

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)

Hearing Date (if necessary):
July 23, 2013 at 10:00 a.m.
(prevailing Central Time)

Hearing Location:
Courtroom 7 North

**NOTICE AND APPLICATION OF THE DEBTORS FOR AUTHORITY TO
EMPLOY AND RETAIN VERITAS CONSULTING, LLC AS SPECIAL
COUNSEL FOR THE DEBTORS EFFECTIVE AUGUST 15, 2013**

PLEASE TAKE NOTICE THAT this application 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 APPLICATION 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 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.

**APPLICATION OF THE DEBTORS FOR AUTHORITY TO
EMPLOY AND RETAIN VERITAS CONSULTING, LLC AS SPECIAL
COUNSEL FOR THE DEBTORS EFFECTIVE AUGUST 15, 2013**

Patriot Coal Corporation (“**Patriot**”) and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) respectfully represent:

Relief Requested

1. By this application (the “**Application**”), the Debtors request the entry of an order (the “**Proposed Order**”) authorizing the Debtors, pursuant to sections 327(e) and 328(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 2014 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the Eastern District of Missouri (the “**Local Bankruptcy Rules**”), to retain and employ Veritas Consulting, LLC (“**Veritas**”) effective August 15, 2013 (the “**Effective Date**”) as special counsel for regulatory and related matters that will be required during these chapter 11 cases. The Debtors request that the Court approve the employment of Veritas under the terms and conditions set forth in this Application, as more fully described in the Declaration of Richard H. Verheij, the Principal of Veritas, attached hereto (the “**Declaration**”).

Background and Jurisdiction

2. 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 SDNY Bankruptcy Court entered an order transferring the Debtors' chapter 11 cases to this Court (the "**Transfer Order**") [ECF No. 1789].² 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. These cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the SDNY Bankruptcy Court's Joint Administration Order entered on July 10, 2012 [ECF No. 30].

3. Additional information about the Debtors' businesses and the events leading up to the Petition Date can be found in the Declaration of Mark N. Schroeder pursuant to Local Bankruptcy Rule 1007-2 of the SDNY Bankruptcy Court, filed on July 9, 2012 [ECF No. 4], which is incorporated herein by reference.

4. The Court has subject matter jurisdiction to consider 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 determined by the Bankruptcy Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Qualifications of Veritas

5. Veritas and its Principal have extensive expertise and experience over the last 30 years in providing counsel in complex regulatory and legal matters, specifically in highly regulated industries such as tobacco, alcohol and coal.

6. Veritas is well qualified to represent the Debtors as special counsel for certain regulatory and related matters (as described more fully below) in these chapter 11

² 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.

cases. Veritas' Principal was the General Counsel and Secretary for Debtor Magnum Coal Company LLC (f/k/a Magnum Coal Company ("**Magnum**")) from 2006 to 2008. The Debtors' selenium issues and related litigation and compliance matters first arose during his tenure as General Counsel and Secretary of Magnum. Veritas has continued to provide advice and counsel related to those matters from 2008 to the present, and is well acquainted with, and has developed relevant experience and historical knowledge regarding various court orders, consent decrees and compliance strategies relating to selenium and environmental compliance generally.

7. Indeed, Veritas' efforts were instrumental in obtaining a critical settlement regarding certain selenium litigation, which was approved by the SDNY Bankruptcy Court on December 18, 2012 [ECF No. 1779], and in receiving regulatory approval for many new technologies. For example, until very recently, no treatment system had been identified for reducing selenium to permit limits on a consistent basis in the conditions found in coal mining operations in Appalachia and, more importantly, no full scale treatment system was in operation anywhere in the United States for reducing selenium to permit limits. In March of 2013, Debtor Apogee Coal Company, LLC ("**Apogee**") commissioned such a system. The system, however, has cost approximately \$52 million to date and will have significant annual operational and maintenance costs going forward. In order to achieve compliance with permit limits at 40-50 other sites, the Debtors have been on the leading edge of developing technologies and obtaining approvals for alternative actively-managed treatment systems which are less capital intensive and will have more moderated annual operational and maintenance costs. Veritas has played a significant role in Debtors

successfully obtaining approval, after intense scrutiny by a court-appointed Special Master, for two treatment systems, the Iron-Facilitated Selenium Reduction (“**IFSeR**”) system and Bio-chemical Reactor (“**BCR**”), both of which will allow the Debtors to come into compliance at dozens of sites over the next couple of years in a less capital-intensive manner. In addition, Veritas has provided support for a very active program of the Debtors’, working with leading engineering firms from around the country to identify and develop more effective and robust selenium treatment systems to allow the Debtors to come into compliance with court-ordered deadlines over the next five years. In short, Veritas has and will continue to provide effective, efficient, and critical services to the Debtors in these chapter 11 cases.

