

**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)**

**STIPULATION AND ORDER PURSUANT TO SECTIONS 105(a), 363(b) AND  
365(a) OF THE BANKRUPTCY CODE AUTHORIZING AND APPROVING  
(i) THE DEBTORS' ASSUMPTION OF CERTAIN INSURANCE PROGRAMS,  
AND (ii) THE DEBTORS' ENTRY INTO INSURANCE PROGRAMS**

WHEREAS, on July 9, 2012 (the "**Petition Date**"), each Debtor commenced with this Court a voluntary chapter 11 case under title 11 of the United States Code (the "**Bankruptcy Code**") and 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;

WHEREAS, prior to the Petition Date, commencing on November 1, 2007, (i) National Union Fire Insurance Company of Pittsburgh, Pa. and/or certain of its affiliates (collectively, the "**Insurers**") issued certain General Liability, Automobile Liability insurance policies to the Debtors for a policy period ending November 1, 2012 and (ii) the Insurers issued certain Statutory Workers' Compensation insurance policies to the Debtors for a policy period ending November 1, 2012 (collectively, the "**Existing Insurance Programs**");

WHEREAS, the Debtors have agreed with the Insurers to enter into renewal insurance programs for General Liability, Automobile Liability and Statutory Workers'

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<sup>1</sup> The Debtors are the entities listed on the Notice of Presentment whereby this Stipulation and Order is presented to this Court. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

Compensation coverage for the policy year commencing November 1, 2012, and ending on November 1, 2013, under policy numbers 4807244, 4806731, 0898921 and 007209909, respectively (collectively, the “**Renewal Insurance Programs**” and together with the Existing Insurance Programs, the “**Insurance Programs**”) and to assume the Existing Insurance Programs in connection therewith;

WHEREAS, the Debtors seek the entry of this Stipulation and Order (this “**Stipulation and Order**”) pursuant to sections 105(a), 363 and 365(a) of the Bankruptcy Code and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure authorizing such entry into the Renewal Insurance Programs and assumption of the Existing Insurance Programs;

WHEREAS, the estimated annual premium payments for the Renewal Insurance Programs will be \$438,984 for the General Liability and Automobile Liability insurance programs and \$4,258,607 for the Statutory Workers’ Compensation insurance programs;

WHEREAS, the Insurers hold and are beneficiary to certain letters of credit as collateral in the amount of \$10,145,000 on account of Statutory Workers’ Compensation insurance programs and \$861,630 on account of General Liability and Automobile Liability insurance programs (collectively, the “**Existing Collateral**”);

WHEREAS, the Insurers presently calculate, subject to the uncertainty of loss development, that they likely will be adequately collateralized under the letters of credit constituting the Existing Collateral in respect of the Existing Insurance Programs. In order for the Debtors to enter into the Renewal Insurance Programs with a reduced collateral requirement, the Insurers require (i) cross-collateralization of the General Liability and Automobile Liability Insurance programs with the Statutory Workers’ Compensation programs, and (ii) cross-collateralization of the Existing Insurance Programs with the Renewal Insurance

Programs. The Insurers also require that the Debtors provide the reduced additional collateral in the form of letters of credit in an aggregate amount of \$4,775,000 (the “**Renewal Collateral**” and together with the Existing Collateral, the “**Collateral**”); *provided that* upon payment of the annual premium and posting of the Renewal Collateral, the Debtors shall not be required to post any additional collateral on account of the Renewal Insurance Programs prior to November 1, 2013 for policy periods prior to November 1, 2013; and

WHEREAS, the Debtors, after undertaking extensive efforts to obtain competitive insurance quotes from numerous insurers and negotiating at arm’s length and in good faith with the Insurers, have determined in the exercise of their business judgment that entering into this Stipulation and Order is in the best interest of the Debtors, their estates and all creditors and parties in interest.

**NOW, THEREFORE, IT IS HEREBY STIPULATED, ORDERED, AND AGREED**, by and between the parties through their undersigned counsel, that:

1. The above recitals are incorporated herein as agreed and so-ordered.
2. The Debtors are authorized to assume and do hereby assume the Existing Insurance Programs in their entirety in accordance with section 365 of the Bankruptcy Code. The assumption of the Existing Insurance Programs is an exercise of the Debtors’ sound business judgment and is in the best interest of the Debtors and their estates. There are no defaults under the Existing Insurance Programs that preclude the assumption, the Debtors have satisfied all of their obligations under section 365(b)(1) of the Bankruptcy Code, and the Insurers shall not seek any cure payments or adequate assurance except as expressly set forth herein; *provided, however*, that (i) the Debtors shall pay any undisputed amounts currently due under the

Insurance Programs in the ordinary course of the Debtors' businesses, and (ii) any currently disputed amounts will be resolved in accordance with the terms of the Insurance Programs.

3. In furtherance of the authority granted by this Court pursuant to the Final Order Authorizing (i) Debtors to Continue and Renew Their Liability, Property, Casualty and Other Insurance Programs and Honor All Obligations in Respect Thereof and (ii) Financial Institutions to Honor and Process Related Checks and Transfers, entered on August 2, 2012 [ECF No. 258], the Debtors are hereby authorized to enter into the Renewal Insurance Programs pursuant to section 363 of the Bankruptcy Code.

4. The Debtors are hereby authorized to execute all documentation reasonably necessary to assume the Existing Insurance Programs and to enter into the Renewal Insurance Programs.

5. The Debtors are hereby authorized to enter into further renewals of the Insurance Programs without further order of this Court, and this Stipulation and Order shall govern such renewals.

6. The Debtors are hereby authorized to pay their obligations under the Insurance Programs, including, without limitation, premium and losses, in the ordinary course of business, in accordance with the relevant terms of the Insurance Programs, without further order of this Court.

7. In the event of a default by the Debtors under the Insurance Programs, the Insurers may exercise all contractual rights in accordance with the terms of the Insurance Programs without further order of this Court, but upon notice to the Debtors and at least a five-business day (or such later time period as provided by contract or applicable law) opportunity to cure any such defaults, including, without limitation, their rights to (i) cancel the Renewal

Insurance Programs, and (ii) foreclose on any Collateral, in part or in full, in which they have a security interest and which may be subject to the automatic stay only insofar as it relates to the Insurance Programs.

8. The reimbursement obligations and any other obligations under the Insurance Programs (regardless of whether all or any part of such obligations are liquidated before or after confirmation of a plan or conversion of one or more of the pending cases to chapter 7) shall be administrative obligations entitled to priority under section 503(b) of the Bankruptcy Code.

9. The Insurers shall be exempt from any bar date that may be issued for the filing of any proof of claim relating to administrative expenses for the Insurance Programs and no proof of claim need be filed by the Insurers in respect of such bar date.

10. All collateral or security held as of the date hereof by the Insurers and all prior payments to the Insurers under the Insurance Programs are approved as unavoidable transfers under the Bankruptcy Code and applicable state law. The Insurers are authorized to retain and use such collateral or security, any additional or replacement collateral or security, and any prior or future payment that may be provided to the Insurers, in each case in accordance with the Insurance Programs' terms; *provided, however*, that the Insurers are required to return to the Debtors any unearned premium payments in respect of the Renewal Insurance Programs for the policy period commencing November 1, 2012 in accordance with the Renewal Insurance Programs' terms.

11. The Insurers may adjust, settle and pay insured claims, utilize funds provided for that purpose, and otherwise carry out the terms and conditions of the Insurance Programs, without further order of this Court; *provided, however*, that nothing herein shall be deemed to grant relief from the automatic stay to a claimant to pursue any claim against the Debtors.

12. The Debtors' rights against all collateral held by the Insurers shall be governed by the terms of the Insurance Programs and the related security documentation, including but not limited to any arbitration provisions contained therein. The Debtors shall not seek to estimate, under section 502(c) of the Bankruptcy Code, any claim of the Insurers on account of security held by the Insurers pursuant to the Insurance Programs.

13. This Stipulation and Order shall inure to the benefit of and shall be binding on the Insurers, the Debtors, their respective successors in interest and assigns.

14. This Stipulation and Order shall only relate to the matters specifically referenced herein.

15. This Stipulation and Order may be signed in counterparts and by facsimile, with each signed counterpart being deemed a part of the original document.

16. This Stipulation and Order may not be modified, altered or amended except by a writing signed by the parties hereto.

17. This Court shall retain jurisdiction to resolve all matters relating to the  
implementation of this Stipulation and Order.

Dated: New York, New York  
November 27, 2012

By: /s/ Michelle A. Levitt  
Michelle A. Levitt

By: /s/ Brian M. Resnick  
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*Counsel to the Debtors  
and Debtors in Possession*

**IT IS SO-ORDERED:**  
December 10, 2012  
New York, New York

/s/ Shelley C. Chapman  
HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE