Post-Hearing Memorandum Filing Deadline: October 5, 2012 at 4:00 p.m. (EST)

ANDREWS KURTH LLP
Paul N. Silverstein (PS 5098)
Jonathan I. Levine (JL 9674)
Jeremy B. Reckmeyer (JR 7536)
450 Lexington Avenue, 15th Floor
New York, New York 10017
Telephone: (212) 850-2800
Facsimile: (212) 850-2929

Counsel to Wilmington Trust Company, as Indenture Trustee for 8.25% Senior Notes Due 2018

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
PATRIOT COAL CORPORATION, *et al.*,	:	Case No. 12-12900 (SCC)
Debtors.	:	(Jointly Administered)

POST-HEARING MEMORANDUM OF WILMINGTON TRUST COMPANY, AS INDENTURE TRUSTEE, IN OPPOSITION TO MOTIONS TO TRANSFER VENUE

TO: THE HONORABLE SHELLEY C. CHAPMAN,
UNITED STATES BANKRUPTCY JUDGE

Wilmington Trust Company ("Wilmington"), the largest unsecured creditor in these cases in its capacity as indenture trustee for $250 million principal amount of 8.25% Senior Notes due 2018 (the "Senior Notes") issued by Patriot Coal Corporation ("Patriot") and guaranteed by each of the other above-captioned debtors and debtors in possession (together with Patriot, the "Debtors"),[1] by its undersigned counsel, submits this post-hearing memorandum (this "Brief") in

[1] In addition to Patriot Coal Corporation, the Debtors are as follows: (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) Brook Trout Coal, LLC; (11) Catenary Coal Company, LLC; (12) Central States Coal Reserves of Kentucky, LLC; (13) Charles Coal Company, LLC; (14) Cleaton Coal Company; (15) Coal Clean LLC; (16) Coal Properties, LLC; (17) Coal Reserve Holding Limited Liability Company No. 2; (18) Colony Bay Coal Company; (19) Cook Mountain Coal Company, LLC; (20) Corydon Resources LLC; (21) Coventry Mining

support of its Joinder [Docket No. 476] (the "Joinder")[2] to the objections filed by the Debtors and the Committee [Docket Nos. 424, 425] (together with the Joinder, the "Objections") in opposition to the (a) Corrected Motion of the United Mine Workers of America Pursuant to 28 U.S.C. § 1412 and Rule 1014, Fed. R. Bankr. Proc., to Transfer the Case to the Southern District of West Virginia [Docket No. 127] (the "UMWA Motion"), (b) Sureties' Motion to Transfer Jointly Administered Cases to Southern District of West Virginia [Docket No. 287] (the "Sureties Motion") and (c) United States Trustee's Motion, Pursuant to 28 U.S.C. § 1412 and Fed. R. Bankr. P. 1014(A)(1), to Transfer Venue Of These Cases in the Interest of Justice [Docket No. 406] (the "U.S. Trustee Motion") and, together with the UMWA Motion and the Sureties Motion, the "Venue Motions"). In support thereof, Wilmington respectfully represents:

