

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.<sup>1</sup>

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

Objection Deadline:  
May 14, 2013 at 4:00 p.m.  
(prevailing Central Time)

Hearing Date (if necessary):  
May 21, 2013 at 10:00 a.m.  
(prevailing Central Time)

Hearing Location:  
Courtroom 7 North

**NOTICE AND MOTION OF THE DEBTORS FOR LEAVE TO CONDUCT  
DISCOVERY OF MORGAN STANLEY PURSUANT TO RULE 2004**

PLEASE TAKE NOTICE THAT this motion is scheduled for hearing on May 21, 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 MAY 14, 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.**

<sup>1</sup> 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 Debtor's chapter 11 petitions.

**MOTION OF THE DEBTORS FOR LEAVE TO CONDUCT  
DISCOVERY OF MORGAN STANLEY PURSUANT TO RULE 2004**

On October 31, 2007, Patriot Coal Corporation and its subsidiaries (collectively, “Patriot”), including the debtors and debtors in possession in this action (collectively, the “Debtors”),<sup>2</sup> were spun-off from Peabody Energy Corporation (“Peabody”) through a distribution of all outstanding Patriot shares (the “Spinoff”). Consequently, Patriot became a separate public company listed on the New York Stock Exchange. As detailed 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*, filed on April 12, 2013 [ECF No. 3494] (the “Peabody Rule 2004 Motion”), the Debtors and the Official Committee of Unsecured Creditors (the “Committee”) are now investigating the Spinoff to ascertain, *inter alia*, whether the Spinoff constituted an actual or constructive fraudulent transfer. Such a claim against Peabody, if cognizable and successfully asserted, could result in significant recoveries for the Debtors and their creditors.

Prior to the Spinoff, Peabody retained Morgan Stanley to advise it on potential transactions for separating the assets and companies that eventually became Patriot from Peabody, and then to advise Peabody’s Board of Directors on several aspects of the transaction. For at least 15 months, Morgan Stanley conducted extensive reviews of, *inter alia*, the financials of the entities to be divested, based on historical and projected data. Morgan Stanley conducted a third-party bidding process as part of Peabody’s exploration of a sale of the Patriot assets, and analyzed the potential for a merger with Magnum Coal Company LLC (“Magnum”). When the spinoff was decided upon as the method for the divestiture, Morgan Stanley conducted a “fairness analysis” to determine whether the proposed spinoff was fair from a financial point of

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<sup>2</sup> The Debtors include Patriot and most of its wholly-owned subsidiaries.

view to Peabody stockholders. Morgan Stanley also analyzed the fair market value of the Patriot shares to be distributed pursuant to the Spinoff.

In furtherance of the Debtors' and the Committee's investigation of the Spinoff, the Debtors respectfully move (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 authorizing issuance of a subpoena to Morgan Stanley, substantially in the form submitted herewith as Appendix A, for the production of documents. In support of the Motion, the Debtors respectfully represent as follows.

### **JURISDICTION**

1. 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.

### **BACKGROUND**

#### **A. The Chapter 11 Cases**

2. 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 *Order Directing Joint Administration of Chapter 11 Cases*, entered on July 10, 2012 [ECF No. 30].

3. 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**

4. Peabody is the world's largest private-sector coal company, owning valuable assets throughout the United States and abroad. See Ex. A at 2. Prior to 2007, Peabody's assets included a number of mining complexes in the Appalachia (Northern and Central) and Illinois Basin regions (collectively, the "Eastern Operations"). Id. Unlike Peabody's assets in the western United States and abroad, the Eastern Operations were, in large part, staffed with unionized miners represented by the UMWA and subject to collective bargaining agreements ("CBAs"). See Ex. B at 30; Ex. C at 2. Over the years of Peabody's ownership, thousands of miners retired from the mines that made up Peabody's Eastern Operations (collectively, "Peabody Retirees"), creating substantial healthcare and pension liabilities for Peabody. Additionally, in the years prior to 2007, the Eastern Operations faced "increasingly difficult geological conditions, particularly in Appalachia." See Ex. C at 5. Further, labor unrest, including the union strike of 1993, motivated Peabody to divest itself of what it viewed as troublesome and costly unionized operations.

