

Objection Deadline: August 16, 2012 at 4:00 pm (prevailing Eastern Time)
Hearing Date (if necessary): September 11, 2012 at 1:30 pm (prevailing Eastern Time)

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: : Chapter 11
:
PATRIOT COAL CORPORATION, *et al.*, : Case No. 12-12900 (SCC)
:
Debtors. : (Jointly Administered)
----- X
:
EASTERN ROYALTY LLC f/k/a EASTERN
ROYALTY CORP.,
:
Plaintiff, :
: Adv. Pro. No. _____
:
v. :
:
BOONE EAST DEVELOPMENT CO.,
PERFORMANCE COAL CO., AND NEW
RIVER ENERGY CORP.,
:
Defendants. :
----- X

**PLAINTIFF’S MOTION FOR AN ORDER AUTHORIZING PLAINTIFF
TO FILE UNDER SEAL THE AGREEMENTS AS EXHIBITS TO PLAINTIFF’S
COMPLAINT FOR DECLARATORY RELIEF**

Eastern Royalty LLC f/k/a Eastern Royalty Corp. (“**ERC**”), as Plaintiff and one of the affiliated debtor entities in the above-captioned chapter 11 case, respectfully submits this motion (the “**Motion**”), pursuant to section 107(b) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for an order, substantially in the form attached hereto as Exhibit A (the “**Proposed Order**”), (a) authorizing ERC to file under seal, in connection with ERC’s complaint for declaratory relief, dated August 6, 2012 (the “**Complaint**”),¹ the Payment Agreement, the Settlement Agreement, the Assignment Agreements, the Boone Lease, the Affiliates Payment Agreements, and the Affiliates Release Agreements (each as defined in the Complaint, and collectively the “**Agreements**”) and the exhibits attached thereto, if any, and (b) directing that the Agreements shall remain under seal, confidential and not be made available to anyone without the consent of ERC and the Massey Entities or further order from the Court (after notice and hearing) except for (i) the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) on a strictly confidential basis, (ii) the counsel and financial advisors to the administrative agents for the Debtors’ post-petition lenders on a strictly confidential and professionals’ eyes only basis, and (iii) the counsel and financial advisors to the official committee of unsecured creditors appointed in the above-captioned chapter 11 case (the “**Committee**”) on a strictly confidential and professionals’

¹ Unless otherwise defined herein, all capitalized terms used herein have the meanings ascribed to such terms in the Complaint.

eyes only basis, *provided, however*, that Committee members shall receive the Agreements only as agreed among the Debtors and counsel to the Committee. In support of this Motion, ERC respectfully represents:

Relief Requested

1. ERC seeks to provide the Court with the Agreements as exhibits to the Complaint. By this Motion, ERC requests entry of the Proposed Order, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, authorizing it to file the Agreements and the exhibits attached thereto under seal and directing that the Agreements shall remain under seal and confidential and not be made available to anyone without the consent of ERC and the Massey Entities or further order from the Court (after notice and hearing), in each case, under appropriate confidentiality agreements reasonably satisfactory to ERC; *provided, however*, that ERC has provided or will provide unredacted copies of the Agreements and the exhibits attached thereto to (i) the U.S. Trustee on a strictly confidential basis, (ii) the counsel and financial advisors to the administrative agents for the Debtors' post-petition lenders on a strictly confidential and professionals' eyes only basis, and (iii) the counsel and financial advisors to the Committee on a strictly confidential and professionals' eyes only basis, *provided, however*, that Committee members shall receive the Agreements only as agreed among the Debtors and counsel to the Committee.

Background and Jurisdiction

2. On July 9, 2012, Patriot Coal Corporation and its affiliated debtor entities (collectively, the “**Debtors**”)² each commenced with this Court a voluntary case under chapter 11 of title 11 of the Bankruptcy Code. 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.

3. These cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the Court’s Joint Administration Order entered on July 10, 2012 [ECF No. 30].

