

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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In re: :
: Chapter 11
PATRIOT COAL CORPORATION, *et al.*, : Case No. 12-51502-659
: (Jointly Administered)
Debtors. : (re: #4043, 3857)
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STIPULATED CONFIDENTIALITY PROTECTIVE ORDER

This STIPULATED CONFIDENTIALITY PROTECTIVE ORDER (the “**Order**”) is made as of June 17, 2013 between and among Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession (the “**Debtors**”), the Official Committee of Unsecured Creditors of Patriot Coal Corporation (the “**Committee**”) (together, the “**Movants**”), and Morgan Stanley & Co. LLC (“**Morgan Stanley**”) (collectively with Movants, the “**parties**”). The Debtors have served a request for the production of documents on Morgan Stanley pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “**Request**”). The Movants further anticipate that they may request and receive production of other discovery from Morgan Stanley in a variety of contexts in these chapter 11 cases, and intend for this Order to apply to any proceedings in this Court relating to these chapter 11 cases, including, but not limited to, any request or motion made pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, litigation, mediation, dispute, contested matter or adversary proceeding (collectively, the “**Proceedings**”). The parties agree that discovery produced or disclosed in the Proceedings shall only be used in the manner set forth herein, including without limitation the restrictions set forth with respect to the litigation against Peabody Energy Corporation (“**Peabody**”) captioned *Lowe v. Peabody Holding Co. LLC*, No. 12-cv-06925 (the “**West Virginia Action**”).

The parties further acknowledge that the disclosure of non-public information produced by Morgan Stanley could result in severe harm to Morgan Stanley’s and its clients’ and/or affiliates’ business. In order to facilitate the disclosure of Confidential Information (as defined below) to Movants and other persons or entities identified in Sections 4(a) and 5 of this Order (all such persons and entities, together with Movants, “**Recipients**”) while protecting Morgan Stanley’s and its clients’ and/or affiliates’ interests, the parties hereby agree that the disclosure, discovery, production, and use of Confidential Information provided by Morgan Stanley pursuant to the Request or other Proceedings shall be governed by the following terms and conditions.

1. **Confidential Information.** For purposes of this Order, “Confidential Information” means all non-public information (whether in writing or in any other format) disclosed by Morgan Stanley in accordance with the terms of this Order that Morgan Stanley in good faith considers to contain, constitute, reflect, or embody confidential, commercially

sensitive or personal, non-public information, including, but not limited to, information relating to Morgan Stanley's and its affiliates' and clients' financial and/or business operations, business ventures, strategic plans, pricing, marketing strategies and programs, labor/employment matters or considerations, ideas, concepts, business plans, financial condition and projections, identifying information about employees and retirees, contracts, distribution arrangements, trade secrets, and/or ideas. However, Confidential Information does not include information as identified below in Section 6 (Exclusions).

2. **Procedure for Confidential Information .**

- a. **Documents.** If Morgan Stanley reasonably believes that information to be produced by Morgan Stanley in documents is Confidential Information, it shall designate that material by stamping or otherwise marking that material with the legend "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER" as applicable, or by sending a letter to counsel for Movants designating the material as such.
- b. **Depositions.** If Morgan Stanley reasonably believes that information to be disclosed by Morgan Stanley during a deposition is Confidential Information, its counsel shall make a statement on the record at the time of disclosure or notify counsel for all other parties in writing within ten (10) business days after receipt by counsel for Morgan Stanley of the transcript of such deposition. The legend "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER" shall be affixed to the first page of all copies of any transcript, as applicable. All transcripts and recordings of depositions of Morgan Stanley witnesses shall be treated as confidential for thirty (30) business days after receipt of the transcript or recording by counsel for Morgan Stanley, during which time Morgan Stanley's counsel may designate the transcripts or recordings of depositions as Confidential Information.
- c. **Procedure for Challenging a Designation.** If a Movant objects to such designation by Morgan Stanley, counsel for Movants and Morgan Stanley shall meet and confer. If the Movant's objection is not resolved following the meet and confer, the Movant may apply to the Court for an order, to be made after notice to Morgan Stanley and a hearing, that the material sought to be protected is not entitled to such status and protection. In the event of a dispute concerning the designation of material as Confidential Information by Morgan Stanley, (i) Morgan Stanley shall bear the burden of proving that the information has been properly designated as Confidential Information, and (ii) the material shall be treated as so designated until the Court orders to the contrary. (The procedures of this Section 3(d) may be invoked to challenge a claim of attorney-client privilege, attorney work product or other protection, privilege or immunity regarding material under Section 12 (Inadvertent Disclosure), but in any such challenge the disclosure shall be deemed inadvertent with no further showing by the Morgan Stanley regarding the steps taken to protect against inadvertent disclosure.) A Movant's acquiescence to a designation of Confidential Information shall not prejudice

its right to, at a later date, object to the designation, but an order entered by the Court making a determination with respect to one Movant's challenge shall be binding upon all parties.