8. The Debtors submit that the employment of Veritas is necessary, appropriate and in the best interests of the Debtors, their estates and their creditors under sections 327(e) and 1107 of the Bankruptcy Code and should therefore be approved.

Scope of Services

9. By this Application, the Debtors seek to employ and compensate Veritas on a flat-fee monthly basis to act as the Debtors’ special counsel for certain regulatory and related matters in these chapter 11 cases. In particular, the Debtors anticipate that Veritas will render, among others, the following professional services:

- a. monitor and assist compliance with all court orders and consent decrees related to pending selenium litigation (including but not limited to liaison with plaintiff environmental activists, the court-appointed Special Master and federal and state regulatory agencies), develop selenium treatment and compliance strategies, and advise and counsel the Debtors on certain other issues related to environmental compliance and permitting (the “**Retained Matters**”); and

- b. perform all other necessary or appropriate services in connection with the Retained Matters.

The Debtors require knowledgeable special counsel to provide these essential professional services.

10. Veritas is authorized to advise the Debtors on the Retained Matters under the Order Authorizing the Debtors to Employ Ordinary Course Professionals, *Nunc Pro Tunc* to the Petition Date, entered by the SDNY Bankruptcy Court on August 2, 2012 (the “**OCP Order**”) [ECF No. 263]. Under the OCP Order, monthly fees for ordinary course professionals are capped at \$50,000 (the “**Monthly Cap**”), with any excess amounts requiring approval pursuant to the procedures set forth in the OCP Order. Furthermore, if payments to an ordinary course professional will exceed \$500,000 over the course of these chapter 11 cases (the “**Aggregate Cap**”), that professional must file a separate retention application under section 327 of the Bankruptcy Code.

11. Veritas’ fees have never exceeded the Monthly Cap. However, the Debtors and Veritas anticipate that Veritas’ aggregate fees in these chapter 11 cases will exceed the Aggregate Cap during September 2013, roughly 14 months after the Petition Date. Accordingly, the Debtors seek to retain Veritas as special counsel under section 327(e) of the Bankruptcy Code.

12. Veritas has stated its desire and willingness to continue to act in these cases and provide the necessary services as special counsel for certain regulatory and related matters for the Debtors. As noted above, Veritas has substantial expertise with respect to the Debtors’ environmental compliance and regulatory needs in connection with the

Retained Matters. Accordingly, the Debtors believe that Veritas is both well qualified and uniquely able to represent the Debtors' interests as special counsel.

Compensation

13. As set forth in the Declaration, Veritas intends to (a) charge for its legal services in connection with the Retained Matters on a flat-fee monthly basis at a rate of \$33,333.33 per month, which reflects a substantial negotiated discount from the rates that Veritas customarily charges for work of this type and (b) seek reimbursement of actual, necessary and documented out-of-pocket expenses. Richard H. Verheij, the Principal of Veritas, is the professional expected to provide services to the Debtors regarding the Retained Matters. The Debtors believe that these rates are reasonable. Veritas will maintain detailed, contemporaneous records of time spent, as well as any actual, necessary and documented expenses incurred, in connection with the rendering of the legal services described above by category and nature of the services rendered.

14. From and after the Effective Date, Veritas intends to apply to the Court for payment of compensation and reimbursement of expenses in accordance with the procedures set forth in the applicable provisions of section 328 of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, the applicable fee and expense guidelines established by the United States Trustee (the "**United States Trustee Guidelines**") (collectively, the "**Fee Guidelines**"), the Order to Establish Procedures for Interim Monthly Compensation and Reimbursement of Expenses of Professionals entered on August 2, 2012 [ECF No. 262] (the "**Interim Compensation Order**") and any other applicable orders of this Court. Veritas has agreed not to share with any person or firm the

compensation to be paid for professional services rendered in connection with the chapter 11 cases, other than as permitted pursuant to section 504 of the Bankruptcy Code.

