will not be set aside unless there is plain error or abuse of discretion”)). The proposed settlement need not result in the best possible outcome for the debtor, but it must not “fall beneath the lowest point in the range of reasonableness.” *Tri-State Financial*, 525 F.3d at 654 (citing *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)); see also *Drexel Burnham Lambert Group*, 134 B.R. at 505.

14. The Settlement preserves PCS’s access to Michelin’s tire products necessary to operate its business and reduces the associated cure obligations substantially. It represents a sound exercise of the Debtors’ business judgment. This Court should approve the Settlement because it is in the best interests of the Debtors, their creditors, and the estates.

WHEREFORE, the Debtors respectfully request that this Court:

- (a) authorize PCS to assume the Amended Supply Agreement;
- (b) authorize delivery of the Settlement Payment by PCS on or before December 20, 2013 as a cure of the outstanding prepetition amounts due under the Supply Agreement;
- (c) Upon payment of the Settlement Payment, disallow Michelin's Proof of Claim;
- (d) Upon payment of the Settlement Payment, disallow Michelin's Reclamation Claim;
- (e) Upon payment of the Settlement Payment, provide that the Motion to Amend be withdrawn;
- (h) Order that in the event any Default occurs, PCS shall have seven (7) calendar days following the receipt of a notice of Default from Michelin to deliver the Settlement Payment to Michelin. Any such notice of Default described hereunder shall be sent to Robert L. Mead at robert\_mead@patriotcoal.com and Wayne Elkins at welkins@patriotcoal.com, with a copy to Kevin J. Coco at kevin.coco@davispolk.com;
- (f) Order that in the event PCS fails to deliver the Settlement Payment before or within the Cure Period, Michelin shall be entitled without further notice or opportunity for a hearing to an order allowing Michelin's 503(b)(9) Claim in the amount of \$604,710.26 as a priority claim pursuant to 11 U.S.C. § 503(b)(9) and Michelin's General Unsecured Claim in the



amount of \$232,457.68 upon the filing of an affidavit of the Default along with a proposed order allowing Michelin's 503(b)(9) Claim as a priority claim pursuant to 11 U.S.C. § 503(b)(9) and Michelin's General Unsecured Claim as set forth herein;

- (g) approve the Settlement; and
- (h) grant such other and further relief as is just and proper.

### Notice

15. Consistent with the Order Establishing Certain Notice, Case Management and Administrative Procedures entered on March 22, 2013 [ECF No. 3361] (the "**Case Management Order**") the Debtors will serve notice of this Motion on the Core Parties (as defined in the Case Management Order) and Michelin. All parties who have requested electronic notice of filings in these cases through this Court's ECF system will automatically receive notice of this Motion through the ECF system no later than the day after its filing with this Court. A copy of this Motion and any order approving it will also be made available on the Debtors' Case Information Website (located at [www.patriotcaseinfo.com](http://www.patriotcaseinfo.com)). A copy of the Proposed Order is available at [www.patriotcaseinfo.com/orders.php](http://www.patriotcaseinfo.com/orders.php) (the "**Patriot Orders Website**"). The Proposed Order may be modified or withdrawn at any time without further notice. If any significant modifications are made to the Proposed Order, an amended Proposed Order will be made available on the Patriot Orders Website, and no further notice will be provided. In light of the relief requested, the Debtors submit that no further notice is necessary. Pursuant to paragraph 14 of the Case Management Order, if no objections are timely filed and served in accordance therewith, the relief requested herein may be entered without a hearing.

Dated: October 29, 2013  
New York, New York

Respectfully submitted,  
DAVIS POLK & WARDWELL LLP

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-and-

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**SCHEDULE 1**  
(Debtor Entities)

1. Affinity Mining Company
2. Apogee Coal Company, LLC
3. Appalachia Mine Services, LLC
4. Beaver Dam Coal Company, LLC
5. Big Eagle, LLC
6. Big Eagle Rail, LLC
7. Black Stallion Coal Company, LLC
8. Black Walnut Coal Company
9. Bluegrass Mine Services, LLC
10. Brody Mining, LLC
11. Brook Trout Coal, LLC
12. Catenary Coal Company, LLC
13. Central States Coal Reserves of Kentucky, LLC
14. Charles Coal Company, LLC
15. Cleaton Coal Company
16. Coal Clean LLC
17. Coal Properties, LLC
18. Coal Reserve Holding Limited Liability Company No. 2
19. Colony Bay Coal Company
20. Cook Mountain Coal Company, LLC
21. Corydon Resources LLC
22. Coventry Mining Services, LLC
23. Coyote Coal Company LLC
24. Cub Branch Coal Company LLC
25. Dakota LLC
26. Day LLC
27. Dixon Mining Company, LLC
28. Dodge Hill Holding JV, LLC
29. Dodge Hill Mining Company, LLC
30. Dodge Hill of Kentucky, LLC
31. EACC Camps, Inc.
32. Eastern Associated Coal, LLC
33. Eastern Coal Company, LLC
34. Eastern Royalty, LLC
35. Emerald Processing, L.L.C.
36. Gateway Eagle Coal Company, LLC
37. Grand Eagle Mining, LLC
38. Heritage Coal Company LLC
39. Highland Mining Company, LLC
40. Hillside Mining Company
41. Hobet Mining, LLC
42. Indian Hill Company LLC
43. Infinity Coal Sales, LLC
44. Interior Holdings, LLC
45. IO Coal LLC
46. Jarrell's Branch Coal Company
47. Jupiter Holdings LLC
48. Kanawha Eagle Coal, LLC
49. Kanawha River Ventures I, LLC
50. Kanawha River Ventures II, LLC
51. Kanawha River Ventures III, LLC
52. KE Ventures LLC
53. Little Creek LLC
54. Logan Fork Coal Company
55. Magnum Coal Company LLC
56. Magnum Coal Sales LLC
57. Martinka Coal Company, LLC
58. Midland Trail Energy LLC
59. Midwest Coal Resources II, LLC
60. Mountain View Coal Company, LLC
61. New Trout Coal Holdings II, LLC
62. Newtown Energy, Inc.
63. North Page Coal Corp.
64. Ohio County Coal Company, LLC
65. Panther LLC
66. Patriot Beaver Dam Holdings, LLC
67. Patriot Coal Company, L.P.
68. Patriot Coal Corporation
69. Patriot Coal Sales LLC
70. Patriot Coal Services LLC
71. Patriot Leasing Company LLC
72. Patriot Midwest Holdings, LLC
73. Patriot Reserve Holdings, LLC
74. Patriot Trading LLC
75. Patriot Ventures LLC
76. PCX Enterprises, Inc.
77. Pine Ridge Coal Company, LLC
78. Pond Creek Land Resources, LLC
79. Pond Fork Processing LLC
80. Remington Holdings LLC
81. Remington II LLC
82. Remington LLC
83. Rivers Edge Mining, Inc.
84. Robin Land Company, LLC
85. Sentry Mining, LLC
86. Snowberry Land Company
87. Speed Mining LLC
88. Sterling Smokeless Coal Company, LLC
89. TC Sales Company, LLC
90. The Presidents Energy Company LLC
91. Thunderhill Coal LLC
92. Trout Coal Holdings, LLC
93. Union County Coal Co., LLC
94. Viper LLC
95. Weatherby Processing LLC
96. Wildcat Energy LLC
97. Wildcat, LLC
98. Will Scarlet Properties LLC
99. Winchester LLC
100. Winifrede Dock Limited Liability Company
101. Yankeetown Dock, LLC