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

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| **In re:**<br><br>**PATRIOT COAL CORPORATION, *et al.*,**<br><br>**Debtors.**[1] | **Chapter 11**<br>**Case No. 12-51502-659**<br>**(Jointly Administered)**<br><br>**Objection Deadline:**<br>**April 16, 2013 at 4:00 p.m.**<br>**(prevailing Central Time)**<br><br>**Hearing Date (if necessary):**<br>**April 23, 2013 at 10:00 a.m.**<br>**(prevailing Central Time)**<br><br>**Hearing Location:**<br>**Courtroom 7 North** |

**NOTICE AND MOTION OF THE DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR LEAVE TO CONDUCT DISCOVERY OF PEABODY ENERGY CORPORATION PURSUANT TO RULE 2004**

PLEASE TAKE NOTICE THAT this motion is scheduled for hearing on April 23, 2013, at 10:00 a.m. (prevailing Central Time), in Bankruptcy Courtroom Seventh Floor North, in the Thomas F. Eagleton U.S. Courthouse, 111 South Tenth Street, St. Louis, Missouri 63102.

**WARNING: ANY RESPONSE OR OBJECTION TO THIS MOTION MUST BE FILED WITH THE COURT BY 4:00 P.M. (PREVAILING CENTRAL TIME) ON APRIL 16, 2013. A COPY MUST BE PROMPTLY SERVED UPON THE UNDERSIGNED. FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THE COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE.**

[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.

**MOTION OF THE DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR LEAVE TO CONDUCT DISCOVERY OF PEABODY ENERGY CORPORATION PURSUANT TO RULE 2004**

No party is as central to a full understanding of the path leading from the creation of Patriot Coal Corporation ("**Patriot**") in 2007 to its current bankruptcy than its former parent Peabody Energy Corporation ("**Peabody**"). Patriot is a Peabody creation. Peabody selected which of its mines would become Patriot's. Peabody determined what projections would underlie Patriot's business plan. Peabody decided which liabilities it would retain and which it would unload onto Patriot. And Peabody dictated the contractual terms that govern Patriot's ongoing obligations to Peabody after the Spinoff (as defined herein).

The debtors and debtors in possession in these proceedings (collectively, the "**Debtors**") and the Official Committee of Unsecured Creditors of Patriot Coal Corporation (the "**Committee**" and, together with the Debtors, the "**Movants**") have begun an investigation to determine, *inter alia*, whether the Spinoff that created Patriot constituted an actual or constructive fraudulent transfer. Such a claim against Peabody, if cognizable and if successfully asserted, could result in sizeable recoveries for Patriot and its creditors. Accordingly, having pursued a meet-and-confer process pursuant to the local rules, the Movants hereby submit this motion (the "**Motion**") pursuant to section 105 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and this Court's Order Establishing Certain Notice, Case Management and Administrative Procedures entered on March 22, 2013 [ECF No. 3361 ¶ 21] (the "**Case Management Order**") for entry of an order granting the Movants leave to propound requests for documents, substantially in the form attached hereto as Appendix A. In support of the Motion, the Movants respectfully represent as follows:

## BACKGROUND AND JURISDICTION

### A. The Chapter 11 Cases

1. On July 9, 2012, 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 cases to this Court [ECF No. 1789]. 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. The cases are being jointly administered pursuant to Rule 1015(b) of the Bankruptcy Rules and the SDNY Bankruptcy Court's Joint Administration Order entered on July 10, 2012 [ECF No. 30].

2. On July 18, 2012, the United States Trustee for the Southern District of New York, pursuant to section 1102 of the Bankruptcy Code, appointed the Committee to represent the interests of all unsecured creditors in these chapter 11 cases. The members of the Committee are: (i) Wilmington Trust Company; (ii) U.S. Bank National Association; (iii) the United Mine Workers of America (the "**UMWA**"); (iv) the United Mine Workers of America 1974 Pension Plan and Trust; and (v) American Electric Power.

### B. The Spinoff

3. For decades prior to the October 31, 2007 spinoff of Patriot from Peabody by a distribution of Patriot's stock to Peabody's shareholders (the "**Spinoff**"), Peabody owned a number of Appalachian and Illinois Basin mining operations. (Ex. A at 2.) Unlike Peabody's assets in the western United States and abroad, these eastern operations were, in large part, staffed with miners represented by the UMWA and subject to collective bargaining agreements. (Ex. B at 30; Ex. C at 2.) Over the years of Peabody's ownership, thousands of miners retired from Peabody's eastern mines, creating substantial healthcare and pension liabilities. These

eastern mines also faced "increasingly difficult geological conditions, particularly in Appalachia." (Ex. C at 5.) Moreover, labor unrest, including the union strike of 1993, left Peabody increasingly motivated to divest itself of the troublesome and costly unionized operations. After years of discussion and planning, Peabody began a series of transactions no later than 2005 whereby it selected certain mining operations in the eastern United States—particularly those staffed by unionized workers represented by the UMWA—to be consolidated in preparation for a sale or spinoff of those operations. Ultimately, Peabody elected to spin-off the entities and create Patriot.

4. By spinning-off Patriot, Peabody rid itself of approximately $600 million of retiree healthcare liabilities, along with hundreds of millions of dollars of other liabilities, including environmental reclamation obligations and black lung benefits. Peabody openly touted the benefits of the Spinoff, as it improved Peabody's "operating and geologic risk," focused Peabody on "high-growth, high-margin markets," and "[r]educe[d] legacy liabilities by nearly half." (Ex. D at 5.) As Peabody's CEO Richard Navarre explained on an earnings call following the Spinoff:

> Our retiree, healthcare liability and related expense will be reduced by about 40%. Workers compensation liability will be cut nearly 90% and asset retirement obligations will be one-third lower and the combined fund and multi-employer co-act obligations will now fully reside with Patriot. In total, our legacy liabilities, expenses and cash flows will be nearly cut in half.

(Ex. E at 3.) For its part, Patriot became responsible for providing retiree healthcare and benefits to thousands of retirees who had never worked a day in their life for Patriot; even today, years later, approximately 49% of retirees covered by Patriot last worked for, or retired from, Peabody or one of its subsidiaries.

5. Certain Peabody officers and employees were selected to take charge of Patriot following the Spinoff (the "**Future Patriot Employees**"). The Future Patriot Employees

transitioned from their Peabody responsibilities to Patriot over the course of 2007, and some were involved in discussions regarding the Spinoff during that time.

6. Peabody assiduously ensured that the Future Patriot Employees could not bring certain documents with them to Patriot. In the midst of the critical transition week leading up to the Spinoff, all Future Patriot Employees were informed that they were required to select—by hand—emails that they wished to have moved to their email account at Patriot. (Ex. F at 1.) Such employees had to perform a similar process for any hardcopy documents they wanted to retain. (Ex. G.) Peabody also required these employees to certify in writing that they had not kept any documents, electronic or otherwise, that did not "solely relate to Patriot" and that they had "not taken or caused to be taken any [d]ocuments that relate in whole or in part to Peabody as it will be configured after the spin-off of Patriot." (Id.) With respect to non-email documents, Peabody employees then reviewed those documents that were to be transitioned to Patriot and removed "[a]ny files that may contain information that is the exclusive property of Peabody Energy." (Ex. F at 2.) With respect to email documents, after the Future Patriot Employees manually selected which emails to retain, Peabody employees then collected their laptops and BlackBerries to remove all other information. All documents, whether email, hardcopy, or electronic files, that were not affirmatively selected for transition to Patriot remain with Peabody.

7. While Patriot began its life as a separate company on October 31, 2007, it retained numerous ties to Peabody—some of which formed the basis of later disputes. For instance, Peabody and Patriot disagreed over several consequences of the Spinoff and the interpretation of several of the contracts governing the Spinoff, including, among other things, in relation to Patriot's obligation to deliver coal to Peabody at below-market prices, to the scope of Peabody's responsibility for millions of dollars of healthcare, pension, and environmental liabilities, and to

the tax treatment of certain pre-Spinoff transactions. Several formal disputes were initiated between the parties and, in some cases, settlements reached.

