Objection Deadline: December 7, 2012 at 4:00 p.m. (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.*,	**Chapter 11**
	Case No. 12-12900 (SCC)
	(Jointly Administered)
Debtors.[1]	

HERITAGE COAL COMPANY, LLC'S MOTION FOR AN ORDER APPROVING SETTLEMENT AGREEMENT BETWEEN THE EVANSVILLE PRP GROUP ORGANIZATION AND SOLAR SOURCES, INC. AND FOR RELIEF FROM THE AUTOMATIC STAY

Heritage Coal Company, LLC ("**Heritage**") hereby submits this motion (the "**Motion**") pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and, to the extent applicable, section 362(d) of the Bankruptcy Code, for

[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.

entry of an order, substantially in the form attached hereto as Exhibit A (the "**Proposed Order**"), (a) approving that certain letter agreement entered into on November 5, 2012 (the "**Settlement Agreement**"), a copy of which is attached to the Proposed Order as Exhibit 1,[2] among Heritage, Mead Johnson & Company, LLC ("**Mead Johnson**") and Vectren Corp. ("**Vectren**", collectively, the Evansville Greensway PRP Group Organization (the "**PRP Group**")), and Solar Sources, Inc. ("**Solar,**" and together with the PRP Group, the "**Parties**"); (b) lifting the automatic stay imposed by section 362 of the Bankruptcy Code, to the extent applicable, solely to the extent necessary to permit payment of insurance proceeds, on behalf of Heritage, by Resolute Management, Inc. ("**Resolute**")[3] to Solar, pursuant to the Settlement Agreement; and (c) authorizing Heritage to take and perform such other actions as may be necessary or appropriate to implement and effectuate the Settlement Agreement. In support of the Motion, Heritage respectfully represents as follows:

Background and Jurisdiction

1. On July 9, 2012 (the "**Petition Date**"), Patriot Coal Corporation and each of its subsidiaries that are debtors and debtors in possession in these proceedings, including Heritage, (collectively, the "**Debtors**"), commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors' cases are being jointly administered pursuant to Rule 1015(b)

[2] Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Settlement Agreement.

[3] Resolute administers certain former CNA Financial Corporation commercial general liability insurance policies.

of the Bankruptcy Rules and the Court's Joint Administration Order entered on July 10, 2012 [ECF No. 30].

2. The individual members of the PRP Group, among others, were named as defendants in *Evansville Greenway and Remediation Trust v. Southern Indiana Gas and Electric Company, et al.*, Civ. Act. No. 3:07-cv-00066 SEB-WGH (S.D. Ind. 2007), a case filed in the United States District Court for the Southern District of Indiana pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, for the recovery of cleanup costs of two allegedly contaminated sites. The individual members of the PRP Group organized themselves into the PRP Group for the purpose of filing claims against other potentially responsible parties ("**PRPs**"), including, but not limited to PRPs who the Evansville Greenway and Remediation Trust failed to name as defendants. In furtherance of this purpose, the PRP Group brought claims against Solar, as a third party defendant in *Evansville Greenway PRP Group v. Solar Sources, Inc.*, Civ. Act. No. 3:07-cv-00066 SEB-WGH (S.D. Ind. 2007) (the "**Civil Action**"). On February 25, 2011, the district court granted summary judgment to Solar, concluding that the Superfund Recycling Equity Act (SREA), 42 U.S.C. § 9627, exempts certain recyclers from CERCLA clean-up liability and awards costs and fees to exempt recyclers who have had to defend themselves in contribution actions. The court determined that Solar was such a recycler and accordingly, on February 23, 2012, awarded to Solar $361,273.58 in costs and fees that it had incurred in defending the Civil Action. (ECF No. 947).

3. The PRP Group subsequently appealed both the summary judgment order and the order awarding fees, which appeal remains pending before the U.S. Court of Appeals for the Seventh Circuit. *Evansville Greenway PRP Group v. Solar Sources, Inc.*, Case Nos. 12-1700

& 12-1862 (7th Cir.). As a result of the commencement of these chapter 11 cases, Heritage filed a notice of automatic stay in the Seventh Circuit, and the Seventh Circuit entered an order staying the proceedings on August 3, 2012. However, on October 10, 2012, upon motion by Solar, the Seventh Circuit vacated the stay on the basis that the proceeding was against the PRP Group, not Heritage. (ECF Doc. 19).

4. The Parties have engaged in extensive arms' length negotiations since April 2012. Until August 2012, when the Seventh Circuit stayed the proceedings, the Parties engaged in settlement negotiations using a Seventh Circuit mediator. The Parties then continued settlement discussions on their own. As a result of these efforts, on November 5, 2012, the Parties agreed to the terms and conditions of the Settlement Agreement. In advance of filing the Motion, Heritage provided the Parties with a copy of the Motion.

Terms of the Settlement Agreement[4]

5. The key terms of the Settlement Agreement are summarized as follows:

(a) The Settlement Agreement is conditioned upon approval by this Court. Heritage shall use its commercially reasonable efforts to obtain entry of the Proposed Order on or before December 15, 2012. If (a) the Court enters an order denying approval of the Settlement Agreement with prejudice, or (b) the Proposed Order is not entered on or before December 15, 2012 and Solar does not agree to extend such date, the Settlement Agreement shall be null and void, and Heritage shall not be bound by the Settlement Agreement or any of its terms.

(b) The PRP Group will pay Solar $361,887.58[5] as a final settlement of all claims that were or could have been raised in the litigation. Of this amount, Mead Johnson will pay $120,731.52; Vectren will

[4] Any description contained in this Motion regarding the Parties' obligations under the Settlement Agreement is merely a summary and is qualified in its entirety by the actual terms and conditions of the Settlement Agreement. In the event any such description conflicts with or varies from the Settlement Agreement, the Settlement Agreement shall control.

[5] This amount includes $614 more than the district court's award on account of postjudgment interest.

pay $120,731.52; and, subject to entry of the Proposed Order, Resolute, on behalf of Heritage, will pay $120,424.54. Heritage shall also take all necessary steps and act in good faith to obtain payments from Resolute as expeditiously as possible.

(c) Subject to entry of the Proposed Order, if Resolute has not paid the full $120,424.54 described in paragraph (b) to Solar on or before December 24, 2012, Mead Johnson and Vectren shall be jointly and severally liable for any amount owed by Heritage and/or Resolute under the Settlement Agreement that remains unpaid.

(d) In exchange for and upon receipt of the payment described in paragraph (b), Solar agrees that the Parties shall jointly move to dismiss with prejudice the appeal currently pending in the Seventh Circuit and thereafter Solar shall file a suitable notice of satisfaction of judgment with the district court. The Parties agree that pursuant to applicable law, the judgment remains *res judicata* and preclusive of any claim that was or could have been brought in the lawsuit by the PRP Group, its members, or Solar.

Basis for Relief

I. The Settlement Agreement is in the Best Interests of Heritage's Estate and Should be Approved

A. Standard to be Applied by the Court

6. Section 105(a) of the Bankruptcy Code authorizes the court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). In practice, section 105(a) of the Bankruptcy Code grants bankruptcy courts broad statutory authority to enforce the Bankruptcy Code's provisions either under the specific statutory language of the Bankruptcy Code or under equitable common law doctrines. *See Momentum Mfg. Corp. v. Employee Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994) ("It is well settled that bankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.").

7. Bankruptcy Rule 9019(a) authorizes a debtor in possession to compromise and settle claims, subject to approval by the Bankruptcy Court. *See* Fed. R. Bankr. P. 9109(a) ("On motion by the [debtor in possession] and after notice and a hearing, the court may approve a compromise or settlement."). Compromises are favored in bankruptcy, *Collier on Bankruptcy* ¶ 9019.01 (16th ed. 2010), and are "a normal part of the process of reorganization." *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (quoting *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)); *In re New York, New Haven and Hartford Railroad Co.*, 632 F.2d 955, 960 (2d Cir. 1980). The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. *Nellis v. Shugrue*, 165 B.R. 115, 122-23 (S.D.N.Y. 1994) (Sotomayor, J.).

8. In order to merit the approval of the bankruptcy court, a settlement must be "in the best interests of the estate." *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 523 (S.D.N.Y. 1993). The bankruptcy court should form an informed and independent judgment as to whether a proposed compromise is fair and reasonable. *Nellis*, 165 B.R. at 122. In forming its judgment, the court may give weight to the "informed judgments of the . . . debtor-in-possession and their counsel that a compromise is fair and equitable, and consider the competency and experience of counsel who support the compromise." *Vaughn v. Drexel Burnham Lambert Grp., Inc. (In re Drexel Burnham Lambert Grp., Inc.)*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991); *see also Nellis*, 165 B.R. at 122; *Purofied Down Prods.*, 150 B.R. at 522. The bankruptcy court should also exercise its discretion "in light of the general public policy favoring settlements." *In re Hibbard Brown & Co.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998); *see Shugrue*, 165 B.R. at 123 ("The general rule [is] that settlements are favored and, in fact, encouraged in bankruptcy.").

9. To approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact raised by the settlement, but rather should "canvass the issues and whether the settlement fall[s] below the lowest point in the range of reasonableness." *Finkelstein v. W.T. Grant Co. (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (internal quotation marks and citation omitted); *see also Purofied Down Prods.*, 150 B.R. at 522 ("[T]he court need not conduct a 'mini-trial' to determine the merits of the underlying [dispute]."). This standard "reflect[s] the considered judgment that little would be saved by the settlement process if bankruptcy courts could approve settlements only after an exhaustive investigation and determination of the underlying claims." *In re Purofied Prods.*, 150 B.R. at 522-23.

10. In deciding whether a particular settlement falls within the "range of reasonableness," courts consider the following "*Iridium*" factors:

- "the balance between the litigation's possibility of success and the settlement's future benefits;"
- "the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay;"
- "the paramount interests of creditors;"
- "whether other parties in interest support the settlement;"
- "the competence and experience of counsel supporting . . . the settlement;"
- "the nature and breadth of releases to be obtained by officers and directors," and;
- "the extent to which the settlement is the product of arm's length bargaining."

Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 462 (2d Cir. 2007) (internal quotation marks and citation omitted).

B. Application to the Settlement Agreement

11. The Settlement Agreement falls well within the "range of reasonableness," and is in the best interests of Heritage and its estate, thus warranting approval. The substantial benefits to Heritage and its estate and creditors clearly outweigh any potential costs.

(i) Balance between Probability of Success in the Litigation and Future Benefits

12. Entry into the Settlement Agreement will avoid the risk and expense of further litigation in the Civil Action. Heritage has undertaken a diligent analysis of the disputed claims and have concluded that, given the likelihood of success of those claims and the costs of litigating them, the benefits of the Settlement Agreement outweigh its costs. Here, the merits of the Civil Action are disputed by the Parties and none of the Parties concedes its ability to succeed at trial. As the merits are disputed, the outcome cannot be predicted with any certainty. Although Heritage believes it has a strong legal argument on appeal, even if the PRP Group is successful in the Seventh Circuit, the matter may then be remanded to the district court. Further, if the PRP Group is not successful in the Civil Action, they will have to pay Solar's appellate attorney's fees, which Solar has alleged already exceed $25,000. In contrast, by entering into the Settlement Agreement, Heritage need not expend any funds. Pursuant to the Settlement Agreement, Solar has agreed to limit any recovery against Heritage to available insurance proceeds or, if any amount remains unpaid by Resolute, to payments by the other members of the PRP Group, none of whom is a Debtor.

(ii) Prospect of Complex and Protracted Litigation

13. Approval of the Settlement Agreement will allow Heritage to avoid any further expense and delay associated with litigation of the Civil Action. Absent approval of the Settlement Agreement, the Parties would have to brief the claims in dispute before the Seventh

Circuit and conduct oral argument before the Seventh Circuit, which would require the expenditure of legal fees. Heritage estimates that this process, along with the time needed for the Seventh Circuit to consider the appeal, would take seven to twelve months. Moreover, should the PRP Group be successful on appeal, the matter may then proceed to trial in the district court, which would require costly and time-consuming preparation. Finally, as discussed above, if the PRP Group is not successful in the Civil Action, they will have to pay Solar's appellate attorney's fees, which Solar has alleged already exceed $25,000. Thus, allowing the Civil Action to proceed is more costly for the PRP Group, and, in turn, Heritage.

(iii) Interest of Creditors

14. Heritage submits that approval of the Settlement Agreement is in the best interest of the creditors. In addition to the certainty and efficiency of a timely and consensual resolution of the Civil Action, as discussed above, pursuant to the Settlement Agreement, the Parties have agreed to limit any recovery against Heritage to available insurance proceeds or, if any amount remains unpaid by Resolute, to payments by the other members of the PRP Group, none of whom is a Debtor. Thus, Heritage's estate will not be negatively impacted.

(iv) Extent that Settlement is the Product of Arms' Length Bargaining

15. The Settlement Agreement is the result of good faith, arms' length bargaining among the Parties without collusion or fraud. The Parties have been negotiating since April 2012, and, for approximately four months, with a court-appointed mediator. All of the Parties were represented by experienced counsel, and the Settlement Agreement is the product of their judgment and negotiation. Among other things, the Settlement Agreement (i) provides for the full and final resolution of the Civil Action; (ii) precludes any future claim that was or could have been brought in the Civil Action; and (iii) represents a fair and equitable resolution for Heritage and its estate in a timely and efficient manner. All of the Parties are in favor of the

Settlement Agreement, which, given the uncertainty of the outcome of the Civil Action, reflects concessions by all of the Parties. Thus, the Settlement Agreement is a fair and equitable compromise for all of the Parties.

II. Resolute Should be Authorized to Pay Solar with the Proceeds of Heritage's Insurance Policy Pursuant to the Settlement Agreement

16. To the extent applicable, Heritage submits that cause exists under section 362(d) of the Bankruptcy Code to lift the automatic stay for the sole purpose of allowing Resolute to pay insurance proceeds pursuant to the Settlement Agreement. It is not clear whether the proceeds of Heritage's insurance policy are property of its estate. Section 362(a)(3) of the Bankruptcy Code provides for an automatic stay of any action seeking to obtain possession or exercise control over property of the bankruptcy estate. As discussed in a recent decision of the Bankruptcy Court for the Southern District of New York, *In re MF Global Holdings, Ltd., et al.*, the question of whether proceeds of an insurance policy are property of the bankruptcy estate is complex and somewhat unsettled. 469 B.R. 177, 190 (Bankr. S.D.N.Y. 2012). Although it is "well-settled that a debtor's liability insurance is considered property of the estate . . . 'the courts are in disagreement over whether the proceeds of a liability insurance policy are property of the estate.'" *Id.* (quoting *In re Downey Fin. Corp.*, 428 B.R. 595, 603 (Bankr. D. Del. 2010)) (emphasis added). Thus, to the extent the applicable insurance proceeds are deemed not to be property of Heritage's estate, the stay would not apply.

17. Moreover, to the extent the automatic stay does apply, Heritage submits that cause exists for this Court to grant relief from the automatic stay for the purpose of permitting Resolute to pay proceeds pursuant to the Settlement Agreement. Section 362(d)(1) of the Bankruptcy Code provides that, on request of a party in interest and after notice and a hearing, the court shall grant relief from the automatic stay "such as by terminating, annulling,

modifying, or conditioning" the stay "for cause." 11 U.S.C. § 362(d)(1). "Cause" is a "broad and flexible concept that must be determined on a case-by-case basis." *In re MF Global Holdings Ltd.*, 469 B.R. at 191. For the reasons provided above in support of approval of the Settlement Agreement, cause exists to modify the automatic stay. The Settlement Agreement resolves all outstanding disputes between the Parties with regard to the subject matter therein without the need for costly and time-consuming litigation, at no direct cost to Heritage. Thus, lifting the automatic stay to permit payment of Heritage's insurance proceeds by Resolute is in the best interests of Heritage's estate.

18. Accordingly, Heritage respectfully requests that the Court lift the automatic stay imposed by section 362(d)(1) of the Bankruptcy Code, to the extent applicable, solely to the extent necessary to permit payment of insurance proceeds by Resolute pursuant to the Settlement Agreement.

III. Conclusion

19. In sum, Heritage has determined, exercising their sound business judgment, that the resolution reached with the Parties pursuant to the Settlement Agreement is fair, reasonable and beneficial to Heritage's estate and creditors, and that the paramount interests of all parties in interest are best served by the Court's entry of the Proposed Order. Accordingly, Heritage respectfully requests the Court to grant the relief requested herein in all respects.

Notice

20. Consistent with the Order Establishing Certain Notice, Case Management and Administrative Procedures entered by the Court on October 18, 2012 [ECF No. 1386] (the "**Case Management Order**"), Heritage 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);

and (c) the Parties to the Settlement Agreement. 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, Heritage submits that no further notice is necessary. Pursuant to paragraph 22 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

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

WHEREFORE, Heritage respectfully requests the Court grant the relief requested herein and such other and further relief as is just and proper.

New York, New York
Dated: November 27, 2012

By: /s/ Michelle M. McGreal

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Counsel for 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 1
Settlement Agreement

BARNES & THORNBURG LLP

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CONFIDENTIAL SETTLEMENT COMMUNICATION

November 5, 2012

VIA ELECTRONIC MAIL AND REGULAR MAIL

G. Daniel Kelley, Jr.
Ice Miller LLP
One American Square, Suite 2900
Indianapolis, Indiana 46282-0200
daniel.kelley@icemiller.com

Re: *Settlement Agreement in Evansville Greenway PRP Group v. Solar Sources Inc., Seventh Circuit Cause Nos. 12-1700 & 12-1862*

Counsel:

I write on behalf of the Evansville Greenway PRP Group (the "PRP Group") in order to memorialize the settlement agreement the parties have reached in this matter. As the matter now stands, the parties have agreed to the following terms:

1. The entry into and execution of this Letter Agreement by Heritage Coal Company, LLC ("Heritage") is conditioned upon approval by the Bankruptcy Court of the Southern District of New York ("the Bankruptcy Court". Heritage shall use commercially reasonable efforts to obtain an order of the Bankruptcy Court providing such approval (the "Bankruptcy Approval Order") on or before December 15, 2012 on such notice and after such hearing as the Bankruptcy Court may require. If (a) the Bankruptcy Court enters an order denying approval of this Settlement Agreement with prejudice, (b) the Bankruptcy Approval Order is not entered on or before December 15, 2012 unless Solar Sources, Inc. ("Solar") agrees to extend such date, this Letter Agreement shall be null and void as to Heritage, and Heritage shall not be bound by this Letter Agreement or any of its terms.

2. The PRP Group will pay the judgment of $361,273.58 plus $614 interest, a total of $361,887.58 as a final settlement of all claims that were or could have been raised in this matter.

3. The payment will be made by three separate checks made payable to "Solar Sources, Inc." The checks will be in the following amounts: (1) as to Mead Johnson & Company, LLC., $120,731.52 (2) as to Vectren Corp., $120,731.52; and (3) subject to entry of the Bankruptcy Court Approval Order, as to Heritage's insurance carrier, $120,424.54.

4. Checks for $120,731.52 each will be tendered to Solar by Mead Johnson & Company, LLC and Vectren Corp. on behalf of Solar no later than November 5, 2012.

5. Subject to entry of the Bankruptcy Approval Order, the check for $120,424.54 from Heritage's insurance carrier will be tendered to Solar no later than December 24, 2012. Heritage shall also take all necessary steps and act in good faith to obtain payment from its insurance carrier as expeditiously as possible.

6. Subject to entry of the Bankruptcy Court Approval Order, if Heritage's insurance carrier has not paid the full amount described in Paragraph 2 to Solar on or before December 24, 2012, Mead Johnson & Company, LLC and Vectren Corp. shall be jointly and severally liable for any amount owed by Heritage and/or its insurance carrier under this agreement that remains unpaid. Any amounts remaining shall be paid by Mead Johnson & Company, LLC. and Vectren Corp. in equal shares by December 28, 2012.

7. To the extent Solar collects any amount from Mead Johnson & Company, LLC and Vectren Corp. pursuant to Paragraph 6, Solar shall assign its judgment against the PRP Group to Mead Johnson & Company LLC and Vectren Corp. However, any assignment under this Paragraph 7 does not cancel, change, or otherwise affect the judgment, if Solar has otherwise satisfied the requirements of Paragraph 8.

8. In exchange for and upon the receipt of the payment described in Paragraph 2, Solar agrees that the parties shall jointly move to dismiss with prejudice the appeal currently pending in the Seventh Circuit and thereafter Solar shall file a suitable notice of satisfaction of judgment with the district court. The parties agree that pursuant to applicable law, the judgment remains res judicata and preclusive of any claim that was or could have been brought in this lawsuit by the PRP Group, its members, or Solar Sources, Inc.

9. The parties agree that this Letter Agreement may only be modified by a writing signed by all parties.

Please review these terms and inform us immediately if you believe they in any way misstate the parties' understanding. If not, please have your client sign this letter agreement and return it to me as soon as possible.

Sincerely,

Mark J. Crandley

Signed and agreed:

Solar Sources Inc.

By Felson Bowman

its CEO

Signed and agreed:

Mead Johnson & Company, LLC

By _____

its _____

Signed and agreed:

Vectren Corp.

By Robert E. Heidorn

its VP, General Counsel

Signed and agreed:

_____
Solar Sources Inc.

By Felson Bowman

its CEO

Signed and agreed:

_____
Mead Johnson & Company, LLC

By Stanley P Barringer Jr

its Asst Secretary and Regional General Counsel, Americas & Europe

Signed and agreed:

_____
Vectren Corp.

By _____

its _____

Signed and agreed:

ERW

Heritage Coal Company LLC

By Bruce A. Short

its VICE PRESIDENT