

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)

Objection Deadline:

July 16, 2013 at 4:00 p.m.

(prevailing Central Time)

Proposed Hearing Date

(if necessary):

July 23, 2013 at 10:00 a.m.

(prevailing Central Time)

**NOTICE AND MOTION OF THE DEBTORS FOR AN ORDER AUTHORIZING
AND APPROVING THE PAYMENT OF FEES AND REIMBURSEMENT
OF EXPENSES OF POTENTIAL RIGHTS OFFERING BACKSTOP PARTIES**

PLEASE TAKE NOTICE that this motion is scheduled for hearing on July 23, 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 JULY 16, 2013. A COPY MUST BE PROMPTLY SERVED UPON THE UNDERSIGNED. FAILURE TO FILE AND SERVE A TIMELY RESPONSE MAY RESULT IN THE COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE.

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.

**DEBTORS' MOTION FOR AN ORDER AUTHORIZING AND
APPROVING THE PAYMENT OF FEES AND REIMBURSEMENT
OF EXPENSES OF POTENTIAL RIGHTS OFFERING BACKSTOP PARTIES**

Patriot Coal Corporation (“**Patriot**”) and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”), hereby submit this motion (the “**Motion**”), pursuant to section 363(b)(1) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an order² authorizing and approving the payment of certain fees and reimbursement of expenses of Knighthead Capital Management, LLC (“**Knighthead**”) and Aurelius Capital Management, LP (“**Aurelius**”), both of which are presently negotiating with the Debtors the potential terms of a chapter 11 plan of reorganization that would involve an investment of hundreds of millions of dollars into the Debtors’ estates through a rights offering backstopped by entities managed by Knighthead and Aurelius.³ In support of this Motion, the Debtors respectfully state as follows:

BACKGROUND AND JURISDICTION

1. 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 case under chapter 11 of the Bankruptcy Code. On December 19, 2012, the

² A copy of the proposed order granting the relief requested in the Motion (the “**Proposed Order**”) has been provided to the United States Trustee, counsel to the official committee of unsecured creditors (the “**Creditors’ Committee**”), counsel to the agents for the Debtors’ postpetition lenders, and counsel to Knighthead and Aurelius. A copy of the Proposed Order is available at www.patriotcaseinfo.com/orders.php.

³ According to the Verified Statement of Goldstein & Pressman, P.C. Pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure [ECF No. 3782], Knighthead holds \$57,356,000 of Patriot’s 8.25% Senior Notes due 2018 (22.94% of the total issuance) and Aurelius holds \$77,901,000 of Patriot’s 8.25% Senior Notes due 2018 (31.16% of the total issuance) and \$19,665,000 of Patriot’s 3.25% Convertible Senior Notes due 2013 (9.83% of the total issuance).

SDNY Bankruptcy Court entered an order transferring these chapter 11 cases to this Court (the “**Transfer Order**”) [ECF No. 1789].⁴ 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 Debtors’ cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the Joint Administration Order entered on July 10, 2012 [ECF No. 30].

2. This Court has subject matter jurisdiction over 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 heard and determined by this Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

REQUESTED RELIEF

3. The Debtors commenced these cases with the goals of restructuring their balance sheet and achieving the cost-savings and revenue increases necessary for a successful emergence from chapter 11. Over the course of these cases, the Debtors have made significant progress toward a successful reorganization, including, most recently, receiving Court approval to make essential changes to their collective bargaining agreements and to transition certain retiree healthcare benefit obligations to a voluntary employee beneficiary association trust. Following the Court’s decision, the Debtors have continued to negotiate with the United Mine Workers of America in an effort to reach a consensual resolution, an outcome that remains in the best interests of the estates if it can be achieved.

⁴ 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.

4. The Debtors have also begun negotiating with certain of their key constituents regarding the terms of a plan of reorganization, and have engaged in discussions with potential sources of emergence financing, including negotiating with significant holders of Patriot's 8.25% Senior Notes due 2018, entities managed by Knighthead and Aurelius, regarding the terms of a chapter 11 plan of reorganization that would involve a rights offering backstopped by entities managed by Knighthead and Aurelius (the "**Potential Backstopped Rights Offering**"). The Debtors anticipate that the Potential Backstopped Rights Offering, if consummated, will involve Knighthead and Aurelius providing and/or backstopping hundreds of millions of dollars of financing for the Debtors' estates.

5. As is customary in connection with debtors' efforts to obtain equity or debt financing, the Debtors have agreed to pay the reasonable and documented fees and expenses of certain of Knighthead's and Aurelius's advisers, specifically: (i) Kirkland & Ellis LLP ("**K&E**"), in connection with the negotiation of the terms and definitive documentation of the Potential Backstopped Rights Offering, and the performance of legal and other due diligence related to the negotiation, approval, and implementation thereof; and (ii) Knighthead's and Aurelius's legal and accounting professionals, in connection with certain tax issues related to the Potential Backstopped Rights Offering, up to an aggregate amount of \$75,000 for the advice covered by this clause (ii). Accordingly, by this Motion, the Debtors are seeking approval to pay the reasonable and documented fees and expenses described in clauses (i) and (ii) of the foregoing sentence that are for work performed from May 1, 2013 through any date on which the Debtors inform Knighthead and Aurelius in writing that the Debtors no longer agree to reimburse

Knighthead and Aurelius for any such fees and expenses (the “**Potential Backstop Fees and Expenses**”).⁵

6. The Debtors believe that payment of the Potential Backstop Fees and Expenses is critical to facilitating Knighthead’s and Aurelius’s continued work towards negotiating, documenting, and executing a fully backstopped rights offering—which investment, if consummated, would serve as the linchpin of a plan of reorganization and the successful conclusion of these chapter 11 cases. Knighthead’s and Aurelius’s reliance on a single lead counsel, K&E, will reduce the fees and expenses that would otherwise be incurred if multiple counsels were retained. The Debtors believe that payment of the Potential Backstop Fees and Expenses is appropriate and justified in light of the value anticipated to be received by the Debtors in the form of a commitment by entities managed by Knighthead and Aurelius to effectuate the Debtors’ emergence from chapter 11. In that regard, while the terms of a commitment are still being negotiated and the Debtors remain fully open to financing proposals from all credible sources, the Debtors have determined in the exercise of their business judgment that it is in the best interests of the Debtors’ estates to obtain Court approval at this time to pay the Potential Backstop Fees and Expenses.

7. Accordingly, the relief sought in this Motion is in the best interests of the Debtors and should be approved under section 363(b)(1) of the Bankruptcy Code. “Under the ‘business judgment’ rule, the management of a corporation’s affairs is placed in the hands of its board of

⁵ For the avoidance of doubt, “Potential Backstop Fees and Expenses” shall include only fees and expenses incurred in connection with the Potential Backstopped Rights Offering, and shall not include any fees and expenses incurred in connection with (i) advice provided to, or actions taken on behalf of, Knighthead or Aurelius in their capacity as creditors the Debtors and unrelated to the negotiation, approval and/or implementation of the Potential Backstopped Rights Offering or (ii) litigation that is adverse to the Debtors or otherwise unrelated to the negotiation, approval and/or implementation of the Potential Backstopped Rights Offering.

directors and officers, and the Court should interfere with their decisions only if it is made clear that those decisions are, inter alia, clearly erroneous, made arbitrarily, are in breach of the officers' and directors' fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code." *In re Farmland Indus. Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (approving an amendment to the Debtors' post-petition financing credit agreement as an exercise of sound and reasonable business judgment); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) ("[w]here the [debtor's] request is not manifestly unreasonable or made in bad faith, the court should normally grant approval as long as the proposed action appears to enhance the debtor's estate'" (citing *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985))); *In re Farmland Indus. Inc.*, 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003) (approving the rejection of employment agreements and noting that "[u]nder the business judgment standard, the question is whether the [proposed action] is in the Debtors' best economic interests, based on the Debtors' best business judgment in those circumstances." (citations omitted)); *see also In re Iridium Operating LLC*, 478 F.3d 452, 466 (2d Cir. 2007) (holding that a judge determining a section 363(b) application must find from the evidence presented before him a good business reason to grant such application); *In re Channel One Comm.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990) (same); *Walter v. Bank (In re Walter)*, 83 B.R. 14, 16 (B.A.P. 9th Cir. 1988) ("there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business" (citing *In re Continental Air Lines, Inc.* 780 F.2d 1223, 1226 (5th Cir. 1986))).

8. The Debtors believe that advancing negotiations with Knighthead and Aurelius in order to secure a firm commitment for a backstopped rights offering provides the Debtors with a promising opportunity to consummate a plan of reorganization and successfully emerge from chapter 11 in the near-term in a manner that maximizes value for the Debtors' estates and stakeholders. To that end, it is common practice for bankruptcy courts in similar cases to approve the payment of fees and reimbursement of expenses for backstop parties pursuant to rights offerings, as well as for other parties in connection with obtaining financing. *See In re Harry & David Holdings, Inc.*, Case No. 11-10884 (MFW) (Bankr. D. Del. May 10, 2011) (authorizing the reasonable and documented fees and expenses of advisors to backstop parties); *In re Cooper Standard Holdings, Inc.*, Case No. 09-12743 (PJW) (Bankr. D. Del. Jan. 5, 2010) (authorizing the reasonable and documented fees and expenses of counsel to backstop parties); *In re Premier Int'l Holdings, Inc., et al.*, Case No. 09-12019 (CSS) (Bankr. D. Del. Dec. 18, 2009) (authorizing payment of reasonable fees and expenses of advisors to backstop parties); *In re Dayton Superior Corp.*, Case No. 09-11351 (BLS) (Bankr. D. Del. Aug. 24, 2009) (same); *In re Dana Corp.*, Case No. 06-10354 (BRL) (Bankr. S.D.N.Y. Aug. 1, 2007) (authorizing payment of fees and expenses of advisors to investors); *In re aaiPharma Inc.*, Case No. 05-11341 (PJW) (Bankr. D. Del. Jan 10, 2006) (authorizing payment of due diligence fees incurred by exit financing lenders).

NO PRIOR REQUEST

9. No prior motion for the relief requested herein has been made to this Court or any other court.

NOTICE

10. 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 Knighthood and Aurelius. 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 is 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.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court enter an order authorizing and approving the payment of the Potential Backstop Fees and Expenses.

Dated: June 18, 2013
New York, New York

Respectfully submitted,

DAVIS POLK & WARDWELL LLP

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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