**C. The Meet-and-Confer Process**

8. In January 2013, the Movants determined that investigation of Peabody required discovery from Peabody. Pursuant to Local Rule 2004-1(A), on January 11, 2013, the Movants provided counsel to Peabody with a copy of a proposed Rule 2004 subpoena and asked to meet and confer. An extensive series of teleconferences among the parties followed, and numerous contested issues were gradually winnowed down. The parties had agreed, among other things, that Peabody would search for relevant documents, in the first instance, in emails and hardcopy documents of certain Peabody custodians and that Peabody would search for and produce documents dating back to January 1, 2005.[2]

9. During these conferences, Peabody disclosed that, until mid-2008, on a daily basis Peabody's email system automatically deleted all email from "deleted" folders, all "sent mail" that was 60 days old, and all other email, including foldered emails, that was older than one year. Peabody's current "live" email system thus contains incoming emails dating no further back than mid-2007 and outgoing emails no further back than early 2008. Any items not in the live system are now available only on Peabody's daily backup tapes.

10. After several meet-and-confer discussions, it is now clear that the parties have reached an impasse on five key issues. First, Peabody refuses to produce <u>any</u> documents from the Future Patriot Employees. Second, Peabody refuses to produce any documents after October

[2] For example, in exchange for Peabody agreeing to search the emails and hardcopy documents of 14 Peabody custodians for responsive documents, Patriot agreed not to require that the documents of Peabody's current CEO Greg Boyce be searched in the first instance. It should be noted, however, that (1) the Movants expressly reserved their rights to seek document discovery from Mr. Boyce should the need arise, and (2) regardless of whether document discovery is necessary, the Movants do intend to seek the deposition of Mr. Boyce.

31, 2007, the date of the Spinoff. Third, Peabody has proposed a means of searching for electronic documents that risks overlooking obviously relevant documents stored in centralized locations. Fourth, Peabody refuses to restore backup tapes for more than four restoration points over a three-year period, an arbitrary position that assures that the Movants will not receive scores of relevant documents and will thus be unable to conduct a complete and thorough investigation. Fifth, Peabody refuses to permit the UMWA, a member of the Committee, to receive any discovery materials, despite the Committee's willingness to enter into a confidentiality agreement with a tight use restriction on the material.

**D. Jurisdiction**

11. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408, 1409, and 1412.

## BASIS FOR RELIEF

### The Movants Are Entitled to Discovery of Peabody Under Rule 2004

**A. The Movants Require Discovery from Peabody Regarding the Spinoff**

12. The Movants' duties to the Debtors' estates and creditors demand a thorough investigation of the Spinoff and discovery from Peabody. As debtors in possession, the Debtors bear fiduciary duties to maximize the value of their estates for the benefit of all estate creditors. Lange v. Schropp (In re Brook Valley IV, Joint Venture), 347 B.R. 662, 673 (B.A.P. 8th Cir. 2006) ("[A] debtor-in-possession[] is obligated to use best efforts to so maximize the value of the debtor's estate."); see In re Apex Oil Co., 92 B.R. 847, 867 (Bankr. E.D. Mo. 1988). This duty includes assessing the value of potential estate causes of action, and, if warranted, instituting litigation or entering into settlements with regard to such causes of action. See In re Apex Oil Co., 92 B.R. at 867; Smart World Techs., LLC v. Juno Online Servs., Inc. (In re Smart World

Techs., LLC), 423 F.3d 166, 175 (2d Cir. 2005) ("[T]he Code not only authorizes the chapter 11 debtor to manage the estate's legal claims, but in fact requires the debtor to do so in a way that maximizes the estate's value.").

13. Likewise, the Committee bears a statutory duty to "investigate the acts, conduct, assets, liabilities, and financial condition of the debtor . . . and any other matter relevant to the case or to the formulation of a plan." 11 U.S.C. § 1103(c)(2); see Advisory Comm. of Major Funding Corp. v. Sommers (In re Advisory Comm. of Major Funding Corp.), 109 F.3d 219, 224-25 (5th Cir. 1997) (recognizing the duty of a creditors' committee to investigate); see also Loop Corp. v. U.S. Trustee, 379 F.3d 511, 519 (8th Cir. 2004) (recognizing the duty of a creditors' committee to advance creditors' interests).

14. In light of these duties, the Movants have an obligation to consider potential claims against Peabody in connection with the Spinoff. Indeed, in other bankruptcy cases, similar spinoffs have resulted in the assertion of estate causes of action and the recovery of additional value for estate creditors.[3] Here, by divesting Patriot, Peabody avowedly sought to distance itself from the extensive legacy liabilities associated with the Patriot assets. Judge Chapman, in transferring the Debtors' cases to this District, cited related allegations by the UMWA regarding the inadequacy of Patriot's capitalization as a key issue in this case. See In re Patriot Coal Corp., 482 B.R. 718, 754 (Bankr. S.D.N.Y. 2012); see also 2nd Am. Compl., Lowe v. Peabody Holding Co. LLC, No. 12-cv-06925 (the "**West Virginia Action**"), at ¶¶ 81-101 (S.D. W. Va.) [ECF No. 39].

[3] See MC Asset Recovery, LLC v. Southern Co., No. 06-cv-417, Slip Op. at 69 (N.D. Ga. Feb. 5, 2009) (denying summary judgment on fraudulent transfer claims); Mot. to Approve Settlement, In re Solutia, Inc., No. 03-17949 (PCB) (Bankr. S.D.N.Y. June 29, 2007) (Docket No. 3974).

15. For its part, the UMWA has loudly, repeatedly, and correctly pointed out that many of its retirees—whose healthcare liabilities the Patriot entities must modify in order to survive and emerge from bankruptcy—retired from operations owned by Peabody, long before Patriot even existed. Those allegations formed the basis of the complaint in Lowe that seeks to hold Peabody accountable for the lifetime benefits it promised to its union retirees. In response to that complaint, Peabody has acknowledged that "the Patriot bankruptcy court is the proper forum to address all matters relating to the Patriot spinoff, including any determination regarding whether Peabody is somehow liable for the healthcare obligations of Patriot and Peabody's former subsidiaries." Peabody Mem. of Law in Supp. of Mots. to Dismiss, Lowe, No. 12-cv-06925, at 24 [ECF No. 30]; see also id., Peabody Reply Mem. of Law in Supp. of Mot. to Dismiss at 16-17 [ECF No. 53] ("The bankruptcy court can bring together all the interested parties and address all the issues surrounding the complex contractual arrangements among Peabody, Patriot, and the UMWA."). The Movants agree: This Court is the right place to address those issues. But, having conceded as much, Peabody must not be allowed to simultaneously thwart an investigation into those issues by unreasonably refusing discovery.

**B. The Terms of the Request Fall Well Within the Broad Discovery Authorized by Rule 2004**

16. The Movants have collected and are meticulously examining evidence within the Debtors' possession regarding the Spinoff, but it is plain that an adequate investigation requires the discovery sought from Peabody. Thus, the Movants must employ Rule 2004 to obtain the discovery necessary to carry out their investigation of Peabody and the Spinoff. See Motor Coach Indus., Inc. v. Drewes (In re Rosenberg), 303 B.R. 172, 175-76 (8th Cir. B.A.P. 2004) (noting that a trustee has a duty to investigate potential estate claims, and commenting that "Rule 2004 provides the mechanism for a trustee to fulfill this obligation"); 11 U.S.C. § 1107(a) ("[A]

debtor in possession shall have all the rights . . . and powers, and shall perform all the functions and duties . . . of a trustee . . . ."); see also In re Recoton Corp., 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004) (discovery under Rule 2004 is intended to "assist a party in interest in determining the nature and extent of the bankruptcy estate" and to "examin[e] transactions and assess[] whether wrongdoing has occurred").

