

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)

Re: ECF No. 1919

Hearing: February 26, 2013

**ORDER DIRECTING APPOINTMENT OF COMMITTEE
OF RETIRED EMPLOYEES PURSUANT TO 11 U.S.C. § 1114**

WHEREAS, the Debtors have informed certain salaried and hourly non-represented retirees that the Debtors intend to file with the Bankruptcy Court for the Eastern District of Missouri (the “**Bankruptcy Court**”) one or more motions seeking approval to discontinue or modify certain retiree healthcare and life insurance benefits (the “**Covered Benefits**”)² for salaried and hourly non-represented retirees (collectively, with their respective spouses, surviving spouses and dependents, as applicable, the “**Covered Retirees**”); and

WHEREAS, the Debtors believe that they have the right to discontinue or modify the Covered Benefits based on an asserted right of unilateral termination, subject to approval of the Bankruptcy Court pursuant to 11 U.S.C. § 363; and

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.

² The Covered Benefits are all healthcare and life insurance benefits offered under the plans listed on Schedule 2 attached hereto.

WHEREAS, there is currently pending a Motion to Appoint Official Retiree Committee Pursuant to 11 U.S.C. § 1114 [ECF No. 1919] (the “**Racer Motion**”) filed by Harold Racer (the “**Movant**”) on behalf of himself and certain other Covered Retirees alleging that 11 U.S.C. §1114 mandates the creation of an official retiree committee notwithstanding any assertion of unilateral termination rights held by the Debtors; and

WHEREAS, to avoid the time, expense and uncertainty of litigation over the predicate issue as to whether an official retiree committee is required to be appointed, the Debtors and the Movant have agreed (in consultation with the Office of the U.S. Trustee and the Official Committee of Unsecured Creditors (the “**UCC**”)) to seek the appointment of an official retiree committee on the terms and conditions set forth below; and

WHEREAS, the Court has jurisdiction to grant the relief provided herein pursuant to 28 U.S.C. § 1334 and Local Rule 9.01(B)(1) of the United States District Court for the Eastern District of Missouri; and consideration of this Order is a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the proposed Order has been provided in accordance with the Order Establishing Certain Notice, Case Management and Administrative Procedures entered in these cases on October 18, 2012 [ECF No. 1386] (as may be amended, the “**Case Management Order**”); and it appears that no other or further notice need be provided; and the relief requested in the Motion is in the best interests of the Debtors and their estates, creditors, and other parties in interest; and the legal and factual bases set forth herein establish just cause for the relief granted herein:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT

1. An official retiree committee (the “**Retiree Committee**”) shall be appointed pursuant to the Court’s discretionary determination under section 1114(d) of the Bankruptcy Code that it is otherwise appropriate to appoint a committee of retired employees. The Retiree Committee shall have all rights powers and duties set forth in section 1114(b)(2) of the Bankruptcy Code, subject to the limitations reflected in this Order.

2. The scope of the Retiree Committee (and its counsel) shall be limited to addressing the Debtors’ factual and legal assertions with respect to the Debtors’ purported right, under contract and applicable non-bankruptcy law, of unilateral termination with respect to some or all of the Covered Benefits.

(a) The Debtors shall provide counsel to the Retiree Committee and the UCC to the extent permitted by applicable law, as soon as reasonably practicable after selection of such counsel by the Retiree Committee, with:

- i. all plan and other historical non-privileged documents evidencing or describing the terms of any and all Covered Benefits sought to be modified or terminated by the Debtors that, to the best of their knowledge after exercising commercially reasonable diligence, are in the Debtors’ possession; and
- ii. contact information for all Covered Retirees.

(b) The Debtors shall timely respond to reasonable discovery requests made by the Retiree Committee (so long as limited by the aforementioned scope of inquiry) at any time following the constitution of the Retiree Committee

(irrespective of whether or not the 363 Motion (as defined below) has been filed), subject to any rights the Debtors may have to contest or limit such discovery under applicable law and rules. The discovery requests may include interrogatories, requests to admit, requests to produce and depositions. Copies of all discovery requests shall promptly be provided to the UCC. Except to the extent prohibited by applicable law, the parties shall also promptly provide to the UCC copies of all discovery responses. The UCC agrees to coordinate with the producing party to minimize any undue expense or inconvenience of such production.

- (c) Based upon the scope of the Retiree Committee activities, counsel fees and expenses for such activities (including one primary counsel and, if necessary, one local counsel) shall be capped at \$250,000, subject to modification by the Bankruptcy Court upon good cause shown if the 363 Motion (as defined below) is not heard by April 23, 2013 (unless such matter is not heard by such date due to the Retiree Committee's request for adjournment).
- i. The Retiree Committee's counsel shall be required to comply with the substantive and procedural compensation requirements of the Bankruptcy Code and any applicable orders entered in the Debtors' Chapter 11 cases.
 - ii. The Retiree Committee and its counsel shall not retain any professionals other than counsel unless and until the limitations and restrictions set forth in this Order are lifted in accordance with paragraph 6 below.

iii. GCG, Inc. (“**GCG**”), the Debtors’ claims and noticing agent, shall mail, at the Debtors’ expense, any letters from the Retiree Committee (or its counsel) to Covered Retirees, upon reasonable request, with a copy of the contents of any letters to counsel to the UCC.

