

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

**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, 2013² 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”),

¹ The Debtors are the entities listed on Schedule 1 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.

² 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”).³ 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


³ 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.


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: May 22, 2013
St. Louis, Missouri
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<p>Dated: May 10, 2013</p> <p>CURTIS, MALLET-PREVOST, COLT & 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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