3. **Peabody Designations.** The parties acknowledge that Morgan Stanley may produce certain documents and information relating to Peabody Energy Corporation and its affiliates ("**Peabody Material**") that Peabody may designate as "Confidential Information" or "AEP Confidential" as those terms are defined in the Stipulated Confidentiality Protective Order (Docket No. 4115) entered by this Court on June 7, 2013. For avoidance of doubt, Peabody Material shall be subject to the Order Granting in part 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 (Docket No. 4114), entered on June 7, 2013, including without limitation the restrictions set forth with respect to West Virginia Action.
4. **Limitations of Use for Confidential Information.**
 - a. Subject to the limitations of the Confidentiality Protective Order between Peabody and the Movants, entered by the Court on June 7, 2013, and the Rule 2004 Order also entered on June 7, 2013, each Movant shall be permitted to disclose on a confidential basis any Confidential Information to (i) its members, officers, directors, and employees that are assisting in prosecuting or defending any of the Proceedings, (ii) counsel (including the clerical, paralegal, and other staff and agents of counsel) of such Movant that are assisting in prosecuting or defending any of the Proceedings, (iii) the outside consultants, experts, financial advisors, or other agents or professionals (including the clerical, paralegal, and other staff and agents of such parties) (collectively, "**Advisors**") of such Movant that are assisting in prosecuting or defending any of the Proceedings, (iv) in the case of the Committee, the outside counsel of its members, the Advisors of its members, and the Advisors' outside counsel; and (v) in the case of the Debtors, outside counsel and the Advisors of the Special Litigation Committee of the Board of Directors of Patriot Coal Corporation (the "**Special Litigation Committee**").
 - b. Recipients (i) shall not use, or allow to be used, any Confidential Information for any purpose other than in connection with these Proceedings, including without limitation in connection with the West Virginia Action, (ii) shall not, without Morgan Stanley's prior written consent, disclose any Confidential Information to any person or entity other than as provided for herein, (iii) shall use reasonable efforts to hold and maintain the Confidential Information in strict confidence using the same degree of care that each Recipient uses with respect to its own comparable confidential information, and (iv) shall be permitted to disclose Confidential Information to other Recipients in accordance with the terms set forth herein.

- c. Every person or entity to whom Confidential Information or information contained therein is disclosed, summarized, described, characterized, or otherwise communicated or made available in whole or in part first shall be advised that the material or information is being disclosed pursuant and subject to the terms of this Order and may not be disclosed, summarized, described, characterized, or otherwise communicated or made available in whole or in part to any other person or entity, except pursuant to the terms hereof. Further, any person or entity (other than outside counsel) listed in 4(a)(iii), (iv), and (v) above who is given access to Confidential Information first shall be required to confirm his/her understanding and agreement to abide by the terms of this Order by signing a copy of Exhibit A attached hereto.

5. **Court Filings.** If a Movant wishes to file with the Court any pleadings, motions or other papers containing Confidential Information or any information derived therefrom, such pleadings, motions or other papers shall be filed with the Court in redacted form. The Movant may file a motion to file such pleadings, motions or other papers under seal unless the Court has granted leave to file such material on the public docket. Exhibits to such pleadings, motions or other papers that contain Confidential Information or information derived therefrom shall be filed in their entirety under seal. The requirements of this section with respect to Confidential Information designated by Morgan Stanley may be waived by Morgan Stanley only in writing.

6. **Exclusions.** Confidential Information shall not include any information or document which (a) is lawfully known to a Recipient at the time of disclosure, without obligation of confidentiality, (b) is independently developed by a Recipient without reference to or use of Confidential Information, (c) becomes known to a Recipient on a non-confidential basis from another source, unless the Recipient knows or reasonably believes that such other source was subject to a confidentiality restriction at that time, (d) is or becomes part of the public domain through no wrongful act of any Recipient, (e) is disclosed publicly pursuant to any judicial request or order, subpoena of any kind, or formal regulatory request, or (f) is determined by this Court not to be Confidential Information.

7. **Obligations on Conclusion of the Proceedings.** Within forty-five calendar days after the later of confirmation, closing or dismissal or conclusion of the Proceedings and any appeals, all Recipients to whom Confidential Information designated by Morgan Stanley were produced either: (i) shall return such material and all copies thereof to counsel for Morgan Stanley, or (ii) shall advise counsel for Morgan Stanley in writing that they have destroyed all such Confidential Information in their possession in a manner that ensures that such material will not be disclosed or disseminated or recovered by any person or entity; provided that outside counsel shall be entitled to retain all court papers, deposition and trial transcripts, exhibits used in affidavits, at depositions and at trial, and attorney work product containing Confidential Information, provided that such outside counsel and employees of such outside counsel shall not disclose such Confidential Information to any person or entity except (a) by written agreement with Morgan Stanley, or (b) pursuant to a Court order, regulatory requirement, or subpoena, provided that outside counsel shall give notice to Morgan Stanley within three (3) business days after service to enable Morgan Stanley to seek a protective order before any such production.

