

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)

THIRD SUPPLEMENTAL DECLARATION OF
MARSHALL S. HUEBNER AND DISCLOSURE STATEMENT
PURSUANT TO BANKRUPTCY CODE SECTIONS
327, 329 AND 504 AND FEDERAL RULES OF
BANKRUPTCY PROCEDURE 2014(a) AND 2016(b)

Marshall S. Huebner declares as follows:

1. I am a partner of the firm of Davis Polk & Wardwell LLP (“**Davis Polk**”), a law firm with its principal office at 450 Lexington Avenue, New York, New York 10017, and other offices in Washington, D.C., Menlo Park, London, Paris, Madrid, São Paulo, Tokyo, Beijing and Hong Kong.

2. I submit this supplemental declaration (the “**Third Supplemental Declaration**”) in connection with the application dated July 19, 2012 [ECF No. 133] (the “**Application**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for approval of the Debtors’ retention of Davis Polk as their attorneys in

¹ The Debtors are the entities listed on Schedule 1 attached to the Application. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

² Each capitalized term not defined herein shall have the meaning ascribed to it in the Application.

the above-captioned chapter 11 cases. This Third Supplemental Declaration supplements the declaration filed on July 19, 2012 in support of the retention of Davis Polk in these cases (the “**Initial Declaration**”), the first supplemental declaration filed on September 28, 2012 [ECF No. 822] (the “**First Supplemental Declaration**”), and the second supplemental declaration filed on February 25, 2013 [ECF No. 2953] (the “**Second Supplemental Declaration**”).

3. Unless otherwise stated in this Third Supplemental Declaration, I have personal knowledge of the facts set forth herein. To the extent it is brought to my attention that any information disclosed herein requires amendment or modification, I intend to file a supplemental declaration with the Court reflecting such amended or modified information.

4. In preparing this Third Supplemental Declaration, I relied on procedures that Davis Polk uses to evaluate its compliance with the requirements of title 11 of the United States Code (the “**Bankruptcy Code**”) and the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) regarding the retention of professionals by a debtor under the Bankruptcy Code (the “**Internal Review Procedures**”), and the information set forth herein is as of June 30, 2013 (the “**Review Date**”), the date on which we commenced our most recent Internal Review Procedures for purposes of this Third Supplemental Declaration. Before implementing the Internal Review Procedures, Davis Polk created a supplemental list consisting of all significant counterparties known to Davis Polk that were not included in the lists of potential parties in interest reviewed in connection with the preparation of the Initial Declaration, the First Supplemental Declaration and the Second Supplemental Declaration, and (a) with whom the Debtors

have (i) litigations, (ii) adversary proceedings or (iii) adversarial negotiations, (b) from whom the Debtors received (i) objections to a motion or pleading or (ii) notices of appearance or (c) who were approved to serve on the official committee of unsecured creditors (the “**Supplemental Potential Parties In Interest**”); and together with the potential parties in interest described in the Initial Declaration, the First Supplemental Declaration and the Second Supplemental Declaration, the “**Potential Parties In Interest**”). Beginning on the Review Date, and pursuant to the Internal Review Procedures, Davis Polk took the following actions to ascertain any connections between Davis Polk and the Supplemental Potential Parties In Interest within the two years preceding the Review Date and, with respect to the other Potential Parties In Interest, to ascertain any connections with Davis Polk that have arisen since the preparation of the Second Supplemental Declaration:

(a) Davis Polk compared each of the Potential Parties In Interest to Davis Polk’s master records database from its conflict clearance and billing records, which includes all clients (and former clients going back two years) for which any attorney time charges have been billed (the “**Records Database**”). The Records Database includes the name of each current or former client and, for each significant current or former matter for each client or former client, (i) the names of the Davis Polk personnel identified at the time such matter was opened as responsible for such matter and (ii) in most instances, a list compiled after reasonable inquiry of the names of certain other parties directly relevant to such matter. It is the policy of Davis Polk that no new matter may be accepted or opened without completing and submitting to those charged with maintaining the

Records Database the information necessary to check each such matter for conflicts, including the identity of the prospective client, the matter and other relevant parties. Accordingly, the Records Database is regularly updated for every new client retaining Davis Polk and significant matters undertaken for such client.

(b) Any client or known client-affiliate matches between the Records Database and the list of Potential Parties In Interest were identified (the “**Client Match List**”).

(c) An attorney then reviewed the Client Match List and deleted individuals or entities that Davis Polk does not currently represent or has not represented in the last two years. The remaining individuals or entities that were not included in the Initial Declaration, the First Supplemental Declaration or the Second Supplemental Declaration are set forth on Exhibit A attached hereto.

(d) On July 25, 2013, a general inquiry was sent to all Davis Polk attorneys by electronic mail asking them whether any of them or their immediate family members was ever employed by any of the Debtors or own any securities of the Debtors. In addition, the inquiry asked whether any Davis Polk attorney (i) has any connections to the Debtors that are relevant to Davis Polk’s engagement; (ii) is related to or has any connections to bankruptcy judges or district judges in the Eastern District of Missouri, or judges on the Eighth Circuit Court of Appeals, Bankruptcy Appellate Panel; or (iii) is related to or has any connections to any attorney known to be working in the Office of the United States Trustee for the Eastern District of Missouri (the “**U.S. Trustee**”).

