

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:

November 5, 2013 at 9:00 a.m.
(prevailing Central Time)

Proposed Hearing Date

(if necessary):
November 6, 2013 at 10:00 a.m.
(prevailing Central Time)

**NOTICE AND MOTION OF THE DEBTORS FOR AN ORDER AUTHORIZING
THE DEBTORS TO (I) ENTER INTO DOCUMENTS IN CONNECTION WITH EXIT
FINANCING, (II) INCUR AND PAY ASSOCIATED FEES, COSTS AND EXPENSES
AND (III) FURNISH RELATED INDEMNITIES**

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 9:00 A.M. (PREVAILING CENTRAL TIME) ON NOVEMBER 5, 2013. A COPY MUST BE PROMPTLY SERVED UPON THE UNDERSIGNED. FAILURE TO FILE AND SERVE 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 AN ORDER AUTHORIZING THE DEBTORS TO
(I) ENTER INTO DOCUMENTS IN CONNECTION WITH EXIT FINANCING,
(II) INCUR AND PAY ASSOCIATED FEES, COSTS AND EXPENSES AND
(III) FURNISH RELATED INDEMNITIES**

Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”), hereby submit this motion (the “**Motion**”), pursuant to section 363(b)(1) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an order² authorizing the Debtors, in connection with their efforts to obtain exit financing, to: (a) enter into (i) an engagement letter (the “**Facilities Engagement Letter**”) with Barclays Bank PLC (“**Barclays**”), Deutsche Bank AG New York Branch (“**DBNY**”) and Deutsche Bank Securities Inc. (“**DBSI**” and together with DBNY, “**DB**”, DB together with Barclays, the “**Facilities Parties**”), (ii) a fee letter with the Facilities Parties (the “**Facilities Fee Letter**” and together with the Facilities Engagement Letter, the “**Facilities Engagement Documents**”),³ (iii) an engagement letter (the “**L/C Engagement Letter**” and together with the Facilities Engagement Letter, the “**Engagement Letters**”) ⁴ with Barclays (Barclays, in its capacity as an engagement party under the L/C Engagement Letter and its other capacities described therein, together with the Facilities Parties, the “**Engagement Parties**”) and (iv) a fee letter with Barclays (the “**L/C Fee Letter**” and together with the Facilities Fee Letter,

² 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 counsel to the Engagement Parties. A copy of the Proposed Order is available at www.patriotcaseinfo.com/orders.php.

³ Any other financial institutions that become party to the Facilities Engagement Letter after the date hereof shall be included in the definition of Facilities Parties for the purposes of this Motion and the relief requested herein.

⁴ Copies of the Engagement Letters will be provided to the Core Parties in advance of the hearing, will be made available at www.patriotcaseinformation.com/exhibits.php in advance of the hearing, and will be made available for inspection at the hearing.

the “**Fee Letters**”⁵ and collectively with the Facilities Engagement Documents and the L/C Engagement Letter, the “**Engagement Documents**”); (b) incur and pay associated fees and expenses in connection with the Engagement Documents; and (c) furnish related indemnities. In support of this Motion, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. As more fully set forth in the *Disclosure Statement for the Debtors’ Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code*, [ECF No. 4870], the Debtors have made substantial progress toward emergence from chapter 11. In addition to the Debtors’ successful restructuring efforts over the past fifteen months since the Petition Date, in the past two months, the Debtors have secured junior financing through committed rights offerings backstopped by Knighthood Capital Management LLC, solely on behalf of certain funds and accounts it manages and/or advises, and reached two global settlements with Peabody Energy Corporation (“**Peabody**”) and the United Mine Workers of America (the “**UMWA**”) and Arch Coal, Inc. (“**Arch**”) respectively. The rights offerings will provide the Debtors with \$250 million of capital, and the settlements with Peabody and the UMWA and Arch will provide the Debtors with over \$175 million in incremental liquidity and value. Moreover, as a result of the rights offerings and the settlement with Peabody, the UMWA Voluntary Employee Benefit Association is expected to receive more than \$400 million in cash over the next four years, all of which will facilitate the Debtors’ satisfaction of certain conditions required by the Debtors’ labor agreements with the UMWA, which are expected to provide the

⁵ Copies of the Fee Letters will be provided on a confidential basis, in advance of the hearing, to (i) the Court, (ii) the office of the United States Trustee, (iii) the Backstop Parties (as defined in the Plan) and their counsel (in each case of this clause (iii), on a strictly confidential basis) and (iv) counsel to the official committee of unsecured creditors (on a strictly confidential, professional eyes’ only basis).

Debtors with labor stability and critically needed savings of approximately \$130 million annually over the next five years. In addition, the foregoing transactions provide for post emergence liquidity of at least \$275 million.

2. The Debtors are now well-positioned to complete the last critical step of their restructuring plan: securing senior exit financing in order to fund the Debtors' obligations under the *Debtors' Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* [ECF No. 4869] (as may be amended or modified from time to time, the "**Plan**") and provide sufficient working capital to the reorganized Debtors upon emergence from chapter 11. Indeed, during the past few weeks, the Debtors, with the assistance of their investment banker, Blackstone Advisory Partners, L.P., have engaged in an extensive process to obtain exit financing proposals from various financial institutions. After reviewing several proposals and negotiating with the parties, the Debtors have selected the Engagement Parties to structure, arrange and, as applicable, syndicate: (a) an exit senior secured term loan facility in an aggregate principal amount of \$250,000,000 (the "**Term Loan Facility**"); (b) an exit senior secured asset-based revolving credit facility in an aggregate principal amount of \$125,000,000 (the "**ABL Facility**"); and (c) a letter of credit facility in an aggregate amount not to exceed \$201,000,000 (the "**L/C Facility**" and, together with the Term Loan Facility and the ABL Facility, the "**Exit Facilities**").

3. The Debtors will request approval of the Exit Facilities in connection with confirmation of the Plan. Nevertheless, given the significant efforts that will need to be expended prior to confirmation in connection with the arrangement and syndication process, the

Engagement Parties have requested that the Debtors seek immediate Court approval of the Debtors' entry into the Engagement Documents.

BACKGROUND AND JURISDICTION

4. 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 [ECF No. 1789] (the "**Transfer Order**").⁶ 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 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 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.

5. 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

⁶ 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.

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

REQUESTED RELIEF

6. By this Motion, the Debtors respectfully request that the Court enter an order:

(a) authorizing the Debtors to: (i) enter into the Engagement Documents; (ii) incur and pay associated fees and expenses in connection with the Engagement Documents pursuant to sections 363(b)(1), 503(b) and 507(a)(2) of the Bankruptcy Code; (iii) furnish related indemnities; and

(b) grant such other relief as is just and proper.

FACTS SPECIFIC TO RELIEF REQUESTED⁷

7. Pursuant to the Engagement Documents and subject to the termination events and other terms and conditions contained therein, the Engagement Parties have agreed to use their commercially reasonable efforts to structure, arrange and, as applicable, syndicate the Exit Facilities and to begin their execution efforts promptly after execution of the Engagement Documents. Pursuant to the Facilities Engagement Letter, Barclays and DBSI are the proposed joint lead arrangers and joint bookrunners for the ABL Facility and Term Loan Facility. Barclays is the proposed sole administrative agent and sole collateral agent for the Term Loan Facility and the proposed syndication agent for the ABL Facility, and DBNY is the proposed sole administrative agent and sole collateral agent for the ABL Facility. Pursuant to the L/C Engagement Letter, Barclays will act as sole lead arranger, sole bookrunner, sole administrative agent and sole collateral agent for the L/C Facility.

⁷ This summary of the obligations pursuant to the Engagement Documents is provided for the benefit of the Court and other parties in interest. To the extent that there are any conflicts between this summary and the Engagement Documents, the terms of the Engagement Documents shall govern.

8. Subject to the Court's approval, entry into the Engagement Letters obligates the Debtors to assist the Facilities Parties in achieving an arrangement and, as applicable, syndication of the Exit Facilities and to not take any actions that would materially impair the arrangement and, as applicable, syndication of the Exit Facilities. The Debtors have also agreed, under certain conditions, to incur and pay certain costs, indemnities and fees in connection with the Exit Facilities, as set forth in the Engagement Documents, including reimbursing the Facilities Parties for out-of-pocket expenses, paying certain legal and collateral audit expenses and deposits and providing indemnities to the Facilities Parties and other related parties.

9. The Debtors have also agreed, pursuant to the Facilities Engagement Letter, to indemnify and hold harmless each Facilities Party, their respective affiliates, their respective successors and their respective directors, officers, employees, advisors, agents and other representatives, from and against any and all losses, claims, damages and liabilities to which any such person may become subject arising out of or in connection with the Facilities Engagement Documents, the Term Loan Facility and the ABL Facility or the use of proceeds thereof, the entering into and funding of the Term Loan Facility and the ABL Facility, the consummation of the Plan, the payment of fees and expenses in connection therewith and the consummation of any other transactions ancillary to the foregoing, or any claim, litigation, investigation or proceeding relating to any of the foregoing (the "**Term/ABL Indemnity**"). The Term/ABL Indemnity is subject to certain customary carve-outs, including a carve-out for conduct arising from willful misconduct or gross negligence of indemnified persons.

The Debtors have further agreed, pursuant to the L/C Engagement Letter, to indemnify and hold harmless Barclays and each other agent or co-agent (if any) appointed in connection

with the L/C Facility, their respective affiliates, their respective successors and their respective directors, officers, employees, advisors, agents and other representatives from and against any and all losses, claims, damages and liabilities to which any such person may become subject arising out of or in connection with the L/C Engagement Letter, the L/C Fee Letter, the L/C Facility or the use of proceeds thereof, or the entering into of the L/C Facility and the extensions of credit thereunder, the consummation of the Plan, the payment of fees and expenses in connection therewith and the consummation of any other transactions ancillary to the foregoing, or any claim, litigation, investigation or proceeding relating to any of the foregoing (the “**L/C Indemnity**” and, together with the Term/ABL Indemnity, the “**Lender Indemnities**”). The L/C Indemnity is subject to certain customary carve-outs, including a carve-out for conduct arising from willful misconduct or gross negligence of indemnified persons.

10. In addition, in return for the Facilities Parties’ undertakings set forth in the Facilities Engagement Letter, the Debtors have agreed to pay certain annual administrative agent and collateral agent fees, an alternative transaction fee payable if the Debtors consummate an alternative transaction under certain circumstances and certain nonrefundable fees upon the closing of the Term Loan Facility and the ABL Facility. Further, in return for Barclays’ undertakings set forth in the L/C Engagement Letter, the Debtors have agreed to pay certain annual administrative agent and collateral agent fees, an alternative transaction fee payable if the Debtors consummate an alternative transaction under certain circumstances and certain nonrefundable fees upon the closing of the L/C Facility.

BASIS FOR RELIEF

11. The Debtors respectfully submit that entering into the Engagement Documents represents a sound exercise of their business judgment and is for valid business purposes. The Debtors believe that entering into the Engagement Documents provides the Debtors with the ability to access financial markets and successfully secure the exit financing that is critical to the Debtors' emergence from chapter 11 as contemplated under the Plan.

12. Accordingly, the relief sought in this Motion is in the best interests of the Debtors and should be approved under section 363(b)(1) of the Bankruptcy Code. "Under the 'business judgment' rule, the management of a corporation's affairs is placed in the hands of its board of directors and officers, and the Court should interfere with their decisions only if it is made clear that those decisions are, inter alia, clearly erroneous, made arbitrarily, are in breach of the officers' and directors' fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code." *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 In re Iridium Operating LLC*, 478 F.3d 452, 466 (2d Cir. 2007) (holding that a judge determining a section 363(b) application must find from the evidence presented before him a good business reason to grant such application); *In re Channel One Comm.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990) (same); *Walter v. Bank (In re Walter)*, 83 B.R. 14, 16 (B.A.P. 9th Cir. 1988) ("there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business" (citing *In re Continental Air Lines, Inc.* 780 F.2d 1223, 1226 (5th Cir. 1986))).

13. Exit financing is the last essential component for the Debtors' Plan and ultimate successful emergence from these chapter 11 cases. Moreover, obtaining the financing contemplated by the Exit Facilities are conditions to the consummation of the rights offerings and the effectiveness of the settlement with Peabody, both of which are cornerstones of the Plan and the Debtors' successful restructuring. The Debtors believe, in their sound business judgment, that entering into the Engagement Documents at this time is necessary to obtain the agreement of the Engagement Parties to engage in the arrangement and, as applicable, syndication process for the Exit Facilities. The Debtors respectfully submit that the Engagement Documents are the result of good faith, arm's-length negotiations among the parties and are reasonable under the circumstances. Thus, the Debtors respectfully submit that it is in the best interests of the Debtors' estates, their creditors and other parties in interest for the Court to authorize the Debtors' entry into the Engagement Documents.

REQUEST FOR WAIVER OF BANKRUPTCY RULE 6004(A) AND (H)

14. 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

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

NOTICE

16. 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 counsel to the Engagement 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 authorizing the Debtors to (a) enter into the Engagement Documents, (b) incur and pay associated fees and expenses in connection with the Engagement Documents and (c) furnish related indemnities.

Dated: October 31, 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

