

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

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In re: : **Chapter 11**
: **Case No. 12-51502-659**
PATRIOT COAL CORPORATION, *et al.*, : **(Jointly Administered)**
:
Debtors. : **Hearing Date:**
: **December 17, 2013 at 9:00 a.m.**
: **(prevailing Central time)**
:
: **Re: ECF Nos.4927, 5074**
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**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF BOONE EAST
DEVELOPMENT CO., PERFORMANCE COAL CO., AND
NEW RIVER ENERGY CORP. TO CONFIRMATION OF
DEBTORS' THIRD AMENDED JOINT PLAN OF REORGANIZATION
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Boone East Development Co., Performance Coal Co., and New River Energy Corp. (the "Massey Entities") file this limited objection and reservation of rights (the "Objection") to confirmation of Debtors' Third Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code (D.I. 4927) (the "Plan"). In support of the Objection, the Massey Entities respectfully state as follows:

Objection

1. On November 14, 2013, this Court entered an Order Granting Motion for Judgment on the Pleadings and Dismissing Counterclaim (Adv. D.I. 32) (the "Adversary Order") and the associated Findings of Fact and Conclusions of Law (Adv. D.I. 31)¹(the "Opinion") in the adversary proceeding captioned Eastern Royalty LLC v. Boone East Development Co., Adv. Pro. No. 12-04353-659 (the "Adversary Proceeding"), holding, *inter alia*, that the Payment

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Findings of Fact and Conclusions of Law.

Agreement, Partial Assignments, and Boone-ERC Lease are clear and unambiguous as a matter of law, that the Payment Agreement is a non-executory contract, and that the Payment Agreement is not integrated with the Settlement Agreement, Partial Assignments, or the Boone-ERC Lease.

2. On November 27, 2013, the Massey Entities filed their notice of appeal from the Adversary Order (Adv. D.I. 35), along with an election for the appeal to be heard by the United States District Court for the Eastern District of Missouri (Adv. D.I. 36), where the appeal was subsequently docketed as Case No. 13-02429-AGF.

3. Also on November 27, 2013, the Debtors filed Schedules 9.2(a) and 9.2(b) (D.I. 5074) (the "Plan Schedules") to the Plan. Under Plan Schedules, the Debtors seek to assume the Boone-ERC Lease, while either rejecting or omitting the Payment Agreement and Partial Assignments pursuant to the Adversary Order. Because the Massey Entities respectfully disagree with the reasoning of and conclusions reached in the Opinion and the Adversary Order and have appealed such Order, for the reasons set forth in the Defendants' Memorandum of Law in Opposition to Plaintiff's Motion for Judgment on the Pleadings (Adv. D.I.20), the Massey Entities object to confirmation of the Plan to the extent it purports to assume the Boone-ERC Lease while rejecting or omitting the Settlement Agreement, Payment Agreement, and Partial Assignments. While the Massey Entities recognize that the Court has reached a decision in this matter in the context of the Adversary Proceeding, in light of the relief sought by the Debtors through the Plan Schedules, the Massey Entities file this Objection solely in order to preserve the Massey Entities' rights on appeal.

4. For all the foregoing reasons, the Massey Entities respectfully request entry of an order (a) conditioning confirmation of the Plan on removal of the Boone-ERC Lease and Partial

Assignments from the Plan Schedules, or in the alternative (b) denying confirmation of the Plan,
and (c) granting such other and further relief as the Court may deem just and proper.

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Dated: December 10, 2013

Respectfully Submitted,

/s/ David A. Sosne

David A. Sosne (#28365)

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