

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 12-51502-659

(Jointly Administered)

Re: ECF No. 1919

**APPLICATION OF THE SALARIED RETIREE COMMITTEE FOR
ORDER AUTHORIZING AND APPROVING THE RETENTION OF
DESAI EGGMANN MASON LLC AS COUNSEL**

The official Salaried Retiree Committee (the “Retiree Committee”) of Debtors, Patriot Coal, and certain affiliates (collectively, the “Debtors”)¹ hereby applies to this Court for entry of

¹ 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.;

an Order authorizing and approving retention of the law firm of Desai Eggmann Mason LLC (“DEM”) as counsel for the Retiree Committee with respect to all matters arising under these chapter 11 proceedings, *nunc pro tunc*, to January 4, 2013, pursuant to sections 328(a), 1103(a) & 1114(b)(2) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this Application, the Retiree Committee relies on the Declaration of Robert E. Eggmann (the “Eggmann Declaration”) attached hereto and incorporated herein as Exhibit A. In further support of this Application, the Retiree Committee respectfully states as follows:

Background

1. On July 9, 2012, Patriot Coal and substantially all of its wholly owned subsidiaries filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court for the Southern District of New York. On November 27, 2012, an Order was entered transferring the Chapter 11 proceedings to this Court.

2. Along with its first-day filings, Debtors filed a Motion for an Order Authorizing: (i) Debtors to (a) pay prepetition wages, salaries, employee benefits and other compensation, and (b) maintain employee benefits programs and pay related administrative obligations; (ii) employees and retirees to proceed with outstanding workers' compensation claims; and (iii) financial institutions to honor and process related checks and transfers filed. These pleadings acknowledge certain retiree benefit obligations, including but not limited to health care insurance

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.

benefits for the Retirees. (See Docket Nos. 9).² In that Motion, Debtors requested permission to continue payment of retiree benefits, including but not limited to union and salaried retiree benefits.

3. Thereafter, on or about December 17, 2012, Debtors sent a mass mailing to approximately six hundred to eight hundred (600 - 800) salaried (i.e. non-union) retiree households informing said retirees that Debtors would be seeking to unilaterally terminate their retiree benefits.

4. On January 8, 2013, DEM caused a Motion To Appoint Official Retiree Committee Pursuant to 11 U.S.C. §1114(d) to be filed on behalf of salaried retiree Harold R. Race and all other similarly situated Non-Union retirees. (Motion to Appoint Retiree Committee)³ [Docket No. 1919].

5. By and through the Motion to Appoint Retiree Committee, Movants sought to: (a) form a Retiree Committee to protect the rights of all affected retirees and (b) to seek administrative claim status with respect to all amounts of monies owed by Debtors to retirees arising out of certain quarterly payments to be made to a retiree settlement fund.

6. Shortly after filing the Motion to Appoint Retiree Committee, Debtors counsel started to engage DEM's co-counsel in an active dialog regarding the substance of the Motion. Debtors counsel initially asserted that based upon its belief that Debtors had the right of unilateral termination, that no Retiree Committee would be required by law in this case. After

² "The Debtors offer several health and welfare benefit plans (collectively, the "**Health and Welfare Plans**") for represented and non-represented employees, certain former employees and certain retirees (the "**Retirees**"), including coverage for medical, medical premium and expense reimbursement, prescription, dental, vision, life, short-term and long-term disability, accidental death and dismemberment, health flexible spending accounts and dependent care flexible spending accounts, business travel and accident insurance and employee assistance programs (collectively, the "**Health and Welfare Plan Obligations**"). [Docket No. 9, par. 13]

³ DEM was initially retained on January 4, 2013.

several weeks of negotiations, which included the cooperation of the office of the U.S. Trustee, a complex Agreed Order was negotiated between Movants' counsel and the Debtors. This process included input and cooperation with the Unsecured Creditor's Committee.

7. The heavily negotiated Agreed Order with Debtors was filed on February 12, 2013 and was presented by Movants and Debtors on February 26, 2013 [Docket No. 2818]. This Court entered the Agreed Order on February 27, 2013. [Docket No. 3004].

8. By and through the office of the U.S. Trustee, seven (7) retirees were selected to serve on the official Retiree Committee. [Docket No. 3007]

9. During its first organizational meeting, the newly formed Retiree Committee voted to engage DEM, officially modifying DEM's scope of engagement from all affected retirees to the Official Retiree Committee, *nunc pro tunc* to January 4, 2013.

10. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

Relief Requested

11. The Retiree Committee seeks to retain and employ DEM as its legal counsel in these cases pursuant to sections 328(a), 1103(a) and 1114(b)(2) of the Bankruptcy Code and DEM's retention is requested to be *nunc pro tunc* to January 4, 2013, because that was the date that DEM initiated efforts to cause the Retiree Committee to be formed (on behalf of Harold R. Racer and on behalf of all affected retirees) and initiated legal actions to have any amounts owed to the affected retirees to be afforded claim status and initiated actions (in response to assertions made by Debtors) to locate materials and prepare to demonstrate that the retiree benefits at issue are vested and not subject to unilateral termination under Section 363 of the Bankruptcy Code.

12. DEM also has significant experience representing debtors, other creditors and creditor groups in Chapter 11 proceedings. Moreover, DEM has broad experience in complex commercial litigation. For all of these reasons, the Retiree Committee believes that DEM is more than sufficiently qualified to represent its interests in these proceedings.

Services to be Rendered

13. The initial scope of DEM's services will be governed by the scope of Agreed Order and Section 1114 in general. The Agreed Order, in summary, provides that the scope of the Retiree Committee will initially be limited to addressing whether the salaried retiree benefits sought to be terminated by Debtors are vested benefits. (Id.) Pursuant to the Agreed Order, the scope of the Retiree Committee will expand to the full spectrum of Section 1114 activities if: (a) this Court finds that some or all retiree benefits at issue are vested and (b) if the Debtors then continue to seek modification or termination of same. (Id.)

14. Accordingly, DEM will engage in all activities required by the Retiree Committee, including but not limited to:

- a. Counseling the Retiree Committee with respect to understanding the bankruptcy process, advising the Retiree Committee members with respect to their fiduciary duties;
- b. Assisting in Retiree Committee communications with the affected retiree constituency and maintenance of a website to provide information to same;
- c. Taking actions to obtain information and discovery with respect to the retiree benefits sought to be modified or terminated by Debtors;
- d. Investigation of all historical plan documents and presentation of plans to retirees;

- e. Research and drafting of pleadings and other matters attendant to the expected motions regarding the retiree benefits at issue;
- f. Court appearances with respect to matters attendant to this case;
- g. Analysis of any proposals made by the Debtors and assistance in any counteroffers to such proposals;
- h. Efforts to keep the Retiree Committee apprised with respect to the status of the case at all times and with respect to any developments therein;
- i. Efforts to address any rulings or findings made by this Court with respect to the retiree benefits at issue, including the potential of appeal(s) from adverse rulings (if any);
- j. Preparation of all necessary motions, answers, orders, reports and other legal papers in connection with the Retiree Committee's interests in the bankruptcy;
- k. Assisting the Retiree Committee in evaluating and/or implementing mechanisms to mitigate the impact of any reduction of retiree benefits;
- l. Submission of all necessary retention and compensation filings for the professionals retained by the Retiree Committee, which could also include Local Counsel in Missouri;
- m. Review of docket and later filings by other parties to the extent matters may relate or impact retiree benefit issues; and
- n. Any and all other advice, activities, and/or action that may be required by or requested by the Retiree Committee consistent with its scope and obligations.

15. In addition to the above noted activities, if and to the extent that the scope of the Retiree Committee is enlarged, consistent with the Agreed Order or otherwise as modified or ordered by this Court, DEM will further engage in:

- a. Investigation of the financial condition of the Debtors,
- b. Review and consideration of necessary equitable considerations arising under Section 1114 of the Bankruptcy Code,
- c. Analysis of any proposals made by the Debtors pursuant to Section 1114 of the Bankruptcy Code and assistance in any counteroffers to such proposals;
- d. Negotiation, discovery and/or litigation with respect to the rights and interests of the Retiree Committee in the event that a voluntary resolution is not reached, including but not limited to defense against any appeals of any Court order affecting retiree benefits and/or relating to Section 1114.
- e. Working with other professionals retained by the Retiree Committee, such as financial and/or actuarial professionals; and
- f. Representation of the interests of the Retiree Committee in any and all matters otherwise necessary to protect its interests and/or otherwise relating to, arising from or required by Section 1114 of the Bankruptcy Code.

Professional Compensation

16. Consistent with the terms of its engagement letter, DEM intends to apply for compensation for professional services rendered in connection with its representation of the Retiree Committee, subject to this Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Local Bankruptcy Rules of the Eastern District of Missouri, the Agreed Order and Orders of this Court relating to the payment of professional fees and

reimbursement of actual, necessary fees and expenses that DEM, Retiree Committee members (and/or other professionals hired by the Retiree Committee, if any) incur in the scope of representing the Retiree Committee.⁴ The range of DEM's hourly rates for its attorneys and legal assistants is as follows:

Attorneys: \$325 - \$175 per hour

Legal Assistants/Paralegals \$105 per hour

DEM's hourly billing rates are subject to periodic adjustments to reflect economic and other conditions. These rates are set at a level designed to fairly compensate DEM for the work of its attorneys and paralegals, and to cover fixed and routine overhead expenses.

17. It is DEM's policy to charge its clients for actual expenses incurred in connection with its representation. The expenses charged by DEM to its clients include, among other things, postage, package delivery, transcript/court reporting costs, telephone charges when utilizing third party conference call facilitators, internal photocopying at a rate of \$.10 per page when copies exceed 200 pages per month, secretarial or paralegal overtime as required by law, outside copy service costs, travel expenses (including transportation and lodging), expenses for "working meals," and any expenses required for computerized research.

⁴ DEM may also directly reimburse members of the Retiree Committee for expenses they incur as a result of their duties on the Retiree Committee with DEM subsequently seeking reimbursement of those same expenses by and through DEM's application for fees and expenses. Such Retiree Committee member expenses will be separately and fully described in any such DEM applications filed. This accommodation is done to avoid any undue prejudice and/or hardship on the volunteer retirees who serve on the Retiree Committee and in recognition that expense reimbursements for travel and the like may otherwise not be repaid to the retirees (absent this practice) until several months after they incur such expenses.

Disinterestedness of Professionals

18. DEM is not owed any money by the Debtors pre-petition and represents no interest adverse to the Retiree Committee or its affected members individually. Based on its investigation, DEM has no connection with the Debtors, the creditors or any other party-in-interest other than DEM's filing of an objection to Debtor's 509(b)(9) Report on behalf of Continental Crushing and Conveying, Inc. ("Continental Crushing"). DEM's limited representation of Continental Crushing does not create or present any matters adverse to the Retiree Committee.

19. DEM has fully informed the Retiree Committee of its representation of Continental Crushing and the Retiree Committee has consented and hereby reaffirms its consent to DEM's representation of this entity. The Retiree Committee believes that DEM's current representation and any future representation of this entity would not in any way affect DEM's representation of the Retiree Committee.

20. DEM does not hold or represent any interest adverse to the Retiree Committee and DEM is a "disinterested person" within the meaning of 101(14) of the Bankruptcy Code, unless as disclosed in Exhibit A. Under §503(b) of the Bankruptcy Code,

(b) After notice and a hearing, there shall be allowed administrative expenses, and other claims allowed under §502(f) of this title, including –

21. DEM has not entered into any agreements to share any compensation that it may be awarded herein, except as provided by under 14 USC § 504(b).

Prior Request

22. No prior request for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Retiree Committee respectfully requests that this Court enter an order authorizing (a) the retention of Desai Eggmann Mason LLC on behalf of the Retiree Committee *nunc pro tunc* to January 4, 2013 (b) the payment and reimbursement of DEM's fees and disbursements, subject to interim and final allowance thereof in accordance with sections 330 and 331 of the Bankruptcy Code or as otherwise ordered by the Court, and (c) granting such other and further relief as may be just and proper.