8. **Remedies.** Money damages alone would not be a sufficient remedy for any breach or threatened breach of this Order and Morgan Stanley shall be entitled to specific performance and injunctive or other equitable relief for any such breach or threatened breach by appropriate action in this Court; *provided, however*, that each Recipient shall be solely responsible for its, his or her own performance hereunder.

9. **Compelled Disclosure.** Notwithstanding anything else herein, if a Recipient is legally compelled (whether by regulatory request, deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any Confidential Information designated by Morgan Stanley, that Recipient, unless requested not to do so by a competent judicial or governmental entity, shall notify Morgan Stanley in writing of such requirement as soon as reasonably practicable, but no later than three (3) business days after service, so that Morgan Stanley may seek a protective order or other appropriate remedy and/or waive compliance with the provisions hereof. Failing the timely entry of a protective order or receipt of a waiver hereunder, the Recipient may disclose, without liability hereunder, that portion (and only that portion) of the Confidential Information that the Recipient has been advised by written opinion of counsel that it is legally compelled to disclose; *provided, however*, that the Recipient agrees to use its best efforts to obtain assurance, at no cost to the Recipient, that confidential treatment will be accorded such Confidential Information by the person or persons or entity or entities to whom it is to be disclosed.

10. **General.** No waiver of any breach or default shall be deemed or construed to constitute a waiver of any other violation or other breach of any of the terms, provisions, and covenants contained in this Order, and forbearance to enforce one or more of the remedies provided on an event of default will not be deemed or construed to constitute a waiver of the default or of any other remedy provided for in this Order.

11. **Submission to Jurisdiction.** The parties hereby submit to the jurisdiction of this Court to resolve any matters relating to this Order.

12. **Inadvertent Disclosure.** Pursuant to Federal Rule of Evidence 502(d), the disclosure by Morgan Stanley of material (including without limitation documents, communications or information) covered by the attorney-client privilege, work product or other applicable state or federal protection or immunity shall not be deemed to waive, and shall not waive, such privilege or protection in this or any other federal or state proceeding. If Morgan Stanley determines that it has disclosed material pursuant to this Order, to which Morgan Stanley wishes to assert a claim of attorney-client privilege, work product protection, or other applicable protection or immunity, Morgan Stanley will notify Movants in writing within seven business days of its discovery of such disclosure. Recipients receiving such material shall electronically delete such material and return all hard copies to Morgan Stanley within thirty (30) days of any written notification, unless a Movant challenges the claim of attorney-client privilege, work-product protection, and/or other privilege or immunity. Any challenge to such claim shall be made pursuant to the procedures set forth in Section 2(c) above and, pursuant to that Section 2(c), shall not require any showing by Morgan Stanley regarding the steps taken to protect such material from disclosure. Upon receipt of a written notification under this section, Recipients shall refrain from viewing or using such material in any way until either Morgan Stanley determines that it will not assert a claim of privilege or other protection or any dispute regarding

the assertion of privilege or other protection is resolved by the parties or the Court. If a Recipient identifies in a production that it has received any material covered by the provisions of this section, it shall notify Morgan Stanley in writing within seven business days after identifying such material and follow the protocols set forth in this section.

IN WITNESS WHEREOF, a duly authorized representative of each party hereby stipulates to entry of this Order as of the date first written above.


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: June 28, 2013
St. Louis, Missouri
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PATRIOT COAL CORPORATION
and its subsidiaries (the "Debtors")

OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF
PATRIOT COAL CORPORATION

By: /s/ Theresa A. Foudy

By: /s/ P. Bradley O'Neill

MORGAN STANLEY & CO., LLC

By: /s/ Kostas D. Katsiris

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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In re:	:
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PATRIOT COAL CORPORATION, <i>et al.</i> ,	: Case No. 12-51502-659
	: (Jointly Administered)
Debtors.	:
	:
	:
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**ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND
CONFIDENTIAL INFORMATION**

The undersigned hereby acknowledges that he/she has read the Stipulated Confidentiality Protective Order dated _____ in the above-captioned action and attached hereto (the "Order"), understands the terms thereof, and agrees to be bound by its terms. The undersigned acknowledges that he or she shall be treated as a "Recipient" under the Order and shall be subject to the use restrictions set forth therein, including without limitation with respect to the West Virginia Action (as defined in the Order). The undersigned submits to the jurisdiction of the United States Bankruptcy Court for the Eastern District of Missouri, Eastern Division, in matters relating to the Order and understands that the terms of the Order obligate him/her to use materials and information designated CONFIDENTIAL INFORMATION - SUBJECT TO PROTECTIVE ORDER in accordance with the Order solely for the purposes of the Proceedings (as defined in the Order).

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

Date: _____ Signature _____