5. Beginning in approximately 2005, Peabody conducted a series of transactions whereby it selected certain mining operations, particularly those staffed by unionized workers represented by the UMWA (*i.e.*, the Eastern Operations) to be consolidated in preparation for a sale or spinoff of those assets. Ultimately, and in accordance with the advice provided by outside financial advisors, including Morgan Stanley, Peabody opted to conduct a tax-free spinoff of these entities, thereby creating Patriot.

6. Patriot is a corporation that was created by Peabody with the advice and guidance of its outside advisors, including Morgan Stanley. 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 following the Spinoff.

7. By spinning off Patriot, Peabody rid itself of approximately \$600 million of retiree healthcare liabilities, along with hundreds of millions of dollars of other so-called "legacy liabilities," including environmental reclamation obligations and federally mandated black lung benefits. Peabody openly touted the benefits of the Spinoff, as it improved Peabody's "operating and geologic risk," enabled Peabody to focus on "high-growth, high-margin markets," and "[r]educe[d] legacy liabilities by nearly half." See Ex. D at 5. As Peabody's CFO and EVP of Corporate Development, Richard Navarre, explained on an earnings call on November 6, 2007 (six days after the Spinoff):

Our retiree, healthcare liability and related expense[s] 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 [Coal 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.

8. The Spinoff was structured so that Patriot became responsible for providing retiree healthcare and other benefits to thousands of Peabody Retirees who had never worked for Patriot; even today, years later, approximately 49% of the retirees covered by Patriot last worked for, or retired from, Peabody or one of its subsidiaries.

**C. Peabody Retains Morgan Stanley as an Advisor in Connection with the Spinoff**

9. Peabody retained Morgan Stanley to serve as a financial advisor in connection with the planned divestiture of the Eastern Operations.

10. As part of its engagement, Morgan Stanley reviewed and analyzed business, operating and other information pertaining to the Eastern Operations, including historical and projected market data (*e.g.*, coal and electrical power supply and demand), and financial forecasts prepared by Peabody management.

11. Based on its analyses, Morgan Stanley made recommendations to Peabody regarding the “separation alternatives” (*i.e.*, possible transaction structures for the divestiture), and took specific actions with respect to each alternative. For example, Morgan Stanley set up a bidding system and vetted potential buyers of the Eastern Operations. Morgan Stanley evaluated the potential for a merger with Magnum. Morgan Stanley also examined “precedent spin transactions,” and discussed with Peabody management the anticipated strategic, financial and operational costs and benefits from the proposed spinoff. Ultimately, Morgan Stanley recommended that Peabody divest the Eastern Operations by way of spinoff, which Peabody did.

12. Morgan Stanley undertook a comprehensive and wide-ranging analysis of the Eastern Operations, including studies comparing the financial performance of the Eastern

Operations to industry and regional peers and comparable publicly traded companies. Pursuant to its analyses, Morgan Stanley made recommendations to Peabody regarding, *inter alia*, Patriot's capital structure and capital markets positioning, credit considerations, credit ratings, debt market capacity and leverage considerations.

13. In addition, Morgan Stanley conducted a "valuation analysis," in which it performed comparable company and discounted cash flow analyses, and opined on the fair market value of the Patriot shares to be distributed pursuant to the Spinoff (the "Valuation Analysis").

14. Morgan Stanley also provided Peabody with a "fairness analysis," concluding that the Spin-Off was "fair" from a financial point of view to Peabody shareholders (the "Fairness Opinion").

15. Based on the scope of Morgan Stanley's work for Peabody in connection with the Spinoff, the Debtors reasonably believe that Morgan Stanley has documents that would significantly aid the Debtors' and the Committee's investigation of the Spinoff.