17. As the basic discovery device in bankruptcy cases, Rule 2004 permits a debtor or official committee to examine "any entity" that has a relationship with, or has engaged in a transaction with, the debtor. See In re Recoton Corp., 307 B.R. at 755 (authorizing an official committee of unsecured creditors to investigate potential causes of action against third parties through a Rule 2004 examination; "[a]ny third party who has a relationship with a debtor may be made subject to a Rule 2004 investigation"); In re Fearn, 96 B.R. 135, 138 (Bankr. S.D. Ohio 1989) (Rule 2004 examination "may properly extend to creditors and third parties who have had dealings with the debtor"). There can be no question that the discovery sought from Peabody is within the purview of Rule 2004. The discovery that the Movants seek in connection with their investigation of potential estate causes of action is "*prima facie* consistent with [Rule 2004's] stated purposes." In re Recoton Corp., 307 B.R. at 756. But Rule 2004 is certainly not confined to investigation of particular causes of action. The broad scope of discovery permitted under Rule 2004 exceeds the claim- and defense-based discovery permitted under Rule 26 of the Federal Rules of Civil Procedure. See In re Apex Oil Co., 101 B.R. 92, 102 (Bankr. E.D. Mo. 1989) (citing In re Vantage Petrol. Corp., 34 B.R. 650, 651 (Bankr. E.D.N.Y. 1983)). Rule 2004 accordingly authorizes even an "exploratory and groping" investigation—commonly characterized as a "fishing expedition"—of matters concerning the debtor's estate far broader than the Spinoff-focused discovery the Movants seek. In re Apex Oil Co., 101 B.R. at 102; see

also In re Hentz, No. 12-30114, 2012 Bankr. LEXIS 2772, at *4 (Bankr. D.N.D. June 18, 2012); In re GHR Energy Corp., 33 B.R. 451, 453-54 (Bankr. D. Mass. 1983); 9 Collier on Bankruptcy ¶ 2004.02[1] (16th ed. 2012).

18. The proposed subpoena of Peabody falls well within the bounds of discovery authorized by Rule 2004. Notwithstanding the sweeping authority provided by the rule, the Movants' discovery request targets the information necessary to their investigation of the Spinoff and evaluation of potential claims. Upon information and belief, essential documents and communications regarding, among other things, Peabody's evaluation of assets and liabilities to be included in Patriot, Peabody's internal assessment of Patriot's prospects, and Peabody's purposes in designing and executing the Spinoff are not available from any other source. The Movants will only be able to shed light on these and other essential questions by obtaining discovery from Peabody. The terms of the proposed subpoena are therefore squarely authorized by Rule 2004 and should be approved.

**C. Peabody's Intransigence Necessitates Issuance of the Subpoena and Order**

19. The parties' extensive meet-and-confer process has reduced, but not eliminated, the number of disputed issues. The proposed subpoena attached as Appendix A reflects much of that progress toward agreeing on both the scope and the manner of discovery. Yet Peabody's adherence to untenable positions regarding its discovery obligations necessitates this Court's intervention on five key points.

1. Peabody Must Produce Documents from Future Patriot Employees

20. Peabody has flatly refused to produce any documents from the Future Patriot Employees for the many years they were Peabody employees and were involved in discussions

and communications regarding the Spinoff.[4] Peabody has not objected that these documents are irrelevant; indeed, Peabody's archive of these employees' email unquestionably holds relevant information not available from any other source. The Movants therefore have "good cause" for their request, and Peabody must search for and produce documents from these employees.[5] See In re Youk-See, 450 B.R. 312, 320 (Bankr. D. Mass. 2011) (stating that "good cause" is established if the party seeking Rule 2004 discovery "has shown that such an examination is reasonably necessary for the protection of . . . legitimate interests" (quoting In re Hammond, 140 B.R. 197, 201 (S.D. Ohio 1992))).

21. In a March 19, 2013 letter to Patriot and the Committee, Peabody based its refusal to produce these documents on the ground that "Peabody employees who went to Patriot were invited to take – and did take – documents and emails they considered relevant to their responsibilities for Patriot's ongoing operations." (Ex. H at 4.) This flawed reasoning does not come close to establishing that the discovery is so unnecessary or burdensome that it should not be permitted. In re Hentz, 2012 Bankr. LEXIS 2772, at *7 (Rule 2004 discovery request should be granted in the absence of "undue hardship" or "injustice"). First, it falsely assumes that simply because an employee was permitted, in the final moments before the Spinoff, to manually select all documents that "solely relate to Patriot," he or she actually did so. Second, it assumes without basis that the emails a particular employee deemed important six years ago captured all emails that are now relevant in connection with a Rule 2004 investigation. Finally, as made clear in Patriot's requests, a number of documents that do not "solely relate to Patriot" are essential to

[4] Peabody has agreed, however, to produce documents in the first instance from 14 custodians who did not ever work for Patriot.

[5] The Movants have proposed that Peabody search for and produce relevant documents from the files of 9 Future Patriot Employees.

the Movants' inquiry. For example, just as Peabody selected which assets to include in the Spinoff, Peabody decided which assets not to include. The discussion about that process and the differences between these assets will shed light on the motives for and expectations of the Spinoff—yet, such emails by definition could not have been moved to Patriot because they did not "solely relate to Patriot." Peabody cannot withhold relevant information simply because Patriot already has other relevant information.

22. Peabody's argument—that all of the Future Patriot Employees' relevant emails would have copied one of the Peabody custodians and therefore will be included in Peabody's production—ignores the realities of email communication. There is no guarantee that any email sent by a Future Patriot Employee would have copied one of the 14 agreed-upon Peabody custodians. In fact, it is highly likely that, as the Spinoff drew nearer and the Patriot custodians became operationally isolated from the Peabody custodians, they increasingly communicated among themselves. Peabody's guesswork to the contrary defies logic and is a wholly insufficient basis for refusing to produce these documents.

2. Peabody Must Produce Documents Post-Dating the Spinoff

23. The Movants have requested a very reasonable discovery cut-off date of May 1, 2008, but Peabody has categorically refused to produce any documents after October 31, 2007, arguing only that Patriot employees "are well aware of the communications between Patriot and Peabody that took place after the spin-off." (Ex. H at 6.) Of course Patriot is "aware of the communications between Patriot and Peabody." But Peabody does not even attempt to argue that Peabody's internal discussions of its ongoing relationship with Patriot and implementation of the Spinoff are not relevant, nor does it even suggest that discovery could properly be limited to communications between Peabody and Patriot. The Bankruptcy Rules do not permit Peabody

to dictate unilaterally that internal Peabody communications—among other relevant documents—are immune from discovery. Moreover, the suggestion that the world's largest private sector coal company would suffer an "undue burden" by searching an additional six months of documents is risible. See In re Hentz, 2012 Bankr. LEXIS 2772, at *7. Internal Peabody communications will likely bear on the reasonableness of the projections used in evaluating the Spinoff and provide insight into Peabody's assessment of Patriot's post-Spinoff performance, among other relevant topics. Peabody therefore should be ordered to search for and produce responsive documents through May 1, 2008.[6]

3. Peabody Must Conduct a Diligent Search for Responsive Non-Email Electronic Documents

24. The Movants and Peabody agree that Peabody must search for responsive non-email electronic documents (such as word processing documents and presentations) in the shared drives of certain Peabody employees identified by the parties, folders identified by these employees as locations in which they saved responsive documents, and folders that Peabody identifies as accessible to certain former employees who are retired or deceased. (Ex. H at 4.) But the Movants do not agree that Peabody could restrict its search to these locations. Under the Federal Rules, Peabody "is charged with knowledge of what documents it possesses." Tarlton v. Cumberland Cnty. Corr. Facility, 192 F.R.D. 165, 170 (D.N.J. 2000). If it is aware of a centralized location that contains responsive documents but was not identified by any custodian—for instance, if a document repository was moved after the retirement of a custodian—Peabody is not relieved of the obligation to search that location. Id.; see also Hayman v. PricewaterhouseCoopers, LLP (In re Telxon Corp. Sec. Litig.), No. 98-2876, 2004

[6] Because responsive emails will be in Peabody's live email system, Peabody cannot even feint an argument that the source data for such discovery is "inaccessible." See Zubulake v. UBS Warburg LLC, 217 F.R.D. 309, 318-19 (S.D.N.Y. 2003).

WL 3192729, at *33 (N.D. Ohio July 16, 2004). Nor can Peabody shift its burden to the Movants by demanding that the Movants identify relevant locations that Peabody has failed to search. Peabody must search for responsive documents where it has reason to believe such documents are stored.[7] See Tarlton, 192 F.R.D. at 170 ("Under the federal rules, the burden does not fall on [the party seeking discovery] to learn whether, how and where [the party subject to discovery] keeps relevant documents.").

4. Peabody's Offer to Restore Four Daily Backups of Email Is Wholly Insufficient

25. Due to Peabody's prior practice of automatically deleting email after certain periods of time, discovery of relevant communications is possible only if Peabody restores email from backup tapes. After extensive negotiation, the Movants have agreed that, as a compromise, they would be willing to accept the restoration of one set of backup tapes every thirty days over the relevant archival period, or approximately 35 restoration points.[8] Peabody has refused that compromise and offered instead the restoration of only four such points, asserting that it is cost-prohibitive to provide more comprehensive discovery. (Ex. H at 6.)

26. Peabody's offer of four restoration points is wholly insufficient and threatens to halt the investigation in its tracks. Because email from "deleted" folders was deleted every day, and sent mail was deleted every 60 days, restoring only four backups over a three-year period guarantees that the Movants will not receive the overwhelming majority of relevant outbound email and email in "deleted" folders. There is simply no source other than the backup tapes for

[7] To be sure, the Movants do not demand that Peabody conduct a wholesale search of its global operations or search for documents in locations where such documents are not likely to be found. At root, the Movants simply demand that Peabody exercise independent judgment about where relevant documents are stored.

[8] The Movants have agreed that the emails resulting from the restoration may be de-duplicated so as to minimize the burden of their subsequent review and production, and have even identified to Peabody's counsel vendors who will perform such de-duplication at a low fixed cost.

this vital and relevant information. The Movants thus have "good cause" to seek a restoration of one restoration point per month.[9] The limited number of restorations required—coupled with Peabody's stated cost of $165 per tape to extract data, or a total of $330 for extraction of each restoration point—clearly evidences that Peabody's backup tapes are not "inaccessible."[10] See Overlap, Inc. v. Alliance Bernstein Invs., Inc., No. 07-0161, 2008 WL 5780994, at *2 (W.D. Mo. Dec. 29, 2008) (finding good cause to produce documents on backup tapes that were "organized in a manner that would allow [party subject to discovery] to substantially narrow the volume of data that would need to be restored"). Moreover, the slight monetary burden of restoration (0.00001% of the value of the liabilities Peabody transferred to Patriot) pales in comparison to the size of the Spinoff and the importance of a complete investigation of the Spinoff to the Debtors' estates—especially since restoration is the sole means of obtaining years' worth of relevant documents not available from any other source. See In re Veeco Instruments Inc. Sec. Litig., No. 05 MD 1695, 2007 WL 983987, at *1 (S.D.N.Y. Apr. 2, 2007) (in the context of Rule 26 discovery, finding good cause for the production of otherwise inaccessible documents because the information was not "reasonably available from any other easily accessed source"). Furthermore, Peabody has refused to provide factual support for its stated estimates of the cost of restoration. While Peabody purports to have obtained estimates of the cost of restoration, Peabody has never provided the Movants with a written estimate of the costs, despite repeated requests to do so. Cf. Escamilla v. SMS Holdings Corp., No. 09-2120, 2011 WL 5025254, at *9-

[9] Indeed, the only way to ensure review and production of relevant emails that may have been placed into "deleted" folders would be to restore backup tapes from every day of the archival period. Recognizing the expense that process would entail, the Movants do not request such extensive restoration at this time but reserve the right to request additional restoration points in the event that discovery reveals that there may be responsive materials overlooked by the Movants' current compromise proposal on email restoration.

[10] Peabody has asserted that the full cost of restoration may be as much as $5000 per restoration point. While this calculation is an overestimate because it includes processing costs that are equally applicable to live data, even at $5000 per restoration point, the Movants' compromise is reasonable.

10 (D. Minn. Oct. 21, 2011) (in the context of Rule 26 discovery, rejecting the claim that restoration of backup tapes would be an undue burden because the argument relied on cost estimates provided by a single vendor). Nevertheless, Peabody has suggested—although never explicitly offered—that it may accede to more restoration points should the Movants, i.e., Patriot's bankruptcy estate, be willing to share some of the cost of restoration. For a company with $8 billion in revenue to attempt to shift routine discovery costs to a bankrupt company and its creditors, including thousands of retired mine workers and their families, is both unjustified and unprecedented.[11]

5. The UMWA Should Not Be Excluded from the 2004 Investigation

27. As the Court is aware, the UMWA is a significant creditor in these proceedings and a member of the Committee. The UMWA also has filed the West Virginia Action, premised on allegations similar to those that the Debtors and the Committee seek to investigate here. See Lowe, Case No. 2:12-cv-06925. During the extensive meet-and-confer process, Peabody objected to providing Rule 2004 discovery materials to the UMWA. Peabody argued that the UMWA was already party to a litigation against it and therefore could not properly take advantage of Rule 2004 to obtain discovery.

28. While the Committee viewed these concerns as mistaken—it is the Committee, and not the UMWA, that is seeking discovery under Rule 2004—it was prepared to agree to certain reasonable restrictions on access to information. In particular, the Committee proposed a form of confidentiality agreement with a tight use restriction, preventing Rule 2004 materials from being used for any purpose other than these proceedings, including the West Virginia Action. In addition, the UMWA has agreed that it will not make Rule 2004 discovery materials

[11] The Movants have been unable to find a single published decision in the context of Rule 2004 discovery that suggests that it is ever appropriate for a debtor to share the costs of discovery with those it has subpoenaed.

available to any UMWA employee or professional involved in the West Virginia Action. The only exception to this commitment would be Grant Crandall, the General Counsel of the UMWA, who was involved in the West Virginia Action. In response to Peabody's concerns, Mr. Crandall is prepared to agree to withdraw from any continuing role in the West Virginia Acton to participate as a Committee member in this Rule 2004 investigation. Peabody has rejected that offer, proposing in response that only the UMWA's outside counsel, Frederick Perillo of the Previant Law Firm, who is not involved in the West Virginia Action, be allowed to receive Rule 2004 discovery materials.

29. While it is prepared to accept reasonable restrictions on the use and distribution of Rule 2004 materials, the Committee is not willing to voluntarily exclude a Committee member from the Rule 2004 process when there is not a proper legal basis to do so. The UMWA and Mr. Crandall, moreover, are active Committee members who contribute significantly to Committee deliberations and analysis. Their agreement not to share Rule 2004 materials with the employees and professionals involved in the West Virginia Action, together with the use restriction in the proposed confidentiality agreement, will provide Peabody with more than sufficient protection against the use of the Rule 2004 materials for purposes of that action.

* * *

30. Because these disputes cannot be resolved despite the parties' good faith efforts to do so, the Movants require the Court's assistance in discharging their duties to all estate stakeholders. Accordingly, the Movants submit this Motion to obtain the authority to serve the requests set out in Appendix A, and entry of an order resolving the five discrete discovery disputes described herein.

**Notice**

31. Consistent with the Case Management Order, the Debtors will serve notice of this Motion on the Core Parties (as defined in the Case Management Order) and on Peabody. 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 Order will be provided to the Core Parties and to Peabody, and will be available at *www.patriotcaseinfo.com/orders.php* (the "**Patriot Orders Website**"). The Proposed Order may be modified or withdrawn at any time without further notice. If any significant modifications are made to the Proposed Order, an amended Proposed 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 14 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**

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

WHEREFORE the Movants respectfully request the Court (i) issue an Order, authorizing the Movants to propound on Peabody a subpoena substantially in the form of Appendix A attached hereto; and (ii) grant such other and further relief as is just and proper.

Dated: New York, New York
April 2, 2013

Respectfully Submitted,

DAVIS POLK & WARDWELL LLP

By: /s/ Michael J. Russano

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*Counsel for the Official Committee of Unsecured Creditors*

**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

# APPENDIX A
# Proposed Rule 2004 Subpoena

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

| | |
|---|---|
| **In re:** | |
| **PATRIOT COAL CORPORATION, *et al.*,** | **Chapter 11** |
| | **Case No. 12-51502-659** |
| | **(Jointly Administered)** |
| **Debtors.**[1] | |

**DOCUMENT REQUESTS PURSUANT TO RULE 2004**

Pursuant to Federal Rule of Bankruptcy Procedure 2004, Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the "Debtors") and the Official Committee of Unsecured Creditors of Patriot Coal Corporation (the "Committee," and together with the Debtors, the "Estate Fiduciaries") propound the following request upon Peabody Energy Corporation for production of the documents described herein within 30 days to the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, and to the offices of Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036. Each of the following document requests is to be read and produced in accordance with the definitions and instructions set forth below.

**DEFINITIONS**

1. "Patriot" means Patriot Coal Corporation and each and any of its subsidiaries, including the Debtors in the above-captioned cases, and including any predecessor entities of Patriot Coal Corporation and/or any of its subsidiaries.

[1] The Debtors are the entities listed on Schedule 1 attached to the Motion of the Debtors and the Official Committee of Unsecured Creditors for Leave to Conduct Discovery of Peabody Energy Corporation Pursuant to Rule 2004. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

2. "Peabody" means each of Peabody Energy Corporation, its present and former parents, subsidiaries, predecessors, members, affiliated entities, joint ventures, agents, representatives, officers, executives, partners, directors, employees, advisors, accountants, attorneys, and all other persons acting, or who have acted, on its behalf or who are under its control.

3. "You" means "Peabody" and "your" means "Peabody's."

4. "Document" shall be used in the broadest sense and includes, but is not limited to, the following items, whether printed or recorded or reproduced by any other mechanical process, or written or produced by hand, and whether sent or received or neither, and further includes any and every manner of information recordation, storage, transmission, or retrieval, including, but not limited to (a) typing, handwriting, printing, or any other form of writing or marking on paper or other material; (b) tape recordings, microfilms, microfiche, and photocopies; and (c) any electronic, magnetic, or electromagnetic means of information storage and/or retrieval, including, but not limited to, electronic mail, optical storage media, computer memory chips, computer tapes, hard disks, compact discs, floppy disks, and any other storage medium used in connection with electronic data processing (together with the programming instructions and all other material necessary to understand or to use such tapes, disks, or other storage materials), namely: contracts; agreements and understandings; communications, including intracompany communications; memos; statements; handwritten or other types of notes; correspondence; telegrams; memoranda; notices; records; books; summaries, notes, or records of telephone conversations; summaries, notes or records of personal conversations or interviews; diaries; forecasts; statistical statements; accountants' work papers; graphs; charts; ledgers; journals; books or records of account; summaries of accounts; balance sheets; income statements; minutes

or records of meetings or conferences; desk calendars; appointment books (including pocket appointment books); reports and/or summaries of interviews; reports and/or summaries of investigations; rough or scratch-pad notes; records, reports, or summaries of negotiations; studies; brochures; pamphlets; circulars; press releases; contracts; projections; drafts of any documents; working papers; marginal notations; doodlings; photographs; drawings; checks (front and back); invoices, bills of lading, and other commercial papers; tape or video recordings; computer printouts; data processing input and output; microfilms; check stubs or receipts; and any other document or writing of whatever description. As used herein, "document" means the original and any nonidentical copy. Handwritten notations of any kind on the original or any copy of a document render same nonidentical.

5. "Communication" means any transmittal of information (in the form of facts, ideas, inquiries, photographs, drawings, or otherwise), and a document request for "communications" includes correspondence, telexes, facsimile transmissions, telecopies, electronic mail ("email"), all attachments and enclosures thereto, recordings in any medium of oral communications, telephone logs, message logs, and notes and memoranda concerning written or oral communications, and any translations thereof.

6. The terms "concerning" and "relating to" shall mean concerning, relating to, referring to, reflecting, describing, involving, evidencing, constituting, or touching upon in any way, in whole or in part.

7. "All," "each," and "any" shall be construed to mean all, each, every, and any, so as to be expansive as possible.

8. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of each document request all documents that might otherwise be construed to be outside of its scope.

9. The term "include," or any derivative thereof, means including without limitation.

10. "1992 Benefit Fund" means the UMWA 1992 Benefit Fund.

11. "1993 Benefit Fund" means the UMWA 1993 Benefit Fund established under Section 9702(a) of the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. § 9702(a).

12. "American Electric Power Contract" means the contract or contracts referred to as "End Customer Contracts" in the Coal Supply Agreement between Coalsales II, LLC and Patriot Coal Sales LLC, dated October 22, 2007.

13. "Analysis" and "analyses" means any analysis whatsoever, including financial, economic, industry, investment, performance, risk, or other analyses whether in the form of narratives, models, or in any other form.

14. "Ancillary Agreement" means any "Ancillary Agreement" as defined in the Separation Agreement, and any capitalized Ancillary Agreement refers to the Ancillary Agreement so defined in the Separation Agreement.

15. "Combined Fund" means the UMWA Combined Benefit Fund established under Section 9702(a) of the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9702(a).

16. "Credit Agreement" means the Credit Agreement dated October 31, 2007 among Patriot, as borrower, the lenders party thereto, and Bank of America, N.A., as Administrative Agent, as amended, restated, supplemented, or otherwise modified from time to time.

17. "Duff & Phelps" means Duff & Phelps Corp. and its affiliates.

18. "Eastern Operations" refers to (i) any operations, reserves, or assets of Peabody or Patriot in either Appalachia or the Illinois Basin, or (ii) any asset of Peabody or any Peabody subsidiary that was actually distributed, or considered for distribution, as part of Patriot in the Spin-Off.

19. "Magnum" means Magnum Coal Company LLC, any of its current or former subsidiaries, and any predecessor entity.

20. "NBCWA" refers to the National Bituminous Coal Wage Agreement of 2007 and any successor agreement.

21. "Offering Materials" refers to registration statements, preliminary and final prospectuses, prospectus supplements, information statements, teasers, term sheets, presentations, summaries, reports, offering memoranda, and any other preliminary or final document used to market, solicit interest in or consent to, or otherwise describe the Spin-Off, the securities of Patriot, or any sale or other disposition of the Eastern Operations or any material portion of the entities, assets and liabilities ultimately included in the Spin-Off. The term shall include all drafts or preliminary versions of any of the foregoing.

22. "Petition Date" means July 9, 2012.

23. "Pledge and Security Agreement" means the Pledge and Security Agreement dated October 31, 2007, between Patriot, the grantors thereto, and Bank of America N.A. as Administrative Agent.

24. "Potential Eastern Spin-Off" means any potential transaction studied, analyzed, proposed, or considered by any person at Peabody involving the spinoff, divestiture, or other disposition of subsidiaries or assets of Peabody that included some or all of the Eastern

Operations. The term shall include, but shall not be limited to, the potential transactions referred to as "Project Gemini," "Project Indian," "Project Big East," and "Project Little East."

25. "Rating Agency" means Moody's Investors Service, Inc. and its affiliates, Standard & Poor's Ratings Services and its affiliates, Fitch Ratings and its affiliates, or any other nationally recognized statistical rating organizations.

26. "Revolving Credit Facility" means the revolving credit facility provided under the Credit Agreement.

27. "Separation Agreement" means the Separation Agreement, Plan of Reorganization and Distribution by and between Peabody Energy Corporation and Patriot Coal Corporation dated October 22, 2007.

28. "Spin-Off" refers to the Spin-Off Preparation and the transaction or series of transactions implemented through the Separation Agreement, the Ancillary Agreements, and other agreements, whereby Patriot was spun off from Peabody.

29. "Spin-Off Preparation" refers to the reorganization steps contemplated by Section 2.01 of the Separation Agreement and other transactions taken by Peabody for the purpose of preparing to spin-off or sell material assets.

30. "Tennessee Valley Authority Contract" means the "End Customer Contract" referred to in the Coal Supply Agreement between Coalsales, LLC and Patriot Coal Sales LLC, dated October 22, 2007.

31. "UMWA" means the United Mine Workers of America, including its locals, districts, and other affiliated entities.

**INSTRUCTIONS**

1. Each request shall be construed independently and not with reference to any other request for documents or communications.

2. Each document or communication is to be produced in its entirety, without abbreviation, redaction, or limitation.

3. These requests for documents or communications are intended to encompass each and every nonidentical copy and draft of the documents requested, as well as all documents which are in your actual or constructive possession, custody, or control, or are available upon your request.

4. These requests for production shall be deemed to be continuing in character. If, after making an initial response to these requests, you obtain or discover any further information, documents, or communications responsive to these requests, or become aware that a response is inaccurate, incomplete, or misleading, you are required to seasonably supplement or amend your response.

5. In producing documents, all documents that are physically attached to each other shall be produced in that form. If a document responsive to any request cannot be produced in full, it shall be produced to the extent possible with an explanation stating why production of the remainder is not possible. Documents that are segregated or separated from other documents, whether by inclusion in binders, files, or sub-files or by the use of dividers, tabs, or any other method, shall be produced in that form. Documents shall be produced either in the manner and order in which they are maintained in the ordinary and usual course of business, or segregated and identified by the request to which they are primarily responsive.

6. You should produce documents or communications not otherwise responsive to this request if such documents or communications refer to, relate to, reflect, concern, or explain the documents or communications called for by the document request, or if such documents or communications are attached to documents or communications called for by the request.

7. If there are no documents or communications responsive to a particular request, you shall so state in writing.

8. If you object to any particular portion of any request herein, you are nevertheless required to produce documents in response to all other portions of such request as to which there is no objection.

9. If you assert a claim of attorney-client privilege, work product doctrine, or any other privilege or immunity with respect to any document request or portion thereof, the objection shall identify the nature of the privilege or immunity being claimed, and describe the nature of the documents not produced in a manner that will enable the Estate Fiduciaries to assess the claim of privilege or immunity, including: (a) the type of document (e.g., letter, memorandum, report); (b) the general subject matter of the document; (c) the date of the document; (d) the author(s) or sender(s) of the document; (e) the addressee(s) of the document; (f) each person who received a copy of the document; and (g) such other information as is necessary to identify the document.

10. If you maintain that any document or communication or any portion thereof responsive to any request herein has been discarded or destroyed in whole or in part, you shall produce the following information: (a) the date the document was discarded or destroyed; (b) the reason(s) the document was discarded or destroyed; (c) the person(s) who discarded or destroyed

the documents; and (d) where the document was maintained prior to it being discarded or destroyed.

11. Whenever necessary to bring within the scope of any document request that which might otherwise be construed to be outside the scope: (a) the use of any verb in any tense shall be construed as the use of that verb in all other tenses, and (b) the use of a word in its singular form shall be deemed to include within its use the plural form and vice versa.

12. For documents kept in paper format, the following specifications should be used for their production:

a. Scanned images should be produced as single-page black-and-white TIFF files in group IV format imaged at 300 dpi.

b. Each filename must be unique and match the Bates number of the page. The filename should not contain any blank spaces and should be zero padded (for example ABC00000001).

c. Media may be delivered on CDs, DVDs, USB drives, or External USB hard drives. Each media volume should have its own unique name and a consistent naming convention (for example ZZZ001 or SMITH001).

d. Each delivery should be accompanied by an Opticon image link file (.OPT).

e. A delimited text file (.DAT) that contains available fielded data should also be included, and at a minimum include Beginning Bates Number, Ending Bates Number, and Number of Pages. The delimiters for that file should be the standard Concordance delimiters.

f. To the extent that documents have been run through an Optical Character Recognition (OCR) software in the course of reviewing the documents for production, full text should also be delivered for each document. Text should be delivered on a document level and may be included in an appropriately formatted text file (.TXT) that is named to match the first Bates number of the document.

13. For documents that originated in electronic format, the following specifications should be used for their production:

a. Electronic documents should be produced in such fashion as to identify the location (i.e., the network file folder, hard drive, backup tape, or other

location) where the documents are stored and, where applicable, the natural person in whose possession they were found, or on whose hardware device they reside or are stored. If the storage location was a file share or work group folder, that should be specified as well.

b. Attachments, enclosures, and/or exhibits to any parent documents should also be produced and proximately referenced to the respective parent documents containing the attachments, enclosures, and/or exhibits.

c. For standard documents, emails, and presentations originating in electronic form, documents should be produced as TIFF images using the same specifications as set forth in Instruction 12 above, with the following additional terms: Provide a delimited text file (using the delimiters detailed in Instruction 12 above) containing the following extracted metadata fields: (i) Beginning Production Number; (ii) Ending Production Number; (iii) Beginning Attachment Range; (iv) Ending Attachment Range; (v) Custodian; (vi) Original Location Path; (vii) Email Folder Path; (viii) Document Type; (ix) Author; (x) File Name; (xi) File Size; (xii) MD5 Hash; (xiii) Date Last Modified; (xiv) Date Created; (xv) Date Last Accessed; (xvi) Date Sent; (xvii) Date Received; (xviii) Recipients; (xix) Copyees; (xx) Blind Copyees; (xxi) Email Subject; (xxii) Path to Native File. Extracted Text (not OCR Text) should be produced as separate .TXT files.

14. When converting electronically stored information from its native format into its production format: (a) all tracked changes shall be retained in the manner in which they existed when the file was collected; (b) OLE Embedded files shall not be extracted as separate documents; (c) author comments shall be retained in the manner in which they existed when the file was collected; (d) hidden columns and rows shall be retained in the manner in which they existed when the file was collected; (e) presenter notes shall be retained in the manner in which they existed when the file was collected; (f) auto-populated fields, with the exception of auto-populating "page number" fields, shall be replaced with text indicating the field name. For example, auto-populating "date" fields shall be replaced with the text "DATE," and auto-populating "file path" fields shall be replaced with the text "Path" (or other similar text).

15. To the extent documents in a foreign language are produced, processing of such documents shall be Unicode-compliant.

16. With respect to documents containing redacted text, no text will be provided for the redacted portion of the documents. OCR will be provided for the unredacted portions of the documents.

17. Additional special processing of certain electronic documents will be as follows: Microsoft Excel spreadsheet files will not be converted to TIFF files and will be produced in native format and in the order that they were stored in the ordinary course of business. A placeholder TIFF image will be created, Bates numbered, and the produced Excel file will be renamed to match the Bates number on its corresponding placeholder page. The exception will be for redacted spreadsheets which will be produced in TIFF format as specified above. Images for the redacted spreadsheets will display the content in the same manner as if it were printed. The extractable metadata and text should be produced in the same manner as other documents that originated in electronic form.

18. Upon review, the Estate Fiduciaries may ask for certain other documents and/or databases that were initially produced in their petrified (TIFF or PDF) format to be produced in their native format in the event that the petrified version is not reasonably usable. The Estate Fiduciaries will identify any such documents by Bates numbers. The documents should be produced in their unaltered native format with an accompanying text delimited text file (using the delimiters described in Instruction 12 above) that contains the following fields: (a) Beginning Production Number; (b) Ending Production Number; (c) Beginning Attachment Range; (d) Ending Attachment Range; (e) Path to Native File; (f) MD5 Hash Value.

19. Unless otherwise indicated, these requests cover the time period from January 1, 2005 to May 1, 2008.

20. The Estate Fiduciaries hereby reserve all rights to expand or supplement all requests for information and the documents and communications set forth herein.

**REQUESTS FOR PRODUCTION**

1. All documents and communications concerning the development, planning, design, or structure of Patriot or the Spin-Off, or concerning the objectives, purposes or reasons for the Spin-Off.

2. All documents and communications concerning any Potential Eastern Spin-Off.

3. All documents and communications regarding the creation of new corporate entities, dissolution of existing corporate entities, or conversion of existing corporate entities to other corporate forms, and the transfer of land or coal reserves, equity in entities holding land or coal reserves, or other assets included in the Eastern Operations, to or from any Peabody subsidiary that was distributed or considered for distribution as part of Patriot in the Spin-Off.

4. All documents and communications concerning the consideration or selection of assets and liabilities to be included in Patriot, including any such documents or communications concerning such assets or liabilities that were ultimately retained by Peabody.

5. All documents and communications concerning the book value, market value, or fair value of the assets or liabilities of Patriot and the calculation thereof, including as calculated under GAAP.

6. All documents and communications regarding any analysis, estimate, evaluation, appraisal, or projection concerning the Eastern Operations (including, but not limited to, those transferred to Patriot). This includes but is not limited to analyses of revenue by coal type, revenue streams from coal and non-coal sources, intercompany revenue versus customer revenue, and breakdown of labor and operating costs; analyses of liabilities associated with each

facility and each mine's permitted operating period and useful life; analyses or estimates of the value of proven and probable coal reserves and the commercial viability of mining such reserves; engineering reports for mining plans; environmental assessments; analyses of selenium-related issues; analyses of fixed assets or equipment; reports of leases and royalties; analyses or estimates of asset retirement obligations, recorded and unrecorded contingent liabilities, off-balance sheet items, and impairments to or disposal of long-lived assets; and communications with auditors regarding the Eastern Operations.

7. All consolidated or consolidating financial statements and unconsolidated financial statements, in each case including balance sheets and cash and income statements, concerning the Eastern Operations for any period after January 1, 2002. This includes but is not limited to financial statements by mine and entity.

8. Documents sufficient to identify the operational role(s), including but not limited to reserve owner or mine operator, for each Patriot legal entity, in relation to Patriot mines and mine complexes.

9. Documents and communications sufficient to show projections, forecasts, or analyses, prepared or consulted in connection with the Spin-Off or analysis of any Potential Eastern Spin-Off, of the price of, supply of, or demand for coal produced in Northern Appalachia, Central Appalachia, Southern Appalachia, or the Illinois Basin (thermal or metallurgical) including any such analyses or projections of the impact of the price of natural gas, the percentage of U.S. electrical generation using coal, the volume of steel production, the volume of coke production, shipping prices or shipping price indices (such as the Baltic Dry Index), production capacity, exports, coal customer inventories, and environmental regulation on the price of, supply of, or demand for such coal.

10. Documents and communications sufficient to show the historical contracted and spot sales of metallurgical and thermal coal produced at Eastern Operations.

11. All documents and communications concerning any proposed or actual leases of coal reserves between Peabody and any of its affiliates and Patriot and any of its affiliates.

12. All documents and communications, from January 1, 2005 through the present, containing information, analysis, or quantification regarding agreements by Patriot to supply coal to former Peabody customers.

13. For the period from January 1, 2007 to the Petition Date, all documents exchanged between, or communications between, Peabody and American Electric Power (and any of its affiliates) concerning Peabody's obligations under the American Electric Power Contract, including documentation of or correspondence regarding any change in pricing or Peabody's right to additional revenue under such contract.

14. For the period from January 1, 2007 to the Petition Date, all documents exchanged between, or communications between, Peabody and the Tennessee Valley Authority (and any of its affiliates) concerning Peabody's obligations under the Tennessee Valley Authority Contract, including documentation of or correspondence regarding any change in pricing or Peabody's right to additional revenue under such contract.

15. All documents and communications regarding any costs of the Spin-Off that were paid, or that were anticipated to be paid, by Patriot.

16. All financial projections or forecasts concerning Patriot, the Spin-Off, or any Potential Eastern Spin-Off concerning any period after January 1, 2005, including, but not limited to, projections or forecasts concerning the actual or anticipated financial impact of the

Spin-Off, the Separation Agreement, or any of the Ancillary Agreements, on either Peabody or Patriot.

17. All financial projections or forecasts for Peabody prepared from January 1, 2005 to May 1, 2008 and, in the case of projections or forecasts related to, affected by, or dependent upon contracts or dealings with Patriot, from January 1, 2005 to the present.

18. All documents and communications concerning or relating to any solvency or capital adequacy analysis regarding Patriot, the Spin-Off, or any Potential Eastern Spin-Off, whether issued by Duff & Phelps or any other person, including financial statements, balance sheets, financial projections, or other financial information referenced in or underlying any solvency opinion. This includes but is not limited to the following documents referenced on page 12 of the solvency opinion prepared by Duff & Phelps:

a. Management-prepared audited and unaudited historical financial statements from 2002–2006 that presents Patriot's historical performance on a stand-alone basis;

b. Management-prepared pro-forma historical income statements for December 31, 2006 and six months ended June 30, 2007 and a pro-forma balance sheet ended June 30, 2007;

c. Management's base case forecast for Patriot for 2007–2011 as of August 29, 2007;

d. Pro-forma schedule of liabilities (including contingent liabilities) and projected expense and cash requirements for "Legacy Liabilities" of Patriot after the spin-off;

e. Management's assumptions regarding projected coal prices and summarized projected coal prices from several industry organizations; and

f. Management's presentations to Peabody's board of directors dated January 23, 2007, February 19, 2007, April 13, 2007, and July 31, 2007.

19. All non-privileged communications with, documents prepared by or for, opinion letters of, or records reflecting due diligence performed by, any financial advisor, investment

bank, auditor, lender, broker, consultant, or other professional retained by Peabody or Patriot in connection with the Spin-Off, any Potential Eastern Spin-Off, any attempt to market or sell the Eastern Operations or any material portion of the entities, assets, and liabilities that were considered in relation to the Spin-Off.

20. All communications with, or documents exchanged with, the Securities and Exchange Commission, the New York Stock Exchange, or the Pension Benefit Guaranty Corporation regarding Patriot or the Spin-Off.

21. All documents and communications concerning any credit facility to be provided to Patriot in connection with the Spin-Off, including, but not limited to, documents and communications regarding the actual, anticipated, planned, or projected uses of any funds borrowed under such facility.

22. All documents and communications concerning the Offering Materials, the preparation of the Offering Materials, and any presentation or roadshow conducted in connection with the Spin-Off or any effort to market or sell the Eastern Operations or any material portion of the entities, assets, and liabilities ultimately included in the Spin-Off.

23. All documents and communications relating to any evaluation or analysis of whether any of the transfers made or obligations incurred in connection with the Spin-Off could be challenged or avoided as fraudulent conveyances under the Bankruptcy Code or state fraudulent conveyance law, or could otherwise create liability on the part of Peabody.

