

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

PATRIOT COAL CORPORATION, *et al.*,

Plaintiffs,

-against-

**PEABODY HOLDING COMPANY, LLC and
PEABODY ENERGY CORPORATION,**

Defendants.

**Chapter 11
Case No. 12-51502-659
(Jointly Administered)**

**Adversary Proceeding
No. 13-04204-659**

**Objection Deadline:
September 17, 2013 at 4:00 p.m.
(prevailing Central Time)**

**Hearing Date (if necessary):
September 24, 2013 at 10:00 a.m.
(prevailing Central Time)**

**Hearing Location:
Courtroom 7, North**

**DECLARATION OF JOHN E. LUSHEFSKI IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION
PURSUANT TO 11 U.S.C. § 105(a)**

John E. Lushefski declares pursuant to 28 U.S.C. § 1746:

1. I am Senior Vice President and Chief Financial Officer for Patriot Coal Corporation (“**Patriot**”), and have served in that capacity since September 2012. From October 2007 through September 2012, I was a member of Patriot’s Board of Directors. As a member of Patriot’s board, at various times I chaired the Compensation Committee and the Finance Committee of Patriot’s board.

2. I submit this declaration in support of the Plaintiffs' Motion for a Preliminary Injunction Pursuant to 11 U.S.C. § 105(a).

3. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge and experience. If called upon to testify, I would testify competently to the facts set forth in this declaration.

4. In my capacity as Senior Vice President and Chief Financial Officer of Patriot, I supervise the company's accounting, tax, internal audit, treasury, operations support, decision analysis, information systems, and investor relations functions. These departments are responsible for all daily, monthly, quarterly, and annual internal and external financial reports, tax compliance, banking, cash management, payroll, budgeting, planning, capital spending, financial analysis, desktop and mobile communications, and relations with the company's lenders and investors.

5. As Senior Vice President and Chief Financial Officer, the departments I supervise are the primary liaison with the company's reorganization and bankruptcy financial advisors, Blackstone Advisory Partners L.P. and AP Services, LLP. All financial reports, specifically required by the bankruptcy process, which include weekly, monthly, quarterly, and annual reports, are prepared and filed by employees in the departments I oversee. All the financial information that is requested from the Uniform Creditors Committee, the debtor-in-possession lenders and their advisors, the United Mine Workers of America (the "UMWA") and their advisors, and Patriot's financial and legal advisors is provided by these same employees. In addition, any financial or operational information requested by prospective investors in the reorganized Patriot is provided by the departments I supervise.

6. Since filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code on July 9, 2012, Patriot and its affiliated debtors (collectively, the “**Debtors**”) have made substantial progress toward emerging from bankruptcy as a successfully reorganized company, and are currently on track for a successful reorganization.

7. Among other milestones in the Debtors’ bankruptcy, the Debtors have successfully:

- (a) obtained approval of an \$802 million debtor-in-possession credit facility, which has financed the Debtors’ operations during these chapter 11 cases (the “**DIP Financing**”);
- (b) negotiated relief from the DIP Financing’s EBITDA covenant to ensure that the Debtors would not default;
- (c) obtained the Bankruptcy Court’s authority to modify their collective bargaining agreements and retiree obligations pursuant to sections 1113 and 1114 of the Bankruptcy Code;
- (d) achieved a settlement with the non-union retiree committee regarding the modification and termination of certain non-union retiree benefits;
- (e) obtained the Bankruptcy Court’s authorization to terminate the Debtors’ supplemental 401(k) program;
- (f) rejected over 265 executory contracts that were determined to not be beneficial to the Debtors’ estates;
- (g) completed the Debtors’ real property leases assumption/rejection process, with the exception of certain matters currently pending before the Bankruptcy Court;
- (h) addressed numerous creditor, supplier, and customer inquiries;
- (i) successfully defeated a motion to appoint an official committee of equityholders, and a motion to appoint a chapter 11 trustee;
- (j) finalized and filed the Debtors’ schedules of assets and liabilities, income and expenditures, and executory contracts and unexpired leases, and their statements of financial affairs;

- (k) established a bar date for the filing of claims, and worked to reconcile the more than 4,100 proofs of claim filed in these cases;
- (l) objected to over 890 claims;
- (m) negotiated claim settlement agreements with certain claimants (including with respect to significant environmental obligations), and entered into claim settlement agreements resolving over 1,000 disputed claims; and
- (n) developed and obtained the Bankruptcy Court's approval of an annual incentive program and critical employee retention program.