#### **D. Debtors' Attempts To Meet and Confer with Morgan Stanley**

16. Under cover letter dated April 3, 2013, counsel for the Debtors provided to Morgan Stanley proposed document requests, and requested that Morgan Stanley agree to informally produce the requested documents. Counsel requested that if Morgan Stanley was willing to voluntarily produce the requested documents, it advise counsel by no later than April 10, 2013. Counsel further stated that "[i]f Morgan Stanley does not agree to voluntarily comply with these requests, the Debtors will file a formal motion pursuant to Rule 2004." A copy of the April 3, 2013 cover letter is annexed hereto as Exhibit F.<sup>3</sup>

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<sup>3</sup> As per the Case Management Order, the Debtors are permitted to file motions under Rule 2004 "prior to conferring with the individual or entity to be examined," and "[s]uch motions need not include

17. The Debtors had some discussions with Morgan Stanley since sending the letter, but, to date, have received no documents nor any firm commitment to produce any documents by a date certain. Therefore, the Debtors considered it prudent and appropriate to file this Motion.

### **BASIS FOR RELIEF**

#### **A. The Debtors Are Obligated to Investigate Potential Estate Causes of Action**

18. A debtor in possession “is a fiduciary, responsible for managing the affairs of the debtor for the benefit of the parties with an interest in the debtor’s estate.” In re Apex Oil Co., 92 B.R. 847, 867 (Bankr. E.D. Mo. 1988) (citation omitted). This duty includes investigating and determining the value of potential estate causes of action and, if warranted, commencing litigation or entering into settlements with regard to such causes of action, for the purpose of maximizing the value of the estate. See Lange v. Schropp (In re Brook Valley IV, Joint Venture), 347 B.R. 662, 673 (B.A.P. 8th Cir. 2006); see also Smart World Techs., LLC v. Juno Online Servs., Inc. (In re Smart World Techs., LLC), 423 F.3d 166, 175 (2d Cir. 2005) (“As fiduciary, the debtor bears the burden of ‘maximizing the value of the estate,’ including the value of any legal claims.”) (citation omitted).

19. Here, the Debtors, as debtors in possession, have a fiduciary duty to maximize the value of the estate. As part of their responsibilities, the Debtors must conduct a thorough investigation of the Spinoff, in order to identify potential causes of action belonging to the estate and evaluate the likelihood of success of any such claims. See In re Apex Oil Co., 92 B.R. at 867 (“In the exercise of their fiduciary obligations, [Debtor] and the Committee have investigated and analyzed the validity and enforceability of the Lender Group’s Claim.”); see also Smart

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the statements otherwise required by Local Bankruptcy Rule 2004(C)(4).” Case Management Order at ¶21. Nonetheless, in the interest of preserving the Debtors’ and the Court’s resources, prior to filing this motion, the Debtors attempted to reach agreement with Morgan Stanley regarding the requested document production.

World Techs., LLC, 423 F.3d at 175 (“Courts [] have interpreted § 1106(a)(1) to include the duty to appear and prosecute, or defend against any cause of action on behalf of the estate that may benefit or adversely affect the property of the debtor’s estate.”) (citations and internal quotation marks omitted).

20. In light of these duties, the Debtors are obligated to consider potential claims against Peabody and/or other entities or individuals 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.<sup>4</sup> Here, by divesting Patriot, Peabody avowedly sought to distance itself from the extensive legacy liabilities associated with the Eastern Operations, including the obligations arising under the CBAs to which Peabody had agreed. In the SDNY Bankruptcy Court’s decision transferring the Debtors’ cases to this District, Judge Chapman 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) (referring to “issues that have been raised by the UMWA with respect to [Peabody’s] spin-off of Patriot and its responsibility to provide promised cradle-to-grave health care benefits to Patriot employees and retirees who worked for Peabody prior to the spin-off”); see also 2nd Am. Compl. at ¶¶ 81-101, Lowe v. Peabody Holding Co., LLC, No. 12-cv-06925 (S.D. W. Va. Jan. 30, 2013).

