UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re	§	
	§	**Chapter 11**
PATRIOT COAL CORPORATION, *et al.*,	§	**Case No. 12-51502-659**
	§	**(Jointly Administered)**
Debtors.	§	
	§	**Objection Deadline:**
	§	**April [ ], 2013 at 5:00 p.m.**
	§	**(prevailing Central Time)**
	§	
	§	**Hearing Date (if necessary):**
	§	**April [ ], 2013 at [ ] a.m.**
	§	
	§	**Hearing Location:**
	§	**Courtroom 7 North**

NOTICE OF HEARING

PLEASE TAKE NOTICE that Irl F. Engelhardt ("Engelhardt"), a creditor and party in interest, will call for hearing on April [__] at [__] (CST) at the United States Bankruptcy Court, Courtroom 7 North, Thomas F. Eagleton Courthouse, 111 South Tenth Street, St. Louis, Missouri 63012 before the Honorable Judge Kathy Surratt-States (the "Hearing"): Irl F. Engelhardt's Motion to Quash Subpoena for Deposition (the "Motion"). Any objection or other response to the Motion should be filed on or before April [__], 2013 at 5:00 p.m. (CST). At the Hearing, Engelhardt will seek entry of an order substantially in the form of the Proposed Order submitted with the Motion**.**

IRL F. ENGELHARDT'S EMERGENCY MOTION
TO QUASH SUBPOENA FOR DEPOSITION

Irl F. Engelhardt, by his attorneys, hereby files this Emergency Motion pursuant to Federal Rule of Bankruptcy Procedure 9016 for an order quashing the United Mine Workers of America's ("UMWA") subpoena for deposition in conjunction with a contested matter (hereinafter the "Subpoena," attached as Exhibit A). The Subpoena—which was served on Mr. Engelhardt on Saturday, April 13, 2013—purports to require Mr. Engelhardt to sit for a deposition on Friday, April 19, 2013 in connection with the upcoming April 29 hearing 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 ("1113/1114 Motion"). In telephonic discussions held on Monday April 15, 2013, the Union subsequently agreed to extend the date for Mr. Engelhardt's deposition to April 25.

This Court must quash the Subpoena under Federal Rule of Civil Procedure 45(c)(1) because it gives Mr. Engelhardt an impossibly short amount of time—11 days (three of them on weekends)—to prepare for an examination that is likely to cover a number of complex topics spanning a seven-year period, and will surely implicate privileged communications or issues. Mr. Engelhardt was an officer and director at both Peabody Energy Corporation ("Peabody") and at Patriot Coal Corporation ("Patriot"), and possesses knowledge of attorney client and work product information that is protected from disclosure in connection with his roles at both companies, and that to Mr. Engelhardt's knowledge, has not been the subject of waiver by either company. Mr. Engelhardt expects that parties will attempt to depose him about events that occurred during Mr. Engelhardt's tenure at both companies, including the spin-off of Patriot by Peabody. Precisely what topics, conversations, and documents are privileged or subject to confidentiality agreements as to either Patriot or Peabody is a complex issue, for which Mr. Engelhardt requires adequate time to prepare in consultation with his own counsel, as well as attorneys for both Patriot and Peabody. It is simply impossible for Mr. Engelhardt to gather and review sufficient information and documents so that he is properly refreshed, and review the same with his personal counsel as well as relevant materials with attorneys for Patriot and Peabody, in such a short period.

Were Mr. Engelhardt forced to sit for a deposition without having had adequate time to prepare, there is a serious risk that he might, as a former director of each company, inadvertently disclose privileged or otherwise protected information, which could then constitute a waiver of

such privilege. *See infra* ¶ 24. As a former officer and director of Patriot and Peabody—both publicly traded companies—Mr. Engelhardt owes duties to both to ensure that his testimony is complete, accurate, and does not inadvertently waive a privilege. *See infra* ¶ 21.

Further, the Court should quash the Subpoena because Mr. Engelhardt's testimony would have minimal relevance to the issues being decided at the April 29 hearing. Mr. Engelhardt has been fully resigned from Patriot since October 2012 and therefore lacks knowledge of Patriot's present financial situation or the necessity of the modifications being proposed through the 1113/1114 process.

