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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Apr 24, 2013

Kathy A. Surratt - States
KATHY A. SURRETT-STATES
Chief United States Bankruptcy Judge

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

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

Objection Deadline:
April 19, 2013 at 4:00 p.m.
(prevailing Central Time)

Proposed Hearing Date
(if necessary):
April 23, 2013 at 10:00 a.m.
(prevailing Central Time)

Hearing Location:
Courtroom 7 North

DEBTORS' MOTION TO (i) COMPEL AURELIUS CAPITAL MANAGEMENT, LP, KNIGHTHEAD CAPITAL MANAGEMENT, LLC AND THEIR COUNSEL TO COMPLY WITH BANKRUPTCY RULE 2019 AND (ii) PROHIBIT FURTHER PARTICIPATION IN THESE CASES BY AURELIUS CAPITAL MANAGEMENT, LP, KNIGHTHEAD CAPITAL MANAGEMENT, LLC AND THEIR COUNSEL PENDING COMPLIANCE WITH BANKRUPTCY RULE 2019

Patriot Coal Corporation (“**Patriot**”) and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) respectfully represent:

Relief Requested

1. By this motion (the “**Motion**”), the Debtors seek an order (the “**Proposed Order**”)²: (i) compelling Aurelius Capital Management, LP (“**Aurelius**”), Knighthead Capital

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.

² The Proposed Order granting the relief requested in this Motion will be provided to the Core Parties (as defined below) and counsel to the Noteholder Group. A copy of the Proposed Order will be made available at www.patriotcaseinfo.com/orders.php.

Management, LLC (“**Knighthead**”), and certain funds and accounts managed or advised by Aurelius and/or Knighthead (collectively, the “**Noteholder Group**”) and counsel to the Noteholder Group to comply with Federal Rule of Bankruptcy Procedure 2019 (“**Bankruptcy Rule 2019**”); (ii) barring the Noteholder Group and its counsel from further participation in these cases until they fully comply with Bankruptcy Rule 2019; (iii) holding the Noteholder Group Pleadings (as defined below) in abeyance until such time as the Noteholder Group fully complies with Bankruptcy Rule 2019; and (iv) granting such other and further relief as the Court determines is just and proper.

Background and Jurisdiction

2. On July 9, 2012 (the “**Petition Date**”), each Debtor commenced with the United States Bankruptcy Court for the Southern District of New York (the “**SDNY Bankruptcy Court**”) a voluntary chapter 11 case under title 11 of the United States Code (the “**Bankruptcy Code**”). 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. These chapter 11 cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the SDNY Bankruptcy Court’s Joint Administration Order entered on July 10, 2012 [ECF No. 30]. On December 19, 2012, the SDNY Bankruptcy Court entered an order transferring the Debtors’ chapter 11 cases to this Court (the “**Transfer Order**”) [ECF No. 1789].³ This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and may be determined by this Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

³ Pursuant to the Transfer Order, all orders previously entered in these chapter 11 cases remain in full force and effect in accordance with their terms notwithstanding the transfer of venue.

3. On March 28, 2013, the Noteholder Group, an informal group of creditors that holds (according to the Noteholder Group) a substantial amount of Patriot's 3.25% Convertible Senior Notes due 2013 and 8.25% Senior Notes due 2018, filed the Motion of Aurelius Capital Management, LP, and Knighthood 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**"). On April 12, 2013, the Noteholder Group filed the Noteholders' Objection to Motion to Reject Collective-Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113 and 1114 [ECF No. 3608] (the "**1113/1114 Objection**") and, together with the Trustee Motion, the "**Noteholder Group Pleadings**"). Aside from the very basic facts contained in these pleadings, very little is definitively known about the Noteholder Group – largely because they have not complied with the mandatory disclosure requirements of Bankruptcy Rule 2019.

Basis for Relief

4. Bankruptcy Rule 2019 requires, in relevant part, certain groups and committees that consist of multiple creditors and act together to advance common interests to disclose information about their financial holdings in the Debtors. Entities that represent such groups or committees (*e.g.*, law firms) must also comply with Bankruptcy Rule 2019:

In a chapter 9 or 11 case, a verified statement setting forth the information specified in subsection (c) of this rule shall be filed by *every group or committee that consists of or represents, and every entity that represents, multiple creditors or equity security holders that are (A) acting in concert to advance their common interests, and (B) not composed entirely of affiliates or insiders of one another.*

Fed. R. Bankr. P. 2019(b) (2012) (emphasis added).⁴ To “represent” includes “tak[ing] a position before the court.” Fed. R. Bankr. P. 2019(a)(2). Unless the members of the Noteholder Group are all affiliates or insiders of one another, Goldstein & Pressman, P.C. and Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP (together, the “**Noteholder Group Counsel**”), as counsel to the Noteholder Group, are such “entities” covered by Bankruptcy Rule 2019 and the Noteholder Group is such a “group” covered by the rule.

5. By its own admission in the Trustee Motion, the Noteholder Group constitutes a “group of creditors” of the Debtors, and by filing the Noteholder Group Pleadings, the members of the Noteholder Group are clearly “acting in concert to advance their common interests”; in fact, they are doing so in full view of the Court and the public. Unless the members of the Noteholder Group are all affiliates or insiders of one another, and, upon information and belief, they are not, the Noteholder Group is clearly a “group” that is covered by Bankruptcy Rule 2019 and required to file a verified statement.⁵ Accordingly, both the Noteholder Group and its counsel must disclose the information required under the applicable provisions in subsection (c) of Bankruptcy Rule 2019 and must do so in a verified statement filed with the Court.⁶

6. The fact that the Noteholder Group does not indicate its intention to form an ad hoc committee is not relevant for purposes of compliance with Bankruptcy Rule 2019, which by

⁴ Unless specifically noted otherwise, all citations to Fed. R. Bankr. P. 2019 are to the current version of the rule, not to the version effective before December 1, 2011.

⁵ Under Fed. R. Bankr. P. 2019(b)(2), an entity is not required to file a verified statement “solely because of its status as: (A) an indenture trustee; (B) an agent for one or more other entities under an agreement for the extension of credit; (C) a class action representative; or (D) a governmental unit that is not a person.” The Noteholder Group and its counsel do not fall into any of these categories.

⁶ A verified statement is an affidavit under oath or similarly sworn statement. Federal Rule of Bankruptcy Procedure 9011(e) permits an unsworn verification under 28 U.S.C. § 1746 to substitute for a verification. Section 1746 requires language that the information is provided under penalty of perjury. If executed within the United States, the unsworn verification must “substantially conform” to the following language: “I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). _____ [Signature]”. 28 U.S.C. § 1746(2).

its terms is no longer limited to ad hoc committees that represent multiple parties. Rather, the amendment to Bankruptcy Rule 2019 that took effect December 1, 2011 “extends the rule’s coverage to groups or committees that *consist of* more than one creditor or equity security holder.” Advisory Committee Note, Fed. R. Bankr. P. 2019. In fact, the advisory committee emphasized that “[t]he rule applies to a group of creditors or equity security holders that act in concert to advance common interests ..., *even if the group does not call itself a committee.*” *Id.* (emphasis added). Bankruptcy Rule 2019 was amended to address precisely the Noteholder Group’s situation. Thus, the Noteholder Group and its counsel must file verified statements pursuant to subsection (c) of Bankruptcy Rule 2019.

7. The information that subsection (c) requires in a verified statement varies depending upon who must make the disclosure. Bankruptcy Rule 2019(c) requires disclosure of the following information:

(1) the pertinent facts and circumstances concerning:

- (A) with respect to a group or committee, other than a committee appointed under § 1102 or § 1114 of the Code, the formation of the group or committee, including the name of each entity at whose instance the group or committee was formed or for whom the group or committee has agreed to act; or
- (B) with respect to an entity, the employment of the entity; including the name of each creditor or equity security holder at whose instance the employment was arranged;

(2) if not disclosed under subdivision (c)(1), with respect to an entity, and with respect to each member of a group or committee:

- (A) name and address;
- (B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date the entity was employed or the group or committee was formed; and
- (C) with respect to each member of a group or committee that claims to represent any entity in addition to the members of the group or committee, other than a committee appointed under § 1102 or § 1114 of the Code, the date of acquisition by quarter and year of each

disclosable economic interest, unless acquired more than one year before the petition was filed;

(3) if not disclosed under subdivision (c)(1) or (c)(2), with respect to each creditor or equity security holder represented by an entity, group or committee, other than a committee appointed under § 1102 or §1114 of the Code:

(A) name and address; and

(B) the nature and amount of each disclosable interest held in relation to the debtor as of the date of the statement; and

(4) a copy of the instrument, if any, authorizing the entity, group, or committee to act on behalf of creditors or equity security holders.

Fed. R. Bankr. P. 2019(c).

8. The disclosures required of the Noteholder Group and its counsel differ based on the distinctions drawn in subsection (c). For example, subsection (c) distinguishes between groups or committees that act only for themselves and those that purport to represent others who do not serve on the group or committee. Bankruptcy Rule 2019(c) also distinguishes entities (*e.g.*, law firms) from groups or committees in the required disclosures.

9. The Noteholder Group must disclose a variety of information in a verified statement, including but not limited to the following:

- The pertinent facts and circumstances about the group's formation. Bankruptcy Rule 2019(c)(1)(A).
- The names of those at whose instance the group was formed. *Id.*
- The name and address of each group member. *Id.* at (c)(2)(A).
- The nature and amount of each disclosable economic interest⁷ held in relation to the debtor on the date that the committee or group was formed and on the date of the statement. *Id.* at (c)(2)(B) and (c)(3)(B).

⁷ The term "disclosable economic interest" is defined in subdivision (a) as "any claim, interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting the holder an economic interest that is affected by the value, acquisition, or disposition of a claim or interest." Fed. R. Bankr. P. 2019(a)(1).

10. The Noteholder Group Pleadings do not state whether the Noteholder Group represents its two members only or whether the Noteholder Group represents a broader constituency, such as other noteholders or all other creditors of the Debtors that are not signatory to collective bargaining agreements. If the Noteholder Group does represent any other creditors or other parties in interest, the verified statement must also include:

- For each of the members of the Noteholder Group, the date of acquisition, by quarter and year, of each disclosable economic interest held, unless acquired more than one year before the bankruptcy petition was filed. Bankruptcy Rule 2019(c)(2)(C).
- For each creditor represented by the Noteholder Group, a name and address. Id. at (c)(3)(A).
- For each creditor represented by the Noteholder Group, the nature and amount of each disclosable economic interest held in relation to the debtor on the date of the statement. Id. at (c)(3)(B).
- A copy of the instrument, if any, authorizing the Noteholder Group to act on behalf of other creditors. Id. at (c)(4).

11. Similarly, the Noteholder Group Counsel, as entities that represent multiple creditors acting in concert to advance common interests, must comply with Bankruptcy Rule 2019(b). Each of Goldstein & Pressman, P.C. and Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP is required to disclose a variety of information in a verified statement, including but not limited to the following:

- The pertinent facts and circumstances concerning their employment, including the name of each creditor “at whose instance the employment was arranged.” Bankruptcy Rule 2019(c)(1)(B).
- The name and address of counsel. Id. at (c)(2)(A).
- The nature and amount of each disclosable economic interest held by counsel, if any, in relation to the debtor as of the date counsel was employed. Id. at (c)(2)(B).

- A copy of the retention agreement, or other instrument, if any, authorizing counsel to act on behalf of the members of the Noteholder Group. *Id.* at (c)(4).

None of this information (other than counsels' names and addresses) has been supplied by either the Noteholder Group or its counsel to date.

Applicable Authority

12. As a general matter, Bankruptcy Rule 2019 “is part of the disclosure scheme of the Bankruptcy Code and is designed to foster the goal of reorganization plans which deal fairly with creditors and which are arrived at openly.” *Baron & Budd, P.C. v. Unsecured Asbestos Claimants Comm.*, 321 B.R. 147, 165 (D.N.J. 2005) (discussing predecessor rule). The rule is rooted in the idea that disclosure “of the personnel and activities of those acting in a representative capacity. . . help[s] foster fair and equitable plans free from deception and overreaching.” *In re Northwest Airlines Corp.*, 363 B.R. 701, 703 (Bankr. S.D.N.Y. 2007) (discussing predecessor rule). Bankruptcy Rule 2019 is implicated where “a group of creditors holding similar claims . . . elect[] to consolidate their collection efforts.” *Id.* Both the purpose and the literal language of Bankruptcy Rule 2019 mandate compliance by the Noteholder Group and its counsel.

13. Bankruptcy Rule 2019 permits the Court to impose sanctions after determining that there has been a failure to comply, including refusing to hear the group in the case and any “other appropriate relief.” Fed. R. Bankr. P. 2019(e). Bankruptcy Rule 2019 specifically provides that if a group fails to comply, the court may “refuse to permit the . . . group . . . to be heard or to intervene in the case” or may “hold invalid any authority, acceptance, rejection, or objection given, procured, or received by the entity, group or committee.” Fed. R. Bankr. P. 2019(e)(2)(A)-(B).

14. Some courts have imposed even more severe penalties on entities that failed to comply with the requirements of Bankruptcy Rule 2019. For example, the Sixth Circuit Court of Appeals upheld the refusal to consider class proofs of claim filed by counsel who failed to comply with Rule 2019. *Reid v. White Motor Corp.*, 886 F.2d 1462, 1471 (6th Cir. 1989); *see also In re Vestra Indus., Inc.*, 82 B.R. 21, 22-23 (Bankr. D.S.C. 1987) (same). Other courts have prohibited professionals from representing such groups where they failed to comply with Bankruptcy Rule 2019. *See, e.g., In re North Bay General Hosp., Inc.*, 404 B.R. 443, 455-56 (Bankr. S.D. Tex. 2009); *In re Ionosphere Clubs, Inc.*, 101 B.R. 844, 852-53 (Bankr. S.D.N.Y. 1989). The fact that Bankruptcy Rule 2019 violations can have such harsh consequences underscores the significance that courts properly place on full disclosure and fairness in bankruptcy proceedings.

15. Accordingly, here, until the Noteholder Group and its counsel comply with their obligations pursuant to Bankruptcy Rule 2019, the Debtors request that the Court prohibit the Noteholder Group and its counsel from further participation in these cases, including with respect to the Noteholder Group Pleadings. The Court, the United States Trustee, the Debtors, the official committee of unsecured creditors, and other parties in interest are simply unable to fully and accurately evaluate the actions and intentions of the Noteholder Group without the information mandated by Bankruptcy Rule 2019.

Notice

Consistent with the Order Establishing Certain Notice, Case Management and Administrative Procedures entered on March 22, 2013 [ECF No. 3361] (the “**Case Management Order**”), the Debtors will serve notice of this Motion on the Core Parties (as defined in the Case Management Order) and counsel to the Noteholder Group. 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 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

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

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems to be just and proper.

Dated: April 16, 2013
New York, New York

Respectfully submitted,

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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