² The Debtors are the following entities: Affinity Mining Company; Apogee Coal Company, LLC; Appalachia Mine Services, LLC; Beaver Dam Coal Company, LLC; Big Eagle, LLC; Big Eagle Rail, LLC; Black Stallion Coal Company, LLC; Black Walnut Coal Company; Bluegrass Mine Services, LLC; Brook Trout Coal, LLC; Catenary Coal Company, LLC; Central States Coal Reserves of Kentucky, LLC; Charles Coal Company, LLC; Cleaton Coal Company; Coal Clean LLC; Coal Properties, LLC; Coal Reserve Holding Limited Liability Company No. 2; Colony Bay Coal Company; Cook Mountain Coal Company, LLC; Corydon Resources LLC; Coventry Mining Services, LLC; Coyote Coal Company LLC; Cub Branch Coal Company LLC; Dakota LLC; Day LLC; Dixon Mining Company, LLC; Dodge Hill Holding JV, LLC; Dodge Hill Mining Company, LLC; Dodge Hill of Kentucky, LLC; EACC Camps, Inc.; Eastern Associated Coal, LLC; Eastern Coal Company, LLC; Eastern Royalty, LLC; Emerald Processing, L.L.C.; Gateway Eagle Coal Company, LLC; Grand Eagle Mining, LLC; Heritage Coal Company LLC; Highland Mining Company, LLC; Hillside Mining Company; Hobet Mining, LLC; Indian Hill Company LLC; Infinity Coal Sales, LLC; Interior Holdings, LLC; IO Coal LLC; Jarrell’s Branch Coal Company; Jupiter Holdings LLC; Kanawha Eagle Coal, LLC; Kanawha River Ventures I, LLC; Kanawha River Ventures II, LLC; Kanawha River Ventures III, LLC; KE Ventures, LLC; Little Creek LLC; Logan Fork Coal Company; Magnum Coal Company LLC; Magnum Coal Sales LLC; Martinka Coal Company, LLC; Midland Trail Energy LLC; Midwest Coal Resources II, LLC; Mountain View Coal Company, LLC; New Trout Coal Holdings II, LLC; Newtown Energy, Inc.; North Page Coal Corp.; Ohio County Coal Company, LLC; Panther LLC; Patriot Beaver Dam Holdings, LLC; Patriot Coal Company, L.P.; Patriot Coal Corporation; Patriot Coal Sales LLC; Patriot Coal Services LLC; Patriot Leasing Company LLC; Patriot Midwest Holdings, LLC; Patriot Reserve Holdings, LLC; Patriot Trading LLC; PCX Enterprises, Inc.; Pine Ridge Coal Company, LLC; Pond Creek Land Resources, LLC; Pond Fork Processing LLC; Remington Holdings LLC; Remington II LLC; Remington LLC; Rivers Edge Mining, Inc.; Robin Land Company, LLC; Sentry Mining, LLC; Snowberry Land Company; Speed Mining LLC; Sterling Smokeless Coal Company, LLC; TC Sales Company, LLC; The Presidents Energy Company LLC; Thunderhill Coal LLC; Trout Coal Holdings, LLC; Union County Coal Co., LLC; Viper LLC; Weatherby Processing LLC; Wildcat Energy LLC; Wildcat, LLC; Will Scarlet Properties LLC; Winchester LLC; Winifrede Dock Limited Liability Company; Yankeetown Dock, LLC. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

4. Contemporaneously herewith, ERC filed the Complaint seeking a declaratory judgment that the Payment Agreement is a standalone, fully integrated non-executory contract that is not subject to rejection or assumption under 11 U.S.C. § 365.

5. This Court has core jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b) and 1334. Alternatively, this Court has noncore concurrent jurisdiction over this proceeding under 28 U.S.C. §§ 1334(b) and 157(a), as the cause of action is directly related to ERC's bankruptcy case and will have a significant impact on ERC's estate.

6. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The statutory predicates for the relief requested herein are sections 105(a) and 107(b) of title 11 of the Bankruptcy Code and Bankruptcy Rule 9018.

Basis for Relief

8. Under Section 105(a) of the Bankruptcy Code, bankruptcy courts have the inherent equitable power 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 addition, section 107(b) gives parties the right to protect commercially sensitive information from potentially harmful disclosures:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information

11 U.S.C. § 107(b)(1).

9. A party in interest seeking protection under section 107(b) may obtain a protective order authorizing the filing of a document under seal pursuant to the procedures set forth in Bankruptcy Rule 9018, which provides:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information

Fed. R. Bankr. P. 9018.

A. Section 107(b) Requires the Court to Protect Parties from Disclosing Sensitive Commercial Information

10. If a court determines that an interested party seeks to protect information that falls within either of the categories enumerated in section 107(b), “the court is required to protect [the requesting party] and has no discretion to deny the application.” *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27–28 (2d Cir. 1994) (under section 107(b)’s exception to the general rule that court records are open to public inspection, an interested party must only demonstrate that the information it wishes to seal is “confidential and commercial”); *see also In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003). In contrast with Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy Code does not require an entity seeking such protection to demonstrate “good cause.” *Orion Pictures Corp.*, 21 F.3d at 28. Nor does it require a finding of “extraordinary circumstances or compelling need.” *Id.* at 27; *see also id.* (“[I]n the bankruptcy area . . . congress has established a special rule for confidential . . . commercial information.”).

11. Moreover, confidential commercial information need not rise to the level of a trade secret to receive protection under section 107(b)(1). *See id.* at 28 (holding that

a license agreement authorizing a licensee “to reproduce, manufacture, distribute, and sell videocassettes” contained confidential commercial information). Rather, it covers all information “which would cause an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” *Id.* at 27 (internal quotation marks and citation omitted); *see also In re Borders Grp., Inc.*, No. 11-10614, 2011 Bankr. LEXIS 4691, at *9 (Bankr. S.D.N.Y. Dec. 7, 2011) (authorizing the debtors to redact the identities of key employees and vendors and confidential financial information from the filing copies of a share purchase agreement); *In re Barney’s, Inc.*, 201 B.R. 703, 708–09 (Bankr. S.D.N.Y. 1996) (denying the debtors’ motion to keep confidential the identity of a potential investor and the investor’s preliminary proposal letter, but noting that commercial information “might include, without limitation, [the debtors’] pricing formulae, short and long term marketing strategies and the terms of agreements with suppliers”).

B. The Agreements Contain “Commercial Information” That Warrants Confidential Treatment Under the Bankruptcy Code

12. The Agreements contain commercially sensitive information that merits protection under section 107(b)(1) of the Bankruptcy Code. For example, the Agreements contain information about specific royalty payments and methodologies for calculating such payments, price and quantity terms regarding coal mined from particular locations, and information regarding the location and size of ERC’s, Defendants’, and third parties’ coal reserves, that are critically sensitive and should remain confidential.

13. As is customary in the coal industry, ERC and the Massey Entities treat this information as highly sensitive and confidential. Such information is rarely disclosed to the public or made available to competitors in the coal industry. Given the intense

competition in the coal industry, disclosure of the terms of the Agreements could heavily constrain the ability of ERC to negotiate its terms in future transactions and could highlight locations of coal reserves to competitors, putting ERC at a strategic disadvantage relative to its competitors and causing it commercial injury.

Notice

14. Consistent with the procedures described in the Order Establishing Certain Notice, Case Management and Administrative Procedures entered by the Court on July 16, 2012 [ECF No. 84] (the “**Case Management Order**”), ERC 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 Massey Entities. All other parties in interest, whether or not they have filed a notice of appearance or request for service of papers under Bankruptcy Rule 2002, shall be deemed to receive electronic notice of this Motion through the ECF System, effective as of the date this Motion is posted on the Court’s ECF System and therefore, in accordance with General Order M-399, need not be separately served with this Motion. 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, ERC submits that no further notice is necessary. Pursuant to paragraph 21 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

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

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

New York, New York
Dated: August 6, 2012

By: /s/ Timothy Graulich
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Exhibit A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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		:
In re:		: Chapter 11
		:
PATRIOT COAL CORPORATION, <i>et al.</i> ,		: Case No. 12-12900 (SCC)
		:
Debtors.		: (Jointly Administered)
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		:
EASTERN ROYALTY LLC f/k/a EASTERN ROYALTY CORP.,		:
		:
Plaintiff,		:
		: Adv. Pro. No. _____
		:
v.		:
		:
BOONE EAST DEVELOPMENT CO., PERFORMANCE COAL CO., AND NEW RIVER ENERGY CORP.,		:
		:
Defendants.		:
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**ORDER AUTHORIZING PLAINTIFF TO FILE UNDER SEAL
THE AGREEMENTS AS EXHIBITS TO PLAINTIFF'S
COMPLAINT FOR DECLARATORY RELIEF**

Upon the motion (the "**Motion**")¹ of Eastern Royalty LLC f/k/a Eastern Royalty Corp. ("**ERC**" or "**Plaintiff**"), one of the affiliated debtors and debtors in possession in the above-captioned chapter 11 case, for entry of an order authorizing ERC to file under seal the Agreements and the exhibits attached thereto pursuant to sections 105(a) and 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the

¹ Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.

relief requested therein pursuant to 28 U.S.C. § 1334; 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 due and proper notice of the Motion having been provided to (a) the Core Parties, (b) the Non-ECF Service Parties (as those terms are defined in the Case Management Order), and (c) the Massey Entities consistent with the Case Management Order, 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 ERC and its estate and creditors; and the Court having reviewed the Motion [and having held a hearing with appearances of parties in interest noted in the transcript thereof (the “**Hearing**”)]; and the Court having determined that the legal and factual bases set forth in the Motion [and at the Hearing] establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the relief requested in the Motion is hereby granted as set forth herein; and it is further

ORDERED that pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, ERC is authorized to file the Agreements and the exhibits attached thereto under seal; and it is further

ORDERED that the Agreements and the exhibits attached thereto shall remain under seal and confidential and shall not be made available to anyone without the consent of ERC and the Massey Entities or without further order from this Court (after notice and a hearing), in each case, under appropriate confidentiality agreements reasonably satisfactory to ERC; *provided, however*, that ERC has provided or will

provide unredacted copies of the Agreements and the exhibits attached thereto to (i) the U.S. Trustee on a strictly confidential basis, (ii) the counsel and financial advisors to the administrative agents for the Debtors' post-petition lenders on a strictly confidential and professionals' eyes only basis, and (iii) the counsel and financial advisors to the Committee on a strictly confidential and professionals' eyes only basis, *provided, however*, that Committee members shall receive the Agreements only as agreed among the Debtors and counsel to the Committee; and it is further

ORDERED that any pleadings filed in this case or the above-captioned chapter 11 case that reference or disclose any confidential commercial information contained in the Agreements and the exhibits attached thereto shall be filed under seal and served only on those parties authorized to receive the Agreements in accordance with this Order; and it is further

ORDERED that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that ERC is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion; and it is further

ORDERED that notice of the Motion as provided therein is good and sufficient notice and satisfies Bankruptcy Rule 9014 by providing the counterparties with notice and an opportunity to object and be heard at a hearing; and it is further

ORDERED that this Court shall retain jurisdiction to hear and decide any dispute related to or arising from this Order.

SO ORDERED, this
___ day of _____, 2012

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE