

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

**Chapter 11
Case No. 12-51502-659
(Jointly Administered)**

**DECLARATION OF DANIEL BRASSIL IN SUPPORT OF JOINT MOTION OF
THE DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO COMPEL PRODUCTION OF DOCUMENTS
BY PEABODY ENERGY CORPORATION**

Daniel Brassil declares as follows:

1. I am a Principal Consultant for H5, a company with offices in New York, New York and San Francisco, California that specializes in information retrieval for the legal industry. Since 1999, H5 has helped corporations and law firms customize protocols to help meet their document search, review, and analysis obligations in connection with litigation, investigations, and related legal information management needs. H5 addresses its clients' discovery obligations by combining professional expertise in linguistics, statistics, computer science, law, information technology, process engineering, and e-discovery with advanced proprietary technology. H5's principled approach adheres to The Sedona Conference recommended best practices and the National Institute of Standards and Technology Text Retrieval Conference protocols. My curriculum vitae is annexed hereto as Exhibit 1.

2. I respectfully submit this declaration based upon personal knowledge, in

support of the Debtors' and Creditor Committee's Joint Motion to Compel the Production of Documents.

3. I have reviewed the transcript of the status hearing in this matter held on August 20, 2013. At the hearing, Mr. Newman, counsel for Peabody Energy Corporation, described the search terms that were negotiated among the parties as "horribly broad" and "very, very complicated." Tr. at 74-75. He asserted that "[w]e knew they would bring back a whole lot of material, including material that would not be responsive." *Id.* at 75. He also stated that "the search terms, which we -- as I say, we knew we were going to produce way, way more than what would be properly responsive here." *Id.* at 78.

4. Mr. Newman's statements reflect a misunderstanding of the search terms. I was involved in the negotiation of those terms, beginning with their initial drafting and then consulting in connection with virtually every round of negotiation that followed. The search terms were created and refined using a rigorous methodology of mapping the requests for production to core concepts and then pairing those concepts using conceptual anchors and syntax consistent with leading approaches in the information-retrieval discipline. The search terms that were ultimately agreed upon, with their compound structure involving proximity connectors and concept pairing, are carefully crafted to *reduce* the amount of over-capture from the document population by identifying documents that are more likely to be responsive. The search terms may appear "complex," but that complexity creates a more precise search of the document population and produces a *smaller* set of documents for review. In my experience, use of "simple" search terms, such as those typically created by attorneys who do not have expertise in search and retrieval methodologies, results in a far broader capture of documents and therefore increases the burden of review for the producing party.

5. Moreover, because the search terms are designed to find documents that are likely to be responsive to the concepts called for in the document requests, the review process that

will follow is likely to proceed more quickly and efficiently. For example, instead of searching in a simple fashion for all documents containing the name of a relevant entity, the search terms are intended to capture relevant concepts. The burden of reviewing documents that have been identified by relevant concepts is less than reviewing documents identified by simpler search terms because the responsiveness decisions are likely to be made more quickly.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 29th day of August, 2013.

/s/ Daniel Brassil

Daniel Brassil

EXHIBIT 1

Curriculum Vitae