Patriot and the Creditors have agreed upon witnesses that are relevant to the 1113/1114 hearing and have agreed upon a deposition schedule for those witnesses. However, prior to the service of the Subpoena, the UMWA did not contact counsel for Mr. Engelhardt, a witness and not a party to this matter, about the timing, the topics or the complexities of the privilege issues associated with his requested testimony. Instead, the UMWA elected to wait to serve Mr. Engelhardt until shortly before the hearing, which deprived Mr. Engelhardt a reasonable opportunity to prepare Mr. Engelhardt for sworn testimony on topics that could extend back seven years and that, based upon the comments made in the press and pleadings by the parties, could impact future significant litigation matters. Thus, pursuant to the mandatory protections of Fed. R. Civ. P. 45(c) (3)(A)(i); (iii) and (iv), the Subpoenas must be quashed.

In support of his Motion, Mr. Engelhardt respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Debtors' Chapter 11 cases in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. The statutory predicates for the relief sought herein are Rule 9016 of the Federal Rules of Bankruptcy Procedure, and Section 105(a) of the Bankruptcy Code.

FACTUAL BACKGROUND

3. Mr. Engelhardt served as Chairman and a director of Peabody from 1998 to October 31, 2007. Mr. Engelhardt also served as Chief Executive Officer of Peabody or its predecessors from 1990 through December 2005. Gregory H. Boyce became Peabody's CEO effective January 2006, and Mr. Engelhardt had no management responsibilities at Peabody following that date.

4. On or about October 31, 2007, Peabody transferred certain assets and liabilities to Patriot, a newly-formed subsidiary. In exchange, Peabody received Patriot common stock. Peabody then distributed to its shareholders all of the outstanding shares of Patriot stock (the "Spin-Off"). As a result of the Spin-Off, Patriot became an independent publicly-traded (PCX) corporate entity.

5. Following the Spin-Off, Mr. Rick Whiting served as Patriot's CEO until May 29, 2012. Mr. Engelhardt then served from May 29 to October 24, 2012. Mr. Ben Hatfield, served as CEO thereafter. Mr. Engelhardt resigned from all of his positions at Patriot on or about October 24, 2012.

6. On July 9, 2012, the Debtors each filed a petition for relief under Chapter 11 of the Bankruptcy Code. Mr. Engelhardt is not a party to these bankruptcy proceedings.

7. On March 14, 2013, the Debtors filed their Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 of the Bankruptcy Code. [Dkt. No. 3214] ("1113/1114 Motion"). Through that motion, the Debtors seek authority to reject their collective bargaining agreements with the UMWA,

implement the Debtors' section 1113 proposal, terminate retiree benefits for certain current retirees, and implement their section 1114 proposal. *Id*. Patriot contends that the implementation of its 1113 and 1114 Proposals are necessary to its restructuring—both to its short term survival and long-term competitiveness. *See* Memorandum of Law In Support of 1113/1114 Motion [Dkt. No. 3219].

8. The hearing on the Debtors' 1113/1114 Motion is set for April 29, 2013.

9. On April 2, 2013, the Debtors and the Official Committee of Unsecured Creditors filed a Motion for Leave to Conduct Discovery of Peabody Energy Corporation Pursuant to Rule 2004. *See* [Dkt. No. 3494] ("Motion for Discovery"). The stated purpose of the requested discovery is to explore "whether the Spinoff that created Patriot constituted an actual or constructive fraudulent transfer." *Id*. at 2. The Motion for Discovery, and the attached discovery requests that the Debtors and the Committee have served on Peabody, make clear that the Debtors and the Committee intend to fully explore the circumstances of the Patriot Spin-Off in connection with their investigation of potential claims against Peabody. *Id*. at 2; Appendix A.

10. The UMWA served Mr. Engelhardt with the Subpoena on Saturday, April 13, 2013, and specified that the deposition was to occur on Friday April 19 at 9:00 a.m.

11. Counsel for Mr. Engelhardt communicated with counsel for the UMWA on April 15, 2013 via e-mail and telephonically in an attempt to resolve the issue without Court intervention. During these exchanges, counsel for the UMWA agreed to postpone Mr. Engelhardt's deposition to April 25, 2013—but no later. Even with that extension, Mr. Engelhardt would have only 11 days (eight business days) to request, obtain, organize and review materials from both Patriot and Peabody, as well as coordinate and review them with Mr. Engelhardt's personal counsel and counsel for both companies..

