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Counsel for Southern Land
Company Limited Partnership,
et al.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN re:
PATRIOT COAL CORPORATION, et al.,
Debtors.

Chapter 11
Case No.: 12-12900 (SCC)
Jointly Administered

**SOUTHERN LAND COMPANY LIMITED PARTNERSHIP, DICKINSON
PROPERTIES LIMITED PARTNERSHIP, CHESAPEAKE MINING
COMPANY, THE IMPERIAL COAL COMPANY, QUINCY COAL
COMPANY, BRANCH BANKING & TRUST COMPANY, ET AL.
SUCCESSOR TRUSTEES OF THE CHARLES C. DICKINSON
TESTAMENTARY TRUST U/W OF CHARLES C. DICKINSON
DTD. 02.28.59, HORSE CREEK LAND & MINING COMPANY, AND
PAYNE-GALLATIN COMPANY LIMITED OBJECTION TO
DEBTORS' MOTION PURSUANT TO BANKRUPTCY RULE 9019
FOR ORDER APPROVING GLOBAL SETTLEMENT AGREEMENT
WITH THE OHIO VALLEY ENVIRONMENTAL COALITION, THE
SIERRA CLUB AND THE WEST VIRGINIA HIGHLANDS CONSERVANCY**

Southern Land Company Limited Partnership, a West Virginia limited partnership
("Southern"), Dickinson Properties Limited Partnership, a West Virginia limited partnership
("Dickinson"), Chesapeake Mining Company, a West Virginia corporation ("Chesapeake"), The

Imperial Coal Company, a West Virginia corporation (“Imperial”), Quincy Coal Company, a West Virginia corporation (“Quincy Coal”), Branch Banking & Trust Company, a North Carolina banking corporation, Nelle Ratrie Chilton, and Charles C. Dickinson, III, Successor Trustees of the Charles C. Dickinson Testamentary Trust U/W of Charles C. Dickinson dtd. 02.28.59 (“C. C. Dickinson Testamentary Trust”), Horse Creek Land & Mining Company, a West Virginia corporation (“Horse Creek”), and Payne-Gallatin Company, a West Virginia corporation (“Payne-Gallatin,” and with Southern, Dickinson, Chesapeake, Imperial, Quincy Coal, C. C. Dickinson Testamentary Trust, and Horse Creek, hereinafter collectively “these Lessors”), by their undersigned Counsel, hereby respectfully submit this limited or “protective” objection (the “Objection”) to Debtors’ Motion Pursuant To Bankruptcy Rule 9019 For Order Approving Global Settlement Agreement With The Ohio Valley Environmental Coalition, The Sierra Club And The West Virginia Highlands Conservancy [Doc 1634] (“Debtors’ Motion”).

These Lessors do not oppose Debtors’ Motion, or the global settlement agreement entered into by and among Patriot Coal Corporation and the Ohio Valley Environment Coalition, Inc., Sierra Club and the West Virginia Highlands Conservatory on November 15, 2012 (the “GSA”) sought to be approved by Debtor’s Motion, per se. However, notwithstanding certain provisions of the GSA including Section 29 Real Property thereof, the impact of the GSA on these Lessors and their rights, privileges and defenses under their various leases with certain of the Debtors is uncertain and cannot be determined at this time. Accordingly, these Lessors respectfully request that if the Court grants the Debtors’ Motion, whether by entry of the proposed Order attached as Exhibit A thereto, or by another Order substantially in the form thereof, such Order include a provision to the effect that all rights, privileges and defenses of lessors under their respective leases with the Debtors are expressly reserved, notwithstanding any

provision of the GSA to the contrary.

In support of this Objection, these Lessors state as follows:

1. These Lessors are counterparties to various leases of non-residential real estate with certain of the Debtors (the “Debtor Lessees”), as set forth in the schedule attached hereto as Exhibit A. Upon information and belief, these leases are also listed in the schedules and statements of affairs of the Debtor Lessees previously filed in their cases.

2. The subject leases impose significant obligations upon the Debtor Lessees, including, but not limited to, the duty to conduct mining diligently and to recover all mineable and merchantable coal. In view of these and other obligations of the Debtor Lessees, these Lessors enjoy significant rights, privileges and defenses under the subject leases.

3. In the GSA, while certain deadlines for environmental compliance by certain of the Debtor Lessees are extended, they also agree to “systematically reduce, and ultimately cease Large Scale Mining through the following steps” [Debtors’ Motion, par. 13, pp. 6-7].

