

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)
#4801

SUPPLEMENTAL ORDER AUTHORIZING, APPROVING PURSUANT TO 11 U.S.C §§ 363(b), 1114(e) AND 105(a) AND FED. R. BANKR. P. 9019(a), (I) AN AMENDMENT TO THE VEBA FUNDING AGREEMENT WITH THE UNITED MINE WORKERS OF AMERICA, (II) AN AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING WITH THE UNITED MINE WORKERS OF AMERICA AND (III) WAIVER OF BANKRUPTCY RULE 6004(h) STAY

Upon the motion (the “**Motion**”)² of Patriot Coal Corporation and its subsidiaries that are Debtors and Debtors In Possession in these cases (collectively, the “**Debtors**”), pursuant to Sections 363(b), 1114(e) and 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019(a), seeking entry of an order (a) supplementing the *Order Pursuant to 11 U.S.C. §§ 1113, 1114(e) and 105(a) and Fed. R. Bankr. P. 9019(a) Authorizing Entry into New Collective Bargaining Agreement and Memorandum of Understanding with the United Mine Workers of America* [ECF No. 4511] (the “**UMWA Settlement Order**”) by authorizing the Debtors’ entry into the VFA Amendment and the MOU Amendment and (b) waiving, to the extent applicable, the fourteen-day stay otherwise imposed by Rule

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.

² Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.

6004(h) of the Federal Rules of Bankruptcy Procedures (the “**Bankruptcy Rules**”) on the immediate effectiveness of the Proposed Supplemental UMWA Settlement Order; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding that the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b)(2); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion and a hearing having been held with appearances of parties in interest noted on the record thereof (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon the record made by the Debtors at the Hearing and all other applicable proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED, AND ADJUDGED, that:

1. Pursuant to Sections 363(b) and 1114(e) of the Bankruptcy Code, the Motion is granted in its entirety as set forth herein. Any objections to the Motion with respect to the entry of this Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled.

2. Proper, timely, adequate and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court for the

Eastern District of Missouri, and no other or further notice of the Motion or the entry of this Order shall be required.

3. The UMWA Settlement Order shall be deemed supplemented by this Order and shall continue in full force and effect.

4. The terms of the VFA Amendment and the MOU Amendment are fair and reasonable, in the best interests of the Debtors, their estates and all stakeholders in these proceedings, and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

5. The VFA Amendment and the MOU Amendment have been negotiated in good faith and at arm's-length among the Debtors and the UMWA.

6. The VFA Amendment and the MOU Amendment are hereby authorized and approved in all respects, and the Debtors are hereby authorized and empowered to perform and take all actions necessary to make, execute and deliver the VFA Amendment, substantially in the form attached hereto as Exhibit A, and the MOU Amendment, substantially in the form attached hereto as Exhibit B.

7. The VFA Amendment, the MOU Amendment and the provisions of this Order shall be binding upon the Debtors and the UMWA, in each of its capacities as authorized representative of the UMWA Employees and the UMWA Retirees, as applicable, and their respective successors and assigns (including any Chapter 7 or Chapter 11 trustee hereinafter appointed or elected for the estates).

8. Upon execution of the VFA Amendment, the UMWA, in each of its capacities as authorized representative of the UMWA Employees and the UMWA

Retirees, shall be deemed to have waived any right to terminate the New CBAs, the MOU, the VFA and all related agreements on the basis that the VFA was not amended.

9. Upon contribution to the VEBA of the Initial Investor Payment on or before the date required by the VFA Amendment, the UMWA, in each of its capacities as authorized representative of the UMWA Employees and the UMWA Retirees, shall be deemed to have waived any right to terminate the New CBAs, the MOU (as amended by the MOU Amendment), the VFA (as amended by the VFA Amendment), and all related agreements on the basis that the Initial Investor Payment was not contributed to the VEBA.

10. The effect of this Order shall survive the conversion, dismissal and/or closing of these Chapter 11 cases, appointment of a Chapter 11 trustee, confirmation of a plan and/or the substantive consolidation of these Chapter 11 cases with any other case or cases.

11. The fourteen-day stay otherwise imposed pursuant to Federal Bankruptcy Rule 6004(h) is hereby expressly waived, and the terms of this Order shall be immediately effective upon entry.


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: November 7, 2013
St. Louis, Missouri
jjh

Exhibit A

VFA Amendment

AMENDMENT TO THE VEBA FUNDING AGREEMENT

This Amendment, dated as of November 4, 2013 (this "Amendment"), to the VEBA Funding Agreement, dated as of August 26, 2013 (as the same may be further amended, supplemented or otherwise modified from time to time, the "VFA") entered into by and among Patriot Coal Corporation ("Patriot"), on behalf of itself and as authorized agent for each of its subsidiaries that is signatory to a 2013 Coal Wage Agreement (hereinafter, the "Obligor Companies") and the United Mine Workers of America, in its capacity as authorized representative under section 1114(c)(1) of the Bankruptcy Code (the "UMWA," and collectively with Patriot, the "Parties"). Capitalized terms used herein but not defined herein are used as defined in the VFA.

WHEREAS, on August 26, 2013, the Parties entered into the VFA;

WHEREAS, under the VFA, Patriot agreed to use its best efforts to monetize the VEBA Funding Amount and/or modify the current form of consideration of the VEBA Funding Amount through a third party funding source in an amount and/or modification acceptable to the UMWA;

WHEREAS, upon obtaining an agreement with respect to a monetization and/or modification in form of consideration that is acceptable to the UMWA, the Parties were required to amend the VFA to account for such monetization and/or modification in form of consideration, which amendment shall, among other things, amend the term "VEBA Funding Amount" as necessary to account for the monetization and/or modification in form of consideration;

WHEREAS, on October 26, 2013, Patriot filed its Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code (as may be amended, supplemented or otherwise modified from time to time, the "Plan") and the Disclosure Statement for Debtors' First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code;

WHEREAS, the transactions contemplated by the Plan include two rights offerings (the "Rights Offerings") on the terms set forth in the term sheet entered into by the Debtors and Knighthead Capital Management, LLC, solely on behalf of certain funds and accounts it manages and/or advises, and consented to by the Official Committee of Unsecured Creditors and the UMWA (the "Rights Offerings Term Sheet");

WHEREAS, the transactions contemplated by the Rights Offerings Term Sheet, among other things, will provide Patriot with the liquidity necessary to fund the VEBA in a form and manner that the UMWA has agreed is acceptable;

WHEREAS, a condition precedent to consummating the Rights Offerings is execution of an amendment to the VFA to reflect the terms set forth in the Rights Offerings Term Sheet; and

WHEREAS, the Parties desire to amend the VFA as set forth below.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL COVENANTS SET FORTH IN THE PLAN AND RELATED AGREEMENTS, THE PARTIES AGREE AS FOLLOWS:

1. Section 2 is hereby amended and restated in its entirety as follows:
 2. **VEBA Funding Amount.** Patriot and the Obligor Companies shall contribute the following to the VEBA (collectively, the "VEBA Funding Amount"):
 - a. Upon the effective date of the Debtors' plan of reorganization (the "**Plan Effective Date**"), 35 percent of the common stock of the reorganized Debtors as contemplated by the Debtors' plan of reorganization;
 - b. (i) the cash payment received by Patriot from Peabody Energy Corporation for the VEBA in connection with the settlement between such parties on the later of (x) January 2, 2014 or (y) the first business day that is seven business days after the effective date of such settlement, as contemplated by the settlement, (ii) \$10 million in cash on the Plan Effective Date (the "**Initial Investor Payment**"), (iii) an additional cash payment of \$5 million at the end of the first quarter of 2014, (iv) \$15 million in cash as of the anniversary of the Plan Effective Date falling in 2015, payable semi-annually in equal portions during such anniversary year, (v) \$20 million in cash as of the anniversary of the Plan Effective Date falling in 2016, payable semi-annually in equal portions during such anniversary year, and (vi) \$25 million in cash as of the anniversary of the Plan Effective Date falling in 2017, payable semi-annually in equal portions during such anniversary year (each such semi-annual payment date in clauses (iv) through (vi), a "**Semi-Annual Payment Date**"), *provided, however*, that the obligation of Patriot and the Obligor Debtors to fund the cash payments on each of the Semi-Annual Payment Dates shall be subject to the occurrence of each of the following conditions:
 1. Patriot having a minimum trailing twelve (12) month EBITDA (defined as GAAP net income plus interest, taxes, depreciation, amortization and any non-recurring non-cash items) of \$200 million, calculated as of March 31 and September 30, as the case may be, immediately preceding a Semi-Annual Payment Date;¹ and
 2. Patriot having unrestricted cash in an amount no less than \$75 million (net of any outstanding revolver borrowings), tested as of the date

¹ Should Patriot determine that this condition has not been satisfied with respect to any Semi-Annual Payment that otherwise would have been made to the VEBA (and that such payment therefore shall not be made), Patriot shall, within five business days of such determination, notify the UMWA and provide the UMWA with a detailed calculation of the applicable trailing twelve month EBITDA (the "**Notice**"). Any reasonable requests for explanation, detail or additional information requested by the UMWA within five business days of the receipt of, and related to, the Notice shall not be unreasonably withheld by Patriot, and shall be provided to the UMWA in a timely manner. The UMWA shall have ten calendar days following the later of receipt of (i) the Notice and (ii) any other supporting documentation reasonably requested by the UMWA related to the Notice to provide written notice to Patriot either accepting Patriot's calculation or notifying Patriot of any objection.

