

**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

**FINAL ORDER AUTHORIZING (i) PAYMENT OF
CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS
AND (ii) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS
RELATED CHECKS AND TRANSFERS**

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**”), pursuant to sections 105(a), 363(b) and 503(b)(9) of the Bankruptcy Code, for an interim order (the “**Interim Order**”) and final order (this “**Order**”) authorizing the Debtors to pay in the ordinary course of business prepetition claims of critical vendors³ (the “**Critical Vendors**”), as more fully described in the Motion; and upon consideration of the Declaration of Mark N. Schroeder, Patriot Coal Corporation’s Senior Vice President and Chief Financial Officer, filed in support of the Debtors’ first-day pleadings; (the “**Declaration**”) and the Court having jurisdiction to consider the Motion and the

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, all capitalized terms shall have the meaning ascribed to them in the Motion.

³ Certain parties may receive payment on account of their prepetition claims pursuant to other motions that have been or may be filed by the Debtors. To the extent that a party receives payment on account of its prepetition claim pursuant to an order approving any such motion, this Order shall not apply to such prepetition claim.

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 the Court having entered the Interim Order on July 16, 2012; and due and proper notice of the Motion, the Interim Order and the Final Hearing (as defined below) having been provided to (a) the Office of the United States Trustee for the Southern District of New York, (b) those creditors holding the five largest secured claims against the Debtors' estates on a consolidated basis, (c) those creditors holding the 50 largest unsecured claims against the Debtors' estates on a consolidated basis, (d) attorneys for the administrative agents for the Debtors' postpetition lenders, (e) the Internal Revenue Service, (f) the Securities and Exchange Commission, (g) the United States Environmental Protection Agency and (h) the United States Attorney's Office for the Southern District of New York; 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 an interim hearing on July 16, 2012 (the "**Interim Hearing**") and a final hearing on August 2, 2012 (the "**Final Hearing**", and together with the Interim Hearing, the "**Hearings**") with appearances of parties in interest noted in the transcripts thereof; and the Court having determined that the legal and factual bases set forth in the Motion, the Declaration and at the Hearings establish just cause for the

final 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 final relief requested in the Motion is hereby granted *nunc pro tunc* to the Petition Date as set forth herein; and it is further

ORDERED that pursuant to sections 105(a), 363(b) and 503(b)(9) of the Bankruptcy Code, the Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay some or all of the prepetition claims of the Critical Vendors (each a “**Vendor Claim**”) in an aggregate amount not to exceed \$25 million; *provided* that all payments to Critical Vendors on account of Vendor Claims shall be applied first in satisfaction of such Critical Vendors’ Twenty-Day Administrative Claims, if any; *provided further* that payments on account of Vendor Claims that are not Twenty-Day Administrative Claims shall not, in the aggregate, exceed \$17 million (the “**Critical Vendor Cap**”); and it is further

ORDERED that the Debtors, in the exercise of their reasonable business judgment, may condition payment of any Vendor Claims upon agreement by the Critical Vendor to continue to supply goods or services to the Debtors during these chapter 11 cases on such Critical Vendor’s “**Customary Trade Terms**” or on other such terms and conditions as are acceptable to the Debtors. As used herein, “**Customary Trade Terms**” means, with respect to a Critical Vendor, (i) the normal and customary trade terms, practices and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, and availability, and other applicable terms and programs), that were most favorable to the Company and in effect between such Critical Vendor and the Company prior to the

Petition Date or (ii) such other trade terms as agreed by the Debtors and such Critical Vendor; and it is further

ORDERED that, as a further condition of receiving payment on a Vendor Claim, the Debtors are authorized, in the exercise of their reasonable business judgment, to require that such Critical Vendor agree to take whatever action is necessary to remove any existing trade liens at such Critical Vendor's sole cost and expense and waive any right to assert a trade lien on account of the paid Vendor Claim; and it is further

ORDERED that after the date hereof, the Debtors shall determine, in the ordinary course of business and in the exercise of their reasonable business judgment, which entities are Critical Vendors by considering, among other things, (a) which suppliers were sole source or limited source suppliers, without whom the Debtors could not continue to operate without disruption, (b) which suppliers would be prohibitively expensive to replace, (c) which suppliers present an unacceptable risk should they cease the provision of truly essential services or supplies and (d) the extent to which suppliers may be able to obtain or have obtained trade liens on equipment, supplies or goods of the Debtors; and it is further

ORDERED that the Debtors shall maintain a matrix summarizing (a) the name of each Critical Vendor paid on account of Vendor Claims, (b) the amount paid to each Critical Vendor on account of its Vendor Claim, (c) the goods or services provided by such Critical Vendor, (d) the Debtor making such payment and (e) whether such Critical Vendor is subject to a Vendor Agreement. This matrix will be provided monthly, on a confidential basis, to (1) the U.S. Trustee, (2) the professionals to the official committee of unsecured creditors (the "**Committee**"), via the proposed counsel to the Committee,

Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Adam C. Rogoff and Gregory G. Plotko and (3) the administrative agents for the Debtors' postpetition lenders (the "**DIP Agents**") via their attorneys, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Margot B. Schonholtz and Ana Alfonso; *provided*, however, that Committee members shall receive the matrix only as agreed among the Debtors and the Committee professionals, and the DIP Agents and their professionals shall keep the matrix confidential and, in each case, shall not disclose any of the information in the matrix to any other party, including, but not limited to, any of the Debtors' postpetition lenders, without prior written consent from the Debtors; and it is further

ORDERED that the Debtors, in the exercise of their reasonable business judgment, may request that each Critical Vendor enter into an agreement (the "**Vendor Agreement**") including provisions substantially in the form attached to the Motion as Exhibit B; and it is further

ORDERED that the Debtors in the exercise of their reasonable business judgment, are authorized, but not required, to enter into Vendor Agreements when the Debtors determine that it is appropriate to do so in connection with making payments to Critical Vendors; and it is further

ORDERED that if the Debtors, in the exercise of their reasonable business judgment, determine that a Critical Vendor has not complied with the terms and provisions of the Vendor Agreement or has failed to continue to provide Customary

Trade Terms following the date of the agreement, or on such terms as were individually agreed to between the Debtors and such Critical Vendor, the Debtors may terminate a Vendor Agreement, together with the other benefits to the Critical Vendor as contained in this Order, *provided, however*, that the Vendor Agreement may be reinstated (x) if such determination is subsequently reversed by the Court for good cause after it is shown that the determination was materially incorrect after notice and a hearing following a motion from the Critical Vendor, (y) the underlying default under the Vendor Agreement is fully cured by the Critical Vendor not later than five business days after the date the initial default occurred or (z) the Debtors, in the exercise of their reasonable business judgment, reach a subsequent agreement with the Critical Vendor; and it is further

ORDERED that if a Vendor Agreement is terminated as set forth above, or if a Critical Vendor that has received payment of a prepetition claim later refuses to continue to supply goods or services for the applicable period in compliance with the Vendor Agreement or this Order, then (a) the Debtors may, in the exercise of their reasonable business judgment, declare that the payment of the creditor's Vendor Claim is a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover in cash or in goods from such Critical Vendor, (b) the creditor shall immediately return such payments in respect of a Vendor Claim to the extent that the aggregate amount of such payments exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever and (c) the creditor's Vendor Claim shall be reinstated in such an amount so as to restore the Debtors and the Critical Vendor to their original positions as

if the Vendor Agreement had never been entered into and no payment of Vendor Claim had been made; and it is further

ORDERED that the execution of a Vendor Agreement by the Debtors shall not be declared a waiver of any other cause of action, including avoidance actions that may be held by the Debtors; and it is further

ORDERED that all Vendor Agreements shall be deemed to have terminated, together with the other benefits to Critical Vendors as contained in this Order, upon entry of an order converting the Debtors' chapter 11 cases to cases under chapter 7 of the Bankruptcy Code; and it is further

ORDERED that all applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests or automated clearing house transfers evidencing amounts paid by the Debtors under this Order, whether presented prior to or after the Petition Date to the extent the Debtors have good funds standing to their credit with such bank or other financial institution. Such banks and financial institutions are authorized to rely on representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions; and it is further

ORDERED that nothing contained in this Order shall be deemed to constitute a rejection, assumption or postpetition reaffirmation of any executory contract pursuant to section 365 of the Bankruptcy Code or to require the Debtors to make any of the payments or to post any of the deposits authorized herein; and it is further

ORDERED that nothing in this Order or the Motion shall be construed as prejudicing any rights the Debtors or any other parties in interest may have to dispute or contest the amount of or basis for any claims against the Debtors arising in connection with the Vendor Claims; and it is further

ORDERED that nothing in this Order shall authorize the Debtors to pay any amount on account of prepetition obligations to insiders, affiliates, Peabody Energy Corporation or its insiders or affiliates, or Arch Coal, Inc. or its insiders or affiliates; and it is further

ORDERED that nothing contained herein shall (i) convert the priority of any claim from a prepetition claim into an administrative expense claim, (ii) create or enhance any rights or status of any claim held by any person or entity or (iii) acknowledge, grant or otherwise permit any right of offset or recoupment by a non-debtor with respect to any claim asserted against the Debtors; 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 to the extent that there may be any inconsistency between the terms of the interim or final order approving the debtor in possession financing, if and when entered, and this Order, the terms of the interim or final order approving the debtor in possession financing, as applicable, shall govern; 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 parties with notice and an opportunity to object and be heard at a hearing; and it is further

ORDERED that notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or any other Bankruptcy Rule, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that the requirements of Bankruptcy Rule 6003 are satisfied by the contents of the Motion and the arguments and evidence presented at the hearing; and it is further

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: August 2, 2012
New York, New York

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