

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
In re: : Chapter 11  
: :  
PATRIOT COAL CORPORATION, *et al.*, : Case No. 12-12900 (SCC)  
: :  
: :  
Debtors. : Jointly Administered  
----- X

**ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE  
AUTHORIZING THE EMPLOYMENT AND RETENTION  
OF MESIROW FINANCIAL CONSULTING, LLC  
AS FINANCIAL ADVISORS TO THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS, NUNC PRO TUNC TO JULY 24, 2012**

**Related Docket Nos. 816 and 1043**

Upon the application (the “**Application**”) of the Official Committee of Unsecured Creditors (the “**Committee**”) appointed in the Chapter 11 Cases of the above-captioned debtors and debtors-in-possession herein (the “**Debtors**”), for entry of an order, pursuant to sections 1103(a) and 1103(b) of Title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”), authorizing the retention and employment of Mesirov Financial Consulting, LLC (“**MFC**”) as financial advisors to the Committee *nunc pro tunc* to July 24, 2012, as was subsequently amended (the “**Amended Application**,”); and upon the Declaration of Monty Kehl in Support of the Application (the “**Kehl Declaration**”); and having heard the statements of counsel in support of the relief requested therein and at the hearing thereon (the “**Hearing**”); and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §157(b)(2), (c) MFC does not hold or represent any adverse interest in connection with these

Chapter 11 Cases, (d) MFC is a “disinterested person” and has no adverse interest in connection with these Chapter 11 Cases as contemplated by the Bankruptcy Code, and (e) such retention is necessary and in the best interests of the Committee; and the Court finding that notice of the Application given by the Committee was sufficient under the circumstances and that no other or further notice is necessary; and the Court having determined that the legal and factual bases set forth in the Application, the Kehl Declaration and at the Hearing on the Application establish just cause for the relief herein granted, and after due deliberation and sufficient cause appearing therefore,

**IT IS HEREBY ORDERED THAT:**

1. The Amended Application is granted to the extent provided herein.
2. The Committee is authorized, pursuant to sections 1103(a) and 1103(b) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, Local Bankruptcy Rules 2014-1 and 2016-1, to employ and retain MFC as financial advisors, in accordance with the Amended Application, nunc pro tunc to July 24, 2012, to perform the services set forth below and on Exhibit A to this Order:

- a. Provide litigation support services in connection with causes of action seeking to avoid or recover damages in connection with potential preferences and fraudulent conveyance complaints which may be brought by the Committee, specifically including the investigation of transactions with Peabody, Arch, and ArcLite consisting of:
  - i. Assist with discovery including
    1. Review of documents to identify potentially fraudulent transaction documents
    2. Identification of possible witnesses for deposition
    3. Assistance in developing deposition interrogatories
    4. Assistance in developing deposition questions

5. Attendance at depositions, if required

- ii. Assessment and analyses of solvency, reasonably equivalent value and any other financial issues as required in support of potential litigation actions
  - iii. Preparation of an expert report setting forth damages and/or amounts sought to be avoided damages
  - iv. Analysis of counterclaims, if any, asserted by any defendants
  - v. Rebuttal of any counterclaims or defenses asserted by any defendants
  - vi. Expert testimony, if required.
- b. Analysis of existing and proposed employee compensation programs including any proposed annual incentive bonus program/KEIP as well as OPEB<sup>1</sup>/Pension/Labor obligations, including funding status and financial analyses related thereto;
- c. Tax analyses and advice regarding preservation of tax attributes for the Debtor under any proposed Plan of Reorganization and any post-conformation trust that may be proposed; and,
- d. Reconciliation of prepetition and postpetition intercompany claims and analysis of intercompany payables/receivables, including as set forth on the Debtors' Schedules/Statements of Financial Affairs.

3. Should the Committee prior to confirmation of a chapter 11 plan(s) seek to expand the role of MFC beyond the matters listed above, MFC will promptly seek approval from this Court for such expanded role. Notice shall be given in accordance with the Bankruptcy Rules, Local Rules and any orders of this Court.

4. MFC currently does not contemplate utilizing independent contractors or sub-contractors in performing its role in these Chapter 11 Cases. To the extent that the circumstances change to warrant the use of sub-contractors or independent contractors, MFC will

---

<sup>1</sup> OPEB means "Other Post-Employment Benefits."

promptly seek approval from the Court. Notice shall be given in accordance with the Bankruptcy Rules, Local Bankruptcy Rules and any orders of this Court.

5. MFC shall be compensated for fees and reimbursed for reasonable and necessary expenses and will file interim and final fee applications for allowance of its compensation and expenses in accordance with sections 330 and 331 of the Bankruptcy Code and the Bankruptcy Rules, the Local Rules, the Order Establishing Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals, dated August 2, 2012 [Docket No. 262], the Standing Order Establishing Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals [M-412] (Dec. 21, 2010), the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases [M-389] (Nov. 25, 2009), and the U.S. Trustee Guidelines (collectively, the “**Fee Guidelines**”), and any other applicable order of this Court.

6. MFC shall not bill the Debtors for staff or paraprofessionals performing clerical or administrative services.

7. Prior to any increases in MFC’s rates for any individual retained by MFC and providing services in these cases, MFC shall file a supplemental affidavit with the Court and provide ten business days’ notice to the Debtors, the United States Trustee and any official committee. The supplemental affidavit shall explain the basis for the requested rate increases in accordance with Section 330(a)(3)(F) of the Bankruptcy Code and state whether the Committee has consented to the rate increase. The United States Trustee retains all rights to object to any rate increases on all grounds including, but not limited to, the reasonableness standard provided for in section 330 of the Bankruptcy Code, and the Court retains the right to review any rate increase pursuant to section 330 of the Bankruptcy Code.

8. Notwithstanding anything to the contrary in the Application, the Amended Application or the Kehl Declaration, the indemnification provisions set forth in paragraph 18 of the Kehl Declaration are subject in their entirety to the following:

- a. all requests by the MFC Indemnified Parties for indemnification by the Debtors and their estates pursuant to the Kehl Declaration and incorporated herein by reference and in this Order approving this indemnification, shall be made by means of an application filed with the Bankruptcy Court (interim or final as the case may be) and shall be subject to review by the Bankruptcy Court to ensure that payment of such indemnity conforms to the terms of this Order approving this indemnification and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought;
- b. in no event shall the MFC Indemnified Parties be indemnified in the case of their own intentional fraud, bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct;
- c. in no event shall the MFC Indemnified Parties be indemnified if the Committee or a representative of the Committee, asserts a claim for, and a court determines by final order that such claim arose out of, MFC's own intentional fraud, bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct;
- d. in the event that the MFC Indemnified Parties seek reimbursement for attorneys' fees from the Debtors and the estates pursuant to this Order, the invoices and supporting time records from such attorneys shall be included in MFC's own applications (both interim and final) and such invoices and time records shall be subject to the Fee Guidelines and the approval of the Bankruptcy Court under the standards of sections 330 and 331 of the Bankruptcy Code without regard to whether such attorney has been retained under sections 1103(a) and 1103(b) of the Bankruptcy Code and without regard to whether such attorneys' services satisfy section 330(a)(3)(C) of the Bankruptcy Code; and
- e. MFC shall not be entitled to reimbursement by the Debtors for any fees, disbursements and other charges of MFC's counsel other than those incurred in connection with a request of MFC for payment of indemnity.

9. MFC shall use its best efforts to avoid any duplication of services provided by any of the Committee's other retained professionals in these Chapter 11 Cases.

10. The Committee and MFC are authorized and empowered to take all actions necessary to effectuate the relief granted in and pursuant to this Order in accordance with the Amended Application or Kehl Declaration.

11. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. To the extent the terms of this Order are in any way inconsistent with the Amended Application or the Kehl Declaration, the terms of this Order shall govern.

13. Notwithstanding any provision to the contrary in the Amended Application or Kehl Declaration, the Court shall retain jurisdiction with respect to all matters arising from or related to the interpretation and implementation of this Order.

14. Notice of the Application and the Amended Application as provided herein shall be deemed good and sufficient notice of the Application and Amended Application.

Dated: December 12, 2012  
New York, New York

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

**Exhibit A**

**Work Plan**

**IN RE PATRIOT COAL CORPORATION, ET AL.  
CASE NO. 12-12900 (SCC)**

**COORDINATION OF RESPONSIBILITIES FOR HOULIHAN LOKEY AND MESIROW FINANCIAL CONSULTING**

*With respect to the projects listed below, where appropriate the parties may coordinate with each other while avoiding duplication of efforts.*

<b><u>HOULIHAN LOKEY</u></b> <b>(FINANCIAL ADVISOR AND INVESTMENT BANKER)</b>	<b><u>MESIROW FINANCIAL CONSULTING</u></b> <b>(FINANCIAL ADVISOR)</b>
RESPONSIBILITIES WILL BE SET FORTH IN THE ORDER APPROVING HOULIHAN LOKEY'S RETENTION	<ul style="list-style-type: none"> <li>• Provide litigation support services, including assisting with discovery, advising on damages and providing expert testimony if necessary to assist the Committee in analyzing potential causes of action (the "<u>Causes of Action</u>"), including potential preferences and fraudulent conveyances, specifically, including the investigation of transactions with Peabody, Arch, and ArcLite and specific valuation analyses related thereto</li> <li>• Analyze existing and proposed employee compensation programs including any proposed annual incentive bonus program/KEIP as well as OPEB<sup>2</sup>/Pension/Labor obligations, including funding status and financial analysis</li> <li>• Provide tax analyses and tax advice regarding any proposed Plan of Reorganization, including any post-confirmation trust that may be established</li> <li>• Reconciliation of prepetition and postpetition intercompany claims and analysis of intercompany payables/receivables, including as set forth on the Debtors' Schedules/Statements of Financial Affairs</li> </ul>

---

<sup>2</sup> OPEB means "Other Post-Employment Benefits."