

Hearing Date (if necessary): November 1, 2012 at 10:00 a.m. (prevailing Eastern Time)

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**

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

**Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 12-12900 (SCC)**

**(Jointly Administered)**

**DEBTORS' REPLY TO THE LIMITED OBJECTION OF ACE AMERICAN  
INSURANCE COMPANY TO DEBTORS' MOTION PURSUANT TO SECTION 362 OF  
THE BANKRUPTCY CODE AND BANKRUPTCY RULE 4001 FOR AN ORDER  
MODIFYING THE AUTOMATIC STAY TO PERMIT PAYMENTS OF  
DEFENSE COSTS UNDER CERTAIN INSURANCE POLICIES**

Patriot Coal Corporation (“**Patriot**”)<sup>2</sup> and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) respectfully represent:

1. On October 18, 2012, the Debtors moved this Court for an Order Modifying the Automatic Stay to Permit Payments of Defense Costs Under Certain Insurance Policies (the

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<sup>1</sup> The Debtors are the entities listed on Schedule 1 attached hereto. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

<sup>2</sup> All capitalized terms not defined herein have the meaning ascribed to them in the Debtors’ Motion.

“**Motion**”). In the Motion, Debtors seek relief in the form of an order modifying the automatic stay, to the extent it applies, to permit payment of proceeds under the XL Policy to Patriot’s former officers and directors who have been named as Defendants in two securities class action lawsuits. In the alternative, the Debtors seek an order affirming that the automatic stay does not bar the payment of proceeds under the Ace Policy.<sup>3</sup>

2. In the proposed Order attached as Exhibit A to the Motion, the Debtors included a provision requiring:

Defendants, current or future, and the insurance providers [to] report to the Debtors quarterly, with a copy to the official committee of unsecured creditors, regarding the insurance coverage provided, the amounts paid, and the tasks carried out.

3. On October 29, 2012, Ace American Insurance Company filed an objection to these proposed reporting requirements, contending that the information the Debtors request is confidential and that the Debtors and the official committee of unsecured creditors are not entitled to receive it.

4. With this Reply, the Debtors submit revised proposed Orders, attached hereto as Exhibits A and B, requesting that the Court order:

that Defendants, current or future, and the insurance providers will report to the Debtors quarterly, with a copy to the official committee of unsecured creditors, regarding the insurance coverage provided and the amounts paid. To the extent an insurance provider has not been subject to claims during any quarterly period, it is not necessary for that insurance provider to provide a quarterly report as to that period. In the event an insurance provider fails to report as to amounts paid for a quarterly period when benefits were paid, the insured individual is still required to submit the requested information.

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<sup>3</sup> The Debtors note that in the event the Court modifies the automatic stay to permit the payment of proceeds under the XL Policy, it will not be necessary for the insured individuals to access proceeds of the Ace Policy, and accordingly the Court would not need to address Ace’s Objection.

5. The Debtors seek the relief requested in the Motion to ensure that sufficient liability insurance coverage will be available to the Company's directors and officers to enable them to fund their defense in response to the securities class action Complaints filed against them. Moreover, as explained in the Motion, the Debtors anticipate that additional similar securities class action lawsuits will be filed, possibly naming additional defendants. Thus, the Debtors also seek to reassure any future defendants that liability insurance will be available to them to defend any subsequent claims.

6. While the Debtors are not directly entitled to the proceeds of the Ace Policy, they retain an interest in the Ace Policy itself because the policy is a benefit the Debtors provide to their employees. *See In re MF Global Holdings Ltd.*, 469 B.R. 177, 190 (Bankr. S.D.N.Y. 2012) (noting that "it is well-settled that a debtor's liability insurance is considered property of the estate"); *Federal Ins. Co. v. Sheldon*, 167 B.R. 15, 20 (S.D.N.Y. 1994) ("insurance policies which provide[] liability coverage to officers and directors . . . actually constitute[] property of the estate"). As explained in the Motion, the Debtors rely on the availability of their liability insurance in order to hire and retain key executives. (Motion ¶ 31.) Supplying sufficient liability insurance is necessary to the Debtors' successful continued operation.

7. The reporting requirement included in the proposed Orders seeks to ensure that the Debtors will be kept fully informed as to the pace at which its available liability insurance is being consumed. This information is critical to the Debtors, not because the Debtors are directly entitled to any proceeds under the Ace Policy, but because the Debtors are obligated to ensure that their directors and officers maintain sufficient insurance coverage. If the Ace Policy were to near exhaustion, the Debtors may need to move before this Court to lift the stay as to other liability policies to make sure there is no disruption of coverage.

8. Conversely, if the Debtors are not informed regarding the pace at which the liability insurance coverage is being depleted, they will be impaired in taking the steps necessary to make adequate coverage available. This would, in turn, likely generate uncertainty among the Debtors' officers and directors regarding the availability and extent of insurance coverage. Such uncertainty would be an unnecessary distraction that could easily be prevented by the inclusion of the monitoring provision in the Debtors' proposed Orders. Indeed, the Bankruptcy Court for the Southern District of New York has recently acknowledged the need for Debtors to monitor the use of their D&O insurance policies. *See In re MF Global Holdings*, 469 B.R. at 179 (directing the parties to agree upon procedures for monitoring expenditures).

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just and proper.

Dated: New York, New York  
October 30, 2012

By: /s/ Amelia T.R. Starr  
Amelia T.R. Starr  
Marshall S. Huebner  
Christopher Lynch

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*Counsel to the Debtors  
and Debtors in Possession*

**SCHEDULE 1**  
(Debtor Entities)

1. Affinity Mining Company
2. Apogee Coal Company, LLC
3. Appalachia Mine Services, LLC
4. Beaver Dam Coal Company, LLC
5. Big Eagle, LLC
6. Big Eagle Rail, LLC
7. Black Stallion Coal Company, LLC
8. Black Walnut Coal Company
9. Bluegrass Mine Services, LLC
10. Brook Trout Coal, LLC
11. Catenary Coal Company, LLC
12. Central States Coal Reserves of Kentucky, LLC
13. Charles Coal Company, LLC
14. Cleaton Coal Company
15. Coal Clean LLC
16. Coal Properties, LLC
17. Coal Reserve Holding Limited Liability Company No. 2
18. Colony Bay Coal Company
19. Cook Mountain Coal Company, LLC
20. Corydon Resources LLC
21. Coventry Mining Services, LLC
22. Coyote Coal Company LLC
23. Cub Branch Coal Company LLC
24. Dakota LLC
25. Day LLC
26. Dixon Mining Company, LLC
27. Dodge Hill Holding JV, LLC
28. Dodge Hill Mining Company, LLC
29. Dodge Hill of Kentucky, LLC
30. EACC Camps, Inc.
31. Eastern Associated Coal, LLC
32. Eastern Coal Company, LLC
33. Eastern Royalty, LLC
34. Emerald Processing, L.L.C.
35. Gateway Eagle Coal Company, LLC
36. Grand Eagle Mining, LLC
37. Heritage Coal Company LLC
38. Highland Mining Company, LLC
39. Hillside Mining Company
40. Hobet Mining, LLC
41. Indian Hill Company LLC
42. Infinity Coal Sales, LLC
43. Interior Holdings, LLC
44. IO Coal LLC
45. Jarrell's Branch Coal Company
46. Jupiter Holdings LLC
47. Kanawha Eagle Coal, LLC
48. Kanawha River Ventures I, LLC
49. Kanawha River Ventures II, LLC
50. Kanawha River Ventures III, LLC
51. KE Ventures, LLC
52. Little Creek LLC
53. Logan Fork Coal Company
54. Magnum Coal Company LLC
55. Magnum Coal Sales LLC
56. Martinka Coal Company, LLC
57. Midland Trail Energy LLC
58. Midwest Coal Resources II, LLC
59. Mountain View Coal Company, LLC
60. New Trout Coal Holdings II, LLC
61. Newtown Energy, Inc.
62. North Page Coal Corp.
63. Ohio County Coal Company, LLC
64. Panther LLC
65. Patriot Beaver Dam Holdings, LLC
66. Patriot Coal Company, L.P.
67. Patriot Coal Corporation
68. Patriot Coal Sales LLC
69. Patriot Coal Services LLC
70. Patriot Leasing Company LLC
71. Patriot Midwest Holdings, LLC
72. Patriot Reserve Holdings, LLC
73. Patriot Trading LLC
74. PCX Enterprises, Inc.
75. Pine Ridge Coal Company, LLC
76. Pond Creek Land Resources, LLC
77. Pond Fork Processing LLC
78. Remington Holdings LLC
79. Remington II LLC
80. Remington LLC
81. Rivers Edge Mining, Inc.
82. Robin Land Company, LLC
83. Sentry Mining, LLC
84. Snowberry Land Company
85. Speed Mining LLC
86. Sterling Smokeless Coal Company, LLC
87. TC Sales Company, LLC
88. The Presidents Energy Company LLC
89. Thunderhill Coal LLC
90. Trout Coal Holdings, LLC
91. Union County Coal Co., LLC
92. Viper LLC
93. Weatherby Processing LLC
94. Wildcat Energy LLC
95. Wildcat, LLC
96. Will Scarlet Properties LLC
97. Winchester LLC
98. Winifrede Dock Limited Liability Company
99. Yankeetown Dock, LLC

