

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 AND
BRUCE MITCHELL 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**”) filed with the United States Bankruptcy Court for the Southern District of New York (the “**SDNY Bankruptcy Court**”) Voluntary Petitions 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 [ECF No. 1789] (the “**Transfer Order**”).¹ 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 “**Subsequent Petition Date**”). The Debtors

¹ Pursuant to the Transfer Order, all orders previously entered in these Chapter 11 cases remain in full force and effect in accordance with their terms notwithstanding the transfer of venue.

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.

Claimant's Claim

4. Bruce Mitchell (the "**Claimant**") contends that he has a claim (the "**Claim**") against Brody Mining, LLC (the "**Debtor Defendant**") arising from a civil action on account of alleged injury to the Claimant initiated in the Circuit Court of Boone County West Virginia, *Bruce Mitchell v. Brody Mining, LLC*, Civil Action No. 12-C-224.

5. On the Subsequent Petition Date, the Claimant was 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 Claimant.

6. On or about October 4, 2013 the Claimant submitted a proof of claim against the Debtor Defendant (Clerk of the Court Claim No. 1-1; Claims Agent Claim No. 4217) in these Chapter 11 cases (the “**Mitchell Proof of Claim**”).

7. Pursuant to this stipulation (the “**Stipulation**”), the Claimant agrees to waive any and all claims against the Debtor Defendant related to the Claim and agrees to seek recovery solely from the insurance coverage, if any, available under one or more insurance policies issued to the Debtor Defendant to satisfy the Claim (the “**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 [ECF No. 2821] (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 Claimant 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 (x) the amount of any applicable deductible or self-insured retention under the applicable insurance policy and (y) 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 Claimant to attempt to recover from any Debtor or any other party for intentional conduct or punitive damages, except to the extent of the Available Coverage.

12. It is expressly understood by the Claimant that (i) the automatic stay is hereby modified solely with respect to the specific Claim of the Claimant identified herein, (ii) the Claimant 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 Claimant in any other way whatsoever with respect to the Claim and (iii) the Claimant 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, from the Debtors.

13. In connection with this modification of the Automatic Stay, the Claimant on behalf of itself, its heirs, representatives and assigns, does hereby fully, finally and forever waive, release and/or discharge the Debtors, their estates, the Debtor Defendant 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 Mitchell Proof of Claim is hereby deemed to be disallowed and the Clerk of the Court and the Debtors' claims and noticing agent are each authorized and

directed to show the disallowance of the Mitchell Proof of Claim and any and all other claims arising from the Claim filed by or on behalf of Claimant on the Debtors' claims register; *provided, however*, that the disallowance of any proof of claim shall not prejudice Claimant's 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 Claimant in any way in the efforts of the Claimant 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.