24. All documents and communications reflecting the evaluation, negotiation, drafting, preparation, execution, or post-Spin-Off interpretation of any agreement concerning any aspect of the Spin-Off, including, but not limited to, the agreements listed below, including a final, executed copy of each such agreement:

a. the Separation Agreement;

b. the Coal Act Liability Assumption Agreement;

c. the NBCWA Liability Assumption Agreement;

d. the Salaried Employee Liability Assumption agreement;

e. the Administrative Services Agreement;

f. the Transition Services Agreement;

g. the Employee Matters Agreement;

h. the Coal Supply Agreements

i. the Real Property Agreements

j. the Throughput and Storage Agreement;

k. the Master Equipment Sublease Agreement;

l. the Software License Agreement;

m. the Common Interest Agreement;

n. any other Ancillary Agreement relating to the Spin-Off;

o. the Credit Agreement; and

p. the Pledge and Security Agreement.

25. All documents and communications reflecting or relating to the accounting for, adjustments made on account of, or treatment of intercompany balances or intercompany liabilities in connection with the Spin-Off.

26. All documents and communications concerning any analysis, discussion, investigation, or evaluation, including actuarial analyses, present-value analyses, cost estimates or projections (including the cost of future contributions or potential withdrawal liability), and estimates of the annual current portion, of Patriot's liabilities relating to:

a. postretirement healthcare obligations under the NBCWA, predecessor agreements, or "me-too" agreements;

b. pension obligations under the NBCWA, predecessor agreements including the UMWA 1950 Pension Plan, the UMWA 1974 Pension Plan, or "me-too" agreements;

c. other obligations under the NBCWA, predecessor agreements, or "me-too" agreements;

d. the Coal Industry Retiree Health Benefit Act of 1992;

e. retiree healthcare and other obligations relating to the Surface Mining Control and Reclamation Act Amendment of 2006, the Combined Fund, the 1992 Benefit Fund, or the 1993 Benefit Fund;

f. the Federal Black Lung Benefits Act, the Black Lung Benefits Revenue Act of 1977, or the Black Lung Benefits Reform Act of 1977;

g. workers' compensation;

h. employees transferred to Patriot;

i. retirees not covered by the Coal Act;

j. the UMWA Cash Deferred Savings Plan and the Retiree Bonus Account Plan;

k. any other plan under which retiree medical, life insurance, or pension benefits were provided to retirees, or promised to employees, of Eastern Operations; and

l. asset retirement obligations, including reclamation obligations under the Surface Mining Control and Reclamation Act of 1977 or any state law.

27. All documents and communications concerning any consideration or evaluation of liabilities of Patriot to be assumed by Peabody, including any analysis of the amount of such

liabilities that Peabody would assume and any communications with the UMWA or Patriot regarding the assumption of retirees' liabilities.

28. All documents and communications reflecting or relating to any guarantee by Peabody of any liability of Patriot.

29. With respect to all plans under which retiree medical or life insurance benefits were provided to retirees, or promised to employees, of Peabody or Patriot during the period from January 1, 1995 through December 31, 2007, all of the following: plan documents, summary plan descriptions, trust agreements for any related trusts, insurance contracts, service contracts with third party administrators, accountants' reports, valuations for purposes of FAS 106, other cost estimates or projections, collective bargaining agreements covering the provision of such benefits, special communications related to early retirement incentive programs and reductions in force, and any complaints relating to elimination or attempted changes to any such benefits filed in any state or federal court.

30. All documents and communications concerning the development, purposes, objectives, or incentive targets of any incentive plan, grant of stock options, or grant of restricted stock units provided for directors, officers, or employees of Patriot in connection with the Spin-Off.

31. All communications between, or documents exchanged between, Patriot's senior managers, directors, and officers and Peabody regarding their employment, compensation, benefits, or indemnification following their hiring by Patriot.

32. All tax returns of Peabody, private ruling requests, correspondence with or from the Internal Revenue Service, and any other draft or final documents and communications

relating to the tax impact of the Spin-Off on Patriot, including any tax liabilities that Patriot bore or was expected to bear in connection with the Spin-Off.

33. All documents and communications concerning any of Peabody's decisions pertaining to tax elections that had any effect on tax assets or liabilities of Patriot, including but not limited to Peabody's election decision regarding the installment sale method for eligible asset sales.

34. All documents and communications relating to any tax assets retained by Peabody that are related to Eastern Operations distributed as part of Patriot.

35. All documents and communications reflecting any analysis, investigation, or consideration by Peabody or Patriot, the board of directors of Peabody or Patriot, any committee of the board of directors of Peabody or Patriot, or any management committee of Patriot or Peabody of:

a. the Spin-Off;

b. any Potential Eastern Spin-Off;

c. any sale of all or part of the Eastern Operations;

d. any purchase of assets to be combined with the Eastern Operations;

e. the Separation Agreement or the Ancillary Agreements;

f. the financial condition of Patriot; and

g. any solvency opinion rendered with respect to Patriot.

36. All presentations to the board of directors of Peabody or Patriot, or any committee of the board of directors of Peabody or Patriot, in connection with the Spin-Off or any Potential Eastern Spin-Off, including duplicate hard copies, and all documents and communications regarding the preparation or development of such presentations to either board.

37. All documents and communications relating to offers or potential offers for the acquisition, sale, or merger of any or all of the entities, assets, or liabilities comprising the Eastern Operations, including any communications with ArcLight Capital Partners or Magnum.

Dated: New York, New York
_____, 2013

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*Counsel for the Official Committee of Unsecured Creditors*

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

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|---|---|
| **In re**<br><br>**PATRIOT COAL CORPORATION, *et al.*,**<br><br>**Debtors.** | **Chapter 11**<br>**Case No. 12-51502-659**<br>**(Jointly Administered)** |

**SUMMARY OF EXHIBITS**

The following exhibits (the "**Exhibits**") referenced in the Motion of the Debtors and the Official Committee of Unsecured Creditors for Leave to Conduct Discovery of Peabody Energy Corporation Pursuant to Rule 2004 will be served on the Court, the office of the U.S. Trustee, counsel to the administrative agents for the Debtors' postpetition lenders, and Peabody[1] (collectively, the "**Service Parties**"). Copies of the Exhibits will be made available at *www.patriotcaseinformation.com/exhibits.php* and will be made available for inspection at the hearing.

| | |
|---|---|
| Exhibit A: | A true and correct copy of excerpts of the Form 10-K that Peabody filed with the Securities and Exchange Commission on February 25, 2013. |
| Exhibit B: | A true and correct copy of excerpts of the Form 10-Q that Peabody filed with the Securities and Exchange Commission on August 8, 2007. |
| Exhibit C: | A true and correct copy of excerpts of the Information Statement of Patriot Coal Corporation, dated October 22, 2007, that was submitted as Exhibit Number 99.1 to the Form 8-K that Patriot filed with the Securities and Exchange Commission on October 24, 2007. |
| Exhibit D: | A true and correct copy of the Peabody Written Presentation, dated November 28, 2007, that was submitted as Exhibit Number 99.1 to the Form 8-K that Peabody filed |

[1] Capitalized terms used but not otherwise defined herein have the meanings assigned to such terms in the Motion.

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|---|---|
| | with the Securities and Exchange Commission on November 28, 2007. |
| Exhibit E: | A true and correct copy of the transcript of Peabody's Q3 2007 Earnings Call, which was retrieved electronically on April 2, 2013 from http://seekingalpha.com/article/53075-peabody-energy-q3-2007-earnings-call-transcript. |
| Exhibit F: | A true and correct copy of an October 23, 2007 email from Gary Kalbfleisch of Peabody to Future Patriot Employees titled "IMPORTANT – Email and Electronic File Transfer to Patriot Coal." |
| Exhibit G: | A true and correct copy of the form of certification that Peabody required Future Patriot Employees to sign in connection with the Spinoff. |
| Exhibit H: | A true and correct copy of a March 19, 2013 letter sent by Peabody's counsel to counsel for the Debtors and counsel for the Committee. |

Dated: New York, New York
April 2, 2013

Respectfully Submitted,

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