



ROCKEFELLER CENTER  
1270 AVENUE OF THE AMERICAS TWENTY-FIFTH FLOOR  
NEW YORK, NY 10020  
T 212.307.5500 F 212.307.5598 www.Venable.com

May 15, 2013

Edward A. Smith

T 212-983-3850  
F 212.307.5598  
easmith@venable.com

BY ECF AND FEDERAL EXPRESS

Honorable Kathy A. Surratt-States  
Chief United States Bankruptcy Judge  
Eastern District of Missouri  
Thomas F. Eagleton Courthouse  
111 South Tenth Street  
St. Louis, Missouri 63102

Re: *In re Patriot Coal Corporation, et al.*, Case No. 12-51502-659 (KSS)

Dear Judge Surratt-States:

This firm represents Morgan Stanley & Co. LLC ("Morgan Stanley").

On April 26, 2013, the debtors filed a motion pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Rule 2004 Motion") seeking the Court's leave to take discovery from Morgan Stanley. The Rule 2004 Motion is returnable on May 21, 2013.

Morgan Stanley and the debtors have reached a consensual resolution of the Rule 2004 Motion, which is set forth in the attached Stipulated Order Authorizing the Issuance of a *Subpoena Duces Tecum* to Morgan Stanley Pursuant to Rule 2004 (the "Stipulated Order"). Pursuant to the Stipulated Order, among other things, Morgan Stanley's rights to object to the scope of the *subpoena duces tecum* to be served on it have been preserved. Also, discovery to be provided to the debtors pursuant to the Stipulated Order is contingent on the entry of a protective order covering Morgan Stanley's production. We understand that the debtors submitted the Stipulated Order to Chambers for entry on May 10, 2013.

On May 14, 2013, Peabody Energy Corporation filed an Objection to Motion of Debtors for Leave to Conduct Discovery of Morgan Stanley Pursuant to Rule 2004 (the "Peabody Opposition") raising certain issues concerning the scope of the discovery to be sought of Morgan Stanley and measures to be taken to preserve the confidentiality of information.

Morgan Stanley has no objection to the Peabody Opposition, and we understand that the debtors and Peabody intend to try to resolve the issues raised in the Peabody Opposition prior to the hearing date. To the extent the Rule 2004 motion is heard on May 21, 2013,

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Honorable Kathy Surratt-States  
May 15, 2013  
Page 2

however, Morgan Stanley does not currently intend to appear at the hearing, as Morgan Stanley's objections to the Rule 2004 Motion have been resolved pursuant to the terms of the Stipulated Order. If the Court desires that Morgan Stanley appear at the hearing -- either in person or by telephone -- we would of course be willing to do so.

If the Court would like Morgan Stanley to appear at the May 21 hearing, we would appreciate it if the Court would notify us.

Thank you for your consideration of this request.

Respectfully yours,



Edward A. Smith

Enclosure.

cc: Theresa Foudy, Esq.  
Curtis, Mallet-Prevost, Colt & Mosle LLP  
101 Park Avenue  
New York, New York 10178  
[tfoudy@curtis.com](mailto:tfoudy@curtis.com)

Paula Batt Wilson, Esq.  
Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
[pbwilson@jonesday.com](mailto:pbwilson@jonesday.com)

P. Bradley O'Neill, Esq.  
Kramer, Levin, Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, New York 10036  
[boneill@kramerlevin.com](mailto:boneill@kramerlevin.com)

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Honorable Kathy Surratt-States  
May 15, 2013  
Page 3

Steven N. Cousins, Esq.  
Armstrong Teasdale  
7700 Forsyth Boulevard  
Suite 1800  
St. Louis, Missouri 63105  
scousins@armstrongteasdale.com

(BY EMAIL AND FEDERAL EXPRESS, WITH ENCLOSURE)

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)

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

Hearing Location:  
Courtroom 7 North

Re: ECF No. 3857

**STIPULATED ORDER AUTHORIZING THE ISSUANCE OF  
A SUBPOENA DUCES TECUM TO MORGAN STANLEY PURSUANT TO RULE 2004**

This Stipulated Order Authorizing the Debtors to Issue a Subpoena Compelling the Production of Documents by Morgan Stanley Pursuant to Rule 2004 (the "Order") is made as of May 10, 2013 by and between the above-captioned debtors and debtors in possession in this action (collectively, the "Debtors") and Morgan Stanley & Co. LLC ("Morgan Stanley" and, together with the Debtors, the "Parties"), through their respective duly authorized counsel of record. The Parties hereby agree that the Rule 2004 Motion filed by the Debtors on April 26, 2013<sup>2</sup> shall be resolved as follows:

