

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF MISSOURI  
(ST. LOUIS)**

In Re: )  
 )  
Patriot Coal Corporation, ) Bankruptcy No.12-51502  
 )  
Debtor. )

**CREDITOR, HAWTHORN BANK’S, RESPONSE**  
**TO THE DEBTOR’S FIFTH OMNIBUS OBJECTION**  
**TO CLAIMS 27-1/27**

COMES NOW Hawthorn Bank (hereinafter “Bank”), a creditor and party in interest, by and through its attorneys of record, and for its Response to the Claims Objection by the Debtor to Hawthorn Claim 27-1/27 in the amount of \$300,454.60, states to the Court as follows:

1. Debtor filed an objection to certain claims of Bank, which have been amended during the course of the bankruptcy proceeding claims 27-1/27 in the amount of \$300,454.60.
2. Bank originally filed these Claims based upon outstanding equipment leases with the Debtor by and through Somerset Capital Group Ltd. (hereinafter “Somerset”).
3. As part of the Claim attachments, Bank attached the Security Agreement from Somerset to Bank pledging the rights in the equipment as well as all rental payments and other amounts payable under the leases with Debtor for mining equipment. The documentation provided a security interest and an assignment that took place prior to the filing of bankruptcy.
4. Bank also was provided as of July 15, 2011 a Notice of Acknowledgment of Assignment indicating that payments under the leases would continue to Somerset subject to continuing payment by Debtor with Somerset disbursing to Bank unless or until there is a

default. A copy of the Notice and Acknowledgment is attached hereto as Exhibit "A" and made a part hereof by this reference. The Acknowledgment was executed by the Debtor and Somerset.

5. The sums owed to Bank are less than the amounts owed by Debtor to Somerset under the leases.

6. Bank acknowledges that Somerset has conveyed all monthly payments from Debtor as called for by the Acknowledgment and is current on the executory contracts.

7. Bank has a claim based upon the leases between Somerset and Debtor and the resulting security agreement and assignment and acknowledgment which is an obligation separate and apart from that of Somerset. In the event of default by Somerset, Bank has the right to collect directly from Debtors.

8. The Debtor's objection to the Claim of Bank is not appropriate in that Bank has rights based upon its documentation that are separate and apart from Somerset.

9. Debtor is bound by its Acknowledgment granted to Bank and cannot seek the expunging of this claim until Bank is paid in full.

10. Bank does not seek a double recovery and acknowledges that the payment by Debtor to Somerset results in the reduction of the claim of Bank; however, Bank has the right to maintain its claims, separate and apart from Somerset until Bank is paid in full.

11. Bank requests that the Court allow the Bank claim to remain, but show that it is to be reduced by all payments made by Debtor to Somerset and that are transferred to Bank. Bank asserts that application of payments in that fashion will give the Debtor proper credit and allow the claims of both Bank and Somerset and will recognize the fact that Somerset may have a resulting claim after Bank is paid in full.

12. A claim as defined in the Bankruptcy Code is to be given the broadest construction possible. See 11 U.S.C. § 101(5) and *Laws v. United Missouri Bank of Kansas City, N.A.*, 188 B.R. 263 (W.D.Mo. 1995).

13. An assignee of a lease has the right to assert a claim against the Debtor's estate. See *In re CP Holdings, Inc.*, 349 B.R. 189 (8<sup>th</sup> Cir. BAP (Mo.) 2006). An assignee, like a subrogee, has the right to stand in the shoes of the assignor and assert the claim. See *In re Lottes*, 226 B.R. 634 (Bkrcty.E.D.Mo. 1998). As such Bank stands in the shoes of Somerset and has the right to assert its claim up to the assigned value and Somerset can assert its claim for the same and any amount in excess of the amount assigned.

14. Bank requests that the Court deny the relief requested by the Debtor in the Fifth Omnibus Objection.

WHEREFORE, for the above and foregoing reasons Bank prays that the Court enter an Order overruling the claims objection by Debtors and for such other and further relief as the Court deems just in the premises.