4. The effect of the Debtor Lessees’ agreement to reduce and ultimately cease Large Scale Mining upon their obligations under their various leases with these Lessors is uncertain and cannot be determined at this time, and in fact can only be determined on a specific, or lease by lease, basis.

5. These Lessors acknowledge that GSA Section 29. Real Property contains certain provisions which appear to limit the application of certain terms of the GSA (or compliance therewith) in certain instances; i.e., “[t]o the extent any lessor claims that any term of this Global Settlement Agreement or compliance herewith constitutes a default under a lease that would allow the lessor to forfeit the lease or recover damages (a “Claim of Default) . . .”) [GSA, Section 29, p. 12]. Specifically GSA Section 29 states:

29. Real Property. Nothing in this Global Settlement Agreement creates any encumbrance or servitude upon any real property, whether owned or leased, by Patriot and no term, limitation or provision contained herein shall be construed to run with any real property. To the extent any lessor claims that any term of this Global Settlement Agreement or compliance herewith constitutes a default under a lease that would allow the lessor to forfeit the lease or recover damages (a “Claim of Default”), then the term or compliance upon which the Claim of Default is based shall not apply to that lease held by Patriot. Upon becoming aware of the Claim of Default, Patriot shall promptly provide Plaintiffs notice of the Excluded Term and any lease and/or permit impacted by it. Patriot shall provide additional notice at least ten days prior to commencing any activity on this lease that would have otherwise been prohibited by such term or compliance.

GSA, Sec. 29, p. 12

6. Notwithstanding these provisions, the impact of the GSA on the rights, privileges and defenses of these Lessors under their leases with Debtor Lessees, including but not limited to these Lessors’ rights to require said Debtor Lessees to recover all mineable and merchantable coal, is uncertain and cannot be determined at this time. By way of example, but not limitation, the GSA provision re a lessor’s claim that a term of the GSA constitutes a “default under a lease that would allow the lessor to forfeit the lease or recover damages (a ‘Claim of Default’),” while potentially affording some relief to these Lessors, is apparently limited to instances of lease forfeiture or money damages [GSA, Sec. 29, p. 12]. Does this GSA provision mean that, if these Lessors sought specific performance of a lease provision, such as their right to have a Debtor

Lessee mine and recover all mineable and merchantable coal, rather than a lease forfeiture or (money) damages, such a remedy would not be allowed, and indeed foreclosed, by the GSA?

7. By the Court's prior Order Extending The Period Within Which The Debtors May Assume Or Reject Unexpired Leases Of Non Residential Real Property [Doc 1465], the deadline for Debtors to assume or reject unexpired leases has been extended to February 4, 2013. During this period, these Lessors hope to engage in discussions with the Debtor Lessees re the subject leases and the impact of the GSA thereon. The reservation of these Lessors' rights, privileges and defenses under their leases with the Debtor Lessees is essential to this discussion.

8. These Lessors were not parties to the litigation which has been resolved by the GSA and have had no input into its terms.

9. These Lessors' rights, privileges and defenses under their leases with the Debtor Lessees should be protected and reserved in any Order of this Court approving Debtors' Motion and the GSA.

WHEREFORE, for the foregoing, and such other reasons as may appear to the Court, these Lessors respectfully request that this Court, in granting the Debtors' Motion:

- (i) Revise the proposed Order attached as Exhibit A to Debtors' Motion with, or include in any other Order granting Debtors' Motion, additional text to the effect that "all rights, privileges and defenses of lessors under their respective leases with Debtors are reserved, notwithstanding any provision in the Global Settlement Agreement to the contrary," and
- (ii) Grant and direct such other and further relief as is just and proper.

Dated: December 7th, 2012

Charleston, West Virginia

Respectfully submitted,

/s/ Thomas Persinger

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EXHIBIT A

Southern Land Company Limited Partnership, Dickinson Properties Limited Partnership, Chesapeake Mining Company, The Imperial Coal Company, Quincy Coal Company, Branch Banking & Trust Company, a North Carolina banking corporation, et al. Successor Trustees of the Charles C. Dickinson Testamentary Trust, Horse Creek Land & Mining Company, and Payne-Gallatin Company

