

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

**In re:**

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

**Debtors.**

**Chapter 11**

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

**(Jointly Administered)**

Hearing Date: October 22, 2013

Hearing Time: 10:00 a.m. Central

Location: Courtroom 7-N, St. Louis

**DEBTORS' EIGHTEENTH OMNIBUS OBJECTION TO CLAIMS**  
**(Palmer Litigation Claims)**

Patriot Coal Corporation and its affiliated debtors (the "Debtors"), pursuant to 11 U.S.C. § 502 and Fed. R. Bankr. P. 3007, respectfully file this Eighteenth Omnibus Objection to Claims (the "Objection"). In support of this Objection, the Debtors show the Court as follows:

**Relief Requested**

1. By this Objection, the Debtors object to certain claims listed on Exhibit A attached hereto (the "Claims") because the Claims arise from certain litigation determined adversely to the claimants in West Virginia state court. The Debtors request entry of an order, pursuant to Section 502 of the Bankruptcy Code and Fed. R. Bankr. P. 3007, disallowing the Claims.
2. **Parties receiving this Objection should locate their names on the attached exhibit.** Any response to this Objection should include, among other things, (i) an appropriate caption, including the title and date of this Objection; (ii) the name of the claimant, both the EDMO and GCG claim numbers of the claim that the Debtors are seeking to disallow or modify, and a description of the basis for the amount claimed; (iii) a concise statement setting forth the

reasons why the Court should not sustain this Objection, including, but not limited to, the specific factual and legal bases upon which the claimant relies in opposing this Objection; (iv) copies of any documentation and other evidence which the claimant will rely upon in opposing this Objection at a hearing; and (v) the name, address, telephone number and facsimile number of a person authorized to reconcile, settle or otherwise resolve the claim on the claimant's behalf. A claimant that cannot timely provide such documentation and other evidence should provide a detailed explanation as to why it is not possible to timely provide such documentation and other evidence.

### **Jurisdiction**

3. This Court has jurisdiction over this Objection under 28 U.S.C. § 1334. Venue of this proceeding is proper pursuant to 28 U.S.C. § 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

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

### **Background**

5. The Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on July 9, 2012 (the "Petition Date") in the United States Bankruptcy Court for the Southern District of New York.

6. On December 19, 2012, the Debtors' cases were transferred to the United States Bankruptcy Court for the Eastern District of Missouri [Dkt. No. 1789].

7. The bar date for filing proofs of claim was December 14, 2012 [Dkt. No. 1388].

8. On March 1, 2013, the Court entered its Order Establishing Procedures for Claims Objections [Dkt. No. 3021].

### **Objection and Argument**

9. Each of the Claims listed on Exhibit A arises from certain litigation filed in the Circuit Court of Monongalia County, West Virginia, styled John Palmer, et al. v. John Renner, et al., Case No. 12-C-42 (the "Litigation"). Two Debtors, Patriot Coal Corporation and Eastern Associated Coal Corporation, are among the defendants. Each Claim listed on Exhibit A was filed by a plaintiff in the Litigation.

10. The claims in the Litigation by the plaintiffs, who were employees of the Debtors, center around the allegation that the defendants exposed them and other employees to dangerous levels of methane gas, which could have caused serious injury or economic loss.

11. All but one of the defendants in the Litigation, including both Debtors, filed motions to dismiss for failure to state a claim upon which relief could be granted. On March 22, 2013, the Monongalia County court entered an order granting all of the motions to dismiss, including the Debtors' motions. A certified copy of the order is attached hereto as Exhibit B.

12. By this Objection, the Debtors respectfully request that this Court disallow the Claims. Because the Monongalia County court dismissed all claims in the Litigation on the merits, the claimants have no basis for maintaining the Claims in the Debtors' bankruptcy cases or otherwise pursuing any recovery from the Debtors' estates.

13. Under West Virginia law, a judgment dismissing an action for failure to state a claim upon which relief can be granted, and without reservation of any issue, is presumed to be on the merits. Sprouse v. Clay Communication, Inc., 211 S.E.2d 674, 696 (W. Va. 1975).

14. Pursuant to 28 U.S.C. § 1738, a federal court must give the same preclusive effect to a state-court judgment that another court in that particular state would give it. The Supreme Court has stated that Section 1738 directs a federal court “to refer to the preclusion law of the state in which the judgment was entered.” In re Asbury, 195 B.R. 412, 415 (Bankr. E.D. Mo. 1996) (citing Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 380 (1985)).

