

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re

PATRIOT COAL CORPORATION, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 12-51502-659

(Jointly Administered)

Objection Deadline:

September 17, 2013 at 4:00 p.m.  
(prevailing Central Time)

Hearing Date (if necessary):

September 24, 2013 at 10:00  
a.m.

(prevailing Central Time)

Hearing Location:

Courtroom 7 North

**THIRD SUPPLEMENTAL APPLICATION OF THE DEBTORS FOR  
AUTHORITY TO EXPAND THE SCOPE OF EMPLOYMENT AND RETENTION OF  
ERNST & YOUNG LLP AS INDEPENDENT AUDITOR  
TO THE DEBTORS NUNC PRO TUNC TO AUGUST 14, 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 third supplemental application (the “**Third Supplemental Application**”), the Debtors request the entry of an order (the “**Proposed Order**”)<sup>2</sup> pursuant to sections 327(a) and 328(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) expanding the scope of the Debtors’ employment and retention of Ernst & Young LLP (“**EY LLP**”) to provide, in

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<sup>1</sup> 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.

<sup>2</sup> The Proposed Order will be provided to the Core Parties (as defined below). A copy of the Proposed Order will be available at [www.patriotcaseinfo.com/orders.php](http://www.patriotcaseinfo.com/orders.php).

addition to the previously authorized audit services, certain union retirement plan audit services (the “**Union Retirement Plan Audit Services**”) pursuant to the terms and conditions of the additional engagement letter dated as of August 14, 2013 (the “**Additional Engagement Letter**”), which is attached as Attachment 1 to the Third Supplemental Declaration (as defined below) and as described below, *nunc pro tunc* to August 14, 2013.<sup>3</sup> In support of this Third Supplemental Application, the Debtors respectfully represent and set forth as follows:

### **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].<sup>4</sup> 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 chapter 11 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. This Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>3</sup> Any description of the Additional Engagement Letter in this Third Supplemental Application is provided for convenience only. In the event of any inconsistency between the terms of the Additional Engagement Letter, as described herein, and the actual terms of the Additional Engagement Letter, the latter shall control.

<sup>4</sup> 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. On July 19, 2012, the Debtors filed their application (the “**Original Application**”) to employ EY LLP as their independent auditor and tax advisor *nunc pro tunc* to the Petition Date. In the Original Application, the Debtors sought authority to retain EY LLP to provide certain audit services, including auditing and reporting on Patriot’s consolidated financial statements and internal control of financial reporting as of December 31, 2012. In support of the Original Application, the Debtors submitted with the Original Application the original declaration of Michael W. Hickenbotham, a partner of EY LLP (the “**Original Declaration**”). On August 2, 2012, the SDNY Bankruptcy Court entered an order approving EY LLP’s retention [ECF No. 267] (the “**Original Order**”).

5. On March 5, 2013, the Debtors filed their first supplemental application (the “**First Supplemental Application**”) to expand the scope of employment of EY LLP as their independent auditor and tax advisor *nunc pro tunc* to February 26, 2013. In the First Supplemental Application, the Debtors sought authority to expand the scope of employment of EY LLP to include certain audit services, including auditing and reporting on Patriot’s consolidated financial statements and internal control of financial reporting for the year ending December 31, 2013. In support of the First Supplemental Application, the Debtors submitted with their First Supplemental Application the first supplemental declaration of Michael W. Hickenbotham, a partner of EY LLP (the “**First Supplemental Declaration**”). On March 15, 2013, this Court entered an order approving the First Supplemental Application [ECF No. 3229] (the “**First Expansion Order**”).

6. On April 2, 2013, the Debtors filed their second supplemental application (the “**Second Supplemental Application**”) to expand the scope of employment of EY LLP as their independent auditor and tax advisor *nunc pro tunc* to March 18, 2013. In the Second

Supplemental Application, the Debtors sought authority to expand the scope of employment of EY LLP to include certain audit services, including auditing and reporting on Patriot's 401(k) Retirement Plan. In support of the Second Supplemental Application, the Debtors submitted with their Second Supplemental Application the second supplemental declaration of Michael W. Hickenbotham, a partner of EY LLP (the "**Second Supplemental Declaration**"). On April 22, 2013, this Court entered an order approving the Second Supplemental Application [ECF No. 3766] (the "**Second Expansion Order**").

7. The Debtors have determined that they require, in addition to those services authorized by the SDNY Bankruptcy Court and this Court in accordance with the Original Application, the First Supplemental Application, and the Second Supplemental Application (together, the "**Prior Applications**") and pursuant to the Original Order, the First Expansion Order, and the Second Expansion Order, EY LLP's audit services set forth below, and are thus filing this Third Supplemental Application to expand the scope of EY LLP's services. In further support of this Third Supplemental Application, the Debtors submit the third supplemental declaration of Michael W. Hickenbotham, a partner of EY LLP, attached hereto (the "**Third Supplemental Declaration**") and, together with the Original Declaration, the First Supplemental Declaration, and the Second Supplemental Declaration, the "**Declarations**").

#### **Basis for Relief**

8. The Debtors request the relief sought by this Third Supplemental Application pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, rule 2014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and rule 2014 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Missouri (the "**Local Rules**").

**Services to be Rendered**

9. Pursuant to the terms of the Additional Engagement Letter, and subject to Court approval, EY LLP will provide the following Union Retirement Plan Audit Services:

- Auditing and reporting on the financial statements and supplemental schedules of the Patriot Coal Corporation 401(k) Union Savings Plan (the “**Plan**”) for the years ended December 31, 2011 and December 31, 2012, which are to be included in the Plan’s Form 5500 filing with the Employee Benefits Security Administration of the Department of Labor (the “**Plan Audit Services**”); and
- Any special audit-related projects that are integral to and necessary for the performance of the Plan Audit Services, such as research and/or consultation on special Plan business or financial issues (i.e., plan amendments, plan suspensions, etc.) (the “**Special Plan Audit-Related Services**”).

10. These services of EY LLP are appropriate and necessary to enable the Debtors to execute their duties as debtors and debtors in possession faithfully. The Debtors have selected EY LLP to provide the Union Retirement Plan Audit Services because of EY LLP’s diverse experience and extensive knowledge in the fields of accounting, taxation and bankruptcy, as set forth more fully in the Original Application. Furthermore, the Debtors have employed EY LLP as independent auditor since 2007. By virtue of its prior engagement, EY LLP is familiar with the Debtors and eminently qualified to continue to provide auditing services to the Debtors. Moreover, in light of EY LLP’s retention and employment pursuant to the Prior Applications, retaining EY LLP for the Union Retirement Plan Audit Services as well is an efficient and cost effective manner in which the Debtors may obtain the requisite services.

**Disinterestedness of Professionals**

11. To the best of the Debtors’ knowledge and except as disclosed in the Declarations:  
(i) EY LLP is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code and as required by section 327(a) and referenced by section 328(a) of the Bankruptcy Code, (ii) EY LLP does not hold or represent an interest adverse to the Debtors and their estates and otherwise meets the standards for employment under the Bankruptcy Code and (iii) EY LLP’s connections with the Debtors’ creditors, any other party in interest, or their respective attorneys are disclosed in the Declarations.

**Professional Compensation**

12. Pursuant to the terms and conditions of the Additional Engagement Letter, the Debtors have agreed to pay EY LLP a fixed fee (the “Fee”) of \$35,000 for the Plan Audit Services.

13. In addition, as described in the Additional Engagement Letter, fees for the Special Plan Audit-Related Services will be billed on an hourly basis, separately from, and in addition to, the Fee described above. The fees for any Special Plan Audit-Related Services will be based on the hours incurred and hourly rates for each member assigned to the engagement based on the following rates, which are the same rates as were previously approved with respect to the 2012 audit services set forth in the Prior Applications:

<b>Title</b>	<b>Rate Per Hour</b>
National Partner/Principal	\$600
Partner/Principal/Executive Director	\$525

Senior Manager	\$430
Manager	\$375
Senior	\$275
Staff	\$190

14. In addition to the fees set forth above, the Debtors and EY LLP have agreed that the Debtors shall reimburse EY LLP for any direct expenses incurred in connection with EY LLP's retention in these chapter 11 cases and the performance of the Union Retirement Plan Audit Services. EY LLP's direct expenses shall include, but not be limited to, reasonable and customary out-of-pocket expenses for items such as travel, meals, accommodations and other expenses (including any fees or reasonable expenses of EY LLP's legal counsel) specifically related to this engagement.

15. Section 328 of the Bankruptcy Court provides, in relevant part, that a debtor "with the court's approval, may employ or authorize the employment of a professional person under section 327 . . . on any reasonable terms and conditions of employment, including . . . on a fixed or percentage fee basis." 11 U.S.C. § 328(a). Thus, section 328(a) permits the Court to approve the Fee sought in connection with the Plan Audit Services. As recognized by numerous courts, Congress intended in 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).

16. The Debtors believe that the terms and provisions of the Additional Engagement Letter, including the Fee, are reasonable terms and conditions of employment and that the Fee should be approved under section 328(a) of the Bankruptcy Code. EY LLP intends to continue to apply to the Court for the allowance of compensation for professional services rendered and reimbursement of expenses incurred consistent with the terms of the Additional Engagement Letter and in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the 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], and any other applicable orders of this Court. EY LLP has agreed to accept as compensation such sums as may be allowed by the Court. EY LLP 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) EY LLP’s experience with respect to these services.

17. Pursuant to the Debtors’ request, EY LLP commenced the Additional Services on August 14, 2013, prior to finalization of this Third Supplemental Application. Based upon the foregoing, the Debtors submit that cause exists to authorize the retention of EY LLP *nunc pro tunc* to August 14, 2013 and request approval of this Third Supplemental Application.

**Notice**

18. Consistent with the procedures described in 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 Third Supplemental Application on (a) the Core Parties and (b) the Non-ECF Service Parties (as those terms are defined in the Case Management Order). All parties who have requested electronic notice of filings in these cases through the Court’s ECF system will automatically receive notice of this Third Supplemental Application through the ECF system no later than the day after its filing with the Court. A copy of this Third Supplemental Application and any order approving it will also be made available on the Debtors’ Case Information Website (located at [www.patriotcaseinfo.com](http://www.patriotcaseinfo.com)). In light of the relief requested, the Debtors submit that no further notice is necessary. Pursuant to paragraph 22 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.

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

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  
August 29, 2013

Respectfully submitted,

BRYAN CAVE LLP

/s/ Laura Uberti Hughes

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ATTORNEYS FOR THE DEBTOR

**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