Services, LLC; (22) Coyote Coal Company LLC; (23) Cub Branch Coal Company LLC; (24) Dakota LLC; (25) Day LLC; (26) Dixon Mining Company, LLC; (27) Dodge Hill Holding JV, LLC; (28) Dodge Hill Mining Company, LLC; (29) Dodge Hill of Kentucky, LLC; (30) EACC Camps, Inc.; (31) Eastern Associated Coal, LLC; (32) Eastern Coal Company, LLC; (33) Eastern Royalty, LLC; (34) Emerald Processing, LLC; (35) Gateway Eagle Coal Company, LLC; (36) Grand Eagle Mining, LLC; (37) Heritage Coal Company LLC; (38) Highland Mining Company, LLC; (39) Hillside Mining Company; (40) Hobet Mining, LLC; (41) Indian Hill Company LLC; (42) Infinity Coal Sales, LLC; (43) Interior Holdings, LLC; (44) IO Coal LLC; (45) Jarrell's Branch Coal Company; (46) Jupiter Holdings LLC; (47) Kanawha Eagle Coal, LLC; (48) Kanawha River Ventures I, LLC; (49) Kanawha River Ventures II, LLC; (50) Kanawha River Ventures III, LLC; (51) KE Ventures, LLC; (52) Little Creek LLC; (53) Logan Fork Coal Company; (54) Magnum Coal Company LLC; (55) Magnum Coal Sales LLC; (56) Martinka Coal Company, LLC; (57) Midland Trail Energy LLC; (58) Midwest Coal Resources II, LLC; (59) Mountain View Coal Company, LLC; (60) New Trout Coal Holdings II, LLC; (61) Newtown Energy, Inc. (62) North Page Coal Corp.; (63) Ohio County Coal Company, LLC; (64) Panther LLC; (65) Patriot Beaver Dam Holdings, LLC; (66) Patriot Coal Company, LP; (67) Patriot Coal Sales LLC; (68) Patriot Coal Services LLC; (69) Patriot Leasing Company LLC; (70) Patriot Midwest Holdings, LLC; (71) Patriot Reserve Holdings, LLC; (72) Patriot Trading LLC; (73) PCX Enterprises, Inc.; (74) Pine Ridge Coal Company, LLC; (75) Pond Creek Land Resources, LLC; (76) Pond Fork Processing LLC; (77) Remington Holdings LLC; (78) Remington II LLC; (79) Remington LLC; (80) Rivers Edge Mining, Inc.; (81) Robin Land Company, LLC; (82) Sentry Mining, LLC; (83) Snowberry Land Company; (84) Speed Mining LLC; (85) Sterling Smokeless Coal Company, LLC; (86) TC Sales Company, LLC; (87) The Presidents Energy Company LLC; (88) Thunderhill Coal LLC; (89) Trout Coal Holdings, LLC; (90) Union County Coal Co., LLC; (91) Viper LLC; (92) Weatherby Processing LLC; (93) Wildcat Energy LLC; (94) Wildcat, LLC; (95) Will Scarlet Properties LLC; (96) Winchester LLC; (97) Winifrede Dock Limited Liability Company; and (98) Yankeetown Dock, LLC. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

[2] Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Joinder.

THE VENUE MOTIONS SHOULD BE DENIED

I. VENUE IS UNQUESTIONABLY PROPER IN THIS DISTRICT

1. Under 28 U.S.C. § 1408(1), a case is properly venued in a district in which the debtor maintains its "domicile, residence, principal place of business in the United States, or principal assets in the United States . . . ." Under 28 U.S.C. § 1408(2), venue is proper in a district where "there is pending a case under title 11 concerning such person's affiliate."

2. In the Venue Motions and at the hearing held before this Court on September 11 and 12, 2012 thereon (the "Venue Hearing"), Movants conceded that venue was proper in this district. *See, e.g.*, UMWA Motion, at ¶17; Sureties Motion, at 2; U.S. Trustee Motion, at 2; Transcript, September 12, 2012 Hearing (hereinafter, "Tr., September 12 Hg."), at 211-12. Movants also conceded that the Debtors filed these cases in this district in "good faith." *See* Transcript, September 11, 2012 Hearing (hereinafter, "Tr., September 11 Hg."), at 69; *Id.*, at 113-14; Tr., September 12 Hg., at 12 - 15.

3. Because venue is unquestionably proper in this district under 28 U.S.C. § 1408, the sole issue before the Court is whether to transfer these cases under 28 U.S.C. § 1412. Under section 1412, a court may transfer venue of a chapter 11 case if such transfer would be "in the interest of justice" or "for the convenience of the parties." It is well settled that the party moving for change of venue, however, bears a heavy burden of proof. *See In re Manville Forest Products, Inc.*, 896 F.2d 1384, 1390 (2d Cir 1990); *Capmark Fin. Group Inc. v. Goldman Sachs Credit Partners L.P.*, 11 CIV. 7511, 2012 WL 698134 (S.D.N.Y. Mar. 5, 2012).[3]

[3] A debtor's choice of venue is entitled to "great weight," *In re Enron Corp.*, 274 B.R. 327, 342 (Bankr. S.D.N.Y. 2002) ("Enron I"), and a court should exercise its power to transfer venue "cautiously." *Matter of Commonwealth Oil Ref. Co., Inc.*, 596 F.2d 1239, 1241 (5th Cir. 1979).