Dated: March 29, 2013

OFFICIAL COMMITTEE OF SALARIED RETIREES

/s/ Thomas H. Riske

By: _____

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EXHIBIT A

ROBERT E. EGGMANN DECLARATION

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

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

Re: ECF No. 1919

**DECLARATION OF ROBERT E. EGGMANN PURSUANT
TO FED. R. BANKR. P. 2014 IN SUPPORT OF APPLICATION OF THE RETIREE
COMMITTEE FOR ORDER AUTHORIZING AND APPROVING THE RETENTION
OF DESAI EGGMANN MASON LLC AS COUNSEL**

COMES NOW Robert E. Eggmann being duly sworn, states as follows:

1. I am an attorney at law duly admitted to practice in this Court, and I am a principal of Desai Eggmann Mason LLC (the "Firm").

2. I am a principal of the Firm and maintain an office for the practice of law at 7733 Forsyth Boulevard, Suite 2075, St. Louis, Missouri 63105. I am familiar with the matters set forth herein and make this Affidavit in support of the Application of the Salaried Retiree Committee for Order Authorizing and Approving the Retention of Desai Eggmann Mason LLC as Counsel.

3. Neither I, nor any associates of the Firm, insofar as I have been able to ascertain, represents any interest adverse to that of the Estate in this matter other than (1) the Firm's limited representation of Continental Crushing & Conveying, Inc. by filing an objection to the Debtor's 509(b) Report on behalf of this entity, and (2) we are acting as counsel to the Committee in this proceeding. I believe the Firm to be a disinterested person within the meaning of §101(4) of the Bankruptcy Code.

4. I have caused a conflicts search to be done using the Firm's standard conflict checking system and conflicts database, using creditor information obtained from the pleadings filed in connection with this bank case. I have also caused an electronic mail message to be circulated to all attorneys in the Firm and solicited information about any relationships with the Region 13 United States Trustee and the personnel who work in the St. Louis office of the United States Trustee. Based on the procedures described above, I have determined that the Firm has from time to time provided legal services to the persons or entities listed above who, according to the information obtained from the bankruptcy court pleadings, are among the creditors of the Debtor in these proceedings. The Firm does not, and will not, represent any of these persons or entities, or their affiliates, with respect to the Chapter 11 proceedings, (other than Continental Crushing & Conveying, Inc. as stated above), nor does the Firm's other representation conflict with the interests of the Debtor, its estate, or the Firm's representation of the Debtor herein.

5. Neither I, nor the Firm, nor any partner or associate thereof, insofar as I have been able to ascertain, has any financial connection with the Debtor, its estate, or any of its attorneys and accountants or with the United States Trustee, or any person employed in the office of the United States Trustee.

6. Neither the Firm nor I have any connections with the Office of the United States Trustee in this region or any of its employees other than Robert E. Eggmann is a panel trustee for Region 10 of the United States Trustee.

7. The Firm has not represented any creditors of Debtor (other than as described above), any other party in interest, their respective attorneys and accountants, the United States Trustee or any person employed by the office of the United States Trustee in connection with any

matters adverse to Debtor, or in any capacity in which confidential knowledge of a creditor has been acquired that would bear on the proposed retention by the Committee.

8. Prior to the Firm being selected as counsel for the Committee in this proceeding, the Firm consulted with and was interviewed by various other constituent groups in this case including but not limited to the Official Unsecured Creditors Committee.

9. The Committee has been advised of the Firm's willingness to serve as its counsel and to receive compensation and reimbursement in accordance with standard billing practices for services rendered and expenses incurred on behalf of the Committee, in accordance with the provisions of §327, §330 and §331 of the Bankruptcy Code. The hourly rates of those paralegals and associates of the Firm who are to be involved in this case range from One Hundred Eighty Dollars (\$180.00) per hour to Three Hundred Fifty Dollars (\$350.00) per hour. These rates are the same as rates generally charged for services rendered in all matters handled by this firm and are competitive with those charged by other law firms in St. Louis for services comparable to those to be provided. The Firm billing rates are adjusted from time to time.

10. I represent to the Court that the Firm does not and will not, while employed by the Committee, represent any other entity having any adverse interest in connection with this case other than as described above.

11. The Firm will bill monthly pursuant to L.B.R. 2016-2 and the Firm will file an Application to Approve Payment of Professional Fees every 120 days.

12. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Robert E. Eggmann

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STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this 29th day of March, 2013, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, personally appeared **ROBERT E. EGGMANN**, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in St. Louis County, Missouri, the day and year last above written.

/s/ Nancy J. Neske

Notary Public in and for said County and State

My Commission Expires: 10/19/2013