15. The Debtors understand that, in connection with the reimbursement of reasonable and necessary expenses, it is Veritas' policy to charge its clients for certain expenses incurred in connection with providing certain client services, including travel, lodging, photocopying, postage, vendor charges, delivery service and other expenses incurred in providing professional services. Veritas intends to seek reimbursement for expenses incurred in connection with the representation of the Debtors in accordance with Veritas' policy, subject to modification as may be required by the Fee Guidelines, the Interim Compensation Order and any other applicable orders of this Court. Veritas understands that interim and final fee awards are subject to approval by this Court. The Debtors believe that the aforementioned fees and expense reimbursement policy are fair and reasonable in light of (a) industry practice, (b) market rates charged for comparable services both in and out of the chapter 11 context and (c) Veritas' experience with respect to these services.

Veritas' Connections

16. To the best of the Debtors' knowledge, information and belief, other than in connection with these chapter 11 cases and in prior representations of the Debtors, Veritas does not represent or hold any interest adverse to the Debtors or to the estates with respect to the Retained Matters on which Veritas is to be employed, except for *de minimis* amounts owed by the Debtors for prepetition services rendered by Veritas totaling \$39,298; Veritas does not have any connection with, and has not represented in the past, the United States

Trustee for the Eastern District of Missouri, or any person employed by the Office of the United States Trustee for the Eastern District of Missouri; and is not connected with the Honorable Kathy A. Surratt-States approving this Application. Veritas does not have any connection with the Debtors' creditors, any other party in interest, or its respective attorneys and accountants, except as set forth below:

- a. Richard Verheij is the sole Principal of Veritas. It is possible that Mr. Verheij holds interests in mutual funds or other investment vehicles that may own the Debtors' securities.

17. Veritas performed the following actions to determine whether Veritas or its Principal has any connections with, has in the past represented, or is currently representing potential parties in interest in these cases:

- a. A list of interested parties (the "**Interested Parties**") was created by the Debtors and provided to Veritas;
- b. Veritas compared each of the Interested Parties to the names that Veritas maintains in its master client database created from its conflict clearance and billing records. Veritas' client database includes: (i) the name of each current or former client; (ii) based on information available to Veritas, the names of entities materially related to, or expected to be materially adverse to, such current or former client; and (iii) the dates on which the matter was opened and/or closed; and
- c. Any matches between the Interested Parties and the entities in Veritas' master client file were identified, reviewed and compiled for the purpose of the Declaration. To the extent that Veritas currently represents, or has represented within the last three (3) years, any of the Interested Parties, the identities of such entities are set forth in Schedule 1, attached hereto.

18. The Debtors have been informed that Veritas intends to conduct an ongoing review of matters it is handling to ensure that no disqualifying circumstances have arisen, and, if any new facts or relationships that Veritas believes should be disclosed to this Court

and the parties in interest in these cases are discovered, Veritas will file a supplemental disclosure with the Court and serve such supplemental disclosure on the U.S. Trustee. If any new material, relevant facts or relationships are discovered between review periods, Veritas will promptly file a supplemental disclosure with the Court and serve such supplemental disclosure on the U.S. Trustee.

19. Based upon the foregoing, to the best of the Debtors' knowledge, information, and belief, Veritas represents no interest or holds any interest adverse to the Debtors or their estates with respect to the Retained Matters on which Veritas is to be employed consistent with section 327(e) of the Bankruptcy Code. Accordingly, the Debtors believe that Veritas should be engaged as special counsel for regulatory and related matters in these chapter 11 cases.

Basis for Relief Requested

20. Section 327(e) of the Bankruptcy Code provides that a debtor in possession may, with the court's approval, employ special counsel that does not hold any interest adverse to the debtor or its estate with respect to the matters upon which such special counsel is to be employed. A professional may be retained under section 327(e) if such professional is a creditor of the estate on account of unpaid fees and expenses for services rendered by such professional on a prepetition basis. *See, e.g., In re Mican Homes, Inc.*, 179 B.R. 886, 888 (Bankr. E.D. Mo. 1995) (granting in part a motion to vacate an order denying the debtor's application to retain special counsel to the extent that "the reference to a prepetition claim [on account of prepetition services rendered] is set aside").