8. In addition, just weeks ago, the Debtors and the UMWA reached a consensual resolution regarding modification of the Debtors' collective bargaining agreements and the funding of a trust for certain benefits of the Debtors' represented retirees (the "**1113 and 1114 Settlements**").

9. Despite the Debtors' significant steps toward a successful reorganization, certain critical near-term objectives must be achieved before a plan of reorganization can be filed and presented for the Bankruptcy Court's confirmation.

10. The deadlines for achieving those near-term objectives are approaching: the Debtors' exclusive period within which to file a plan of reorganization is set to expire on December 1, 2013, and the Debtors' exclusive period within which to solicit acceptances of a plan of reorganization is set to expire on January 30, 2014.

11. In addition to these deadlines, the covenants of the Debtors' DIP Financing impose additional time-sensitive obligations on the Debtors. The Debtors must, for example, secure committed exit financing by October 31, 2013.

12. Further, under the terms of the DIP Financing, a plan of reorganization acceptable to the debtor-in-possession lenders must be filed by September 20, 2013 in order for the Debtors to receive an extension on the maturity date of the DIP Financing.

If the Debtors do not file a plan by September 20, the DIP Financing will mature on October 4, 2013. Even with an extension, however, the DIP Financing will mature on December 31, 2013.

13. Accordingly, the Debtors must secure confirmation of a plan of reorganization with sufficient time to allow the plan to become effective and replace the DIP Financing with emergence financing by December 31, 2013. And so, even without the September 20, 2013 deadline to file a plan, the Debtors would still be required to file a confirmable plan of reorganization and disclosure statement well in advance of December 31, 2013, to allow for a sufficient solicitation period, consideration of plan objections, and a confirmation hearing.

14. To meet those statutory and contractual deadlines, the Debtors' financial, legal, and corporate development departments are in the process of developing, drafting, and negotiating a plan of reorganization and comprehensive disclosure statement, which requires considerable time and energy. I understand that a chapter 11 disclosure statement for a large company usually contains information very much like the information included in a proxy or registration statement. I am informed that a typical disclosure statement will include, among other things, a liquidation analysis and financial projections, as well as information regarding the company's new corporate and capital structures, exit financing, recoveries to creditors and corporate governance (including management and the board of directors for the reorganized companies). These important tasks require the full attention of the Debtors' management team, the Debtors' legal and finance department, and the Debtors' financial and legal advisors.

15. As part of the plan development process, the Debtors are currently engaged in active discussions with Knighthood Capital Management, LLC and Aurelius Capital Management, LP on the potential terms of a plan of reorganization that would involve an investment of hundreds of millions of dollars into the Debtors' estates through a rights offering backstopped by entities managed by those parties. I have personally participated in these discussions on behalf of the Debtors.

16. The Debtors are also in discussions with certain other parties regarding exit financing proposals that could potentially provide the Debtors the capital they need to fund the distributions required under the plan and emerge as a viable and competitive company. Key members of the Debtors' management team, including myself, and the Debtors' financial advisors have had introductory meetings with several debt-financing providers and have populated a data room to aid in their diligence process. We have also had discussions with a number of potential equity investors. These discussions involved meetings, conference calls, and the provision of diligence materials to aid potential investors in their review of the Debtors' businesses. These efforts have required, and will continue to require, a significant amount of management attention, including: continually populating data rooms with relevant diligence materials and updated financial and operational information; responding to information requests from multiple potential debt and equity financing sources; conducting meetings and diligence calls with potential debt underwriters and equity investors; and negotiating debt and equity investments terms.

17. Under any financing scenario, the Debtors intend to—and must—move expeditiously toward plan confirmation with the best available financing package in order to adhere to the timeline required by the DIP Financing.