21. In these cases, the Committee as well is actively investigating the Spin-Off in a joint and coordinated fashion alongside the Debtors.

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<sup>4</sup> See, e.g., 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 (Bankr. S.D.N.Y. June 29, 2007).

**B. The Debtors Are Entitled to the Requested Documents from Morgan Stanley Under Rule 2004**

22. As detailed in the Peabody Rule 2004 Motion, the Debtors have collected and are examining evidence in the Debtors' possession regarding the Spinoff. That internal investigation has revealed the above facts about Morgan Stanley showing the important role Morgan Stanley played in connection with the plans for a divestiture of the Eastern Operations and the eventual Spin-Off. For reasons detailed in the Peabody Rule 2004 Motion, many documents pertinent to the planned divestiture of the Eastern Operations and the Spin-Off are not in the Debtors' possession.

23. In addition, while the Debtors are attempting to obtain discovery from Peabody, it is not at all clear the extent of documents that the Debtors will be able to obtain from Peabody. It is apparent that many Peabody documents were not retained.<sup>5</sup> Moreover, the discovery from Peabody has been limited to a discrete group of custodians to minimize Peabody's burden. It has not been established that those custodians were the key points of contact for Morgan Stanley, or, even if they had received relevant material, that they would have retained it. It is thus crucially important that the Debtors obtain this discovery from Morgan Stanley in order for an effective investigation to be conducted by the Debtors and the Committee. See Motor Coach Indus., Inc. v. Drewes (In re Rosenberg), 303 B.R. 172, 175 (B.A.P. 8th Cir. 2004) (trustee was "required" to "use the examination powers available through Rule 2004 to investigate the claim as an asset of the estate" in order "to fulfill his statutorily mandated responsibilities.");<sup>6</sup> see also In re Recoton

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<sup>5</sup> As set forth in detail in the Peabody Rule 2004 Motion, 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 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. All items not on the live system are now available only on Peabody's daily backup tapes. See Peabody Rule 2004 Motion ¶ 9.

<sup>6</sup> 11 U.S.C. § 1107(a) provides that "a debtor in possession shall have all the rights . . . and powers,

Corp., 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004) (“The purpose of a Rule 2004 examination is to assist a party in interest in determining the nature and extent of the bankruptcy estate, . . . examining transactions and assessing whether wrongdoing has occurred.”) (citation omitted).

1. *Rule 2004 Authorizes Discovery of Third Parties such as Morgan Stanley*

24. Rule 2004 authorizes the bankruptcy court to order “the examination of any entity relating to the acts, conduct, property, liabilities or financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate, or the debtor’s right to a discharge.” Motor Coach Indus., Inc., 303 B.R. at 175 (citing Fed. R. Bankr. P. 2004(a),(b)) (emphasis added). Courts have explained that any third party who has had a relationship with or has engaged in a transaction with a debtor may be subject to a Rule 2004 investigation. See In re Apex Oil Co., 101 B.R. 92, 102 (Bankr. E.D. Mo. 1989) (investigation under Rule 2004 “may include the examination of the debtor and *third parties* concerning the debtor’s assets and affairs”) (emphasis in original) (citation omitted); see also In re Hentz, No. 12-30114, 2012 Bankr. LEXIS 2772, at \*4 (Bankr. D.N.D. June 18, 2012) (authorizing discovery of transactions between debtor, his wife, his father, and several companies); In re Recoton Corp., 307 B.R. at 755 (authorizing Rule 2004 examination of 15 former officers and directors); In re Valley Forge Plaza Assocs., 109 B.R. 669, 674 (Bankr. E.D. Pa. 1990) (“Third parties having knowledge of the debtor’s affairs, as well as the debtor itself, are subject to examination.”).

