

Objection Deadline: August 2, 2012 at 4:00 pm (prevailing Eastern Time)
Hearing Date (if necessary): To be determined

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

In re:

PATRIOT COAL CORPORATION., et al.,

Debtors.¹

Chapter 11

Case No. 12-12900 (SCC)

(Jointly Administered)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING
DEBTORS TO PROCEED WITH CERTAIN LITIGATION CLAIMS**

Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the "**Debtors**") respectfully represent:

Relief Requested

1. By this motion (the "**Motion**"), the Debtors seek entry of an order in the form attached hereto as Exhibit A authorizing Patriot to proceed with the below-referenced claims.

¹ 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.

Background and Jurisdiction

2. On July 9, 2012 (the “**Petition Date**”), each Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors 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.

3. The Debtors’ cases (the “**Chapter 11 Cases**”) are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the Court’s Joint Administration Order entered on July 10, 2012 [ECF No. 30].

4. 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, Patriot Coal Corporations Senior Vice President and Chief Financial Officer, which is incorporated herein by reference.

5. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and may be determined by the Bankruptcy Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Patriot's Claims

6. On June 1, 2012, Patriot Coal Sales LLC, a Debtor entity ("**Patriot**"), commenced an action for breach of contract (the "**Keystone Action**") in the United States District Court for the Southern District of West Virginia against Keystone Industries LLC ("**Keystone**"), a limited liability corporation organized and existing under the laws of Maryland with a principal place of business in Fort Myers, Florida.

7. In the Keystone Action, Patriot alleges that Keystone failed to take or pay for coal in breach of its contractual obligations under a December 7, 2011 coal supply agreement between the parties (the "**Keystone Claim**").

8. On April 3, 2012, Patriot commenced an action for breach of contract, or in the alternative, for fraud (the "**Bridgehouse Action**"), in the Circuit Court of Kanawha County in the State of West Virginia, against: (i) Bridgehouse Commodities Trading Limited ("**Bridgehouse**"), a corporation organized and existing under the laws of the Isle of Man with offices in London, England and Doha, Qatar; (ii) Donald A. Jordan ("**Jordan**"), an alien currently residing outside of the United States; (iii) Sentrum Holdings Limited ("**Sentrum**"), a corporation organized and existing under the laws of the British Virgin Islands with, upon information and belief, a principal place of business in London, England; and (iv) Bridgehouse Capital Limited ("**Bridgehouse Capital**"), a corporation organized and existing under the laws of England and Wales with a principal place of business in London, England, (collectively, the "**Bridgehouse Defendants**").

9. In the Bridgehouse Action, Patriot alleges that Bridgehouse failed to take or pay for coal in breach of its contractual obligations under a September 16, 2011 coal supply agreement between the parties, and that Sentrum and Bridgehouse Capital

breached an October 27, 2011 comfort letter. In the alternative, Patriot alleges fraud against each of the Bridgehouse Defendants (collectively, the “**Bridgehouse Claims**”).

10. On July 13, 2012, W. Henry Jernigan, Jr. of Dinsmore & Shohl LLP, counsel for Patriot, contacted Keystone’s counsel requesting that Patriot and Keystone enter into a stipulation to proceed with the Keystone Claim, attached hereto as Exhibit B. Patriot’s counsel asked that Keystone respond to the proposed stipulation by July 20, 2012. Keystone has not responded to this proposal.

11. None of the Bridgehouse Defendants have an attorney of record in connection with the Bridgehouse Action, and service of all but one of the Bridgehouse Defendants in connection with the Bridgehouse Action is still pending. Thus, Patriot has not been able to contact the Bridgehouse Defendants with respect to entering into a stipulation to proceed with the Bridgehouse Claims.

Relief Sought

12. Patriot seeks to proceed, by and through its counsel, Thompson Coburn LLP and Dinsmore & Shohl LLP, with its Keystone Claim and Bridgehouse Claims (collectively, the “**Claims**”), which are not subject to the automatic stay under 11 U.S.C. §362(a) (the “**Automatic Stay**”). *See e.g., Koolik v. Markowitz*, 40 F.3d 567, 568 (2d Cir. 1994) (“This Court has recognized that the automatic stay is applicable only to proceedings ‘against’ the debtor.”).

13. The Automatic Stay shall not bar Keystone from defending against the Keystone Claim in the Keystone Action. In the event that Patriot chooses to continue litigating the Keystone Claim, Keystone shall be allowed to proceed with its own defense in the Keystone Action. *See, e.g., In re Enron Corp.*, 2003 Bankr. LEXIS 2261, at *13

(Bankr. S.D.N.Y. Jan. 13, 2003) (holding that “where a debtor initiates litigation and no counterclaim is asserted, mere defenses to a debtor’s affirmative claims are not proscribed by the automatic stay”).

14. The Automatic Stay shall not bar the Bridgehouse Defendants from defending against the Bridgehouse Claims in the Bridgehouse Action. In the event that Patriot chooses to continue litigating the Bridgehouse Claims, the Bridgehouse Defendants shall be allowed to proceed with their own defense in the Bridgehouse Action. *See, e.g., Id.*

Notice

15. Consistent with the procedures described in the Order Establishing Certain Notice, Case Management and Administrative Procedures entered by the Court on July 16, 2012 [ECF No. 84] (the “**Case Management Order**”), the Debtors will serve notice of this Motion on (a) the Core Parties, (b) the Non-ECF Service Parties (as those terms are defined in the Case Management Order), (c) Keystone, and (d) the Bridgehouse Defendants. All parties who have requested electronic notice of filings in these cases through the Court’s ECF system will automatically receive notice of this motion through the ECF system no later than the day after its filing with the Court. A copy of this Motion and any order approving it will also be made available on the Debtors’ Case Information Website (located at www.PatriotCaseInfo.com). In light of the relief requested, the Debtors submit that no further notice is necessary. Pursuant to paragraph 21 of the Case Management Order, if no objections are timely filed and served in accordance therewith, an order granting the relief requested herein may be entered without a hearing.