1. The Debtors are granted leave to propound discovery upon Morgan Stanley pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"),

<sup>1</sup> The Debtors are the entities listed on Schedule I attached to the Debtors' Notice and Motion for Leave to Conduct Discovery of Morgan Stanley Pursuant to Rule 2004 which was filed on April 26, 2013 [ECF No. 3857] (the "Rule 2004 Motion"). The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

<sup>2</sup> Capitalized terms not defined herein have the meanings ascribed to them in the Rule 2004 Motion, including the draft subpoena attached thereto as Appendix A.

in the form of the subpoena duces tecum attached as Appendix A to the Rule 2004 Motion (the "Subpoena"). The Debtors shall serve the Subpoena by email to counsel for Morgan Stanley.

2. Morgan Stanley shall respond to the Debtors' Subpoena. Subject to negotiations on the scope of the Subpoena and Morgan Stanley's Objections to the Subpoena, Morgan Stanley shall produce all responsive documents in accordance with the requirements of Rule 45(d)(1) of the Federal Rules of Civil Procedure ("FRCP").<sup>3</sup> Morgan Stanley will begin a rolling production of documents within 30 days of service of the Subpoena, and will use reasonable efforts to complete the production within 60 days of service of the Subpoena, unless the Debtors and Morgan Stanley agree on a later date for Morgan Stanley's production(s). Under no circumstances shall Morgan Stanley be obligated to commence the production of documents until seven business days after a protective order covering Morgan Stanley's production has been entered by the Court. If Morgan Stanley withholds subpoenaed information under a claim that such information is privileged or subject to protection as trial-preparation material, Morgan Stanley will prepare a privilege log, in accordance with FRCP 45(d)(2) and applicable local rules.

3. This Order is without prejudice to Morgan Stanley's right to object to the scope of the Subpoena based on FRCP 45(c)(2)(B) and, if such objection cannot be resolved following the requisite meet and confer, to move to quash or modify the Subpoena pursuant to FRCP 45(c)(3).

4. This Order is without prejudice to the Debtors' rights to move to compel production by Morgan Stanley pursuant to FRCP 45(c)(2)(B) if such dispute cannot be resolved.

5. Prior to the filing of a motion related to a dispute concerning the Subpoena or the subsequent document production, the Parties agree to meet and confer in an effort to resolve the dispute without Court intervention. If the parties cannot resolve the dispute within five calendar

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<sup>3</sup> FRCP 45 is applicable pursuant to Rule 9016 of the Federal Rules of Bankruptcy Procedure.

days of the initial meet and confer, then either Party may file a motion and such motion shall be scheduled for a hearing forthwith.

6. This Order is without prejudice to the Debtors' rights to seek other and/or further discovery pursuant to Rule 2004 in connection with these chapter 11 cases.

7. Proper, timely, adequate and sufficient notice of this Order has been provided in accordance with chapter 11 of title 11 of the United States Code, the Bankruptcy Rules and the Local Rules of the United States Bankruptcy Court for the Eastern District of Missouri, and no other or further notice of this Order is required.

8. Notwithstanding any Bankruptcy Rule that might otherwise delay the effectiveness of this Order, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated: May 10, 2013  
New York, New York

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KATHY A. SURRETT-STATES  
Chief Judge, United States Bankruptcy  
Court for the Eastern District of Missouri

<p>Dated: May 10, 2013</p> <p>CURTIS, MALLET-PREVOST, COLT &amp; MOSLE LLP</p> <p>By: <u>/s/ Theresa Foudy</u> Steven J. Reisman Turner P. Smith Theresa Foudy Ellen Tobin 101 Park Avenue New York, New York 10178 (212) 696-6000</p> <p><i>Conflicts Counsel for Debtors and Debtors in Possession</i></p>	<p>Dated: May 10, 2013</p> <p>VENABLE LLP</p> <p>By: <u>/s/ Kostas D. Katsiris</u> Edward A. Smith Kostas D. Katsiris Rockefeller Center 1270 Avenue of the Americas Twenty-Fourth Floor New York, NY 10020 (212) 307-5500</p> <p><i>Counsel for Morgan Stanley</i></p>
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