25. Morgan Stanley was retained by Peabody to serve as a financial advisor in connection with the Spinoff. As part of its engagement, Morgan Stanley conducted extensive analyses of the Eastern Operations (which would become Patriot’s assets), marketed the assets to third parties, analyzed the potential for a merger with Magnum, and made important

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and shall perform all the functions and duties . . . of a trustee . . . .” Accordingly, decisions referring to the fiduciary duties of trustees to investigate and evaluate potential claims of the estate apply equally to the obligations of debtors in possession.

recommendations to Peabody regarding Patriot's structure, including its capital structure, capital markets positioning, the appropriate amount and structure of its credit facility, and its debt market capacity. Further, Morgan Stanley performed extensive work in connection with the Fairness Opinion and the Valuation Analysis, in which Morgan Stanley opined on the value of the Patriot shares to be distributed in connection with the Spinoff. Consequently, the Debtors reasonably believe that Morgan Stanley has information related to the liabilities and financial condition of Patriot at the time of the Spinoff, as well as the motives for the Spinoff, which would significantly aid the Debtors in their investigation of the Spinoff.

26. Morgan Stanley fits well within the definition of third parties who may properly be subject to a Rule 2004 investigation. See In re Apex Oil Co., 101 B.R. at 102 ("The purpose of the F.R.B.P. 2004 investigation is to aid in the discovery of assets, and if a third person can be shown to have a relationship with the debtor's affairs, the party is subject to the F.R.B.P. 2004 investigation.") (citation omitted); see also In re Washington Mut., Inc., 408 B.R. 45, 53 (Bankr. D. Del. 2009) (granting debtor's Rule 2004 motion to examine JP Morgan Chase Bank, N.A. in connection with, *inter alia*, potential fraudulent transfer claims); In re Valley Forge Plaza Assocs., 109 B.R. at 674 ("Third parties having knowledge of the debtor's affairs, as well as the debtor itself, are subject to examination.").

2. *The Requested Documents Are Well Within the Broad Scope of Discovery Allowed Under Rule 2004*

27. Rule 2004 provides for examination of any entity relating to "the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate." Fed. R. Bankr. P. 2004(b) (emphasis added). "It is well established that the scope of such an investigation is broad. The exploration can be in the nature of a fishing expedition." In re Apex Oil Co., 101 B.R. at 102 (citation omitted); see also

Air Line Pilots Assocs., Int'l v. Am. Nat'l Bank & Trust Co. of Chicago (In re Ionosphere Clubs, Inc.), 156 B.R. 414, 432 (S.D.N.Y. 1993) (Rule 2004 discovery “is supposed to be a ‘fishing expedition’”) (citation omitted). Examination under Rule 2004 “is broader than the scope of discovery under [Rule] 26” of the Federal Rules of Civil Procedure. In re Apex Oil Co., 101 B.R. at 102 (Rule 2004 examination “may be exploratory and groping and may be as searching . . . as appears proper.”); see also In re Hentz, 2012 Bankr. LEXIS 2772, at \*4 (“The scope of a Rule 2004 examination is broader than the scope of discovery under Rule 26 of the Federal Rules of Civil Procedure.”); In re Fearn, 96 B.R. 135, 137 (Bankr. S.D. Oh. 1989) (“It is well-established that the scope of a Rule 2004 examination is very broad and great latitude of inquiry is ordinarily permitted”) (citation omitted); 9 Collier on Bankruptcy ¶ 2004.02[1] (16th ed. 2012) (“The scope of Rule 2004(b) is very broad.”).