18. Even after committed financing is obtained and the plan and disclosure statement are drafted and filed, the Debtors will be required to dedicate substantial resources to soliciting votes from various creditor constituencies to obtain approval for a plan, which will require the Debtors and their advisors to educate creditor groups about the business and its prospects, the plan of reorganization and creditor recoveries, and any potential strategic alternatives, and resolve any objections to the Debtors' proposed plan.

19. All the while, the Debtors and their advisors must be mindful of the financial covenants of the DIP Financing, including a \$100 million liquidity covenant. While the Debtors have actively sought investors to inject liquidity into the company, they cannot risk violating that covenant through unplanned and unnecessary expenses.

20. Completing all of these endeavors by the requisite deadlines has required and will continue to require the constant engagement and the full attention of senior members of the Debtors' management team, the Debtors' legal and finance departments, and the Debtors' financial and legal advisors.

21. Joseph Bean, Patriot's General Counsel is responsible for managing the Debtors' legal, administrative, and human resources departments. He is extensively involved in all aspects of the Debtors' bankruptcy; among his current responsibilities are overseeing the development and drafting of the plan of reorganization and disclosure statement, working with the Debtors' finance department and outside advisors on the financial structure of the plan; monitoring the Debtors' compliance with the covenants of the DIP Financing; and assessing the Debtors' ongoing litigation with Peabody. He also played a central role in the Debtors' negotiations with the UMWA. I have personally

observed that all of these responsibilities relating to the Debtors' restructuring consume the vast majority—if not all—of Mr. Bean's time.

22. I have reviewed the subpoena served on the Debtors by Peabody Holding Company, LLC and Peabody Energy Corporation (together, "**Peabody**"), which demands that Patriot produce documents responsive to 57 individual requests by September 6, 2013 (the "**Subpoena**").

23. While the bulk of the work reviewing documents called for by the Subpoena and preparing them for production would of course be done by outside counsel and third-party vendors, I believe that complying with the Subpoena would consume a large amount of the Debtors' management team's time.

24. Complying with the Subpoena will, for example, require Patriot's legal department to work continually with outside counsel to determine the scope of Peabody's document requests.

25. In addition, because a substantial percentage of Peabody's requests are aimed at financial projections, historical coal pricing, and forecasts relating to the 2007 spinoff of Patriot from Peabody and Patriot's 2008 acquisition of Magnum, complying with the Subpoena will require Patriot's finance department to invest substantial resources to locate historical financial documents and help explain the import of these plans and projections to outside counsel. I expect that I would be required to dedicate significant time to working with Patriot's legal department and outside counsel to parse the requests, and even more time to directing the process of locating and interpreting potentially responsive documents.

26. These substantial time commitments will divert my attention, and the attention of Mr. Bean and Patriot's legal department from completing the work that is essential to the Debtors' reorganization and maintenance of their daily operations.

27. Complying with the Subpoena will be costly in other respects, too. Based on the Debtors' past experience in responding to the UMWA's information requests over the course of the 1113/1114 process and other discovery requests, I understand that responding to the Subpoena would likely involve the review and production of hundreds of thousands of documents. This process would cost, at a minimum, hundreds of thousands of dollars, and could potentially cost millions of dollars. It would also require thousands of hours of labor.

28. The significant projected cost of complying with the Subpoena was factored into neither the above-mentioned liquidity covenants of the Debtors' DIP Financing nor the Debtors' business plan itself.

29. Given their current financial condition, the Debtors cannot afford to expend such sums to comply with the Subpoena. Indeed, the Debtors have already sought and obtained relief from the covenants of their DIP Financing, and they have been actively seeking investors to inject liquidity into the company.

30. In sum, the risk posed by the Subpoena poses a threat to the Debtors' reorganization effort at a particularly inopportune time.

31. I, John E. Lushefski, declare under penalty of perjury that the foregoing is true and correct.

/s/ John E. Lushefski
John E. Lushefski
Senior Vice President & Chief Financial Officer
Patriot Coal Corporation

Dated: September 3, 2013
St. Louis, Missouri