12. Further, during counsel's April 15 exchanges, counsel for the UMWA refused to agree to limitations on the temporal scope or topics to be covered at the deposition.

RELIEF REQUESTED

13. Mr. Engelhardt respectfully requests that the Court, pursuant to the mandate of Fed. R. Civ. P. 45, quash the Subpoena in its entirety.

BASIS FOR RELIEF

14. Federal Rule of Civil Procedure 45(c)(3)(A)(iv), made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 9016, provides that a court "**must**" quash a subpoena that subjects a person to an "undue burden." Whether considering a motion to quash or a request for a protective order pursuant to Federal Rule of Civil Procedure 26(c)(1), the substantive standard under either rule is the same: A court must determine whether the subpoena, and the burden it subjects on the respondent, is "reasonable under the circumstances." *Thayer v. Chiczewski*, 257 F.R.D. 466, 469-70 (N.D. Ill. 2009); 9A Charles Alan Wright & Arthur Miller, *Federal Practice and Procedure* § 2463.1 (3d ed. 2009). This analysis requires a court to balance the interests served by demanding compliance with the subpoena against the interests served by quashing, by assessing "the relevance of the discovery sought, the requesting party's need, and the potential hardship to the party subject to the subpoena." *In re NCAA Student-Athlete Name & Likeness Licensing Litigation*, 2012 WL 4856968, at *2 (E.D. Mo. Oct. 12, 2012).

15. Here, the undue burden imposed on Mr. Engelhardt by the UMWA through its late service far outweighs any benefit that the UMWA could obtain from Mr. Engelhardt's testimony, which is only minimally relevant to the resolution of the 1113/1114 Motion. The Subpoena is unduly burdensome because it purports to allow Mr. Engelhardt only 11 days

(including weekends), with no advance notice by the UMWA as to the topics of the deposition, to prepare for sworn testimony on a myriad of topics extending back seven years in time, and coordinate with two separate companies' outside counsel regarding factual preparation, as well as complex attorney client privileged issues.

A. <u>The Subpoena Affords Mr. Engelhardt an Impossibly Short Amount of Time To Prepare</u>.

16. A subpoena is unduly burdensome when it affords inadequate notice, and Fed. R. Civ. P. 45 specifically provides that a court "***must*** quash or modify a subpoena" that "fails to allow a reasonable time to comply." Fed. R. Civ. P. 45(c)(3)(A)(i) (emphasis supplied).

17. Although Rule 45 does not define "reasonable time," many courts have found that anything less than fourteen days from the date of service is presumptively unreasonable. *See, e.g. Brown v. Hendler*, 2011 WL 321139, at *2 (S.D.N.Y. Jan.31, 2011) (collecting cases). Conversely, courts recognize that complex cases such as this one require longer notice periods, in order to allow lawyers and witnesses adequate time to prepare. *United States v. Phillip Morris Inc.*, 312 F. Supp. 2d 27, 36-37 (D.D.C. 2004) (in complex lawsuit "notice of three business days, especially to busy litigators who need to prepare to testify about events occurring six to nine years previously, does not constitute 'reasonable notice.'"); *C & F Packing Co., Inc. v. Doskocil Companies, Inc.*, 126 F.R.D. 662, 678–680 (N.D. Ill. 1989) ("the reasonableness of notice must be determined under the individual circumstances of each case[,]" and "counsel is entitled, when possible, to a date which does not conflict with other obligations and to ***an opportunity to prepare for the deposition*** ...) (emphasis supplied); *In re Sulfuric Acid Antitrust Litigation*, 231 F.R.D. 320, 327 (N.D. Ill. 2005) (10 days unreasonable in a complex antitrust case).

18. In cases far less complex and significant as this, Courts have held that similar

notice periods to the one provided here were unreasonable. *See, e.g. Brown*, 2011 WL 321139, at *2 (nine days not reasonable because witness would have had to travel for deposition); *Tri Invs., Inc. v. Aiken Cost Consultants, Inc.*, 2011 WL 5330295, at *2 (W.D.N.C. Nov. 7, 2011) (six days notice not reasonable for fact witness in construction case); *Memorial Hospice, Inc. v. Norris*, 2008 WL 4844758, at * 1 (N.D. Miss. Nov. 5, 2008) (for nonparty fact witness, eight days' notice of deposition not reasonable); *In re Stratosphere Corp. Sec. Litig.*, 183 F.R.D. 684, 687 (D. Nev. 1999) (six days not reasonable); *Donahoo v. Ohio Dept. of Youth Servs.*, 211 F.R.D. 303, 306 (N.D. Ohio 2002) (one week not reasonable).

19. Here, in light of the circumstances of this case, based upon the late service and complexity of the case, the 11-day preparation period afforded to Mr. Engelhardt is inadequate. The Subpoena is unduly burdensome because it purports to force Mr. Engelhardt to testify without allowing him and his attorneys time to properly prepare. *Phillip Morris Inc.*, 312 F. Supp. 2d at 36-37; *C & F Packing Co., Inc.*, 126 F.R.D. at 678–680.

20. *First*, as noted above, Mr. Engelhardt is a former officer and director of Peabody and Patriot, and owes each a duty to be properly prepared in giving testimony that could implicate both companies. *See, e.g.* Engelhardt Employment Agreement with Patriot, at ¶ 14, attached to Patriot's 10/12/2007 Form 10-12B/A, and attached here as Exhibit B (following term of employment, Engelhardt may not "directly or indirectly…disclose…any secret or confidential information that is not publicly available regarding the business or property of the Company…"); Engelhardt Employment Agreement with Peabody at ¶ 11, attached to Peabody's 3/4/2005 Form 8-K, and attached here as Exhibit C (same). Eleven days (eight business days) is simply an impossibly short amount of time for Mr. Engelhardt to request, obtain, organize, and review documents, as well as consult with his personal and company attorneys about information and

documents that span a seven-year period.[1] The fraudulent transfer allegations raised by the Debtors and the Committee in their Motion for Discovery are serious, and demand proper preparation. Forcing Mr. Engelhardt to appear unprepared risks placing him in the untenable position of presenting potentially inaccurate or incomplete testimony both in contravention of his duties and as a result of insufficient preparation.

21. *Second*, the provided notice period is far too short in light of the especially complex privilege-related issues that are sure to confront Mr. Engelhardt at the deposition. During the lead up to the Spin-Off, Mr. Engelhardt engaged in numerous conversations and communications with Peabody's attorneys. Many of these communications may be protected by the attorney-client and other privileges, held by Peabody.[2] The Debtors' and Committee's Motion for Discovery clearly shows that Mr. Engelhardt will be questioned broadly about the Spin-Off and otherwise about his tenure at Peabody.[3]

22. The Spin-Off occurred nearly six years ago. Mr. Engelhardt is entitled to refresh his recollection with his attorneys' assistance as to which conversations and communications included attorneys and were for the purpose of seeking legal advice, and which were not. If Mr. Engelhardt is compelled to testify without adequate preparation, there is a real risk that he would inadvertently disclose privileged information or provide information that was inaccurate solely as a result of insufficient preparation.

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[1] Mr. Engelhardt does not possess the documents that he would need to properly prepare himself for his deposition. Mr. Engelhardt needs both the cooperation of Patriot and Peabody to obtain those documents, which will take significant amounts of time.

[2] *See Upjohn Co. v. United States*, 449 U.S. 383 (1981) (the attorney-client privilege attaches to corporations as well as to individuals).

[3] In addition, as Mr. Engelhardt understands from this Court's April 5, 2013 Order setting procedures for the resolution of the 1113/1114 Motion [Dkt. No. 3543], at the conclusion of questions by the UMWA, any other creditor can ask additional questions on any number of additional topics, thus adding to the undue and unrealistic burden imposed upon him.

23. Worse still, were Mr. Engelhardt to inadvertently disclose protected information through his testimony, a party could argue that any protections Peabody had over the information had been waived. *See, e.g. Commodity Futures Trading Com'n v. Weintraub*, 471 U.S. 343, 348 (1985) (power to waive the corporate attorney-client privilege rests with officers and directors); *In re West*, 2012 WL 1344220, at *5 (Bkrtcy. E.D. Va. April 17, 2012) (discussing doctrine of inadvertent waiver of privilege and noting that some "[c]ourts in this area take almost a strict liability approach to third party disclosure. … Once in the hands of a third party, the privilege, if it ever existed, is lost."); *c.f.* Fed. R. Evid. 502.