28. Here, the documents sought from Morgan Stanley are well within the broad scope of discovery authorized by Rule 2004. The Debtors seek documents and communications related to the work performed by Morgan Stanley in connection with the Spinoff. In particular, the Debtors seek documents related to, *inter alia*, Morgan Stanley’s analysis of the separation alternatives and actions with respect to each alternative, including the bidding system and vetting of potential buyers of the Eastern Operations; Morgan Stanley’s evaluation of a potential merger with Magnum; Morgan Stanley’s conclusion that Peabody should proceed by way of spinoff; Morgan Stanley’s analyses of the Eastern Operations and of market data and recommendations regarding Patriot’s capital structure; Morgan Stanley’s Valuation Analysis, including documents underlying the related benchmark comparisons, cash flow analyses, and conclusions regarding the fair market value of the Patriot shares to be distributed pursuant to the Spinoff; and Morgan

Stanley's Fairness Opinion, including documents underlying the conclusion that the transaction was fair from a financial point of view to Peabody shareholders.

29. The requested documents are reasonably expected to shed light on whether the Spinoff was a fraudulent conveyance. Further, the requested documents are likely to bear on the existence of other potential claims against Peabody and/or other entities or individuals. See In re Recoton Corp., 307 B.R. at 755 (granting Rule 2004 motion to take discovery of third parties "to determine whether potential claims exist against them or others in favor of the Debtors and their estates"); In re Fearn, 96 B.R. at 138 (granting Rule 2004 motion where the requested discovery "could conceivably establish that other parties obtaining distributions . . . received a fraudulent transfer from the debtors").

30. Moreover, the Debtors' requests are appropriately tailored to the transaction at issue, and the receipt of such documents will enable the Debtors to conduct a meaningful investigation of potential claims, in order to determine whether value would inure to the estate by pursuing such claims. See In re Apex Oil, 92 B.R. at 867-68.

31. In light of foregoing, the discovery sought from Morgan Stanley falls well within the purview of Rule 2004, and the Debtors respectfully request the Court's leave to serve the requests set forth in Appendix A.

#### **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 Morgan Stanley. 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 Morgan Stanley, and will be available at [www.patriotcaseinfo.com/orders.php](http://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 Debtors in this or any other court.

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WHEREFORE the Debtors respectfully request that the Court (i) issue an Order, authorizing the Debtors to propound on Morgan Stanley 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: April 26, 2013  
New York, New York

Respectfully Submitted,

CURTIS, MALLET-PREVOST,  
COLT & MOSLE LLP

By: /s/ Theresa Foudy  
Steven J. Reisman  
Turner P. Smith  
Theresa Foudy  
Ellen Tobin  
101 Park Avenue  
New York, New York 10178  
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*Conflicts Counsel for Debtors and  
Debtors in Possession*

**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.*,

Debtors.

Chapter 11

Case No. 12-51502

(Jointly Administered)

**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”)<sup>1</sup> propound the following request upon Morgan Stanley for production of the documents described herein within 30 days to the offices of Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, NY 10178. Each of the following document requests is to be read and responded to 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.
2. “Morgan Stanley” means each of Morgan Stanley, 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 Morgan Stanley and “Your” means Morgan Stanley’s.

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<sup>1</sup> 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.

4. “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.

5. “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 the same nonidentical.

6. “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.

7. 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.

8. “All,” “each,” and “any” shall be construed to mean all, each, every, and any, so as to be expansive as possible.

9. 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.

10. The term “include,” or any derivative thereof, means including without limitation.
11. “1992 Benefit Fund” means the UMWA 1992 Benefit Fund.
12. “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).
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. “Bankruptcy Code” refers to title 11 of the United States Code.
16. “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).
17. “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.
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. “Fairness Analysis” means the work performed by You to evaluate the fairness of the Spin-Off from a financial point of view to Peabody stockholders.
20. “IRS” means the United States Internal Revenue Service.

21. “Magnum” means Magnum Coal Company LLC, any of its current or former subsidiaries, and any predecessor entity.

22. “Morgan Stanley Presentations” means all presentations prepared by You for Peabody and/or Patriot in connection with the Eastern Operations, the Potential Eastern Spin-Off, and the Spin-Off.

23. “NBCWA” refers to the National Bituminous Coal Wage Agreement of 2007.

