

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:**

**November 12, 2013 at 4:00 p.m.**

**(prevailing Central Time)**

**Hearing Date:**

**November 19, 2013 at 10:00 a.m.**

**(prevailing Central Time)**

**Hearing Location:**

**Courtroom 7 North**

**NOTICE AND DEBTORS' MOTION PURSUANT TO SECTION 362 OF THE  
BANKRUPTCY CODE AND BANKRUPTCY RULE 4001 FOR AN  
ORDER MODIFYING THE AUTOMATIC STAY TO PERMIT  
PAYMENTS OF DEFENSE EXPENSES UNDER INSURANCE POLICY**

PLEASE TAKE NOTICE THAT this motion is scheduled for hearing on November 19, 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 NOVEMBER 12, 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.**

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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.

**DEBTORS' MOTION PURSUANT TO SECTION 362 OF THE  
BANKRUPTCY CODE AND BANKRUPTCY RULE 4001 FOR AN  
ORDER MODIFYING THE AUTOMATIC STAY TO PERMIT  
PAYMENTS OF DEFENSE EXPENSES UNDER INSURANCE POLICY**

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 motion (the “**Motion**”), the Debtors respectfully move this Court, pursuant to section 362 of the Bankruptcy Code, Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 4001-1 of the Local Rules of Bankruptcy Court for the Eastern District of Missouri (the “**Local Rules**”), for entry of an order (the “**Proposed Order**”)<sup>2</sup> (i) granting relief from the automatic stay, to the extent it applies, to advance and/or pay under an insurance policy those defense expenses being incurred by the insured persons of the Debtors, and (ii) requiring notice to the Debtors and the official committee of unsecured creditors (the “**Creditors’ Committee**”) regarding the insurance coverage provided and the amounts paid.<sup>3</sup>

**Background and Jurisdiction**

2. On July 9, 2013 (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

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<sup>2</sup> The Proposed Order granting relief requested in this Motion will be provided to the Core Parties (as defined below) and National Union Fire Insurance Company of Pittsburgh, Pa. A copy of the Proposed Order will be made available at [www.patriotcaseinfo.com/orders.php](http://www.patriotcaseinfo.com/orders.php).

<sup>3</sup> The Debtors are submitting this Motion without prejudice to any future motion to extend the automatic stay to apply to suits naming the Debtors’ officers, directors, and/or employees as defendants.

SDNY Bankruptcy Court entered an order transferring the Initial Debtors' chapter 11 cases to this Court (the "**Transfer Order**") [ECF No. 1789].<sup>4</sup> 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 being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and the Joint Administration Order entered on July 10, 2012 [ECF No. 30], and the New Debtors' cases are being jointly administered with the Initial 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.

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). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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<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.

### **Factual Background**

5. In January 2012, John Renner, his wife Patty Renner, and his three minor children (collectively, “**Plaintiffs**”) filed suit in the Circuit Court of Monongalia County, West Virginia (the “**Complaint**”) (Exhibit A). The Complaint named as defendants Randy Coffindaffer and Joseph B. “Blair” McGill (collectively “**Individual Defendants**”), in addition to Debtors Eastern Associated Coal, LLC and Patriot Coal Corporation (collectively, and together with the Individual Defendants, “**Defendants**”). The Complaint alleges that on February 2, 2010, the Defendants unlawfully terminated the employment of Mr. Renner, purportedly for violating one or more mandatory health and safety regulations and falsifying records regarding such violations. Plaintiffs allege that the purported reasons for Mr. Renner’s termination were pre-textual. Plaintiffs seek compensatory damages, punitive damages, reinstatement of employment, fringe benefits and seniority rights, and costs. Although the suit remains stayed against the Debtors pursuant to the automatic stay provision of the Bankruptcy Code, 11 U.S.C. § 362(a), it is set to proceed against the Individual Defendants.

### **The Insurance Policy**

6. Before the Petition Date, National Union Fire Insurance Company of Pittsburgh, Pa., a subsidiary of the American International Group, Inc., formerly Chartis Inc., initially issued the Employee Practices Liability Insurance Policy No. 01-308-55-92 (the “**Policy**”), which was in effect for the period October 31, 2011 to October 31, 2012 (Exhibit B). Subject to all of its terms and conditions, the Policy potentially affords coverage up to a maximum aggregate limit of liability of \$10,000,000, including Defense Costs.<sup>5</sup>

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<sup>5</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Policy.