21. Section 328 of the Bankruptcy Code provides, in relevant part, that a debtor “with the court’s approval, may employ or authorize the employment of a professional under section 327 . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.” 11 U.S.C. § 328(a). Thus, section 328(a) permits the Court to approve the terms of Veritas’ flat-fee monthly compensation structure. As recognized by numerous courts, Congress intended section 328(a) to enable debtors to retain professionals pursuant to specific fee arrangements to be determined at the time of the court’s approval of the retention, subject to reversal only if the terms are found to be “improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.” 11 U.S.C. § 328(a). *See Donaldson, Lufkin & Jenrette Sec. Corp. v. Nat’l Gypsum Co. (in re Nat’l Gypsum Co.)*, 123 F.3d 861, 862-63 (5th Cir. 1997) (“The court must therefore set the compensation award either according to § 328 or §330. If prior approval is given to a certain compensation, § 328 controls and the court starts with that approved compensation, modifying it only for developments unforeseen when originally approved.”); *see also In re Benassi*, 72 B.R. 44 (D. Minn. 1987).

22. Veritas’ services are necessary to the successful functioning of these chapter 11 cases. Based upon both its extensive experience and expertise, and its prior representation of the Debtors, Veritas is both well-qualified and uniquely able to represent the Debtors with respect to its critical environmental compliance needs in an efficient, cost-effective, and timely manner. Accordingly, the Debtors submit that the retention of Veritas

is in the best interests of the Debtors, their estates, and their creditors and should be approved by the Court.

Notice

23. Consistent with the Order Establishing Certain Notice, Case Management and Administrative Procedures [ECF No. 3361] (the “**Case Management Order**”), the Debtors will serve notice of this Application on the Core Parties. All parties who have requested electronic notice of filings in these cases through the Court’s ECF system will automatically receive notice of this Application through the ECF system no later than the day after its filing with the Court. A copy of this Application 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 will be 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.

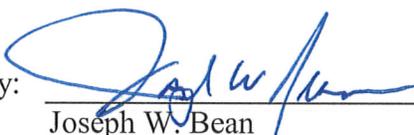
24. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice of this Application is necessary or required.

No Previous Request

25. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just and proper.

Dated: St. Louis, Missouri
July 2, 2013

By: 

Joseph W. Bean
Senior Vice President, Law &
Administration
Patriot Coal Corporation

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

Debtors Effective August 15, 2013 (the “**Application**”).²

3. Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein and, if called as a witness, I would testify thereto.

Qualifications of Veritas

4. Veritas is based in California and I am its Principal. Veritas has extensive expertise over the last 30 years and experience in providing counsel in complex regulatory and legal matters, particularly in highly regulated industries such as tobacco, alcohol and coal.

5. Veritas is well qualified to represent the Debtors as special counsel regarding certain regulatory and related matters (as described more fully below) in these chapter 11 cases. I was General Counsel and Secretary for Debtor Magnum Coal Company LLC (f/k/a Magnum Coal Company (“**Magnum**”)) from 2006 to 2008, prior to its acquisition by Patriot. The Debtors’ selenium issues and related litigation and compliance matters first arose during my tenure as General Counsel and Secretary of Magnum. Veritas has continued to provide advice and counsel related to those matters from 2008 to the present, and is well acquainted with, and has developed relevant experience and historical knowledge regarding various court orders, consent decrees and compliance strategies relating to selenium and environmental compliance generally.

6. Indeed, Veritas’ efforts were instrumental in obtaining a critical settlement regarding certain selenium litigation, which was approved by the SDNY Bankruptcy Court on December 18, 2012 [ECF No. 1779], and in receiving regulatory approval for many new technologies. For example, until very recently, no treatment system had been identified for reducing selenium to permit limits on a consistent basis in the conditions found in coal mining

² Capitalized terms used but not defined herein shall have the meanings set forth in the Application.

operations in Appalachia and, more importantly, no full scale treatment system was in operation anywhere in the United States for reducing selenium to permit limits. In March of 2013, Debtor Apogee Coal Company, LLC (“Apogee”) commissioned such a system. The system, however, has cost approximately \$52 million to date and will have significant annual operational and maintenance costs going forward. In order to achieve compliance with permit limits at 40-50 other sites, the Debtors have been on the leading edge of developing technologies and obtaining approvals for alternative actively-managed treatment systems which are less capital intensive and will have more moderated annual operational and maintenance costs. Veritas has played a significant role in Debtors successfully obtaining approval, after intense scrutiny by a court-appointed Special Master, for two treatment systems, the Iron-Facilitated Selenium Reduction (“IFSeR”) system and Bio-chemical Reactor (“BCR”), both of which will allow the Debtors to come into compliance at dozens of sites over the next couple of years in a less capital-intensive manner. In addition, Veritas has provided support for a very active program of the Debtors’, working with leading engineering firms from around the country to identify and develop more effective and robust selenium treatment systems to allow the Debtors to come into compliance with court-ordered deadlines over the next five years.

7. Veritas has and will continue to provide effective, efficient, and critical services to the Debtors in these chapter 11 cases.

Scope of Services

8. The Debtors seek to employ and compensate Veritas on a flat-fee monthly basis to act as special counsel for certain regulatory and related matters in these chapter 11 cases. In particular, the Debtors anticipate that Veritas will render, among others, the following professional services:

- a. monitor and assist compliance with all court orders and consent decrees related to pending selenium litigation (including but not limited to liaison with plaintiff environmental activists, the court-appointed Special Master and federal and state regulatory agencies), develop selenium treatment and compliance strategies, and advise and counsel the Debtors on certain other issues related to environmental compliance and permitting (the “**Retained Matters**”); and
- b. perform all other necessary or appropriate services in connection with the Retained Matters.

9. Veritas is authorized to advise the Debtors on the Retained Matters under the Order Authorizing the Debtors to Employ Ordinary Course Professionals, *Nunc Pro Tunc* to the Petition Date, entered by the SDNY Bankruptcy Court on August 2, 2012 (the “**OCP Order**”) [ECF No. 263]. Under the OCP Order, monthly fees for ordinary course professionals are capped at \$50,000 (the “**Monthly Cap**”), with any excess amounts requiring approval pursuant to the procedures set forth in the OCP Order. Furthermore, if payments to an ordinary course professional will exceed \$500,000 over the course of these chapter 11 cases (the “**Aggregate Cap**”), that professional must file a separate retention application under section 327 of the Bankruptcy Code.

10. Veritas’ fees have never exceeded the Monthly Cap. However, the Debtors and Veritas anticipate that Veritas’ aggregate fees in these chapter 11 cases will exceed the Aggregate Cap during September 2013, roughly 14 months after the Petition Date. Accordingly, the Debtors are seeking to retain Veritas as special counsel for regulatory and related matters under section 327(e) of the Bankruptcy Code.

11. Veritas has stated its desire and willingness to continue to act in these cases and provide the necessary services as special counsel for certain regulatory and related matters for the Debtors. As noted above, Veritas has substantial expertise with respect to the Retained Matters.

Compensation

12. Veritas intends to (a) charge for its legal services in connection with the Retained Matters on a flat-fee monthly basis at a rate of \$33,333.33 per month, which reflects a substantial negotiated discount from the rates that Veritas customarily charges for work of this type and (b) seek reimbursement of actual, necessary and documented out-of-pocket expenses. Richard H. Verheij, the Principal of Veritas, is the professional expected to provide services to the Debtors regarding the Retained Matters. Veritas will maintain detailed, contemporaneous records of time spent, as well as any actual and necessary expenses incurred, in connection with the rendering of the services described above by category and nature of the services rendered.

