

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:

October 30, 2013 at 4:00 p.m.

(prevailing Central Time)

Hearing Date:

November 6, 2013 at 10:00 a.m.

(prevailing Central Time)

Hearing Location:

Courtroom 7 North

**NOTICE OF THE DEBTORS' MOTION FOR ENTRY OF AN ORDER PURSUANT TO
11 U.S.C. §§ 363(b)(1) AND 105(a) (i) AUTHORIZING ENTRY INTO A BACKSTOP
PURCHASE AGREEMENT, (ii) AUTHORIZING THE DEBTORS TO CONDUCT THE
RIGHTS OFFERINGS IN CONNECTION WITH THE DEBTORS' JOINT PLAN OF
REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE AND
(iii) APPROVING RIGHTS OFFERINGS PROCEDURES**

PLEASE TAKE NOTICE that this motion is scheduled for hearing on November 6, 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 MOTION MUST BE
FILED WITH THE COURT BY 4:00 P.M. (PREVAILING CENTRAL TIME) ON
OCTOBER 30, 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.

DEBTORS' MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 363(b)(1) AND 105(a) (i) AUTHORIZING ENTRY INTO A BACKSTOP PURCHASE AGREEMENT, (ii) AUTHORIZING THE DEBTORS TO CONDUCT THE RIGHTS OFFERINGS IN CONNECTION WITH THE DEBTORS' JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE AND (iii) APPROVING RIGHTS OFFERINGS PROCEDURES

Patriot Coal Corporation (“**Patriot Coal**” or the “**Company**”)² and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”), hereby submit this motion (the “**Motion**”), pursuant to sections 363(b)(1) and 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an order³ (1) authorizing entry into a backstop purchase agreement (the “**Backstop Purchase Agreement**”) among the Debtors and the proposed rights offerings backstop parties (the “**Backstop Parties**”) on the terms and conditions summarized herein, (2) authorizing the Debtors to conduct rights offerings (the “**Rights Offerings**”) pursuant to which the Debtors will offer Eligible Holders (as defined below) of Allowed Senior Notes Claims, Allowed Convertible Notes Claims and Allowed General Unsecured Claims and the Backstop Parties rights to purchase 15% senior secured second lien notes issued by the Reorganized Debtors (such rights offering, the “**Notes Rights Offering**”, and such notes, the “**Notes**”)⁴ and Warrants exercisable for New Class A Common Stock of the Reorganized Debtors (such rights offering, the “**Warrants Rights**

² Terms not defined herein shall have the meaning given to such terms in the Plan (as defined below).

³ A copy of the proposed order granting the relief requested in the Motion (the “**Proposed Order**”) will be provided to the Core Parties (as defined below) and the Backstop Parties. A copy of the Proposed Order will be made available at www.patriotcaseinfo.com/orders.php.

⁴ The Notes will be governed by an indenture and subject to a registration rights agreement, the forms of which will be filed as Plan Supplements.

Offering”, and such warrants, the “**Warrants**”)⁵ and (3) approving the Debtors’ proposed procedures for the Rights Offerings to be implemented in connection with the *Debtors’ First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [ECF No. 4762] (as amended, modified or supplemented from time to time, and together with all exhibits, annexes and schedules thereto, the “**Plan**”), including the Eligibility Form, Subscription Form, Certification Period Transfer Notice and the Post-Certification Period Transfer Notice (the “**Rights Offerings Forms**”) to be used in connection with the Rights Offerings (such procedures and accompanying forms, the “**Rights Offerings Procedures**”).⁶ In support of this Motion, the Debtors respectfully state as follows:

Background

1. On July 9, 2012 (the “**Petition Date**”), each Debtor other than Brody Mining, LLC and Patriot Ventures LLC (collectively, the “**Initial Debtors**”) 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 Initial Debtors’ chapter 11 cases to this Court (the “**Transfer Order**”) [ECF No. 1789]. Subsequently, Brody Mining, LLC and Patriot Ventures LLC (together, the “**New Debtors**”) each commenced its chapter 11 case by filing a petition for voluntary relief with this Court on September 23, 2013. 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. The Initial Debtors’ cases are

⁵ The Warrants will be governed by a warrant agreement and the Class A Common Stock will be subject to a registration rights agreement, the forms of which will be filed as Plan Supplements.

⁶ The Rights Offerings Procedures will be provided to the Core Parties and the Backstop Parties and made available at www.patriotcaseinfo.com.

being jointly administered pursuant to Bankruptcy Rule 1015(b) and the Joint Administration Order entered on July 10, 2012 [ECF No. 30], and the New Debtors' cases are being jointly administered with the Debtors' cases pursuant to Bankruptcy Rule 1015(b) and the Order Directing Joint Administration of Chapter 11 Cases entered by this Court on September 27, 2013 in each of the New Debtors' chapter 11 cases.

2. On September 6, 2013, the Debtors filed the *Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [ECF No. 4606] (the "**Initial Plan**"). Following the filing of the Initial Plan, the Debtors continued to engage in discussions with investors regarding a transaction that would provide hundreds of millions of dollars of emergence financing for the Estates.

3. The Debtors also continued their negotiations with the UMWA, Arch Coal, Inc. and Peabody Energy Corporation in an attempt to reach global settlements with these parties and resolve the risks and uncertainties created by the parties' ongoing litigation, provide necessary liquidity to the Debtors and provide funding to the UMWA VEBA.

4. On October 9, the Debtors filed the Plan and the *Disclosure Statement for Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [ECF No. 4763] (as may be amended, restated or otherwise modified after the date hereof, the "**Disclosure Statement**"), which reflected new sources of liquidity resulting from these extensive efforts, consisting of a \$250 million commitment by certain funds and accounts managed and/or advised by Knighthead Capital Management, LLC (collectively, "**Knighthead**") to backstop the Rights Offerings (such commitment, the "**Backstop Commitment**") and \$150

million in incremental value and liquidity on account of the Arch Settlement and Peabody Settlement.⁷

5. Together, the Rights Offerings, Backstop Commitment, Arch Settlement and Peabody Settlement form the cornerstones of the Debtors' Plan, which the Debtors believe provides substantially greater value to the Estates and a more expeditious emergence from chapter 11 than any other alternative. The Rights Offerings Term Sheet (as defined below) has been consented to and is supported by the Creditors' Committee and the UMWA, subject to the definitive documentation.

Jurisdiction

6. This Court has subject matter jurisdiction over 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 heard and determined by the Bankruptcy Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Overview of the Backstop Purchase Agreement

7. The primary purpose of the Backstop Commitment is to ensure that the Debtors have sufficient proceeds from the Rights Offerings to, among other things, fund their operations upon exit from bankruptcy, as well as to refinance the Company's existing debtor-in-possession financing facility, fund the non-union retiree VEBA, honor their ongoing obligations under the UMWA 1974 Pension Plan and Trust, pay certain fees and expenses and provide working capital for the Reorganized Debtors.

8. Under the terms and conditions of the Backstop Purchase Agreement, (i) the Company has agreed to distribute to the Backstop Parties, Rights to purchase up to 40% of the

⁷ The Peabody Settlement also provides the UMWA VEBA with \$310 million over the next four years.

Rights Offering Notes and up to 40% of the Rights Offering Warrants for an aggregate subscription price of \$100,000,010 and (ii) the Backstop Parties have committed (with respect to Knighthead, on a joint and several basis, and, with respect to the other Backstop Parties, if any, on a several but not joint and several basis) to purchase, for the applicable subscription price, all of the Rights Offering Notes and Rights Offering Warrants that are not purchased by Eligible Holders in the Rights Offerings.

9. The Debtors expect that the proceeds of the Rights Offerings, combined with the Exit Credit Facilities and the cash and credit support received pursuant to the settlements with Arch and Peabody, will provide the Debtors with the liquidity necessary for consummation of the Plan.

10. The Backstop Purchase Agreement, which will serve as the definitive documentation of the Backstop Commitment, is being negotiated on the basis of the term sheet (the “**Rights Offerings Term Sheet**”), dated as of October 9, 2013, among the Debtors and the Backstop Parties, and consented to by the Creditors’ Committee and the UMWA, attached as Appendix D to the Disclosure Statement.⁸ Among the other terms and conditions to be set forth in the Backstop Purchase Agreement, the Backstop Purchase Agreement will require that:⁹

- **Backstop Fee:** The Debtors shall pay a backstop commitment fee (the “**Backstop Fee**”) in an amount equal to 5% of the Rights Offerings Amount, payable to the Backstop Parties in the form of additional Notes and additional Warrants in an aggregate combined principal amount equal to the Backstop Fee.
- **Rights Offerings:** Each of the Rights Offerings shall be effected by means of the issuance of Rights to the Certified Eligible Holders (as defined in the Rights

⁸ The Backstop Purchase Agreement will be provided to the Core Parties and made available at www.patriotcaseinfo.com in advance of the hearing on the Motion.

⁹ Any description or summary of the Backstop Purchase Agreement in this Motion is qualified in all respects by reference to the Backstop Purchase Agreement and, if there is any inconsistency between this Motion and the Backstop Purchase Agreement, the Backstop Purchase Agreement shall govern.

Offerings Procedures) of Allowed Senior Notes Claims, Allowed Convertible Notes Claims and/or Allowed General Unsecured Claims and the Backstop Parties. The Certified Eligible Holders shall be offered Rights to purchase up to 60% of the Rights Offering Notes and up to 60% of the Rights Offering Warrants, and the Backstop Parties shall be offered Rights to purchase up to 40% of the Rights Offering Notes and up to 40% of the Rights Offering Warrants. Additionally, each Certified Eligible Holder and each Backstop Party shall have the opportunity to subscribe to a greater number of Rights than initially allocated to such party to the extent that there are any Unsubscribed Rights, as further described below.