4. As the evidentiary record here demonstrates, Movants failed, at the Venue Hearing and in the Venue Motions, to meet their heavy burden to establish grounds for transfer under 28 U.S.C. § 1412. Indeed, the record conclusively establishes that, under applicable legal standards, transfer of the venue would be *improper*. The Venue Motions should be denied.

II. MOVANTS FAILED TO ESTABLISH THAT TRANSFER OF VENUE WOULD BE CONVENIENT FOR PARTIES IN INTEREST

5. Movants failed even to remotely establish that transfer of venue out of this district would be more convenient for the parties. When determining whether transfer of venue would be proper for the "convenience of the parties," courts generally consider six factors: "(1) the proximity of creditors of every kind to the court;[4] (2) the proximity of the bankrupt (debtor) to the court; (3) the proximity of witnesses necessary to administration of the estate; (4) the location of the assets;[5] (5) the economic administration of the estate;[6] [and] (6) the necessity for ancillary administration…" *In re Garden Manor Assocs., L.P.*, 99 B.R. 551, 553 (Bankr. S.D.N.Y. 1988) (internal quotations) omitted); *see also* Enron I, 274 B.R. at 343.

6. Movants failed to meet their substantial burden to show that it would be more convenient for the parties in interest to transfer these cases outside of this district under the factors set forth above. As this Court recognized at the Venue Hearing, Movants introduced little (if any) evidence to show that, under the standards or factors identified above, transfer of these

[4] When considering proximity of creditors, courts take into account the amount of the claims held by creditors, with emphasis on the interests of the largest creditors. *Commonwealth Oil*, 596 F.2d at 1248; Enron I, 274 B.R. at 345 ("In considering the proximity of creditors, this Court must examine both the number of creditors as well as the amount of claims held by such creditors."); *In re Suzanne de Lyon, Inc.*, 125 B.R. 863, 868 (Bankr. S.D.N.Y. 1991) ("As the creditors with the most to lose from this bankruptcy, they are the true interested parties in this case and their opinion as to what would be most convenient for them carries great weight. . . .").

[5] Courts place "little emphasis on the location of the assets" and "discount[ ] the consideration concerning ancillary administration." *See* Enron I at 344 & n.14.

[6] Of the six "Enron I" factors, the "economic administration of the estate" is the most important. Enron I, 274 B.R. at 343.

cases would be convenient for parties in interest in these cases.[7] *See, e.g.*, Tr., September 12 Hg. at 408. The Debtors and other objecting parties introduced evidence that transfer of these cases to the Southern District of West Virginia (or any other district) would not only be inconvenient for parties in interest in these cases, but that such transfer would likely hinder the efficient and economic administration of the Debtors' estates. *See* Schroeder Decl.;[8] *See* Kaye Decl.;[9] *see also* Tr., September 12 Hg., at 409.

7. Moreover, the Debtors' creditor constituencies, including holders of a substantial majority of secured and unsecured claims, overwhelmingly objected to transfer of these cases. Such creditors include Wilmington (in its capacity as indenture trustee, the largest unsecured creditor of all Debtors in these cases), the DIP Lenders, a significant number of the Debtors' top fifty (50) unsecured claim holders, a majority of the Debtors' top five (5) secured creditors, numerous trade creditors, leaseholders and others. *See, e.g.*, Tr., September 12 Hg., at 156-57. Such support for retaining venue in this district was reflected by, among other things, the number of creditors (in claim and amount) that objected to the Venue Motions. *Id*.

---

[7] Although the UMWA introduced a declaration stating that certain miners and retirees live in West Virginia, Buckner Decl., at ¶ 5, UMWA employees represent only 42% of the Debtor's employees. In addition, only 38% of the Debtors' retirees live in West Virginia. Schroeder Decl., at ¶¶ 39, 40. The remaining Movants offered minimal evidence with respect to convenience of the parties. *See, e.g.*, Schwartz Decl.

