

**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.	§	
	§	Re: Docket No. 3654
	§	
	§	Hearing Date
	§	April 17, 2013 at 9 a.m.
	§	
	§	Hearing Location:
	§	Courtroom 7 North

**ORDER DENYING EMERGENCY MOTION TO QUASH SUBPOENA
AND LIMITING SCOPE OF DEPOSITION
OF IRL F. ENGELARDT**

Upon the Emergency Motion of Irl F. Engelhardt to Quash Subpoena for Deposition (Dkt. No. 3654) (the “Motion”), as more fully set forth in the Motion, and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding which the Court can determine pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with the Case Management Order (as may be amended); and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion, the UMWA’s Opposition to the Motion (Dkt. No. 3692) (the “UMWA Opposition”), and having held a hearing with appearances of parties in interest noted on the record (the “Hearing”); and the Court having considered the legal and factual bases set forth in the Motion, in the UMWA Opposition, and at the Hearing; and after due deliberation and sufficient cause appearing therefore, the Court finds as follows:

On April 13, 2013, at the request of counsel for the United Mine Workers of America (“UMWA”), Movant Irl Engelhardt was served with a subpoena (the “Subpoena”) in accordance with Rule 45, Fed. R. Civ. P., as made applicable to these proceedings by Bankruptcy Rule 9016, to give deposition testimony; and

UMWA desires to obtain Mr. Engelhardt’s testimony in connection with the Debtor’s Motion to Terminate Collective Bargaining Agreement and Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113 and 1114 (Dkt. No. 3214)) (the “Debtor’s Motion”); and

Movant asserted in support of his Motion to Quash that the short time between service of the Subpoena and the proposed deposition date (now April 25 by agreement of UMWA) would constitute an undue burden given the potential breadth of inquiry and the large number of interested parties who might participate in the deposition; and

It is in the interest of the parties that the hearing on the Debtor’s Motion proceed as scheduled on April 29 in light of the compressed timing parameters for motions under Sections 1113 and 1114 as set forth in the Bankruptcy Code. Therefore,

IT IS ORDERED that the Emergency Motion of Irl F. Engelhardt to Quash Subpoena for Deposition (Dkt. No. 3654) is **DENIED**; and it is further

ORDERED that the deposition of Irl F. Engelhardt shall proceed at 9:00 a.m. on April 25, 2013 subject to the limitations hereinafter set forth; and it is further

ORDERED that the deposition is authorized for purposes of discovery in connection with the Debtor’s Motion, and not for any other purpose; and it is further

ORDERED that the only parties who may ask questions of Mr. Engelhardt at the April 25, 2013 deposition are the Debtor, the UMWA, and the “UMWA Funds” (collectively United

Mine Workers of America 1993 Benefit Plan and the United Mine Workers of America 1974 Pension Trust); and it is further

ORDERED that no party may ask questions of Mr. Engelhardt at the April 25 deposition on the subjects of (1) the Spin-Off of Patriot Coal Corporation (“Patriot”) from Peabody Energy Corporation (“Peabody”), and/or (2) any of the issues raised in the Second Amended Complaint [Dkt. No. 39] in *Lowe et al v. Peabody Holding Company, LLC et al*, Case No. 2:12-cv-06925, pending in the United States District Court of the Southern District of West Virginia; and it is further

ORDERED that, subject to the foregoing limitation, the subjects of inquiry at the April 25 deposition of Mr. Engelhardt are limited to those listed in the UMWA Opposition, and therefore include only the following:

(1) “whether Patriot has exacerbated its retiree obligations by making payments for retirees who contractually should have been assumed by Peabody” (UMWA Opposition, ¶ 29);

(2) “Patriot’s financial performance” provided the question is based upon publically available Form 10-Ks and similar publically available documents filed by Debtor. (UMWA Opposition, ¶ 29);

(3) the “impressions of [Mr. Engelhardt] and other top management at Peabody and Patriot concerning the future prospects of Patriot” to the extent such questions are limited to Mr. Engelhardt’s tenure at Patriot as either an officer or board member (UMWA Opposition, ¶ 31);

(4) Patriot’s entering into of the Magnum transaction, and the sustainability of Patriot’s retiree obligations in connection with that transaction (UMWA Opposition, ¶ 35);

(5) “the reasonableness of Patriot’s coal price projections” and “Mr. Engelhardt’s ... involvement in overseeing the setting of coal prices...both with respect to Patriot’s July 2012

DIP projections and the November, 2012 five year plan, his knowledge of how the coal prices were projected, as well as the reasonableness and oversight of the process Patriot used” (UMWA Opposition, ¶ 36); and

(6) the negotiation of Patriot’s DIP financing. (UMWA Opposition, ¶ 37).


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: April 22, 2013
St. Louis, Missouri
jjh

Order prepared by:

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