- Termination Rights: Prior to the Effective Date, the commitment of the Backstop Parties to purchase the Rights Offering Notes and the Rights Offering Warrants set forth in the Backstop Purchase Agreement shall terminate and all of the obligations of the Debtors (other than the obligations of the Debtors to (i) pay the Breakup Fee, if applicable, (ii) pay the reimbursable fees and expenses, and (iii) satisfy their indemnification obligations, in each case, as and to the extent set forth in the Backstop Purchase Agreement), shall be of no further force or effect, upon the giving of written notice of termination by the Backstop Parties, in the event that any of the items set forth below, among others, occurs, each of which may be waived in writing by the Backstop Parties:
 - since the date of the Rights Offerings Term Sheet, there shall have been a Material Adverse Change (as defined in the Rights Offerings Term Sheet);
 - the Bankruptcy Court shall not have entered an order approving the Backstop Purchase Agreement, including the Breakup Fee, the Backstop Fee and the Expense Reimbursement (as defined below) on or prior to November 8, 2013;
 - the Bankruptcy Court enters an order confirming a plan of reorganization other than the Plan;
 - the Company shall have failed to comply with all or any of its obligations or covenants set forth herein or in the Backstop Purchase Agreement in any material respect or it shall be reasonably apparent that it shall be unable to satisfy each of the conditions to closing on or before the Effective Date and such failure or inability remains uncured or continues for a period of 10 Business Days following delivery of written notice thereof to the Company by the Backstop Parties;
 - the Company shall have breached any of the representations and warranties made or deemed made in any material respect; or
 - the Effective Date shall not have occurred by December 31, 2013.

- Conditions Precedent: The obligation of the Backstop Parties to participate in the Rights Offerings and to purchase the Rights Offering Notes and the Rights Offering Warrants in the Backstop Commitment will be conditioned upon satisfaction of certain terms and conditions on or prior to the Effective Date, including the following:
 - Upon the Effective Date (following satisfaction of all administrative claims and bankruptcy costs and expenses) immediately following the consummation of the Rights Offerings, the Company's unrestricted cash balance shall not be less than \$175.0 million (which shall include the \$15 million dollar cash collateral posted by the Company in respect of federal black lung benefits even if not yet released by the Department of Labor), net of any amount in respect of the Expense Reimbursement, assuming, on a pro forma basis, no borrowings under the First Lien Exit Facilities' revolving facility, and its working capital accounts shall have been managed in a manner generally consistent with past practice;
 - The Debtors shall have entered into the Peabody Settlement, which shall have become effective substantially in accordance with its terms on the Effective Date;
 - The Debtors shall have entered into the Arch Settlement, which shall have become effective substantially in accordance with its terms on the Effective Date;
 - The Company and the UMWA shall have executed a final and binding amended version of the VEBA Funding Agreement to reflect the terms set forth in the Rights Offerings Term Sheet with respect to funding the VEBA, and the VEBA shall have been funded with the amount contemplated by the Rights Offerings Term Sheet;
 - The Company shall have entered into definitive documentation for the First Lien Exit Facilities on or before the Effective Date in form and substance reasonably satisfactory to the Backstop Parties;
 - The certificate of incorporation, bylaws and other corporate governance documents of the Reorganized Debtors shall provide to the Backstop Parties pre-emptive rights in the event the Company issues or proposes to issue any equity securities and shall otherwise be in form and substance acceptable to the Backstop Parties;
 - The Registration Rights Agreement shall be in form and substance consistent with the Rights Offerings Term Sheet and reasonably acceptable to the Backstop Parties;
 - Except as otherwise provided, the Plan, the Disclosure Statement, the Confirmation Order and any material documents, including, without

limitation, the amended VEBA Funding Agreement, shall be in form and substance reasonably acceptable to the Backstop Parties;

- The Backstop Purchase Agreement shall have been approved by the Bankruptcy Court by November 8, 2013, and shall not have terminated;
 - Since the date of the Rights Offering Term Sheet, there shall have not been a Material Adverse Change, as defined therein;
 - The Plan shall have become, or simultaneously with the issuance of the Rights Offering Notes and the Rights Offering Warrants will become, effective.
- Plan Support: The Backstop Purchase Agreement will contain customary plan support provisions.
 - Expenses: Whether or not the transactions contemplated hereunder or the Backstop Purchase Agreement are consummated, the Debtors shall pay the reasonable and documented out-of-pocket fees and expenses of counsel to the Backstop Parties relating to the preparation, negotiation and execution of the Backstop Purchase Agreement, the Plan, the Offerings Procedures, the Rights Offerings Term Sheet, the Plan documents or the Postconfirmation Organizational Documents (as defined in the Rights Offerings Term Sheet) (including, without limitation, in connection with the successful enforcement of any of rights and remedies under such documents) and (ii) in the event the Debtors and the Backstop Parties agree that the Backstop Parties require a financial advisor in connection with litigation regarding the Plan and the Rights Offerings and the transactions contemplated thereby, one financial advisor in an amount to be agreed between the Debtors and the Backstop Parties (the “**Expense Reimbursement**”).
 - No-Shop: The parties to the Backstop Purchase Agreement and their advisors and representatives will not, directly or indirectly, take any action to solicit, initiate, encourage or assist the submission of, or enter into any discussions, negotiations or agreements regarding, any proposal, negotiation or offer relating to a transaction, or series of transactions, whether pursuant to a plan of reorganization, liquidation or otherwise, or merger, consolidation or combination or any other disposition of all or substantially all of the assets of or equity, capital stock or ownership interests in the Company and its subsidiaries, with or sponsored by any entity other than the Backstop Parties (such transaction, an “**Alternative Transaction**,” and such prohibition, the “**No-Shop Provision**”); *provided, however,* that if the Company receives, after the execution date of the Backstop Purchase Agreement, a bona fide unsolicited Alternative Transaction proposal, and the Debtors’ board of directors (the “**Board**”) reasonably determines in its good faith judgment that: (i) such Alternative Transaction provides a higher and better economic recovery to the Debtors’ estates than that proposed in the Rights Offerings Term Sheet; (ii) the Board’s fiduciary obligations require it to direct the

Company to accept such Alternative Transaction proposal; and (iii) such Alternative Transaction is from a proponent that the Board has reasonably determined is capable to consummate such Alternative Transaction; then the Board may terminate the Backstop Purchase Agreement; *provided further, however,* that (A) the Company has been in compliance with the No-Shop Provision through the time of such proposed termination (including notifying the Backstop Parties in writing of such Alternative Transaction prior to any discussions (other than accepting an initial inbound communication) regarding such Alternative Transaction taking place); and (B) the Company gives the Backstop Parties at least five (5) business days' written notice (accompanied by the proposal and any materials supporting such Alternative Transaction) and negotiates in good faith with and provides the Backstop Parties an opportunity to propose a revised transaction, before the earliest to occur of: (x) the Company exercising any permitted termination right in accordance with the Backstop Purchase Agreement, (y) the Company entering into such Alternative Transaction, and (z) the Company filing a motion with the Bankruptcy Court seeking approval of such Alternative Transaction, *provided, further,* the Company shall pay to the Backstop Parties the Breakup Fee in accordance with the Backstop Purchase Agreement. The Creditors' Committee will be permitted to exercise a fiduciary out substantially consistent with the terms of the Company's fiduciary out, subject to the payment to the Backstop Parties of the Breakup Fee in accordance with the Backstop Purchase Agreement.

- Breakup Fee: In the event the Debtors or the Creditors' Committee enter into or seek court authority to enter into an Alternative Transaction with or sponsored by any entity other than the Backstop Parties, the Company shall pay to the Backstop Parties or any other party that assumes and funds such Backstop Party's Commitment Amount a fee of \$10.0 million in cash (the "**Breakup Fee**"); *provided, however,* that the Breakup Fee shall not be payable in the event that the Rights Offerings are not consummated due to (i) the termination of the Backstop Purchase Agreement by the Backstop Parties as a result of the failure of one or more conditions precedent to the Backstop Parties' obligations thereunder to be satisfied or waived by the Backstop Parties or (ii) the termination of the Backstop Purchase Agreement following any uncured breach of the Backstop Purchase Agreement by one or more Backstop Parties, in each case, other than due to a breach of the no-shop provision of the Backstop Purchase Agreement by the Company or the other Debtors.

Overview of the Rights Offerings Procedures¹⁰

11. A total of \$250 million in aggregate principal amount of Notes and an aggregate amount of Warrants to be determined by the Debtors and the Backstop Parties will be offered in the Rights Offerings, to be allocated to the Certified Eligible Holders and Backstop Parties in the proportion of 60% and 40%, respectively. The aggregate subscription price for the Notes Rights shall be \$250,000,000 and the aggregate subscription price for the Warrants Rights shall be \$25. Thus, the aggregate subscription price for the Rights Offerings shall be \$250,000,025.

12. Each Warrant will entitle the holder to purchase one share of New Class A Common Stock. In the aggregate, the Warrants (including the Warrants offered in the Warrants Rights Offering and the Warrants issued in respect of the Backstop Fee) will entitle the holders to purchase shares of New Class A Common Stock representing 95% of the Company's common stock that would be outstanding as of the Issue Date (as defined below), subject to dilution by the Management Incentive Plan.

13. Participation in the Rights Offerings is voluntary and is limited to Certified Eligible Holders of an Allowed Senior Notes Claim, Allowed Convertible Notes Claim and Allowed General Unsecured Claim and the Backstop Parties. Each Certified Eligible Holder will be offered its Pro Rata Share of the Senior Notes Rights Allocation or the GUC/Convertible Notes Rights Allocation, as applicable, and each Backstop Party will be offered its Backstop Commitment Percentage of the Backstop Rights Allocation. The Rights will entitle the Rights Offering Participants to acquire Rights Offering Notes and Rights Offering Warrants.

¹⁰ Terms used in this section but not defined herein shall have the meaning given to such terms in the Rights Offerings Procedures. Any description or summary of the Rights Offerings Procedures in this Motion is qualified in all respects by reference to the Rights Offerings Procedures and, if there is any inconsistency between this Motion and the Rights Offerings Procedures, the Rights Offerings Procedures shall govern.

14. Rights Offerings Participants participating in the Notes Rights Offering must also participate in the Warrants Rights Offering (and vice versa) by subscribing for and purchasing a proportionate share of the aggregate Notes Rights or Warrant Rights, as applicable, offered pursuant to the Rights Offerings.

15. In connection with the Rights Offerings, on or about November 11, 2013, the Debtors will complete the distribution of the Eligibility Certificate, substantially in the form attached to the Rights Offerings Procedures as Annex A, to each holder of an Allowed Senior Notes Claim, Allowed Convertible Notes Claim and Allowed General Unsecured Claim as of the Rights Offerings Record Date (November 6, 2013). Each Holder (or the transferee of a Holder) wishing to participate in the Rights Offerings will be required to certify that it is an Eligible Holder because it is either a “qualified institutional buyer” within the meaning of Rule 144A of the Securities Act or an “accredited investor” within the meaning of Rule 501(a)(1), (2), (3), (5), (6) or (7) of the Securities Act or any entity in which all of the equity owners are “qualified institutional buyers” or all of the equity owners are “accreditor investors”, respectively, by returning a completed Eligibility Certificate to the Subscription Agent so as to be actually received by the Subscription Agent by the Eligibility Certificate Deadline (November 27, 2013 at 5:00 p.m. (prevailing Central Time)), or such later time as determined in the Debtors’ sole discretion, and is required to certify therein to the ownership of an Allowed Senior Notes Claim, Allowed Convertibles Notes Claim and/or Allowed General Unsecured Claim. In addition to the Backstop Parties, only those Holders that certify that they are Eligible Holders will receive the Subscription Form and have the opportunity to participate in the Rights Offerings.

16. If, after the Rights Offerings Record Date, a Holder of an Allowed Senior Notes Claim, Allowed Convertible Notes Claim or Allowed General Unsecured Claim transfers such Claim to an Eligible Holder, the transferee will have the opportunity to participate in the Rights Offerings on account of the Claim, provided that the transferee delivers to the Subscription Agent, by the Eligibility Certificate Deadline, both an Eligibility Certificate and a Certification Period Transfer Notice evidencing the transfer.

17. Each Eligible Holder that returns an Eligibility Certificate (a “**Certified Eligible Holder**”) in accordance with the Rights Offerings Procedures and each Backstop Party will receive a Subscription Form and be offered Rights. The Rights will not be transferable, other than to an Eligible Affiliate (in whole only) or in connection with the transfer of the corresponding Claim, which must be evidenced by a Post-Certification Period Transfer Notice delivered to the Subscription Agent prior to the Subscription Deadline.

18. In order to exercise Rights, each Rights Offerings Participant must, so that such form, documents and payment are actually received by the Subscription Agent on or before the Subscription Deadline (December 10, 2013 at 5:00 p.m. (prevailing Central Time)), or such later time as determined in the Debtors’ sole discretion, (i) return a duly completed and executed Subscription Form to the Subscription Agent and the other documents referenced therein, including a W-8 or W-9, as applicable (collectively, the “**Subscription Forms**”), and (ii) pay an amount equal to the Subscription Purchase Price (as calculated pursuant to the Subscription Form) by wire transfer or bank or cashier’s check, as set forth in the Subscription Form; *provided, however,* that (i) any Backstop Party’s Subscription Purchase Price and (ii) any amounts in respect of a Backstop Party’s Backstop Allocation must each be received on or before the Effective Date.

19. To the extent there exist any Unsubscribed Rights, each Rights Offerings Participant shall have the opportunity to subscribe for such rights on the Subscription Form. 60% of the Unsubscribed Rights shall be allocated to the Eligible Holders that have subscribed for additional Rights, and the remaining 40% of the Unsubscribed Rights shall be allocated to the Backstop Parties, with any remaining Rights offered to such parties in such proportions until all Unsubscribed Rights have been exercised, or no more Unsubscribed Rights are exercised. If, after taking into account the oversubscription privilege set forth in the Rights Offerings Procedures, any Rights remain unsubscribed, each of the Backstop Parties shall purchase, at the applicable Subscription Purchase Price, its Backstop Commitment Percentage of the Rights Offering Notes and Rights Offering Warrants corresponding to such remaining Unsubscribed Rights.

20. The Debtors request that the Court establish the following dates and deadlines for the implementation of the Rights Offerings:

- Rights Offerings Record Date: **November 6, 2013**, as the date by which it is determined to which Holders the Eligibility Certificate shall be distributed.
- Eligibility Certificate Distribution Date: **November 11, 2013**, as the date by which the Debtors will complete the distribution of the Eligibility Certificates to Holders of Allowed Senior Notes Claims, Allowed Convertible Notes Claims and Allowed General Unsecured Claims as of the Rights Offerings Record Date.
- Eligibility Certificate Deadline: **November 27, 2013 at 5:00 p.m. (prevailing Central Time)**, which is sixteen (16) days following the Eligibility Certificate Distribution Date, or such later time as determined in the Debtors' sole discretion, as the deadline for Eligible Holders to return the Eligibility Certificates to the Subscription Agent.
- Subscription Commencement Date: **December 3, 2013**, as the date by which the Subscription Agent will complete the distribution of Subscription Forms to Certified Eligible Holders and to the Backstop Parties.
- Subscription Deadline: **December 10, 2013 at 5:00 p.m. (prevailing Central Time)**, or such later time as determined in the Debtors' sole discretion, as the time by which the Subscription Forms and the Subscription Purchase Price must be

received by the Subscription Agent in order for Eligible Holders and the Backstop Parties to exercise their Rights; *provided, however*, that (i) any Backstop Party's Subscription Purchase Price and (ii) any amounts in respect of a Backstop Party's Backstop Allocation must each be received on or before the Effective Date.

21. Consummation of the Rights Offerings is conditioned upon confirmation of the Plan and the occurrence of the Effective Date. In the event that the Plan is not confirmed by the Court, Rights Offerings Participants that subscribed for Notes and Warrants on account of their Rights and transmitted payment for same will be refunded all such amounts without interest.

Relief Requested

22. By this Motion, the Debtors seek entry of the Proposed Order authorizing the Debtors to (i) enter into the Backstop Purchase Agreement, (ii) authorizing the Debtors to conduct the Rights Offerings in accordance with the Rights Offerings Procedures, (iii) approving the Rights Offerings Procedures and (iv) granting such other and further relief as is just and proper.

Basis for Relief

A. The Debtors' Entry into the Backstop Purchase Agreement and Decision to Conduct the Rights Offerings In Accordance With the Rights Offerings Procedures Reflects the Sound Exercise of the Debtors' Business Judgment.

23. Section 363(b) of the Bankruptcy Code provides, in relevant part, "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Although section 363(b) of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale, disposition or other use of a debtor's assets, courts in the Eighth Circuit and elsewhere, in applying this section, have required that such an action be based upon the sound business judgment of the debtor. *See In re Farmland Indus. Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (approving an amendment to the debtors' post-petition financing credit agreement as an

exercise of sound and reasonable business judgment); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n.16 (8th Cir. 1997) (“[w]here the [debtor’s] request is not manifestly unreasonable or made in bad faith, the court should normally grant approval ‘as long as the proposed action appears to enhance the debtor’s estate’” (citing *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985))); *In re Farmland Indus. Inc.*, 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003) (approving the rejection of employment agreements and noting that “[u]nder the business judgment standard, the question is whether the [proposed action] is in the Debtors’ best economic interests, based on the Debtors’ best business judgment in those circumstances” (citations omitted)); *see also Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141 (2d Cir. 1992) (holding that a judge reviewing a section 363(b) application must find from the evidence presented a good business reason to grant such application); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983) (same); *In re Chrysler LLC*, 405 B.R. 84 (Bankr. S.D.N.Y. 2009), *aff’d Ind. State Police Pension Trust v. Chrysler LLC (In re Chrysler LLC)*, 576 F.3d 108 (2d Cir. 2009) (same); *In re Gen. Motors Corp.*, 407 B.R. 463 (Bankr. S.D.N.Y. 2009) (same).

24. Moreover, a strong presumption attaches to a debtor’s business decision that the debtor “acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Sub. Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1990) (holding that the Delaware business judgment rule has “vitality by analogy” in chapter 11); *see also In re Pilgrim’s Pride Corp.*, 401 B.R. 229, 237 (Bankr. N.D. Tex. 2009) (“[I]f a valid business reason is shown for the transaction, the transaction is presumed appropriate.”). The business judgment rule is “a presumption that in making a business decision the directors of a corporation acted on

an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company.” *Integrated Res., Inc.*, 147 B.R. at 656 (citations omitted). Courts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence. *Id.*

25. The Debtors respectfully submit that the entry into the Backstop Purchase Agreement and the implementation of the Rights Offerings pursuant to the Rights Offerings Procedures represent a sound exercise of their business judgment and are supported by valid business justifications. The Rights Offerings are a cornerstone of the Plan and, together with the Backstop Commitment, provide the Reorganized Debtors with a crucial source of liquidity. The Backstop Purchase Agreement ensures that the Debtors will receive the full amount of the new money investment contemplated by the Rights Offerings and the Plan. Without the Backstop Commitment, the Debtors cannot be certain that the Rights Offerings will raise the capital required to consummate the Plan. Additionally, the Backstop Fee, Expense Reimbursement, No-Shop Provision and Breakup Fee are necessary to obtain the Backstop Commitment, and compensate the Backstop Parties for their reservation of capital and the risks they are undertaking by agreeing to backstop the Rights Offerings. Furthermore, as illustrated below in paragraph 28, the 5% Backstop Fee and 4% Breakup Fee are reasonable and consistent with rights offerings approved by bankruptcy courts in similar large chapter 11 cases.

26. Bankruptcy courts have approved procedures similar to the Debtors’ proposed Rights Offerings Procedures pursuant to which subscription rights to purchase equity or debt in a reorganized debtor are distributed to one or more classes of creditors under a plan of reorganization. *See, e.g., In re Eastman Kodak Company*, Case No. 12-10202 (Bankr. S.D.N.Y. Jun. 26, 2013) (approving rights offerings procedures in connection with rights offerings to

holders of general unsecured claims and retiree settlement unsecured claims), *In re General Maritime Corporation*, Case No. 11-15285 (Bankr. S.D.N.Y. Feb. 28, 2012) (approving rights offering procedures in connection with a rights offering to holders of general unsecured claims); *In re Loehmann's Holdings, Inc.*, Case No. 10-16077 (Bankr. S.D.N.Y. Jan. 3, 2011) (approving rights offering procedures for a rights offering to senior secured noteholders certifying that they were “qualified institutional buyers”); *In re Cooper-Standard Holdings Inc.*, Case No. 09-12743 (Bankr. D. Del. Mar. 26, 2010) (approving rights offering procedures in connection with rights offering to noteholders certifying they were “accredited investors” or “qualified institutional buyers”); *Terrestar Networks, Inc.*, Case No. 10-15446 (Bankr. S.D.N.Y. Dec. 22, 2010) (authorizing the debtors to commence a rights offering to holders of senior secured notes, senior exchangeable notes and other unsecured claims); *In re Merisant Worldwide, Inc.*, Case No. 09-10059 (PJW) (Bankr. D. Del. Oct. 23, 2009) (approving procedures in connection with rights offering to holders of notes and general unsecured claims); *In re Tronox Inc.*, Case No. 09-10156 (Bankr. S.D.N.Y. Sept. 30, 2010) (approving procedures for a rights offering to holders of general unsecured claims and indirect environmental claims).

27. Importantly, if the Company—or the Creditors’ Committee—receives an unsolicited proposal that it reasonably believes could be expected to lead to a higher and better economic recovery for the Debtors’ creditors, the Company is permitted, consistent with the no-shop provision of the Backstop Purchase Agreement, to entertain the proposal and to engage in discussions and an exchange of information that could lead to the realization of an Alternative Transaction and, provided that it pays the Breakup Fee, to consummate such Alternative Transaction.

28. Comparable backstop fees, expense reimbursement and deal protections have been features of previous backstop agreements in connection with rights offerings under plans of reorganization, and have been approved on the basis of a debtor's reasonable business judgment. *See, e.g., In re Eastman Kodak Company*, Case No. 12-10202 (Bankr. S.D.N.Y. Jun. 26, 2013) (approving entry into backstop agreement providing for cash backstop fees of 5%, including 4% fully earned upon approval of backstop agreement, and expense reimbursement); *In re K-V Discovery Solutions Inc.*, Case No. 12-13346 (Bankr. S.D.N.Y. June 7, 2013) (authorizing the debtors to enter into a stock purchase and backstop agreement that provided for (a) a commitment fee of 5% of the equity in the reorganized debtors upon plan consummation, (b) expense reimbursement and (c) a 4.5% breakup fee); *In re Vertis Holdings Inc.*, Case No. 10-16170 (Bankr. S.D.N.Y. Dec. 1, 2010) (approving commitment fee of 10% of the equity in the reorganized debtors upon plan consummation and cash breakup fee equal to 1.6% of commitment amount); *In re Tronox, Inc.*, No. 10-16170 (Bankr. S.D.N.Y. Sep. 17, 2010) (authorizing payment of commitment fee in equity or cash equal to (a) 6% of the equity commitment and (b) 4.7% of shares outstanding upon plan consummation in connection with \$185 million rights offering); *In re Visteon Corp.*, No. 09-11786 (Bankr. D. Del. Jun. 17, 2010) (\$60.4 million, or 4.8%, in fees in connection with commitment to purchase \$300 million of equity and backstop rights for additional \$950 million).

29. The Debtors believe that the Disclosure Statement, in the form approved by the Court, will provide all creditors eligible to participate in the Rights Offerings with adequate information for all purposes relating to the Rights Offerings, including for the purposes of making an informed judgment as to such creditors' participation in the Rights Offerings. The Rights Offerings Procedures and Rights Offerings Forms are designed to afford all interested

Eligible Holders of Allowed Senior Notes Claims, Allowed Convertible Notes Claims and Allowed General Unsecured Claims a fair and reasonable opportunity to participate in the Rights Offerings, and to inform interested Eligible Holders as to the appropriate procedures for such participation. The Debtors submit that the Rights Offerings Procedures and Rights Offerings Forms are reasonable and are comparable to procedures and forms that have been approved in connection with similar rights offerings.

30. Accordingly, the Debtors respectfully submit that the entry into the Backstop Purchase Agreement and implementation of the Rights Offerings pursuant to the Rights Offerings Procedures represents a sound exercise of their business judgment and is supported by a valid business justification. As discussed above, the Rights Offerings, together with the Backstop Commitment, will enable the Debtors to increase the recovery available for unsecured creditors and facilitate the Debtors' emergence from chapter 11. Accordingly, the Debtors believe that entry into the Backstop Purchase Agreement, the Rights Offerings Procedures, and the implementation of the Rights Offerings in accordance with the Rights Offerings Procedures and the Plan, should be approved by the Court.

Waiver of Bankruptcy Rules 6004(a) and (h)

31. To implement the foregoing immediately and to the extent applicable, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

No Prior Request

32. No prior motion for the relief requested herein has been made to this Court or any other court.

Notice

33. Consistent with 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 Motion on the Core Parties (as defined in the Case Management Order) and the Backstop 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 motion through the ECF system no later than the day after its filing with the Court. A copy of this Motion 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 is 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.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court enter an order granting the relief requested herein and such other and further relief as is just and proper.

Dated: October 18, 2013
New York, New York

Respectfully submitted,

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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. Brody Mining, LLC
11. Brook Trout Coal, LLC
12. Catenary Coal Company, LLC
13. Central States Coal Reserves of Kentucky, LLC
14. Charles Coal Company, LLC
15. Cleaton Coal Company
16. Coal Clean LLC
17. Coal Properties, LLC
18. Coal Reserve Holding Limited Liability Company No. 2
19. Colony Bay Coal Company
20. Cook Mountain Coal Company, LLC
21. Corydon Resources LLC
22. Coventry Mining Services, LLC
23. Coyote Coal Company LLC
24. Cub Branch Coal Company LLC
25. Dakota LLC
26. Day LLC
27. Dixon Mining Company, LLC
28. Dodge Hill Holding JV, LLC
29. Dodge Hill Mining Company, LLC
30. Dodge Hill of Kentucky, LLC
31. EACC Camps, Inc.
32. Eastern Associated Coal, LLC
33. Eastern Coal Company, LLC
34. Eastern Royalty, LLC
35. Emerald Processing, L.L.C.
36. Gateway Eagle Coal Company, LLC
37. Grand Eagle Mining, LLC
38. Heritage Coal Company LLC
39. Highland Mining Company, LLC
40. Hillside Mining Company
41. Hobet Mining, LLC
42. Indian Hill Company LLC
43. Infinity Coal Sales, LLC
44. Interior Holdings, LLC
45. IO Coal LLC
46. Jarrell's Branch Coal Company
47. Jupiter Holdings LLC
48. Kanawha Eagle Coal, LLC
49. Kanawha River Ventures I, LLC
50. Kanawha River Ventures II, LLC
51. Kanawha River Ventures III, LLC
52. KE Ventures LLC
53. Little Creek LLC
54. Logan Fork Coal Company
55. Magnum Coal Company LLC
56. Magnum Coal Sales LLC
57. Martinka Coal Company, LLC
58. Midland Trail Energy LLC
59. Midwest Coal Resources II, LLC
60. Mountain View Coal Company, LLC
61. New Trout Coal Holdings II, LLC
62. Newtown Energy, Inc.
63. North Page Coal Corp.
64. Ohio County Coal Company, LLC
65. Panther LLC
66. Patriot Beaver Dam Holdings, LLC
67. Patriot Coal Company, L.P.
68. Patriot Coal Corporation
69. Patriot Coal Sales LLC
70. Patriot Coal Services LLC
71. Patriot Leasing Company LLC
72. Patriot Midwest Holdings, LLC
73. Patriot Reserve Holdings, LLC
74. Patriot Trading LLC
75. Patriot Ventures LLC
76. PCX Enterprises, Inc.
77. Pine Ridge Coal Company, LLC
78. Pond Creek Land Resources, LLC
79. Pond Fork Processing LLC
80. Remington Holdings LLC
81. Remington II LLC
82. Remington LLC
83. Rivers Edge Mining, Inc.
84. Robin Land Company, LLC
85. Sentry Mining, LLC
86. Snowberry Land Company
87. Speed Mining LLC
88. Sterling Smokeless Coal Company, LLC
89. TC Sales Company, LLC
90. The Presidents Energy Company LLC
91. Thunderhill Coal LLC
92. Trout Coal Holdings, LLC
93. Union County Coal Co., LLC
94. Viper LLC
95. Weatherby Processing LLC
96. Wildcat Energy LLC
97. Wildcat, LLC
98. Will Scarlet Properties LLC
99. Winchester LLC
100. Winifrede Dock Limited Liability Company
101. Yankeetown Dock, LLC