24. “Offering Materials” refers to registration statements, preliminary and final prospectuses, prospectus supplements, information statements, teasers, term sheets, presentations, summaries, reports, and any other preliminary or final document used to market, solicit interest in or consent to, or otherwise describe the Potential Eastern 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.

25. “Petition Date” means July 9, 2012.

26. “Potential Eastern Spin-Off” means any potential transaction studied, analyzed, proposed, or considered by any person at Peabody involving the spin-off, 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.”

27. “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.

28. “Road Show” means all meetings, presentations and discussions given by Peabody or Patriot prior to the Spin-Off to prospective investors and/or banks.

29. “SEC” means the United States Securities and Exchange Commission.

30. “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.

31. “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.

32. “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.

33. “UMWA” means the United Mine Workers of America, including its locals, districts, and other affiliated entities.

34. “Valuation Analysis” means the work performed by You to evaluate the fair market value of the Patriot shares to be spun-off.

### **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 Debtors 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; and (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 Debtors 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 Debtors 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; and (f) MD5 Hash Value.

19. Unless otherwise indicated, these requests cover the time period from January 1, 2006 to May 1, 2008.

20. The Debtors 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 related to the Eastern Operations, the Potential Eastern Spin-Off, or the Spin-Off.

2. Without regard to the date limitation set forth in the Instructions above, all engagement letters, documents and communications concerning the nature or scope of Your engagements or the services You performed for Peabody or Patriot during the time period January 1, 2005 through the Petition Date, including but not limited to the Eastern Operations, the Potential Eastern Spin-Off, or the Spin-Off.

3. Without regard to the date limitation set forth in the Instructions above, all documents and communications concerning the amounts and sources of fees or other consideration You received in connection with the Eastern Operations, the Potential Eastern Spin-Off, the Spin-Off, or any other engagement or service You performed during the time period January 1, 2005 through the Petition Date.

4. All documents (including drafts) prepared by You relating to the services You provided to Peabody or Patriot in connection with the Eastern Operations, the Potential Eastern Spin-Off or the Spin-Off, including without limitation the Valuation Analysis, the Fairness Analysis, the Morgan Stanley Presentations or any other presentation given by You.

5. All documents provided by Peabody or Patriot to You relating to the Valuation Analysis or the Fairness Analysis or any other services You provided, including without limitation term sheets, financial statements, balance sheets, financial projections, or other

financial information referenced in or underlying the Valuation Analysis or the Fairness Analysis.

6. All documents and communications concerning Your analysis or evaluation of documents or information provided to You by Peabody or Patriot in connection with the Valuation Analysis, the Fairness Analysis, or any other services You provided to Peabody or Patriot.

7. All documents and communications concerning Your meetings and discussions with Peabody's management team, Patriot's prospective management team, or Patriot's management team (whether in-person or by videoconference, telephone, fax, email or otherwise) in connection with the services You provided to Peabody or Patriot.

8. All documents and communications relating to the evaluation, calculation, analysis, appraisal or estimation by any party of the actual or potential assets and liabilities of the Eastern Operations, the Potential Eastern Spin-Off, and/or Patriot and/or each of its subsidiaries.

9. All documents and communications concerning the allocation of assets, liabilities and debt between Patriot and Peabody prior to or in connection with the Spin-Off.

10. 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.

11. 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. worker’s 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 of obligations under the Surface Mining Control and Reclamation Act of 1977 or any state law.

12. All documents and communications concerning any projection, forecast, or analysis in connection with the Spin-Off or Potential Eastern Spin-Off, of the price of, supply of, or demand for coal (thermal or metallurgical) produced in Northern Appalachia, Central Appalachia, Southern Appalachia, or the Illinois Basin including any such analysis or projection of the impact of the price of natural gas, the percentage of U.S. electrical generation using coal, the volume of steel or 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.

13. All documents and communications concerning the Offering Materials, the distribution of Offering Materials to interested parties, and bids submitted by potential buyers.

14. All documents and communications concerning Your analysis, evaluation, or recommendation concerning possible transaction structures related to the Eastern Operations, including but not limited to (i) spin-off, (ii) spin/merger (“Morris Trust” transaction), (iii) sale, and (iv) acquisition of assets which would be combined with the assets to be divested and spun-off as a single entity.

15. All documents and communications concerning Your analysis, evaluation, or recommendation concerning a possible transaction with Magnum related to the Eastern Operations.

16. All documents and communications concerning the Road Shows conducted prior to or in connection with the Spin-Off.

17. All documents and communications in connection with the preparation of documents filed with the SEC, the IRS, the New York Stock Exchange or the Pension Benefit Guaranty Corporation concerning the Potential Eastern Spin-Off or the Spin-Off, and all communications and documents filed with those entities.

18. All documents and communications concerning any evaluation or analysis of whether any of the transfers considered in connection with the Potential Eastern Spin-Off or 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 or Patriot.

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

20. All documents and communications concerning any analysis, discussion, investigation, evaluation or appraisal of the Bank of America Credit Facility referred to in the Morgan Stanley Presentations or the Credit Agreement.

21. All documents and communications concerning the conclusions You reached regarding Patriot's liquidity needs.

22. All documents and communications concerning Your recommendations as to Patriot's funded debt capacity.

23. All documents and communications concerning the conclusions You reached as to Patriot's likely credit rating by Ratings Agencies.

24. All documents and communications concerning the conclusions You reached as to Patriot's value and price per Patriot share.

25. All documents and communications concerning the support, or lack thereof, for the conclusion reached in the Morgan Stanley Presentations as to the appropriate multiplier of EBITDA to use in the Valuation Analysis.

26. All documents and communications concerning the selection of companies and transactions included in the analysis of "Precedent Spin Transactions" included in the Morgan Stanley Presentations.

27. All documents and communications concerning the “Discounted Cash Flow Analysis” reflected in the Morgan Stanley Presentations.

Dated: New York, New York  
\_\_\_\_\_, 2013

CURTIS, MALLETT-PREVOST,  
COLT & MOSLE LLP

By: \_\_\_\_\_

Steven J. Reisman  
Turner P. Smith  
Theresa Foudy  
Ellen Tobin

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New York, New York 10178  
(212) 696-6000

*Conflicts Counsel for Debtors and  
Debtors in Possession*

**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 N
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
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

- |     |                                 |     |   |
|-----|---------------------------------|-----|---|
| 48. | Kanawha River Ventures I, LLC   | 98. | Winifrede Dock Limited Liability<br>Company |
| 49. | Kanawha River Ventures II, LLC  | 99. | Yankeetown Dock, LLC                        |
| 50. | Kanawha River Ventures III, LLC |     |   |

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

**In re:**

**PATRIOT COAL CORPORATION, et al.,**

**Debtors.**

**Chapter 11**

**Case No. 12-51502-659  
(Jointly Administered)**

**SUMMARY OF EXHIBITS**

The following exhibits (the “**Exhibits**”) referenced in the *Motion of the Debtors for Leave to Conduct Discovery of Morgan Stanley Pursuant to Rule 2004* will be served on the Court, the office of the U.S. Trustee, counsel to the Official Committee of Unsecured Creditors, counsel to the administrative agents for the Debtors’ postpetition lenders, and Morgan Stanley. Copies of the Exhibits will be made available at [www.patriotcaseinformation.com/exhibits.php](http://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 Energy Corporation (“**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 (“**Patriot**”), 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 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-eabody-energy-q3-2007-earnings-call-transcript>.

Exhibit F: A true and correct copy of a letter dated April 3, 2013 sent by counsel for the Debtors to Morgan Stanley.

Dated: April 26, 2013  
New York, New York

Respectfully Submitted,

CURTIS, MALLET-PREVOST,  
COLT & MOSLE LLP

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