15. Pursuant to the doctrine of res judicata, the claimants are bound by the Monongalia County court’s determination of the invalidity of their claims, and they cannot seek reconsideration of the claims in this Court. Under West Virginia law, an adjudication by a court having jurisdiction of the subject matter and the parties is final and conclusive, not only as to the matters actually determined, but as to every other matter which the parties might have litigated as incident thereto and coming within the legitimate purview of the subject matter of the action. State ex rel. Richey v. Hill, 603 S.E.2d 177, 183 (W. Va. 2004) (citing Sayre’s Administrator v. Harpold, 11 S.E. 16 (W. Va. 1890)). “It is not essential that the matter should have been formally put in issue in a former suit, but it is sufficient that the status of the suit was such that the parties might have had the matter disposed of on its merits.” Id. Here, because the Litigation has been dismissed, the Claims, which are based entirely on the underlying Litigation, should be disallowed as a matter of res judicata. Even if the plaintiffs believe that the Monongalia County decision was erroneous, the state court’s order remains final and preclusive. See Burgess v. Corp. of Shepherdstown, No. 3:11-CV-109, 2012 WL 6681875 (N.D. W. Va. Dec. 21, 2012).

16. Moreover, under the Rooker-Feldman doctrine, this Court does not have the power to disagree with the Monongalia County court’s determination of the Litigation. Under that doctrine, inferior federal courts lack subject-matter jurisdiction over “cases brought by state-

court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” In re Athens/Alpha Gas Corp., 715 F.3d 230, 234 (8th Cir. 2013). See generally Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). Thus, in any contested matter involving the validity of the Claims, this Court would not have jurisdiction to reach a conclusion.

17. Here, the Monongalia County court’s dismissal of the Litigation calls for the application of Rooker-Feldman because the state court made its decision after reviewing the merits of the underlying causes of action. Because that court determined that the claims in the Litigation had no merit and that the motions to dismiss – including those of Debtors Patriot Coal Corporation and Eastern Associated Coal Corporation – should be granted, this Court, pursuant to Rooker-Feldman, is barred from reviewing the merits of the state court’s judgment.

WHEREFORE, the Debtors respectfully request that this Court:

- (a) disallow the Claims; and
- (b) grant such other and further relief as is just and proper.

Dated: September 20, 2013  
St. Louis, Missouri

Respectfully submitted,  
BRYAN CAVE LLP

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-and-

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## Exhibit A

**Omnibus Objection to Claims**

**Patriot Coal Corporation  
12-51502 (KSS)**

Note: Claims on the exhibit are sorted in alphabetical order based on the creditor name as listed on proof of claim form.

SEQ NO.	CLAIM(S) TO BE DISALLOWED			
	NAME	GCG CLAIM NO.	ED MO CLAIM NO.	CLAIM AMOUNT
1	CLIF TENNANT THE HAMSTEAD WILLIAMS & SHOOK LAW FIRM ATTN ALEX J SHOOK 315 HIGH ST MORGANTOWN, WV 26505  Date Filed: 12/13/12 ED MO Date Filed: 02/27/13 Debtor: PATRIOT COAL CORPORATION	2327	1522-1	Unsecured: \$75,000.00*
2	CLIF TENNANT THE HAMSTEAD, WILLIAMS & SHOOK LAW FIRM ATTN ALEX J. SHOOK 315 HIGH STREET MORGANTOWN, WV 26505  Date Filed: 12/13/12 ED MO Date Filed: 02/27/13 Debtor: EASTERN ASSOCIATED COAL, LLC	2326	3082-1	Unsecured: \$75,000.00*
3	DEWAYNE JARVIS THE HAMSTEAD WILLIAMS & SHOOK LAW FIRM ATTN ALEX J SHOOK 315 HIGH ST MORGANTOWN, WV 26505  Date Filed: 12/13/12 ED MO Date Filed: 02/27/13 Debtor: EASTERN ASSOCIATED COAL, LLC	2331	1465-1	Unsecured: \$75,000.00*
4	DEWAYNE JARVIS THE HAMSTEAD, WILLIAMS & SHOOK LAW FIRM ATTN ALEX J. SHOOK 315 HIGH STREET MORGANTOWN, WV 26505  Date Filed: 12/13/12 ED MO Date Filed: 02/27/13 Debtor: PATRIOT COAL CORPORATION	2330	3083-1	Unsecured: \$75,000.00*

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**Omnibus Objection to Claims**

**Patriot Coal Corporation  
12-51502 (KSS)**

Note: Claims on the exhibit are sorted in alphabetical order based on the creditor name as listed on proof of claim form.