No Previous Request

16. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

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
July 23, 2012

By: /s/ Jonathan D. Martin
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Amelia T.R. Starr
Jonathan D. Martin

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*Proposed 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.¹

Chapter 11

Case No. 12-12900 (SCC)

(Jointly Administered)

**ORDER AUTHORIZING DEBTORS TO PROCEED
WITH CERTAIN LITIGATION CLAIMS**

Upon the motion (the “**Motion**”)² of Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) for an order authorizing Patriot Coal Sales LLC (“**Patriot**”) to proceed with certain litigation claims, as more fully 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 this 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

¹ 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.

² Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Motion.

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 hereby granted as set forth herein; and it is further

ORDERED that Patriot is authorized, but not directed, to proceed with the Keystone Claim and with the Bridgehouse Claims, as represented by its counsel in the Keystone Action and the Bridgehouse Action, Thompson Coburn LLP and Dinsmore & Shohl LLP; and it is further

ORDERED that the Automatic Stay shall not bar Keystone from defending against the Keystone Claim in the Keystone Action; and it is further

ORDERED that the Automatic Stay shall not bar the Bridgehouse Defendants from defending against the Bridgehouse Claims in the Bridgehouse Action; and it is further

ORDERED that this Order as set forth herein shall have no effect as to any parties and any claims or causes of action that are not explicitly described herein; and it is further

ORDERED that the Automatic Stay shall remain in full force and effect with respect to any parties and any claims, causes of action, including collection on any judgments, against the debtors and their estates; and it is further

ORDERED that this Court shall retain jurisdiction with respect to any disputes arising from or related to the implementation and/or interpretation of this Order; and it is further

ORDERED that the Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order; and it is further

ORDERED that the Order shall be immediately effective and enforceable upon entry; and it is further

ORDERED that notice of the Motion as provided therein shall be deemed good and sufficient notice.

Dated: New York, New York
_____, 2012

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.

Chapter 11

Case No. 12-12900 (SCC)

(Jointly Administered)

**STIPULATION BETWEEN DEBTORS AND
KEYSTONE INDUSTRIES LLC TO PROCEED WITH LITIGATION**

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 commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors 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 Debtors’ cases (the “**Chapter 11 Cases**”) are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the court’s Order Granting Debtors’ Motion for Joint Administration of Chapter 11 dated July 10, 2012.

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, Patriot Coal Corporation’s Senior Vice President and Chief Financial Officer, which is incorporated herein by reference.

3. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and may be determined by the Bankruptcy Court.

Debtor's Claim

4. On June 1, 2012, Patriot Coal Sales LLC, a Debtor entity ("**Patriot**"), commenced an action for breach of contract (the "**Keystone Action**"), in the United States District Court for the Southern District of West Virginia, against Keystone Industries LLC ("**Keystone**"), a limited liability corporation organized and existing under the laws of Maryland with a principal place of business in Fort Myers, Florida.

5. In the Keystone Action, Patriot alleges that Keystone failed to take or pay for coal, in breach of its contractual obligations under a December 7, 2011 coal supply agreement between the parties (the "**Claim**").

6. Patriot intends to proceed with its Claim, which is not subject to the automatic stay in favor of the Debtors under 11 U.S.C. §362(a) (the "**Automatic Stay**"). *See e.g., Koolik v. Markowitz*, 40 F.3d 567, 568 (2d Cir. 1994) ("This Court has recognized that the automatic stay is applicable only to proceedings 'against' the debtor.").

7. Keystone wishes to proceed with its defense against the Claim.

It is hereby stipulated and agreed, by and among the parties to this Stipulation, as follows:

8. The Automatic Stay shall not bar Keystone from defending against the Claim in the Keystone Action. In the event that Patriot chooses to continue litigating the Claim, Keystone is allowed to proceed with its own defense in the Keystone Action. *See,*

e.g., In re Enron Corp., 2003 Bankr. LEXIS 2261, at *13 (Bankr. S.D.N.Y. Jan. 13, 2003) (holding that “where a debtor initiates litigation and no counterclaim is asserted, mere defenses to a debtor’s affirmative claims are not proscribed by the automatic stay”).

9. The Stipulation as set forth herein shall have no effect as to any parties and any claims or causes of action that are not described herein. The Automatic Stay shall remain in full force and effect with respect to any parties and any claims, causes of action, including collection on any judgments, against the Debtors and their estates.

10. 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 prove that Keystone is not barred by the Automatic Stay to proceed with its defense against the Claim in accordance with the terms hereof.

11. This Stipulation may be signed in counterpart originals and delivered by facsimile, which, when fully executed, shall constitute a single original.

12. 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.

13. The Court shall retain jurisdiction (and Keystone consents 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.

14. Each of the undersigned counsel represents that he/she is authorized to execute this Stipulation on behalf of his/her respective client.

15. This Stipulation is effective upon submission to the Court without further order of Court and shall not be modified, altered, amended or vacated without written consent of all parties hereto, subject to Court approval.

KEYSTONE INDUSTRIES, LLC

By Counsel,

SPILMAN THOMAS & BATTLE, PLLC

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SO ORDERED

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE