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# Davis Polk

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April 3, 2013

**Re: In re Patriot Coal Corp. et al., Case No. 12-51502-659 (Jointly Administered)**

The Honorable Kathy A. Surratt-States  
United States Bankruptcy Court  
for the Eastern District of Missouri  
Thomas F. Eagleton US Courthouse  
111 S. 10th Street  
St. Louis, Missouri 63102

Dear Judge Surratt-States:

We represent the Debtors in the above-referenced action. We write to request that the *Motion of Aurelius Capital Management, LP, and Knighthead Capital Management, LLC, for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 1104(a), Directing the Appointment of a Chapter 11 Trustee* [ECF No. 3423] (the "**Trustee Motion**") be adjourned from April 23, 2013 to the Debtors' next scheduled status hearing date, May 21, 2013, or such other date as the Court may direct.

Aurelius Capital Management, LP and Knighthead Capital Management, LLC (collectively, the "**Movants**") filed the Trustee Motion on March 28, 2013 and purported to schedule a hearing on the motion for April 23, 2013. Needless to say, the Debtors strongly disagree with the contentions expressed in the Trustee Motion and believe the motion is an unfortunate distraction from the significant challenges facing the estates. Given the default of the Debtors' post-petition financing facility that would result from the appointment of a trustee, as well as the operational crisis that would inevitably ensue from the separation of the management of the various Debtors' highly interdependent subsidiaries, it is difficult for the Debtors to fathom that the Movants seriously desire the result that they request.

The appointment of a trustee is an extraordinary remedy, and the Movants have not met, and cannot meet, their heavy burden to show that it is warranted under the circumstances.<sup>1</sup> Rather,

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<sup>1</sup> See, *In re Keeley and Grabanski Land Partnership*, 455 B.R. 153, 162 (B.A.P. 8th Cir. 2011) ("The appointment of a trustee in a Chapter 11 case is an extraordinary remedy. And, 'there is a strong presumption in favor of allowing a chapter 11 debtor-in-possession to remain in possession.'" (internal citation omitted). As this Court is no doubt aware, all large multi-debtor chapter 11 cases contain potential inter-debtor and inter-creditor issues. Yet, it is virtually unprecedented for such issues to result in the appointment of a chapter 11 trustee – especially absent any showing of fraud or bad faith (neither of which has been alleged by the Movants). Additionally, we are not aware of a single case where a chapter 11 trustee was appointed for certain of the legal entities of an operating debtor family and not for others.

the appointment of a trustee is contrary to the interests of each of the Debtors' bankruptcy estates, their creditors and other parties in interest. The Debtors' management team has been exercising their fiduciary duties appropriately throughout these cases. In light of their vast expertise and experience, they are best suited to guide all of the Debtors through this reorganization.

The Debtors (and we presume various other parties in interest as well) will vigorously object to the Trustee Motion on an appropriate timetable set by the Court. However, in particular given the agenda for the April 23 hearing, which is already full with a number of important time-sensitive matters that we anticipate will occupy the entire day, the Debtors believe that the Trustee Motion should be scheduled for the May 21 status hearing. There will not be sufficient time on April 23 to properly address the Trustee Motion, and the Debtors respectfully submit that the Court should not allow the Movants' baseless allegations to distract from the pressing matters before the Court on April 23 and the critical Section 1113/1114 trial that is scheduled to commence on April 29.

In terms of the April 23 status hearing, as the Court is aware, the *Motion of Certain Interested Shareholders for Entry of an Order Directing the Appointment of an Official Committee of Equity Security Holders Pursuant to Bankruptcy Codes § 1102(a)(2)* [ECF No. 417] has long been scheduled to be heard at that hearing. The Debtors expect that the parties will introduce multiple witnesses, and that the hearing on this motion will likely require the majority of the day.

As the Court is also aware, in *Robin Land Company LLC v. STB Ventures, Inc.* (Adv. Pro. No. 12-04355-659), there are two contested motions scheduled to be heard on April 23.<sup>2</sup> The Debtors estimate that this portion of the agenda will require at least one to two hours. In addition, the Court has scheduled a pre-hearing conference on the Debtors' *Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 of the Bankruptcy Code* [ECF Doc. 3214] and a pretrial conference in *Patriot Coal Corp. and Heritage Coal Company v. Peabody Holding Company, LLC and Peabody Energy Corp.* (Adv. Pro. No. 13-04067-659). In addition, there is currently scheduled a motion for leave to conduct an examination of Peabody Energy Corporation pursuant to Rule 2004 of the Bankruptcy Rules of Federal Procedure.

Next, in addition to two motions to modify the automatic stay filed by third parties, there are currently five time-sensitive procedural motions on file that the Debtors expect to go forward on April 23, the Debtors' motion to extend their exclusive periods to file a plan of reorganization and solicit acceptances thereon,<sup>3</sup> the Debtors' motion to modify the automatic stay to permit the payment of defense costs in a pending litigation involving certain of their directors and officers and three applications to retain professionals who are currently performing services for the Debtors or other parties in interest. Further, the Debtors also expect that the *Payne Gallatin Company Objection to Debtors' Motion for Authorization to (i) Assume or (ii) Reject Unexpired*

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<sup>2</sup> These two motions are the *Motion for Judgment on the Pleadings and to Dismiss Defendants' Counterclaims* [ECF No. 34] and the *Motion of STB Ventures, Inc., Under 11 U.S.C. § 365(d)(3) to Compel Robin Land Company to Pay Part or All of the Post-Petition Amounts Due Under the STB Override Agreement, and, in the Alternative, to Provide STB Ventures Adequate Protection of Its Interests Under the STB Override Agreement* [ECF No. 40].

<sup>3</sup> The Debtors' current exclusive period to file a plan of reorganization expires on May 5, 2013.

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*Leases of Nonresidential Real Property* [Doc 1995] will go forward.<sup>4</sup> The Debtors and Payne-Gallatin Company may introduce witnesses with respect thereto.

Finally, and in accordance with the *Order Directing Appointment of Committee of Retired Employees Pursuant to 11 U.S.C. § 1114* [ECF Doc. 3004], the Debtors intend to seek modification and termination of certain non-union retiree benefits pursuant to section 363 of the Bankruptcy Code at the April 23 hearing.

Accordingly, the Debtors respectfully request that the Court adjourn the Trustee Motion to May 21, 2012, or such other date as the Court may direct, and set a deadline of seven days prior to such hearing to file objections to the Trustee Motion in accordance with the *Order Establishing Certain Notice, Case Management and Administrative Procedures* [ECF No. 3361].

Respectfully yours,



Brian Resnick

cc via

e-mail: Brian C. Walsh, Esq.  
Thomas M. Mayer, Esq.  
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Margot B. Schonholtz, Esq.  
Leonora S. Long, Esq.  
Steven Goldstein, Esq.  
Lawrence S. Robbins, Esq.

Via E-mail and Overnight Courier

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<sup>4</sup> In fact, on March 28, 2013, Payne-Gallatin Company filed the *Payne-Gallatin Motion for an Order (A) Directing Debtors to File a Response to the Payne-Gallatin Company Objection to Debtors' Motion For Authorization to (I) Assume or (II) Reject Unexpired Leases of Nonresidential Real Property with Respect to Contract Id Lnd 323, and (B) Scheduling Mediation and Hearing* [ECF No. 3419].