5. Any parties thus identified that Davis Polk represents as a client or has represented as a client within the two years preceding the Review Date were reviewed by Davis Polk associates working under my supervision. Based upon such review, Davis Polk believes that it does not hold or represent an interest that is adverse to the Debtors' estates (with any relevant representations identified below), and that Davis Polk is a "disinterested person" as such 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(c) of the Bankruptcy Code, neither holds nor represents any interest adverse to the Debtors and their estates, in that Davis Polk, its partners, counsel and associates:

(a) are not creditors, equity security holders or insiders of the Debtors, except in the de minimis ways set forth in the Initial Declaration, the First Supplemental Declaration, the Second Supplemental Declaration and this Third Supplemental Declaration;

(b) are not and were not, within two years before the date of the filing of the Debtors' chapter 11 petitions, a director, officer or employee of the Debtors; and

(c) do not have an interest materially adverse to the interest of the Debtors' estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors, or for any other reason, other than as set forth herein.

6. Supplemental disclosure with respect to any connections Davis Polk has or has had with the Debtors, their significant creditors or any other significant parties in

interest, any of their respective attorneys and accountants, the U.S. Trustee or any employee of that office, insofar as I know or have been able to ascertain after reasonable inquiry, that have arisen since or were not covered by the Initial Declaration, the First Supplemental Declaration or the Second Supplemental Declaration, is set forth below.

7. I have been advised that (a) in addition to the entities listed in Exhibit 1 to the Initial Declaration, the entities listed in the First Supplemental Declaration and the entities listed in the Second Supplemental Declaration, Davis Polk has represented within the two years preceding the Review Date and/or currently represents, and may represent in the future, the Supplemental Potential Parties In Interest listed on Exhibit A hereto, or their respective affiliates (together, the “**Disclosed Parties**”), in matters unrelated to the Debtors and (b) the list attached hereto as Exhibit A is the product of implementing the Internal Review Procedures. Davis Polk will not represent any of the Disclosed Parties in matters related to the Debtors’ chapter 11 cases. To the best of my knowledge and information, none of the Supplemental Potential Parties In Interest (together with their respective known affiliates) was the source of more than 1% of Davis Polk’s revenues for the 12 months ended June 30, 2013.

8. During the course of these chapter 11 cases, the Debtors filed motions to conduct discovery of Duff & Phelps Corporation and Morgan Stanley. Because each of these entities is a Davis Polk client, Curtis, Mallet-Prevost, Colt & Mosle LLP, the Debtors’ conflicts counsel, is representing the Debtors during these chapter 11 cases with respect to those motions.

9. Partners, counsel and associates of Davis Polk, including attorneys that may be engaged in Davis Polk’s representation of the Debtors, were in the past employed

by various Potential Parties In Interest, or, when previously employed by other law firms or professional services firms, may have performed services for various Potential Parties In Interest. I do not believe any such connections would in any way affect Davis Polk's ability to effectively represent the Debtors.

10. Partners, counsel and associates of Davis Polk may have relatives who are or in the past have been employed by various Potential Parties In Interest. However, I do not believe any such connections would compromise Davis Polk's ability to effectively represent the Debtors. Hon. Charles L. Nail, Jr., a judge on the United States Court of Appeals for the Eighth Circuit, Bankruptcy Appellate Panel, is the father of an associate in our New York office. Judge Nail has not been assigned to a case involving the Debtors.

11. It is possible that former Davis Polk attorneys are, or were after leaving Davis Polk, affiliated with various Potential Parties In Interest. However, I do not personally know of any such connections and do not believe any such connection would in any way affect Davis Polk's ability to effectively represent the Debtors.

12. Various Davis Polk associates are seconded to the legal departments of Davis Polk clients for several months, some of whom are or are affiliates of Potential Parties In Interest. However, I do not believe such connections would compromise Davis Polk's ability to effectively represent the Debtors.

13. As part of its practice, Davis Polk appears in cases, proceedings and transactions involving many different attorneys, accountants, financial consultants and investment bankers, some of which have represented in the past, represent now or may represent in the future claimants and other parties in interest in these cases. Davis Polk is

not aware of any relationship that Davis Polk has with any such attorneys, accountants, financial consultants and investment bankers that would be adverse to the Debtors or their estates.

14. It is possible that certain Potential Parties In Interest have provided, and in some cases continue to provide, services to Davis Polk.

15. As part of its practice, Davis Polk regularly represents clients before and/or in connection with inquiries from governmental agencies, including, but not limited to, the SEC, the FCC, the FTC and the U.S. Department of Homeland Security. However, I do not believe any such connections would compromise Davis Polk's ability to effectively represent the Debtors.

16. In addition to the foregoing, after reasonable inquiry, I do not believe there is any connection between Davis Polk and the U.S. Trustee or any person known by me to be employed as an attorney with the Office of the U.S. Trustee, in each case, that would compromise Davis Polk's ability to effectively represent the Debtors.

17. Davis Polk will conduct an ongoing review of its files on each June 30 and December 31 that occurs prior to the effective date of a plan of reorganization in the Debtors' chapter 11 cases, as set forth in the Initial Declaration, to ensure that no disqualifying circumstances have arisen. If any new facts or relationships that Davis Polk believes should be disclosed to this Court and the parties in interest in these cases are brought to my attention, Davis Polk will file a supplemental disclosure with the Court and serve such supplemental disclosure on the Office of the U.S. Trustee to the extent that such review has been completed prior to the effective date of a plan of reorganization in the Debtors' cases.

18. The foregoing constitutes the statement of Davis Polk pursuant to sections 327(a), 329 and 504 of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016(b).

19. 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, and that this Third Supplemental Declaration was executed on September 3, 2013.

By: /s/ Marshall S. Huebner
Name: Marshall S. Huebner
Title: Partner, Davis Polk & Wardwell LLP

Exhibit A

Alcoa Fuels, Inc.¹

The Blackstone Group LP

Caterpillar Inc.

Comerica, Inc.

Duff & Phelps Corporation

IBM

¹ Alcoa Fuels, Inc. is a subsidiary of Alcoa, Inc., a Davis Polk client.