## **Exhibit A**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**

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

**Debtors.<sup>4</sup>**

**Chapter 11**

**Case No. 12-12900 (SCC)**

**(Jointly Administered)**

**ORDER GRANTING LIMITED MODIFICATION OF  
THE AUTOMATIC STAY**

Upon the motion (the “**Motion**”)<sup>5</sup> of Patriot Coal Corporation (“**Patriot**”) and its subsidiaries, that are debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to section 362 of the Bankruptcy Code, Rule 4001 of the Federal Rules of Bankruptcy Procedure and Rule 4001-1 of the Local Bankruptcy Rules for the Southern District of New York, for entry of an order granting limited modification to the automatic stay, to the extent it applies, to permit the payment of proceeds and advancing of defense costs as provided by XL Specialty Insurance Company, Insurance Policy No. ELU123382-11 (the “**XL Policy**”) to Richard M. Whiting and Mark N. Schroeder and any other Patriot officers and directors subsequently named defendants in relation to securities class action lawsuits filed against Mr. Whiting and Mr. Schroeder captioned

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<sup>4</sup> The Debtors are the entities listed on Schedule 1 attached to the Motion. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

<sup>5</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.

*Ernesto Espinoza v. Richard M. Whiting and Mark N. Schroeder*, 4:12 CV 01711 (E.D. Mo.) and *Furman Jerry Rogers III v. Richard M. Whiting and Mark N. Schroeder*, 4:12 CV 01815 (E.D. Mo.) and any other related securities lawsuits, as described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.) as amended by Standing Order M-431, dated February 1, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion having been provided in accordance with the Case Management Order, and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion [and having held a hearing with appearances of parties in interest noted in the transcript thereof (the “**Hearing**”)]; and the Court having determined that the legal and factual bases set forth in the Motion [and at the Hearing] establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that, the relief requested in the Motion is GRANTED as and to the extent set forth herein; and it is further

ORDERED the automatic stay pursuant to Section 362 of the Bankruptcy Code, is modified, to the extent it applies, solely to the extent necessary to permit the payment of defense costs and advance of legal fees to the Debtors’ officers and directors

in relation to securities class action lawsuits filed against them, pursuant to the terms of the XL Policy, and for no other purposes; and it is further

ORDERED that Defendants, current or future, and the insurance providers will report to the Debtors quarterly, with a copy to the official committee of unsecured creditors, regarding the insurance coverage provided and the amounts paid. To the extent an insurance provider has not been subject to claims during any quarterly period, it is not necessary for that insurance provider to provide a quarterly report as to that period. In the event an insurance provider fails to report as to amounts paid for a quarterly period when benefits were paid, the insured individual is still required to submit the requested information; and it is further

ORDERED that the requirements set forth in Local Rule 9013-1(b) are satisfied; and it is further

ORDERED that the entry of this Order is without prejudice to the rights of any party in interest, including the Debtors, to oppose any motion by any party seeking stay relief; and it is further