13. From and after the Effective Date, Veritas intends to apply to the Court for payment of compensation and reimbursement of expenses in accordance with the procedures set forth in the applicable provisions of section 328(a) of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, the applicable fee and expense guidelines established by the United States Trustee (the “**United States Trustee Guidelines**”) (collectively, the “**Fee Guidelines**”), the Order to Establish Procedures for Interim Monthly Compensation and Reimbursement of Expenses of Professionals entered on August 2, 2012 [ECF No. 262] (the “**Interim Compensation Order**”) and any other applicable orders of this Court. Veritas has agreed not to share with any person or firm the compensation to be paid for professional services rendered in connection with the chapter 11 cases, other than as permitted pursuant to section 504 of the Bankruptcy Code.

14. In connection with the reimbursement of reasonable and necessary expenses, it is Veritas’ policy to charge its clients for certain expenses incurred in connection with providing certain client services, including travel and lodging. Veritas intends to seek reimbursement for

expenses incurred in connection with the representation of the Debtors in accordance with Veritas' policy, subject to modification as may be required by the Fee Guidelines, the Interim Compensation Order and any other applicable orders of this Court. Veritas understands that interim and final fee awards are subject to approval by this Court.

Veritas' Connections

15. To the best of my knowledge and information after due inquiry, other than in connection with these chapter 11 cases and in prior representations of the Debtors, Veritas does not represent or hold any interest adverse to the Debtors or to the estates with respect to the Retained Matters on which Veritas is to be employed, except for *de minimis* amounts owed by the Debtors for prepetition services rendered by Veritas totaling approximately [\$39,000]; Veritas does not have any connection with, and has not represented in the past, the United States Trustee for the Eastern District of Missouri, or any person employed by the Office of the United States Trustee for the Eastern District of Missouri; and is not connected with the Honorable Kathy A. Surratt-States approving this Application. Veritas does not have any connection with the Debtors' creditors, any other party in interest, or its respective attorneys and accountants, except as set forth below:

- a. I am the sole Principal of Veritas. It is possible I hold interests in mutual funds or other investment vehicles that may own the Debtors' securities.

16. Veritas performed the following actions to determine whether Veritas or its Principal has any connections with, has in the past represented, or is currently representing potential parties in interest in these cases:

- a. A list of interested parties (the "**Interested Parties**") was created by the Debtors and provided to Veritas;
- b. Veritas compared each of the Interested Parties to the names that Veritas maintains in its master client database created from its conflict clearance and billing records. Veritas' client database includes: (i) the name of each current

or former client; (ii) based on information available to Veritas, the names of entities materially related to, or expected to be materially adverse to, such current or former client; and (iii) the dates on which the matter was opened and/or closed; and

- c. Any matches between the Interested Parties and the entities in Veritas' master client file were identified, reviewed and compiled for the purpose of the Declaration. To the extent that Veritas currently represents, or has represented within the last three (3) years, any of the Interested Parties, the identities of such entities are set forth in Schedule 1, attached hereto.

17. Veritas intends to conduct an ongoing review of matters it is handling to ensure that no disqualifying circumstances have arisen, and, if any new facts or relationships that Veritas believes should be disclosed to this Court and the parties in interest in these cases are discovered, Veritas will file a supplemental disclosure with the Court and serve such supplemental disclosure on the U.S. Trustee. If any new material, relevant facts or relationships are discovered between review periods, Veritas will promptly file a supplemental disclosure with the Court and serve such supplemental disclosure on the U.S. Trustee.

18. Based upon the foregoing and information available to me at this time, to the best of my knowledge, information, and belief, Veritas represents no interest or holds any interest adverse to the Debtors or their estates with respect to the Retained Matters on which Veritas is to be employed consistent with section 327(e) of the Bankruptcy Code.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief, and that this Declaration was executed on July 1, 2013.


Richard H. Verheij

SCHEDULE 1: DISCLOSURE OF REPRESENTATION

Set forth below are the Interested Parties (other than the Debtors and the Debtors' affiliated entities) whom Veritas currently represents or has represented within the past three (3) years in matters unrelated to these cases (collectively, the "**Matched Entities**"). There are other entities affiliated or associated with the Matched Entities whom Veritas currently represents or has represented within the past three (3) years in matters unrelated to the Debtors and these chapter 11 cases. Veritas has only provided information for the specific Matched Entities identified by the Debtors as Interested Parties in these chapter 11 cases. Several Interested Parties fall into multiple categories below; however, each Interested Party has been listed only once.

None