SEQ NO.	CLAIM(S) TO BE DISALLOWED			
	NAME	GCG CLAIM NO.	ED MO CLAIM NO.	CLAIM AMOUNT
5	JOHN PALMER THE HAMSTEAD, WILLIAMS & SHOOK LAW FIRM ATTN ALEX J SHOOK 315 HIGH STREET MORGANTOWN, WV 26505  Date Filed: 12/13/12 ED MO Date Filed: 02/27/13 Debtor: PATRIOT COAL CORPORATION	2329	1526-1	Unsecured: \$75,000.00*
6	JOHN PALMER THE HAMSTEAD, WILLIAMS & SHOOK LAW FIRM ATTN ALEX J. SHOOK 315 HIGH STREET MORGANTOWN, WV 26505  Date Filed: 12/13/12 ED MO Date Filed: 02/27/13 Debtor: EASTERN ASSOCIATED COAL, LLC	2328	3080-1	Unsecured: \$75,000.00*
7	PALMER, JOHN ET AL. THE HAMSTEAD, WILLIAMS & SHOOK LAW FIRM ATTN ALEX J. SHOOK 315 HIGH STREET MORGANTOWN, WV 26505  Date Filed: 12/13/12 ED MO Date Filed: 02/28/13 Debtor: PATRIOT COAL CORPORATION	2324	3607-1	Unsecured: \$75,000.00*
8	PALMER, JOHN ET AL. THE HAMSTEAD, WILLIAMS & SHOOK LAW FIRM ATTN ALEX J. SHOOK 315 HIGH STREET MORGANTOWN, WV 26505  Date Filed: 12/13/12 ED MO Date Filed: 02/28/13 Debtor: EASTERN ASSOCIATED COAL, LLC	2325	3606-1	Unsecured: \$75,000.00*



## Exhibit A

**Omnibus Objection to Claims**

**Patriot Coal Corporation  
12-51502 (KSS)**

Note: Claims on the exhibit are sorted in alphabetical order based on the creditor name as listed on proof of claim form.

SEQ NO.	CLAIM(S) TO BE DISALLOWED			
	NAME	GCG CLAIM NO.	ED MO CLAIM NO.	CLAIM AMOUNT
9	ROBERT HILLBERRY THE HAMSTEAD WILLIAMS & SHOOK LAW FIRM ATTN ALEX J SHOOK 315 HIGH ST MORGANTOWN, WV 26505  Date Filed: 12/13/12 ED MO Date Filed: 02/27/13 Debtor: EASTERN ASSOCIATED COAL, LLC	2333	1467-1	Unsecured: \$75,000.00*
10	ROBERT HILLBERRY THE HAMSTEAD, WILLIAMS & SHOOK LAW FIRM ATTN ALEX J. SHOOK 315 HIGH STREET MORGANTOWN, WV 26505  Date Filed: 12/13/12 ED MO Date Filed: 02/27/13 Debtor: PATRIOT COAL CORPORATION	2332	3084-1	Unsecured: \$75,000.00*
11	SCOTT LEPKA THE HAMSTEAD WILLIAMS & SHOOK LAW FIRM ATTN ALEX J SHOOK 315 HIGH ST MORGANTOWN, WV 26505  Date Filed: 12/13/12 ED MO Date Filed: 02/27/13 Debtor: EASTERN ASSOCIATED COAL, LLC	2335	1468-1	Unsecured: \$75,000.00*
12	SCOTT LEPKA THE HAMSTEAD, WILLIAMS & SHOOK LAW FIRM ATTN ALEX J. SHOOK 315 HIGH STREET MORGANTOWN, WV 26505  Date Filed: 12/13/12 ED MO Date Filed: 02/27/13 Debtor: PATRIOT COAL CORPORATION	2334	3081-1	Unsecured: \$75,000.00*

\* Denotes an unliquidated component.

**EXHIBIT B**

Order of March 22, 2013

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA  
DIVISION II

JOHN PALMER, SCOTT LEPKA,  
CLIF TENNANT, DeWAYNE JARVIS,  
and ROBERT HILLBERRY, individually  
and on behalf of all others similarly situated,

Plaintiffs,

v.

CASE NO.: 12-C-42  
Judge Russell M. Clawges, Jr.