[8] Establishing, among other things, that (i) the Debtors' largest unsecured creditor, Wilmington, is not located in West Virginia; (ii) forty of the Debtors' largest unsecured creditors, holding approximately 98% of the Debtors' unsecured claims pool, are located outside of West Virginia; (iii) none of the Debtors' five largest secured creditors is located in West Virginia; (iv) no member of the Committee is located in West Virginia; (v) all of the Debtors' DIP Agents and Joint Lead Arrangers are based outside of West Virginia (with three of five lenders headquartered in New York); (vi) none of the Debtors' directors is from West Virginia; (vii) the Debtors' corporate headquarters and executive offices are located outside of West Virginia; (viii) a majority of the Debtors' management team is located outside of West Virginia; and (ix) virtually all of the Debtors' pre-petition debt instruments, and both of their DIP agreements, which collectively total over $1.25 billion, are governed by New York law or contain a New York forum selection clause).

[9] Establishing that New York clearly is more accessible and cost-efficient to virtually all of the interested parties in these cases than West Virginia.

8. In contrast, Movants hold a very small number of claims (certain of which are contingent) against a limited subset of the Debtors. The UMWA only holds claims against nine of the Debtors. *See* Schroeder Decl., at ¶ 38 ("Nine of the ninety-nine chapter 11 debtors are signatories to collective bargaining agreements."). The Sureties' claims only represent potential liability and may never accrue or ripen. *See* Tr., September 12 Hg., at 18 - 20. The number of creditors (in claim and amount) that support transfer of venue outside of this district is minimal compared to the number of creditors that believe it would be more convenient to remain here.

9. The record here demonstrates that there is little (if any) question that transfer of these cases to West Virginia (or elsewhere) would not be convenient for the substantial majority of parties in interest in these cases. Although transfer of venue may arguably be convenient for a small, limited number of creditors, this Court should not grant Movants' attempt to shift inconvenience away from themselves to the vast majority of the other interested parties in these cases.

III. MOVANTS FAILED TO ESTABLISH THAT TRANSFER OF VENUE WOULD BE IN THE INTEREST OF JUSTICE

10. Movants also failed to establish that transfer of these cases would be in the "interest of justice." The governing standard with respect to whether the "interest of justice" prong supports transfer of venue is whether transfer "will promote the efficient administration of the estate, judicial economy, timeliness and fairness." *In re Enron Corp.*, 284 B.R. 376, 403 (Bankr. S.D.N.Y. 2002) ("Enron II") (citing *Gulf States Exploration Co. v. Manville Forest Prods. Corp.(In re Manville Forest Prods. Corp.),* 896 F.2d 1384, 1391 (2d Cir. 1990). The standard is broad and flexible and should be applied based on the facts and circumstances of a particular case. *Id*.

11. Movants introduced no evidence whatsoever to show that transfer of these cases would promote the efficient administration of the estate, judicial economy or timeliness. Instead, Movants effectively argued solely on "fairness" grounds. In short, Movants' arguments "boil down" to two things: (i) because certain of the Debtors' coal mines and employees are located in West Virginia, failure to transfer to that district would be unfair to those unionized employees, and (ii) because the Debtors took steps prior to the bankruptcy filing to establish venue in New York in compliance with 28 U.S.C. § 1408, allowing these cases to remain in this district would be unjust. Neither of these arguments is persuasive.

12. First and foremost, transfer of these cases would hinder efficient administration of these cases, would not preserve judicial economy and would likely delay these cases. Although, as this Court well recognized at the Venue Hearing, there is no reason to believe that bankruptcy courts outside of this district would be incapable (or less capable) of efficiently and effectively addressing issues that arise in these cases, any court (whether in West Virginia or elsewhere) would need to apprise itself of the specific facts and issues present here, likely involving unnecessary and duplicative time and effort. Movants have woefully failed to provide *any* evidence that this Court would be less capable than other courts of addressing the case issues presented because of a lack of familiarity with "local" coal and environmental issues. No one could, with a straight face, argue such a proposition.

13. In addition to being "up to speed" on the facts and issues present here, this Court has the experience and expertise necessary to address the issues that arise (or have arisen) in these cases. This Court has extensive experience in cases involving coal (and other energy) companies, as well as cases involving complex labor issues. Moreover, it is not uncommon for bankruptcy cases to be venued in districts that have experience handling large, complex

bankruptcy cases and, significantly, where principal parties in interest (including creditors and professionals) are located. The Southern District of New York is certainly such a venue.