LOWTHER JOHNSON, LLC

By: /s/ Lee J. Viorel  
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*Attorneys for Creditor,  
Hawthorn Bank*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served by electronic notice or by United States Mail, First Class postage prepaid, this 1st day of July, 2013, to:

U.S. Trustee  
Office of the U.S. Trustee  
111 S. Tenth St., Ste. 6353  
St. Louis, MO 63102

*Debtor's Attorney*  
David Polk & Wardwell  
450 Lexington Ave.  
New York, NY 10017

*Debtor's Attorney*  
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*Debtor's Attorney*  
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St. Louis, MO 63105

/s/ Lee J. Viorel  
Lee J. Viorel

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LOWTHER JOHNSON, LLC

By: /s/ Lee J. Viorel  
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*Attorneys for Creditor,  
Hawthorn Bank*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served by electronic notice or by United States Mail, First Class postage prepaid, this 1st day of July, 2013, to:

U.S. Trustee  
Office of the U.S. Trustee  
111 S. Tenth St., Ste. 6353  
St. Louis, MO 63102

*Debtor's Attorney*  
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*Creditor Committee*  
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120 S. Central Ave., Ste. 1800  
St. Louis, MO 63105

/s/ Lee J. Viorel

Lee J. Viorel



New Day Aluminum Acquires Noranda's Upstream Assets for US\$24.43 MM. Noranda Aluminum's remaining upstream assets are now the property of New Day Aluminum after having submitted the winning bid at the court-sanctioned bankruptcy auction on Tuesday. Court filings indicate that their bid bested the offer submitted by ARG International AG. New Day Oct. UNION OF MISSOURI FOUNDATION 454 Whittier Street St. Louis, Missouri 63108 Phone: 314/652-3114 Fax: 314/652- 3112 trothert@aclu-mo.org gdoty@aclu-mo.org. Gillian R. Wilcox, #61278MO AMERICAN CIVIL LIBERTIES. UNION OF MISSOURI FOUNDATION 3601 Main Street Kansas City, Missouri 64111 Phone: 816/470-9933 Fax: 314/652-3114 gwilcox@aclu-mo.org. An injunction, entered February 3, 2014, to a permanent injunction, and the Court being fully advised in the premises, it is hereby ordered: 1. In this case, Plaintiff challenges the alleged policy and custom of the City of Ellisville, Missouri, of having police officers pull over, detain, and cite individuals who are perceived by police officers as having communicated. US Bankruptcy Court, located in St. Louis, Missouri, is at South 10th Street 111. You can look at the address on the map. You can see how to get to US Bankruptcy Court on our website. You can use the phone number +1 314-244-4500 to contact the company. Alternatively you can use the www.moeb.uscourts.gov web address. You can check the working days and hours below before going there. Claim and edit this place. Download Card. Print. Report Content. Eastern District of Missouri | United States Bankruptcy Court. How Can I Go US Bankruptcy Court? From Where. : to Where. : PLACE INFORMATION. Address : 4, 111 South 10th Street, St. Louis, MO 63102. Phone Number: +1 314-244-4500. Subpremise: 4. Case 12-51502 Doc 4878 Filed 10/28/13 Entered 10/28/13 09:57:13 Pg 1 of 2 Main Document IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF MISSOURI EASTERN DIVISION In re: ) ) Patriot coal corporation, et al., ) ) Debtors. ) ) 10/28/13 Entered 10/28/13 09:57:13 Pg 2 of 2 Main Document IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF MISSOURI EASTERN DIVISION In re: ) ) Patriot coal corporation, et. Al. ) ) St. louis, mo 63195-0000 smith mills cemetery protective corp po box... The Bankruptcy Clerk's Office is located in the Eastern District of Missouri, in St. Louis, Missouri. There are three divisions, two of which are outlying: the Northern Division, located in Hannibal, Missouri; and the Southeastern Division, located in Cape Girardeau, Missouri. St. Louis is the only division permanently staffed. Court is conducted at the outlying divisions when Judges, Law Clerks, Courtroom Deputies and/or ECROs travel from St. Louis to the divisional offices. Street Address: Eastern Division Thomas F. Eagleton U.S. Courthouse 111 South 10th St., 4th Floor St. Louis, MO 63102 Phone: (314) 244-4500 Fax: (314) 244-4990. First Sidebar: Hearing Dates.