24. The same privilege related issues would confront Mr. Engelhardt concerning his time at Patriot, as Mr. Engelhardt interacted daily with Patriot's attorneys.

25. Further complicating the already complex privilege issues are contractual arrangements between Patriot and Peabody that govern the disclosure of each company's privileged information. The Spin-Off was in part governed by an October 22, 2007 "Separation Agreement, Plan of Reorganization and Distribution by and between Peabody Energy Corporation and Patriot Coal Corporation," which was filed by Patriot in an October 22, 2007 Form 8-K and is attached here as Exhibit D ("Separation Agreement"). Article 13.05(b)(i) of the Separation Agreement provides that post-Spin-Off, Peabody "shall be entitled, in perpetuity, to control the assertion or waiver of all privileges in connection with privileged information which relates solely to [Peabody's] Business, whether or not the privileged information is in the possession of or under the control of [Peabody] or Patriot." Article 13.05(b)(ii) provides the opposite—that Patriot can control in perpetuity the privilege in connection with information that relates solely to Patriot's business "whether or not the privileged information is in the possession of or under the control of [Peabody] or Patriot." Before Mr. Engelhardt can testify on any topic

that implicates potentially privileged information, careful deliberation and consultation between attorneys for Patriot and Peabody is required, to determine whether disclosure would be consistent with the provisions of the Separation Agreement.

26. The Separation Agreement further provides that professional services rendered leading up to the Spin-Off were "rendered for the collective benefit of" both Patriot and Peabody, and that both entities "should be deemed to be the client with respect to such pre-separation services." *Id*. at Article 13.05(a). The Agreement provides that Patriot and Peabody enjoy a "shared privilege" over information that does not solely relate to one or the other, *id*. at Article 13.05(c), and that written consent is required before one company may disclose information over which a shared privilege is enjoyed. *Id*. at Article 13.05(c). The Separation Agreement also provides that in the event of litigation or a dispute between Patriot and Peabody, information over which both parties share the privilege may be disclosed without consent "provided, that such waiver of a shared privilege shall be effective only as to the use of information with respect to the litigation or dispute between the relevant Parties … and shall not operate as a waiver of the shared privilege with respect to third parties." *Id*. at Article 13.05(e). Here again, careful deliberation must be given as to whether any of the information possessed by Mr. Engelhardt is subject to a "shared privilege," and therefore cannot be disclosed without the agreement of both Patriot and Peabody. Absent agreement, it is unclear whether any information subject to a "shared privilege" could ever be voluntarily disclosed to third parties, such as the UMWA. Eleven days is simply not enough time for Mr. Engelhardt, his attorneys, and attorneys for Peabody and Patriot to work through these complex issues.

27. *Third*, the Subpoena gives Mr. Engelhardt, Patriot, and Peabody insufficient time to put in place procedures to ensure that confidential commercial information known to Mr.

Engelhardt is not inadvertently released. *See* Fed. R. Civ. P. 45(c)(3)(B)(i) (court may quash subpoena when deposition would cause the disclosure of "a trade secret or other confidential research, development, or commercial information").

28. *Finally*, it is "not as though there had been some impropriety, and the identit[y] of [Mr. Engelhardt] had been concealed … until late in the game." *In re Sulfuric Acid Antitrust Litigation*, 231 F.R.D. at 327. Since well before the inception of this proceeding, the UMWA certainly knew of Mr. Engelhardt and were well aware of his roles at both Peabody and Patriot. There is no adequate explanation as to why the UMWA waited until shortly before the deposition date to serve the Subpoena, when it could have been served far earlier.

B. Mr. Engelhardt's Testimony Is Minimally Relevant To The 1113/1114 Hearing.

29. While the lack of reasonable preparation time and danger of disclosure of protected information would impose an undue burden on Mr. Engelhardt, the UMWA's countervailing interest in Mr. Engelhardt's testimony for use at the 1113/1114 hearing is negligible.