3. The United States Trustee shall appoint the Retiree Committee within seven (7) business days after the later of (i) entry of this Order and (ii) the provision by the Debtors to the U.S. Trustee of the contact information of the Covered Retirees, or as soon thereafter as reasonably practicable.

4. Unless the Debtors determine not to discontinue or modify any Covered Benefits, the Debtors shall file and serve on all parties required by the Case Management Order, including the Retiree Committee and all Covered Retirees, a motion under 11 U.S.C. § 363(b) of the Bankruptcy Code to approve the discontinuance or modification of some or all of the Covered Benefits (the “**363 Motion**”).

5. The 363 Motion shall be heard on April 23, 2013, or such later date as may be ordered by the Bankruptcy Court or agreed among the Debtors, the Retiree Committee and the U.S. Trustee (in consultation with the UCC and subject to the Bankruptcy Court’s availability), for the Bankruptcy Court to determine whether some or all of the Covered Benefits sought to be discontinued or modified by the Debtors are subject to the Debtors’ asserted right of unilateral termination (such benefits, the “**Amendable Benefits**”), and, if so, whether the 363 Motion should be granted with respect to such Amendable Benefits.

6. If the Bankruptcy Court determines (or if determined by mutual agreement of the Debtors (after consultation with the UCC and the agents to the Debtors’ post-


petition lenders) and the Retiree Committee) that some or all of the Covered Benefits sought to be terminated by the Debtors are not subject to unilateral termination (such benefits, the “**Non-Amendable Benefits**”), then, within seven days after the Bankruptcy Court’s ruling on the 363 Motion with respect to Amendable Benefits, the Debtors (after consultation with the UCC and the agents to the Debtors’ post-petition lenders) shall file and serve on all parties required by the Case Management Order, including the Retiree Committee and all applicable Covered Retirees, a notice stating whether they will seek to discontinue or modify any Non-Amendable Benefits at such time. If such notice indicates that the Debtors determine to seek to discontinue or modify any Non-Amendable Benefits, the Debtors and the Retiree Committee shall proceed under section 1114 of the Bankruptcy Code, and the scope of the Retiree Committee shall be expanded to the fullest extent provided under section 1114 of the Bankruptcy Code except as otherwise ordered by the Bankruptcy Court, without the limits of scope or fee limitations described above (other than limits otherwise applicable to any professional fees and expenses submitted on behalf of an official committee appointed under section 1114 of the Bankruptcy Code); *provided, however*, that the U.S. Trustee shall modify the membership of the Retiree Committee in light of the Non-Amendable Benefits sought to be terminated to the extent it deems appropriate in its sole discretion. Nothing herein or in such notice shall preclude the Debtors from seeking to discontinue or modify any Non-Amendable Benefits pursuant to section 1114 of the Bankruptcy Code at any time during the Debtors’ bankruptcy cases.

7. The Debtors agree that if and to the extent any Covered Benefits are deemed subject to unilateral termination, and the Bankruptcy Court approves such

termination under 11 U.S.C. § 363(b), the applicable Covered Retirees will receive an unsecured claim approximating the value of the terminated Covered Benefits that, but for such termination, would be due to be paid during the course of the Debtors' Chapter 11 cases, or in such other amount as may be agreed between the Debtors and the Retiree Committee (in consultation with the UCC and subject to the approval of the Bankruptcy Court).

8. Unless and until the Bankruptcy Court orders otherwise, the Debtors shall not discontinue or modify any Covered Benefits during the Debtors' Chapter 11 cases.

9. Notwithstanding any Federal Rule of Bankruptcy Procedure to the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: February 27, 2013
St. Louis, Missouri
jjh

Order prepared by:
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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

SCHEDULE 2

(Plans under which Covered Benefits are offered)³

1. Medical Premium Reimbursement Allowance
2. Retiree Choice Accounts
3. Patriot Salaried Retiree Medical Benefit Plan for Legacy Peabody Energy Corporation Retirees
4. Patriot Medical Benefit Plan for Legacy Magnum Retirees
5. Eastern Associated Coal Corporation Medical, Dental and Life Insurance Benefits
6. Eastern Associated Coal Corporation Medical, Dental and Life Insurance Benefits for Salaried Employees Receiving Disability Benefits under the Eastern Gas and Fuel Associates Long-Term Disability Plan and Eligible Spouses of EACC Employees
7. Diamond Shamrock Retirees Benefit Plan
8. Catastrophic Group Health Plan for Salaried Employees Terminated Through a Reduction in Force
9. Catastrophic Retiree Medical Plan
10. Amherst Coal Company Employee Benefit Plan for Salaried Employees

³ The Debtors currently intend to seek approval of the Bankruptcy Court to (1) discontinue all healthcare benefits offered under the plans listed as numbers 1 – 10 and (2) modify the life insurance benefits that are provided to each participant in such plans who currently is eligible for such benefits in an amount that exceeds \$30,000 by reducing such amount to \$30,000. In the event that the Debtors seek approval to discontinue or modify any healthcare and life insurance benefits for salaried and hourly non-represented retirees that are not provided under the plans listed above, such benefits shall be deemed “Covered Benefits” and shall be governed by this Order. Nothing in this Order (including the list of plans set forth on this Schedule 2) shall be deemed to preclude the Retiree Committee from seeking discovery on any plans not included in this Schedule 2, and the Debtors’ rights to object to such discovery under applicable discovery law and rules is expressly preserved.