immediately prior to the respective Semi-Annual Payment Date and calculated without giving effect to such semi-annual cash payment;

provided, further, that each semi-annual cash payment made on any Semi-Annual Payment Date will be reduced dollar for dollar by the Profit Sharing Payments (as defined below) made during the 12-month period ending on the March 31 or September 30 immediately preceding such Semi-Annual Payment Date.

c. to the extent that in any calendar period Patriot's liquidity exceeds the greater of \$125 million or 125 percent of the then applicable minimum liquidity requirements in the debt covenants contained in the agreements governing Patriot's first lien exit facilities (after taking the amount of any such payment into account), 15 percent of net income over \$75 million for 2014 and 2015, and 15 percent of net income over \$150 million for 2016 and beyond, subject to an annual cap of \$75 million and a lifetime cap of \$300 million (the "**Profit Sharing Payments**"); *provided* that, for purposes of the computation of net income, net income shall exclude any non-cash, non-recurring, or extraordinary gains; and

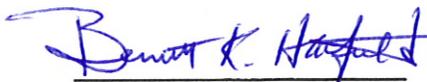
d. beginning as of July 1, 2013, per-ton royalty payments (to be paid quarterly in arrears; provided that the payments in respect of the period from July 1, 2013 through December 31, 2013 shall be paid on or before January 31, 2014) of (i) \$0.20 per ton on annual production up to 23,035,498 tons in 2013, 20,917,872 tons in 2014, 23,025,862 tons in 2015, 24,285,757 tons in 2016, and 24,285,757 tons in each year thereafter, and (ii) \$1.00 per ton on production in excess of the levels set forth for each respective year in clause (i), in each case, with such payments due on all tons produced from all mining complexes Patriot or any of its subsidiaries owns and operates on the Plan Effective Date.

2. Section 3 is hereby amended and restated in its entirety as follows:

3. **Termination.** The UMWA may terminate this Agreement if (x) the Initial Investor Payment is not contributed to the VEBA on or before the Plan Effective Date or (y) an order of the Bankruptcy Court modifies or alters in any way the preceding Section 2 absent the consent of the UMWA.

3. The terms of this Amendment are hereby incorporated into the VFA as though fully set forth therein.

Agreed:


Date: 11/04/2013
For Patriot Coal Corporation


Date: 11/4/13
For the Union

Exhibit B

MOU Amendment

AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING

This Amendment, dated as of November 4, 2013 (this "Amendment"), to the Memorandum of Understanding, dated as of August 26, 2013 (as the same may be further amended, supplemented or otherwise modified from time to time, the "MOU") between the United Mine Workers of America, International Union ("Union"), on behalf of itself and its members, and Patriot, Coal Corporation ("Patriot"), on behalf of itself and as authorized agent for each of its subsidiaries that is signatory to a 2013 Coal Wage Agreement with the Union (the "Signatory Companies"). Capitalized terms used herein but not defined herein are used as defined in the MOU.

WHEREAS, on August 26, 2013, the Parties entered into the MOU;

WHEREAS, on October 24, 2013, (i) Patriot, its affiliates that are debtors and debtors-in-possession, and its non-debtor wholly-owned subsidiaries, (ii) Peabody Energy Corporation and its subsidiaries and affiliates (collectively, "Peabody"), (iii) the Union, on behalf of itself, (iv) the Debtors' Union-represented employees, by and through the Union as their authorized representative, and (v) the Debtors' Union-represented retirees and their eligible dependents, by and through the Union as their authorized representative to the full extent permitted under section 1114 of the Bankruptcy Code, entered into a settlement agreement that resolves all disputes between the parties;

WHEREAS, on October 23, 2013, Patriot and its affiliates that are debtors and debtors-in-possession and Arch Coal, Inc. and its subsidiaries and affiliates (collectively, "Arch"), entered into a settlement agreement that resolves all disputes between the parties; and

WHEREAS, as a result of the foregoing settlements, the Debtors do not currently have any claims or causes of action against Peabody or Arch to transfer to the Litigation Trust; and

WHEREAS, the Parties desire to amend the MOU as set forth below.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL COVENANTS SET FORTH IN THE DEBTORS' PLAN OF REORGANIZATION AND RELATED AGREEMENTS, THE PARTIES AGREE AS FOLLOWS:

1. Section 6 is hereby deleted in its entirety.
2. The terms of this Amendment are hereby incorporated into the MOU as though fully set forth therein.

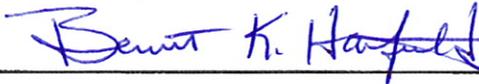
Agreed:



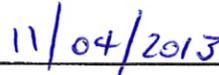
For the Union



Date



For Patriot Coal Corporation
Authorized Agent for:



Date

Heritage Coal Company, LLC
Eastern Associated Coal, LLC
Pine Ridge Coal Company, LLC
Hobet Mining, LLC
Apogee Coal Company, LLC
Highland Mining, LLC
Gateway Eagle Coal Company, LLC
Colony Bay Coal Company
Rivers Edge Mining, Inc.
Mountain View Coal Company, LLC