30. The core issues that the Court will consider at the April 29, 2013 hearing are the need for and fairness of Patriot's 1113 and 1114 Proposals in light of Patriot's present financial condition and current business outlook. Mr. Engelhardt has little to offer on these subjects, as he has been fully resigned from Patriot since October 2012. Any information that Mr. Engelhardt can offer on Patriot's financial outlook is months old, and much better and more up-to-date information is available from other sources (who will actually testify at the April 29 hearing). *See Perez v. City of Chicago*, 2004 WL 1151570, at *4 (N.D. Ill. April 29, 2004) (subpoena unreasonable in part because requested information substantially available through other, less burdensome means); *In re Kaiser Steel Corp.*, 84 B.R. 202, 204-05 (Bankr. D. Colo. 1998) (*citing* Fed. R. Civ. P. 26(C)(i) ("Limitations can be placed on discovery if the Court determines

that the discovery sought is obtainable from some other source that is more convenient, less burdensome or less expensive.").

31. Similarly, Mr. Engelhardt cannot offer testimony about the content of the Debtors' current 1113/1114 Proposals, or the process by which the current or past proposals were offered to the UMWA. Patriot made its Original Proposal to the UMWA on November 15, 2012. Mr. Engelhardt resigned from all of his positions at Patriot in October—approximately one month before Patriot made its Original Proposal.

32. Indeed, the Debtors' and Committee's Motion for Discovery reveals that the real reason the UMWA wishes to depose Mr. Engelhardt now has little to do with the upcoming 1113/1114 hearing. Rather, the real purpose of the examination appears to be an attempt by the UMWA to obtain early discovery into the circumstances of the Spin-Off and related topics for any purported fraudulent transfer claim against Peabody, prior to this Court's ruling on the Motion for Discovery and prior to initiation of any such action.

33. Discovery into the Debtors' purported fraudulent transfer claim would shed little light on any issue to be decided at the April 29 hearing. *See* Memorandum in support of the 1113/1114 Motion [Dkt. 3219 at 72-74] (citing authorities for the proposition that "courts do not require related litigation to conclude before granting relief under Section 1113 and 1114"). The potential for a cash infusion from Peabody based on the Debtors' nascent fraudulent transfer claim is wholly speculative, and therefore is irrelevant to the outcome of the 1113/1114 Motion. Accordingly, anything Mr. Engelhardt can testify to about the Spin-Off at his deposition will have minimal relevance to the April 29 hearing.

34. Finally, coloring every aspect of the analysis is the fact that Mr. Engelhardt is not a party to these proceedings. Accordingly, discovery requests that might be "reasonable" if

directed at a party are not necessarily so when directed against Mr. Engelhardt. Courts have recognized that "restrictions on discovery may be broader where a nonparty is the target of the discovery." *In re Candor Diamond Corp.*, 26 B.R. 847, 849 (Bankr. S.D.N.Y. 1983); *Patterson v. Burge*, 2005 WL 43240, at *1 (N.D. Ill. Jan. 6, 2005) (granting third party's motion to quash and recognizing that "non-parties are not treated exactly like parties in the discovery context, and the possibility of mere relevance may not be enough; rather, non-parties are entitled to somewhat greater protection").

35. The significant burden imposed by the last-minute deposition, the minimal relevance of his testimony to the upcoming hearing, and Mr. Engelhardt's nonparty status all weigh heavily in favor of quashing the Subpoena.

CONCLUSION

WHEREFORE, Irl F. Engelhardt respectfully requests that the Court enter an order, substantially in the form submitted herewith, granting the Motion, and granting such other and further relief as may be just and equitable.

Dated: April 15, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 15, 2013, a copy of the foregoing document was served via U.S. First Class Mail on all of the parties listed on the Master Service List filed at Docket No. 3568. All parties requesting notice through the Court's CM/ECF system also received service of this document.

/s/ William Michael, Jr.

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF MISSOURI

In Re:	)	
	)	**Case No. 12-51502-659**
PATRIOT COAL CORORATION, *et al.*,	)	
	)	**Chapter 11**
Debtor.	)	

EXHIBIT SUMMARY

Pursuant to the Local Rules of Bankruptcy Procedure, the following exhibits are referenced in support of Irl F. Engelhardt's Emergency Motion to Quash Subpoena for Deposition. Copies of these exhibits will be provided as required by Local Rules:

A. Englehardt Subpoena for Deposition

B. Irl F. Engelhardt employment agreement with Patriot Coal Corporation

C. Irl F. Engelhardt employment agreement with Peabody Energy Corporation

D. Irl F. Engelhardt separation agreement with Patriot Coal Corporation

Respectfully submitted,

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