JOHN RENNER, RANDEL COFFINDAFFER,  
BLAIR MCGILL, EASTERN ASSOCIATED  
COAL, LLC; and PATRIOT COAL  
CORPORATION,

Defendants,

**ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS**

This matter came before the Court on the 19<sup>th</sup> day of June 2012, on Motions to Dismiss filed by Defendants, Eastern Associated Coal, LLC ("Eastern"), Patriot Coal Corporation ("Patriot"), Blair McGill, and Randel Coffindaffer. The Plaintiffs appeared, not in person, but by counsel, Alex Shook. Defendant John Renner appeared by counsel, Paul Cranston. Defendant Randel Coffindaffer appeared by counsel, William Kolibash. Defendant Blair McGill appeared by counsel, Stephen Brooks and Lindsay Saad. Defendants Eastern and Patriot appeared by counsel, David Laurent and Wendy Adkins.

The Court heard the arguments of counsel and took the matter under advisement. The Court has studied the motions; the responses; the memoranda of law and exhibits submitted by the parties; considered all papers of record; and reviewed pertinent legal authorities. As a result of these deliberations, the Court is ready to rule.

**FACTS and PROCEDURAL HISTORY**

Plaintiffs are five employees of Eastern or Patriot. They were employed at the mine under the 2007 Wage Agreement. They filed this case on their own behalf and on behalf of all other persons similarly situated. Defendants John Renner, Randel Coffindaffer, and Blair McGill are former employees of Patriot and/or Eastern.

In Count I of the Complaint, Plaintiffs allege that the Defendants intentionally, willfully, recklessly, and wantonly exposed them and other employees to dangerous levels of methane gas and that this exposure could have caused serious injury or death and economic loss. Plaintiffs claim that John Renner was directed by Randal Coffindaffer and Blair McGill to not accurately record the dangerous methane gas readings and to not evacuate the mine if dangerous levels of methane gas was present. Plaintiffs further contend that on at least nineteen occasions John Renner detected dangerous levels of methane gasses in the mine. Mr. Renner then falsified the readings in the record book and failed to evacuate the mine.

In Count II of the Complaint, Plaintiffs allege that Defendants' conduct of intentionally, willfully, recklessly, and wantonly exposing them and other employees to dangerous levels of methane gas offends the generally accepted standards of decency and morality. Plaintiffs seek damages for intentional infliction of emotional distress.

Eastern and Patriot filed a Motion to Dismiss. They assert that Plaintiffs claims should be dismissed because (a) they are pre-empted by Section 301 of the Labor Management Relations Act, (b) Count I does not state a viable claim under West Virginia law, and (c) Count II is barred by the immunity provisions of the West Virginia Workers' Compensation Act.

Defendants, Blair McGill and Randel Coffindaffer also filed Motions to Dismiss. They assert

that the claims against them are preempted by Section 301 and that they are not signatories to the subject collective bargaining agreement.

### **DISCUSSION**

The standard applied to Rule 12(b)(6) motions is well established. In analyzing a complaint, the Court must accept the allegations as true, and construe the same in the light most favorable to the Plaintiff. "The trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Syllabus, Flowers v. City of Morgantown, 166 W.Va. 92 (1980).

### **Count I - Defendants' Intentional, Wilful, Reckless, and Wanton Violation of Employee Safety**

"Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce. . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. 185(a).

The Supreme Court of the United States has stated that the subject matter of § 301(a) is peculiarly one that calls for uniform law. Teamsters v. Lucas Flour Co., 369 U.S. 95 (1962). "The interests in interpretive uniformity and predictability that require that labor-contract disputes be resolved by reference to federal law also require that the meaning given a contract phrase or term be subject to uniform federal interpretation. Thus, questions relating to what the parties to a labor

agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort. Any other result would elevate form over substance and allow parties to evade the requirements of § 301 by relabeling their contract claims as claims for tortious breach of contract.” Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 211 (1985).

“An application of state law is pre-empted by § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, only if such application requires the interpretation of a collective-bargaining agreement.” Syl. Pt. 4, Greenfield v. Schmidt Baking Co., Inc., 199 W.Va. 447 (1997). “A determination of pre-emption under § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, requires a fact specific analysis.” Syl. Pt. 5, Id.

Plaintiffs insist this is a tort action. They have alleged both a negligent breach of duty and intentional acts in breach of duty. They contend generally that Defendants have a duty to conduct themselves in such a manner as to not injure others, and specifically that a reasonable, prudent coal company has the duty to conduct periodic testing to ensure that excessive levels of methane gas are not accumulating in its mine and to inform its employees if excessive levels of methane gas is detected. Assuming there is such a duty, missing here is any resulting injury from the alleged breach of duty. Fortunately, no serious injury or death occurred as a result of the alleged unsafe conditions.