ORDERED that, notwithstanding the possible applicability of any Bankruptcy Rule that might otherwise delay the effectiveness of this order, including, but not limited to, Bankruptcy Rule 4001(a)(3), the Local Rules or the Case Management Order entered in these chapter 11 cases, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that the notice procedures set forth in the Motion are good and sufficient notice and satisfy Bankruptcy Rule 9014 by providing the counterparties with a notice and an opportunity to object and be heard at a hearing; and it is further

ORDERED that this Court retains jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: New York, New York

\_\_\_\_\_, 2012

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THE HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE

## **Exhibit B**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**

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

**Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 12-12900 (SCC)**

**(Jointly Administered)**

**ORDER AFFIRMING THAT THE AUTOMATIC STAY  
DOES NOT BAR THE PAYMENT OF PROCEEDS  
UNDER INSURANCE POLICY**

Upon the motion (the “**Motion**”)<sup>2</sup> of Patriot Coal Corporation (“**Patriot**”) and its subsidiaries, that are debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to section 362 of the Bankruptcy Code, Rule 4001 of the Federal Rules of Bankruptcy Procedure and Rule 4001-1 of the Local Bankruptcy Rules for the Southern District of New York, for entry of an order affirming that the automatic stay does not bar the payment of proceeds and advancing of defense costs as provided by Ace American Insurance Company (“**Ace**”) Excess DIC Policy No. DOX G23652936 005 (the “**Ace Policy**”) to Richard M. Whiting and Mark N. Schroeder and any other Patriot officers and directors subsequently named defendants in relation to securities class action lawsuits filed against Mr. Whiting and Mr. Schroeder captioned *Ernesto Espinoza v. Richard M. Whiting and Mark N. Schroeder*, 4:12 CV 01711 (E.D. Mo.) and *Furman Jerry Rogers III v. Richard M. Whiting*

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<sup>1</sup> The Debtors are the entities listed on Schedule 1 attached to the Motion. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

<sup>2</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.

*and Mark N. Schroeder*, 4:12 CV 01815 (E.D. Mo.) and any other related securities lawsuits, as described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.) as amended by Standing Order M-431, dated February 1, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion having been provided in accordance with the Case Management Order, and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion [and having held a hearing with appearances of parties in interest noted in the transcript thereof (the “**Hearing**”)]; and the Court having determined that the legal and factual bases set forth in the Motion [and at the Hearing] establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that, the relief requested in the Motion is GRANTED as and to the extent set forth herein; and it is further

ORDERED that that the automatic stay does not bar the payment of proceeds and advancing of defense costs as provided by the Ace Policy to the extent necessary to permit the payment of defense costs and advance of legal fees to the Debtors’ officers and directors in relation to securities class action lawsuits filed against them, pursuant to the terms of the Ace Policy, and for no other purposes; and it is further

ORDERED that Defendants, current or future, and the insurance providers will report to the Debtors quarterly, with a copy to the official committee of unsecured creditors, regarding the insurance coverage provided and the amounts paid. To the extent an insurance provider has not been subject to claims during any quarterly period, it is not necessary for that insurance provider to provide a quarterly report as to that period. In the event an insurance provider fails to report as to amounts paid for a quarterly period when benefits were paid, the insured individual is still required to submit the requested information; and it is further

ORDERED that the requirements set forth in Local Rule 9013-1(b) are satisfied; and it is further

ORDERED that the entry of this Order is without prejudice to the rights of any party in interest, including the Debtors, to oppose any motion by any party seeking stay relief; and it is further

ORDERED that, notwithstanding the possible applicability of any Bankruptcy Rule that might otherwise delay the effectiveness of this order, including, but not limited to, Bankruptcy Rule 4001(a)(3), the Local Rules or the Case Management Order entered in these chapter 11 cases, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that the notice procedures set forth in the Motion are good and sufficient notice and satisfy Bankruptcy Rule 9014 by providing the counterparties with a notice and an opportunity to object and be heard at a hearing; and it is further

ORDERED that this Court retains jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: New York, New York

\_\_\_\_\_, 2012

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THE HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE