

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

PATRIOT COAL CORPORATION, et al.,

Debtors.¹

Chapter 11
Case No. 12-51502-659
(Jointly Administered)

Objection Deadline:
February 19, 2013 at 4:00 p.m.
(prevailing Central Time)

Hearing Date (if necessary):
February 26, 2013 at 10:00 a.m.
(prevailing Central Time)

Hearing Location:
Courtroom 7 North

Re: ECF Nos. 16, 89 and 369

**MOTION TO APPROVE AMENDED FINAL ORDER AUTHORIZING
THE DEBTORS TO (i) ENTER INTO AND PERFORM UNDER COAL
SALE CONTRACTS IN THE ORDINARY COURSE OF BUSINESS AND
(ii) ESTABLISH CERTAIN PROCEDURES WITH RESPECT THERETO**

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 the United States Bankruptcy Court for the Southern District of New York (the “**SDNY Bankruptcy Court**”) a voluntary case under chapter 11 of the Bankruptcy Code. On December 19, 2012, the SDNY Bankruptcy Court entered an order transferring the

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.

Debtors' chapter 11 cases to this Court (the "**Transfer Order**") [ECF No. 1789].² 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. These chapter 11 cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the SDNY Bankruptcy Court's Joint Administration Order entered on July 10, 2012 [ECF No. 30].

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 pursuant to Local Bankruptcy Rule 1007-2 of the SDNY Bankruptcy Court, filed on July 9, 2012 [ECF No. 4], which is incorporated herein by reference.

3. On the Petition Date, the Debtors filed the *Motion for Authority to (i) Enter Into and Perform Under Coal Sale Contracts in the Ordinary Course of Business and (ii) Establish Certain Procedures with Respect Thereto*, filed on July 9, 2012 [ECF No. 16] (the "**Coal Sale Contract Motion**"), which described that the Debtors, in the ordinary course of their businesses, routinely enter into and perform under contracts with customers to sell coal from the Debtors' mining operations or acquired from other sources (the "**Coal Sale Contracts**").

4. On July 16, 2012, the SDNY Bankruptcy court entered the *Interim Order Authorizing the Debtors to (i) Enter Into and Perform Under Coal Sale Contracts in the Ordinary Course of Business and (ii) Establish Certain Procedures with Respect Thereto* [ECF No. 89], granting the relief sought in the Coal Sale Contract Motion on an interim

² Pursuant to the Transfer Order, all orders previously entered in these chapter 11 cases remain in full force and effect in accordance with their terms notwithstanding the transfer of venue.

basis. On August 16, 2012 the SDNY Bankruptcy Court entered the *Final Order Authorizing the Debtors to (i) Enter Into and Perform Under Coal Sale Contracts in the Ordinary Course of Business and (ii) Establish Certain Procedures with Respect Thereto* [ECF No. 369] (the “**Order**”), granting the relief sought in the Coal Sale Contract Motion on a final basis. Under the Order, the Debtors are permitted to enter into and fully perform under Coal Sale Contracts in the ordinary course of business, subject to the Procedures (as defined in the Order), and take any actions and execute any agreements or other documentation that are reasonably necessary or desirable to effectuate the transactions contemplated thereunder.

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). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

6. Pursuant to sections 105(a), 362 and 363 of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), the Debtors hereby seek the entry of an amended order authorizing the Debtors to (i) enter into and perform under Coal Sale Contracts in the ordinary course of business and (ii) establish certain procedures with respect thereto (the “**Proposed Amended Order**”).³

7. In the course of negotiating and entering into Coal Sale Contracts after entry of the Order, certain of the Debtors’ potential customers have conditioned their willingness to enter into Coal Sale Contracts on the Debtors’ seeking, and obtaining,

³ The Proposed Amended Order granting the relief requested in this Motion will be provided to the Core Parties (as defined below). A copy of the Proposed Amended Order, as well as a marked copy showing changes to the Order, will be available at www.patriotcaseinfo.com/orders.php.

additional protections and clarifications of customer rights and protections under the Order. In light of the foregoing, the Debtors have determined, in an exercise of their business judgment, that certain modifications to the Order are in the best interests of the Debtors' and their stakeholders.

8. Therefore, the Debtors hereby seek entry of the Proposed Amended Order, requesting that the Procedures be modified to include certain additional provisions (the "**Amended Procedures**"). Among other things, the Proposed Amended Order provides that the automatic stay be modified, to the extent applicable, solely to the extent necessary to enable any applicable counterparty to a Coal Sale Contract entered into after approval of the Amended Procedures to exercise their contractual rights and remedies under such Coal Sale Contract.

9. The Proposed Amended Order also clarifies that

(a) The payments, transfers and other obligations under the Coal Sale Contracts will not be avoided or recoverable under Chapter 5 of the Bankruptcy Code; and

(b) Any postpetition liability of a Debtor and any postpetition amounts due and owing from a Debtor pursuant to a Coal Sale Contract will, to the extent unpaid, constitute administrative expenses under section 503(b) of the Bankruptcy Code, and will be entitled to priority pursuant to section 507(a)(2) of the Bankruptcy Code; *provided* that the Proposed Amended Order shall not impair the Debtors' or any other party's rights to dispute the validity of any amounts or other obligations under any Coal Sale Contract.

Basis for Relief

10. Section 363(c) of the Bankruptcy Code authorizes a debtor in possession operating its business pursuant to section 1108 of the Bankruptcy Code to “enter into transactions ... in the ordinary course of business without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1).

11. Section 363 of the Bankruptcy Code is designed to serve the “‘overriding goal of maximizing the value of the estate’ by striking the optimal balance between the interests of the debtor and the creditors.” *Habinger, Inc. v. Metropolitan Cosmetic and Reconstructive Surgical Clinic, P.A.*, 124 B.R. 784, 786 (Bankr. D. Minn. 1990) (citing *United States ex rel. Harrison v. Estate of Deutscher*, 115 B.R. 592 (Bankr. M.D. Tenn. 1990)). “The ‘ordinary course of business’ standard is intended to allow a debtor the flexibility it needs to run its business and respond quickly to changes in the business climate.” *Habinger*, 124 B.R. at 786. Thus, the Debtors have authority “to enter into transactions in the ordinary course of business without the approval of the court.” *Shields v. Cumberland Surety Ins. Co. (In re Am. Coal Corp.)*, 1996 Bankr. LEXIS 2013, *16 (Bankr. D. Minn. Oct. 7, 1996). Coal Sale Contracts are the core of the Debtors’ businesses, virtually their sole source of revenue and without question they are transactions in the ordinary course of their businesses.

12. The Bankruptcy Code does not define “ordinary course of business.” However, “through a synthesis of case law, courts have developed a workable analytical framework for determining whether an activity is within the debtor’s ‘ordinary course of business.’” *In re Husting Land & Dev., Inc.*, 255 B.R. 772, 778 (Bankr. D. Utah 2000),

aff'd, 274 B.R. 906 (D. Utah 2002). A transaction qualifies as “ordinary course” if it: (i) “is of the type that is commonly undertaken within the debtor’s industry,” *Peltz v. Gulfcoast Workstation Group (In re Bridge Info. Sys’s, Inc.)*, 293 B.R. 479, 486 (Bankr. E.D. Mo. 2003), and (ii) is ordinary and consistent with the reasonable expectations of creditors. *Streetman v. US (In re Russell)*, 154 B.R. 187, 292 (W.D. Ark. 1995); *see also In re Bridge Info. Sys’s, Inc.* 293 B.R. at 486 (courts look to “whether interested parties would reasonably expect[] the particular debtor in possession to seek court approval before entering in the questioned transaction”); *In re James A. Phillips, Inc.* 29 B.R. 391, 394 (Bankr. S.D.N.Y. 1983) (“The touchstone of ‘ordinariness’ is [] the interested parties’ reasonable expectations of what transactions the debtor in possession is likely to enter in the course of its business. So long as the transactions conducted are consistent with these expectations, creditors have no right to notice and hearing, because their objections to such transactions are likely to relate to the bankrupt's chapter 11 status, not the particular transactions themselves.”).

13. An important characteristic of an “ordinary” postpetition business transaction is its similarity to a prepetition business practice. *Marshack v. Orange Comm. Credit (In re Nat'l Lumber & Supply, Inc.)*, 184 B.R. 74, 79 (B.A.P. 9th Cir. 1995) (to qualify as ordinary course, payment must be consistent with the past practices and industry standards). Relevant factors in determining whether a transaction is ordinary include the type of business the debtor is engaged in as well as the size and nature of the business and transaction in question. *Harrison*, 115 B.R. at 598; *see also In re Hanson Indus., Inc.*, 90 B.R. 405, 413-424 (Bankr. D. Minn. 1988) (“[T]he size, nature, or both, of the transaction may be dispositive on the issue of ordinariness. What

may be ordinary for a large, multinational corporation engaged in a number of businesses is distinctly different from what is ordinary in a smaller corporation with lesser capital, fewer employees and fewer business transactions.”). The Amended Procedures satisfy section 363 of the Bankruptcy Code. The SDNY Bankruptcy Court considered the Procedures upon notice and a hearing and subsequently entered the Order, which approved the Procedures as “in [the Debtors’] reasonable business judgment, and consistent with their ordinary course of business and past practices.” The Amended Procedures reflect the Debtors’ decision that providing certain protections and clarifications to customers will facilitate future Coal Sale Contracts.

14. The modifications to the Procedures as set forth in the Amended Procedures are in the best interests of the Debtors and should be approved under sections 363(b)(1). “Under the ‘business judgment’ rule, the management of a corporation’s affairs is placed in the hands of its board of directors and officers, and the Court should interfere with their decisions only if it is made clear that those decisions are, inter alia, clearly erroneous, made arbitrarily, are in breach of the officers’ and directors’ fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code.” *In re Farmland Indus. Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (approving an amendment to the Debtors’ post-petition financing credit agreement as an exercise of sound and reasonable business judgment); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) (“[w]here the [debtor’s] request is not manifestly unreasonable or made in bad faith, the court should normally grant approval as long as the proposed action appears to enhance the debtor’s estate” (citing *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303,

1309 (5th Cir. 1985)); *In re Farmland Indus. Inc.*, 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003) (approving the rejection of employment agreements and noting that “[u]nder the business judgment standard, the question is whether the [proposed action] is in the Debtors’ best economic interests, based on the Debtors’ best business judgment in those circumstances.” (citations omitted)).

15. The Debtors believe that any Coal Sales Contract could be enforced against them in accordance with such Coal Sales Contract’s terms. Nevertheless the Debtors wish to make this clear to customers and request that the automatic stay be modified to the extent it is necessary to assure customers of their ongoing ability to enforce their contractual and legal rights and remedies against the Debtors pursuant to the terms of any Coal Sales Contracts and applicable non-bankruptcy law. For all of the business reasons stated above, cause certainly exists for the automatic stay to be modified so that customers will be assured of their ability to enforce their rights under Coal Sales Contracts.

16. Under section 105(a) of the Bankruptcy Code, the Court has expansive equitable powers to fashion any order or decree that is in the interest of preserving or protecting the value of the Debtors’ assets. *See, e.g., Carlson v. United States (In re Carlson)*, 126 F.3d 915, 920 (7th Cir. 1997) (“Section 105(a) gives the bankruptcy court the authority to issue any order necessary to carry out the provisions of the Bankruptcy Code.”); *In re Chinichian*, 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”); *Bird v. Crown Convenience (In re NWFEX, Inc.)*, 864 F.2d 588, 590 (8th Cir. 1988) (“The overriding consideration in bankruptcy, however, is that

equitable principles govern . . .’); *Steinberg v. Esposito*, 33 B.R. 812, 813 (Bankr. N.D. Ill. 1983) (The “bankruptcy court is vested with great latitude to protect the assets of the debtor’s estate, including the use of equitable remedies . . .”).

17. The Debtors have successfully operated under the Procedures for several months. The Debtors believe the Procedures have been instrumental in helping to assure the Debtors’ customers that entering into Coal Sale Contracts with the Debtors is permissible under applicable law and authorized by the Court, enabling a steady stream of revenue during these cases.

18. Just like the Procedures, the Amended Procedures will expedite the flow of cash into the estates, eliminating the need to prepare and prosecute motions and obtain express court approval of individual Coal Sale Contracts. The modifications to the Procedures as set forth in the Amended Procedures simply clarify certain customer protections, which have been requested by certain potential customers, and will induce additional customers to enter into Coal Sale Contracts with the Debtors. The modifications to the Procedures as set forth in the Amended Procedures constitute the most efficient and cost-effective way to protect the Debtors’ capacity to continue their businesses by allowing the Debtors to enter into and perform under Coal Sale Contracts whenever appropriate in the Debtors’ business judgment, while protecting the best interests of the Debtors, their estates and their creditors.

Objections

19. Any objection to the relief requested in this Motion must be filed on or before 4:00 p.m. Central Time on February 19, 2013 (the “**Objection Deadline**”) and served on (a) the Chambers of the Honorable Kathy A. Surratt-States, United States Bankruptcy Court for the Eastern District of Missouri, 111 South 10th Street, 4th Floor,

St. Louis, Missouri 63102, (b) counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick, (c) conflicts counsel to the Debtors, Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, New York 10178, Attn: Steven J. Reisman and Michael A. Cohen, (d) local counsel to the Debtors, Bryan Cave, 211 North Broadway, Suite 3600, St. Louis, Missouri, Attn: Lloyd A. Palans and Brian C. Walsh, (e) the Office of the United States Trustee for the Eastern District of Missouri, 111 South 10th Street, Suite 6.353, St. Louis, Missouri 63102, Attn: Leonora S. Long and Paul A. Randolph, (f) Kramer, Levin, Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Thomas Moers Mayer, Adam C. Rogoff and Gregory G. Plotko, counsel to the official committee of unsecured creditors in these cases (the “**Committee**”), (g) local counsel to the Committee, Carmody MacDonald P.C., 120 South Central Avenue, St. Louis, Missouri 63105-1705, Attn: Gregory D. Willard and Angela L. Schisler; (h) the Debtors’ authorized claims and noticing agent, Patriot Coal Corporation, c/o GCG, Inc., P.O. Box 9898, Dublin, Ohio 43017-5798 and (i) the attorneys for the administrative agents for the Debtors’ postpetition lenders, (1) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia Goldstein and Joseph Smolinsky and (2) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Margot B. Schonholtz and Ana Alfonso.

Notice

20. Consistent with the Order Establishing Certain Notice, Case Management and Administrative Procedures entered on October 18, 2012 [ECF No. 1386] (as may be amended, the “**Case Management Order**”), the Debtors will serve notice of this Motion on (a) the Core Parties and (b) the Non-ECF Service Parties (as those terms are defined in

the Case Management Order). 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*). A copy of the Proposed Amended Order, as well as a marked copy showing changes to the Order, will be provided to the Core Parties, and will be available at *www.patriotcaseinfo.com/orders.php* (the "**Patriot Orders Website**"). The Proposed Amended Order may be modified or withdrawn at any time without further notice. If any significant modifications are made to the Proposed Amended Order, an amended Proposed Amended Order will be made available on the Patriot Orders Website, and no further notice will be provided. In light of the relief requested, the Debtors submit 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, 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 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: February 12, 2012
New York, New York

Respectfully submitted,

DAVIS POLK & WARDWELL LLP

/s/ Brian M. Resnick

Marshall S. Huebner

Damian S. Schaible

Brian M. Resnick

Darren S. Klein

450 Lexington Avenue

New York, New York 10017

Telephone: (212) 450-4000

Facsimile: (212) 607-7983

*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