Schedule of Leases
to
Patriot Coal Corporation
and Subsidiaries

<u>Date</u>	<u>Lessors</u>	<u>Lessee</u>	<u>Location</u> ¹
10.01.47	Southern Land Company LP & Dickinson Properties LP (“Southern-Dickinson”)	Eastern Associated Coal, LLC (“EAC”)	Boone County, Crook District
07.01.67	Southern-Dickinson and Cole, Lindsey & Woods, Trustees	EAC	Boone County, Crook District
02.01.74	Southern-Dickinson and Pardee Land Company	EAC	Boone County, Crook District
02.01.77	Southern-Dickinson	Robin Land Company, LLC (“Robin”)	Kanawha County, Malden District
02.01.91	Dickinson Properties LP (“Dickinson”)	Robin	Kanawha County, Malden District
01.01.94	Southern-Dickinson	Robin	Raleigh County, Clear Fork District
07.01.97	Southern-Dickinson and Klausmeyer, Woods, Kibesch, Trustees	Jupiter Holdings, LLC (“Jupiter”)	Boone County, Crook District
11.15.00	Southern-Dickinson	Hillside Mining Company	Boone County, Crook District
04.01.02	Southern-Dickinson	Logan Fork Coal Company (“Logan”)	Boone County, Sherman District
09.01.75	Southern-Dickinson	Hobet Mining, LLC (“Hobet”)	Boone County, Scott District
08.25.86	Southern-Dickinson	Patriot Reserve Holdings, LLC (“PRH”)	Boone County, Crook District

¹ All located in West Virginia

<u>Date</u>	<u>Lessors</u>	<u>Lessee</u>	<u>Location</u> ¹
03.25.08	Quincy Coal Company ("QCC")	Robin	Kanawha County, Cabin Creek District
11.25.97	Imperial Coal Company ("Imperial")	PRH	Kanawha County, Cabin Creek District
12.19.89	Imperial	PRH	Kanawha County, Cabin Creek District
12.01.00	C. C. Dickinson Testamentary Trust	PRH	Kanawha County, Cabin Creek District
12.01.00	Chesapeake Mining Company ("Chesapeake")	PRH	Kanawha County, Cabin Creek District
12.01.00	Payne-Gallatin Mining Company ("Payne-Gallatin")	PRH	Kanawha County, Cabin Creek District
10.15.76	Payne-Gallatin	Magnum Coal Company, LLC ("Magnum")	Kanawha County, Cabin Creek District
06.01.05	Horse Creek Land and Mining Company ("Horse Creek")	Robin	Boone County, Scott District Lincoln County, Duval, Jefferson & Union Districts

CERTIFICATE OF SERVICE

I certify that on December 7, 2012, a true and correct copy of the foregoing was served by (i) the Electronic Case Filing system for the United States Bankruptcy Court for the Southern District of New York on those parties that have consented to such service in these cases, (ii) FedEx to the chambers of the Honorable Shelly C. Chapman, Judge of the USBC (SDNY) 100 Bowling Green, New York, NY 10004-1406, and (iii) United States mail, first class postage prepaid, on the parties and or counsel listed below:

(a) Counsel to the Debtors:

Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY
10017, Attn: Marshall S. Huebner and Brian M. Resnick

(b) Conflicts counsel to the Debtors:

Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York,
NY 10178, Attn: Steven J. Reisman and Michael A. Cohen

(c) The Office of the United States Trustee for the Southern District of
New York, 33 Whitehall Street, Suite 2100, New York, NY 10004, Attn:
Elisabetta G. Gasparini and Paul K. Schwartzberg

(d) Counsel for the Official Committee of Unsecured Creditors:

Kramer Levin Naftalis & Frankel LLC, 1177 Avenue of the Americas,
New York, NY 10036

(e) The Debtors' authorized claims and noticing agent:

Patriot Coal Corporation, c/o GCG, Inc., P.O. Box 9898, Dublin, OH
43017-5798

(f) Counsel for the administrative agents for the Debtors' proposed
postpetition lenders:

(i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153,
Attn: Marcia Goldstein and Joseph Smolinsky and

(ii) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019,
Attn: Margot B. Schonholtz and Ana Alfonso

- (g) Counsel to the United Mine Workers of America:

Kennedy, Jennik & Murray, P.C., 113 University Place, 7th Floor New
York, NY 10003 Attn: Susan M. Jennik
- (h) Counsel to the Argonaut Insurance Company, Indemnity National Insurance
Company, US Specialty Insurance , and Westchester Fire Insurance Company:

Stites & Harbison, PLLC, 250 West Main Street, Suite 2300, Lexington, KY
40507, Attn: Chrisandrea L. Turner
- (i) Joseph M. Lovett, Esq.
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Trust Company, Nelle Ratrie Chilton, and
Charles C. Dickinson, III, Successor
Trustees of the C. C. Dickinson
Testamentary Trust, Horse Creek Land &
Mining Company, and Payne-Gallatin
Company