7. Under the Policy's Insuring Agreement, coverage is provided to Insureds for Loss arising from a Claim first made against such Insured during the Policy Period and reported to the Insurer pursuant to the terms of the Policy for any actual or alleged Employment Practices Violations.

8. The Policy defines Insured(s) to mean "Individual Insureds" and "the Company," and defines Individual Insured(s) to include "any Employee(s) of the Company."

9. The Policy defines "Loss" to mean "damages (including back pay and front pay), judgments, settlements, pre- and post-judgement [sic] interest and Defense Costs." The Policy defines "Defense Costs" to mean "reasonable and necessary fees, costs and expenses consented to by the Insurer (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a Claim against the Insureds, but excluding salaries of officers or Employees of the Company."

10. The Policy defines "Employment Practices Violations" to include wrongful dismissal, discharge or termination (either actual or constructive) of employment and retaliation.

11. Clause 6 of the Policy, titled "Retention" and contained in Endorsement No. 9 of the Policy, provides that, "in the event a Company refuses to pay an applicable Retention due to Financial Insolvency, then the Insurer shall commence advancing Loss within the Retention, subject to the other terms, conditions and exclusions of this policy. . . ."

12. The Policy defines "Financial Insolvency" as (i) the appointment by any state or federal official, agency or court of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate a Company; or (ii) the

Company becoming a debtor-in-possession pursuant to the United States bankruptcy law, and as to both (i) and (ii), the equivalent status outside the United States of America.

**Basis for Relief**

13. The Debtors seek the entry of an order granting relief from the automatic stay provided for in section 362(a) of the Bankruptcy Code, to the extent it applies, to allow the National Union Fire Insurance Company of Pittsburgh, Pa. to advance Defense Expenses to the Individual Defendants, and to any future covered individuals who might be named as defendants in related or similar actions, in each case as permitted under the Policy.

**The Automatic Stay Should Be Modified, to the Extent it Applies,  
Because Good Cause Exists to Modify the Stay**

14. It is not clear whether the proceeds of the Policy are property of the Debtors' estate. *See In re MF Global Holdings, Ltd., et al.*, 469 B.R. 177, 190 (Bankr. S.D.N.Y. 2012) (stating that "the courts are in disagreement over whether the proceeds of a liability insurance policy are property of the estate." (quoting *In re Downey Fin. Corp.*, 428 B.R. 595, 603 (Bankr. D. Del. 2010)). However, whether or not the insurance proceeds of the Policy are deemed to be property of the estate, good cause exists for this Court to grant relief from the automatic stay for the purpose of permitting the National Union Fire Insurance Company of Pittsburgh, Pa. to advance Defense Costs to the Individual Defendants, and to any covered individuals who might be named as defendants in future related actions, as permitted under the Policy. In *MF Global*, the court, under circumstances similar to those presented here, declined to rule as to whether the proceeds of the insurance policy at issue in that case were property of the estate, but lifted the stay in any event for good cause shown. 469 B.R. at 191; *see also In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 463-64 (S.D.N.Y. 2004).

15. Section 362(d) of the Bankruptcy Code provides that “the court shall grant relief from the stay . . . for cause.” 11 U.S.C. § 362(d)(1). “Because neither the Code nor the legislative history provides a specific definition of what constitutes ‘cause’ under § 362(d), courts must determine whether relief is appropriate on a case by case basis, taking into consideration the interests of the debtor, the claimants and the estate.” *See In re MacInnis*, 235 B.R. 255, 259 (S.D.N.Y. 1998).

16. In making the determination of whether to grant relief from the stay for cause, courts in the Eighth Circuit look to balance the potential prejudice to the debtor, to the bankruptcy estate, and to the other creditors against the hardship to the moving party if relief is not granted. *See, e.g., Wiley v. Hartzler (In re Wiley)*, 288 B.R. 818, 822 (B.A.P. 8th Cir. 2003). Courts consider several factors in weighing harm to these parties, including: (1) judicial economy; and (2) the cost of defense or other potential burden to the bankruptcy estate and the impact of the litigation on other creditors.<sup>6</sup>

17. As detailed above, the Policy provides coverage to Individual Insureds who have a present need for payment of their Defense Expenses. This need is routinely held to justify modifying the automatic stay to prevent insured individuals from suffering irreparable harm. *See Adelpia Commc’ns Corp. v. Assoc. Ins. Serv., Ltd. (In re Adelpia Commc’ns Corp.)*, 285 B.R. 580, 598 (Bankr. S.D.N.Y. 2002) (granting relief from stay in order to permit primary insurer to advance defense costs), *vacated and remanded on other grounds*, 298 B.R. 49 (S.D.N.Y. 2003); *see also Downey*, 428 B.R. 595 (same).

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<sup>6</sup> The other factors considered when applicable are: (1) trial readiness; (2) the resolution of preliminary bankruptcy issues; and (3) the creditor’s chance of success on the merits. *Id.*

18. The Individual Insureds' need to access insurance coverage to pay Defense Costs far outweighs any potential harm that could be suffered by the Debtors. "Lifting the automatic stay to permit [an insurance company] to advance defense costs on behalf of Individual Insureds would not severely prejudice Debtors' estates. But failure to do so would significantly injure the Individual Insureds, whose defense costs are covered by the [Policies]." *MF Global*, 429 B.R. at 193. Although it is true that to the extent the aggregate coverage limit is reduced by the payment of proceeds to the Individual Defendants there is less coverage available for the Debtors, the possibility that the aggregate coverage will be significantly diminished by the defense of the Individual Defendants is entirely speculative at this point. *See Downey*, 428 B.R. at 609 (modifying the stay to permit the payment of insurance proceeds where "there is no chance that lifting the stay would allow the insureds to run up unlimited defense costs and ultimately exhaust the Policy coverage.").

19. Equitable considerations further support a modification of the stay in this case, as they did in *MF Global*. 469 B.R. at 176-77 ("[T]he Individual Insureds would suffer significant hardships if the Policies were disabled . . . [B]ankruptcy courts should be wary of impairing the contractual rights of [individual insureds] even in cases where the policies provide entity coverage.") (internal citations omitted). As is the case with any company, Patriot's employees rely upon the protection of liability insurance while carrying out their duties. Patriot's ability to hire and retain key employees would be hindered if the contract providing for this employment practices liability coverage were impaired. *See Adelpia*, 285 B.R. at 598. This Court should accordingly modify the automatic stay, to the extent it applies, to avoid conflict with the "usual claim submission, determination and payment processes dictated by the Policies." *MF Global*, 469 B.R. at 177.

**Notice**

20. Consistent with the Order Establishing Certain Notice, Case Management and Administration Procedures entered on March 22, 2013 [ECF No. 3361] (the “**Case Management Order**”), the Debtors will serve notice of this Motion on the (i) Core Parties (as defined in the Case Management Order) and (ii) National Union Fire Insurance Company of Pittsburgh, Pa. (collectively, the “**Service Parties**”). All parties who have requested electronic notice 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](http://www.patriotcaseinfo.com)). A copy of the Proposed Order will be provided to the Service Parties, and will be available at [www.patriotcaseinfo.com/orders.php](http://www.patriotcaseinfo.com/orders.php) (the “**Patriot Order 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.

**No Previous Request**

21. 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: October 29 , 2013  
New York, New York

Respectfully submitted,

/s/ Amelia T.R. Starr

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**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)**

**SUMMARY OF EXHIBITS**

The following exhibits (the “**Exhibits**”) referenced in the *Debtors’ Motion Pursuant to Section 362 of the Bankruptcy Code and Bankruptcy Rule 4001 for an Order Modifying the Automatic Stay to Permit Payments of Defense Expenses Under Insurance Policy* will be provided to the Core Parties and National Union Fire Insurance Company of Pittsburgh, Pa. Copies of the Exhibits will also be made available at [www.patriotcaseinformation.com/exhibits.php](http://www.patriotcaseinformation.com/exhibits.php) and will be made available for inspection at the hearing.

- Exhibit A: Complaint, John Renner, et al. v. Eastern Assoc. Coal, LLC, et al., Civ. Action No. 12-C-27 (W. Va. Cir. Ct. Monongalia Cnty.)
- Exhibit B: Employment Practices Liability Insurance Policy No. 01-308-55-92

**SCHEDULE 1**  
(Debtor Entities)

- |  |  |
|--|--|
| 1. Affinity Mining Company                               | 51. KE Ventures, LLC                         |
| 2. Apogee Coal Company, LLC                              | 52. Little Creek LLC                         |
| 3. Appalachia Mine Services, LLC                         | 53. Logan Fork Coal Company                  |
| 4. Beaver Dam Coal Company, LLC                          | 54. Magnum Coal Company LLC                  |
| 5. Big Eagle, LLC  | 55. Magnum Coal Sales LLC                    |
| 6. Big Eagle Rail, LLC                                   | 56. Martinka Coal Company, LLC               |
| 7. Black Stallion Coal Company, LLC                      | 57. Midland Trail Energy LLC                 |
| 8. Black Walnut Coal Company                             | 58. Midwest Coal Resources II, LLC           |
| 9. Bluegrass Mine Services, LLC                          | 59. Mountain View Coal Company, LLC          |
| 10. Brook Trout Coal, LLC                                | 60. New Trout Coal Holdings II, LLC          |
| 11. Catenary Coal Company, LLC                           | 61. Newtown Energy, Inc.                     |
| 12. Central States Coal Reserves of Kentucky, LLC        | 62. North Page Coal Corp.                    |
| 13. Charles Coal Company, LLC                            | 63. Ohio County Coal Company, LLC            |
| 14. Cleaton Coal Company                                 | 64. Panther LLC                              |
| 15. Coal Clean LLC                                       | 65. Patriot Beaver Dam Holdings, LLC         |
| 16. Coal Properties, LLC                                 | 66. Patriot Coal Company, L.P.               |
| 17. Coal Reserve Holding Limited Liability Company No. 2 | 67. Patriot Coal Corporation                 |
| 18. Colony Bay Coal Company                              | 68. Patriot Coal Sales LLC                   |
| 19. Cook Mountain Coal Company, LLC                      | 69. Patriot Coal Services LLC                |
| 20. Corydon Resources LLC                                | 70. Patriot Leasing Company LLC              |
| 21. Coventry Mining Services, LLC                        | 71. Patriot Midwest Holdings, LLC            |
| 22. Coyote Coal Company LLC                              | 72. Patriot Reserve Holdings, LLC            |
| 23. Cub Branch Coal Company LLC                          | 73. Patriot Trading LLC                      |
| 24. Dakota LLC   | 74. PCX Enterprises, Inc.                    |
| 25. Day LLC  | 75. Pine Ridge Coal Company, LLC             |
| 26. Dixon Mining Company, LLC                            | 76. Pond Creek Land Resources, LLC           |
| 27. Dodge Hill Holding JV, LLC                           | 77. Pond Fork Processing LLC                 |
| 28. Dodge Hill Mining Company, LLC                       | 78. Remington Holdings LLC                   |
| 29. Dodge Hill of Kentucky, LLC                          | 79. Remington II LLC                         |
| 30. EACC Camps, Inc.                                     | 80. Remington LLC                            |
| 31. Eastern Associated Coal, LLC                         | 81. Rivers Edge Mining, Inc.                 |
| 32. Eastern Coal Company, LLC                            | 82. Robin Land Company, LLC                  |
| 33. Eastern Royalty, LLC                                 | 83. Sentry Mining, LLC                       |
| 34. Emerald Processing, L.L.C.                           | 84. Snowberry Land Company                   |
| 35. Gateway Eagle Coal Company, LLC                      | 85. Speed Mining LLC                         |
| 36. Grand Eagle Mining, LLC                              | 86. Sterling Smokeless Coal Company, LLC     |
| 37. Heritage Coal Company LLC                            | 87. TC Sales Company, LLC                    |
| 38. Highland Mining Company, LLC                         | 88. The Presidents Energy Company LLC        |
| 39. Hillside Mining Company                              | 89. Thunderhill Coal LLC                     |
| 40. Hobet Mining, LLC                                    | 90. Trout Coal Holdings, LLC                 |
| 41. Indian Hill Company LLC                              | 91. Union County Coal Co., LLC               |
| 42. Infinity Coal Sales, LLC                             | 92. Viper LLC                                |
| 43. Interior Holdings, LLC                               | 93. Weatherby Processing LLC                 |
| 44. IO Coal LLC  | 94. Wildcat Energy LLC                       |
| 45. Jarrell's Branch Coal Company                        | 95. Wildcat, LLC                             |
| 46. Jupiter Holdings LLC                                 | 96. Will Scarlet Properties LLC              |
| 47. Kanawha Eagle Coal, LLC                              | 97. Winchester LLC                           |
| 48. Kanawha River Ventures I, LLC                        | 98. Winifrede Dock Limited Liability Company |
| 49. Kanawha River Ventures II, LLC                       | 99. Yankeetown Dock, LLC                     |
| 50. Kanawha River Ventures III, LLC                      | 100. Brody Mining, LLC                       |
|  | 101. Patriot Ventures LLC                    |