The only damages mentioned are for lost wages due to the mine being idled for an extended period of time as a result of the Defendants’ intentional conduct. These damages sound in contract and indicate the application of the collective bargaining agreement. Whether the Plaintiffs should be compensated while the mine was idled as a result of these unusual circumstances will need to be

determined from the rights and duties of the employees and employer under the collective bargaining agreement. Because the Court would need to analyze the terms of the 2007 Wage Agreement to resolve this claim for lost wages, it should be treated as a § 301 claim.

Therefore, Count I of Plaintiffs' Complaint should be dismissed.

### **Count II - The Tort of Outrage**

Under the West Virginia Workers' Compensation Act, employers and their agents are generally immune from liability for workplace injuries. W.Va. Code §§ 23-4-2(d)(1); 23-2-6; 23-2-6a. "An employer who is otherwise entitled to the immunity provided by W.Va. Code § 23-2-6 may lose that immunity in only one of three ways: (1) by defaulting in payments required by the Workers' Compensation Act or otherwise failing to be in compliance with the Act; (2) by acting with 'deliberate intention' to cause an employee's injury as set forth in W.Va. Code § 23-4-2(d); or (3) in such other circumstances where the Legislature has by statute expressly provided an employee a private remedy outside the workers' compensation system." Syl. Pt. 2, Bias v. Eastern Associated Coal Corp., 220 W.Va. 190 (2006).

"For the purposes of [the Workers' Compensation] chapter, no alleged injury or disease shall be recognized as a compensable injury or disease which was solely caused by nonphysical means and which did not result in any physical injury or disease to the person claiming benefits. It is the purpose of this section to clarify that so-called mental-mental claims are not compensable under this chapter." W.Va. Code § 23-4-1f.

“W.Va. Code, 23-2-6a extends the employer's immunity from liability set forth in W.Va.Code, 23-2-6 to the employer's officer, manager, agent, representative or employee when he is acting in furtherance of the employer's business and does not inflict an injury with deliberate intention.” Syl. Pt. 4, Henderson v. Meredith Lumber Co., Inc., 190 W.Va. 292 (1993).

Intentional or reckless infliction of emotional distress is also known as the tort of outrage. Travis v. Alcon Laboratories, Inc., 202 W.Va. 369, 374 (1998). “In order for a plaintiff to prevail on a claim for intentional or reckless infliction of emotional distress, four elements must be established. It must be shown: (1) that the defendant's conduct was atrocious, intolerable, and so extreme and outrageous as to exceed the bounds of decency; (2) that the defendant acted with the intent to inflict emotional distress, or acted recklessly when it was certain or substantially certain emotional distress would result from his conduct; (3) that the actions of the defendant caused the plaintiff to suffer emotional distress; and, (4) that the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it.” Syl. Pt. 3, Id.

Plaintiffs emphasis that their claims reference intentional wrongdoing and not negligence. Plaintiffs also insist that they have sufficiently pleaded a claim for deliberate intent under West Virginia Workers' Compensation law. The Court disagrees. Plaintiffs have not set forth factual allegations for each of the five statutory requirements of deliberate intent under West Virginia Code 23-4-2(d)(2)(i) and/or West Virginia Code 23-4-2(d)(2)(ii). Most important, there is no injury. Severe emotional distress alone without a physical injury is not recognized. Plaintiffs have clearly articulated outrageous conduct on the part of the Defendants. However, lacking a compensable injury, Plaintiffs have failed to state a claim for deliberate intent.

Accordingly, based on the foregoing, the Court must GRANT the Motions to Dismiss.



**ORDER**

WHEREFORE, it is ORDERED that Defendants, Eastern Associated Coal, LLC and Patriot Coal Corporation's Motion to Dismiss is GRANTED.

It is further ORDERED that Defendant, Blair McGill's Motion to Dismiss is GRANTED.

It is further ORDERED that Defendant, Randel Coffindaffer's Motion to Dismiss is GRANTED.

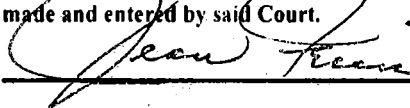
The Court further directs the Clerk of the Circuit Court of Monongalia County to distribute certified copies of this order to the parties and/or counsel of record.

Enter March 22, 2013



Russell M. Clawges, Jr., Judge  
17<sup>th</sup> Judicial Circuit, Division II.

STATE OF WEST VIRGINIA, SS:  
I, Jean Friend, Clerk of the Circuit and Family Courts of Monongalia County State aforesaid do hereby certify that the attached ORDER is a true copy of the original Order made and entered by said Court.

  
Circuit Clerk