14. Many, if not a majority, of the parties in interest in these cases have their primary counsel and other professionals located in New York (many of which were engaged prior to any contemplation of the Debtors' bankruptcy filing and many of which are being compensated by the Debtors' estates). If these cases were transferred, many (if not all) of these parties would need to hire additional counsel and/or other professionals (whether as a substitute for New York counsel/professionals or in addition thereto). In addition to being unnecessarily duplicative, such a process would undoubtedly be costly for the Debtors' estates and other parties in interest.

15. Further, keeping these cases in this district is not "unfair" simply because certain of the Debtors' assets and employees are located in West Virginia. Although the "coal is in the ground," so to speak, in West Virginia, and the Debtors' employees, including those resident in West Virginia, are certainly an important constituency in these cases, as noted above, the Debtors have extensive ties to this district (in addition to being domiciled here). *See* Schroeder Decl.; Tr., September 12 Hg., at 231-32. In addition, although certain individual mine workers may, apparently, want to "pack the courtroom" in West Virginia, that is no basis for transfer of venue. The Debtors' unionized employees are represented by a single representative - - the UMWA - - and it is that representative which is their exclusive agent which will be responsible for advocating on their behalf in these cases. That that representative is not even located in West Virginia - - it is located outside of Washington D.C. - - belies Movants' arguments that retaining the cases here would be unfair to parties in West Virginia.

16. Another of Movants' arguments (and the sole grounds for transfer proposed by the U.S. Trustee) is that the Debtors "forum-shopped" or somehow "manipulated" venue

requirements by forming the New York Debtors for the purpose of complying with the venue statute. In addition to being inconsistent with the applicable governing standard, this argument fails for several reasons.

17. The venue statute is clear and unambiguous and expressly does not prohibit what the Debtors did here. As this Court noted, domicile as a basis for bankruptcy venue has been "on the books" since the 19th century. *See, e.g.*, Tr., September 12 Hg., at 27 ("the notion of domicile as a predicate for venue in bankruptcy cases goes back to the nineteenth century…"). Movants concede that the Debtors' steps to establish venue, and the Debtors' decision to file, in this district were made in good faith. *See* Tr., September 11 Hg., at 69; *Id*., at 113-14; Tr., September 12 Hg., at 12-15. It appears that Movants do not have an issue with the Debtors' actions, they have an issue with the venue statute. This Court, however, is not the proper arbiter of whether that statute should be changed. That is a legislative matter and if Congress wants to amend the statute to either remove domicile as a basis for jurisdiction, it certainly can.

18. The Debtors are charged with a fiduciary responsibility to maximize the value of their estates for the benefit of creditors and other parties in interest. Here, the record shows that the Debtors took extensive steps to analyze which forum gave them the best chance to reorganize and maximize the value of the respective estates. *See, e.g.*, Tr., September 12 Hg., at 406-8. They chose to file petitions in this district precisely because they concluded that this district maximized their chances for an effective and successful reorganization. *See* Schroeder First Day Decl., at ¶43 (the Debtors chose this venue based upon their appraisal of "the best interests of the Debtors, their creditors and other stakeholders and [the] estates" and their conclusion that "the costs and inefficiency of the administration of the estates would have been materially increased if the cases were commenced in another district."). The Debtors should not then be penalized

because they took steps precisely in order to comply with the venue statute. Indeed, it would appear counter-intuitive (if not flat out unjust) to transfer these cases "in the interests of justice" *on the sole basis* that the Debtors complied with the letter of the law.

19. Another issue that Movants have argued supports transfer of these cases is the possible precedential impact of a ruling allowing these cases to remain in this district. Movants have claimed that, if this Court does not transfer these cases, it would have a broad, sweeping and unavoidable impact (such that companies seeking to reorganize could file anywhere in the United States without having any ties whatsoever to that jurisdiction). *See, e.g.*, Tr., September 12 Hg., at 14-15. So long as domicile (or state of formation) remains a statutory basis for venue, this so-called "precedential" impact will exist, and New York and Delaware will likely continue to attract large and complex cases. The point, however, is that the "interest of justice" prong is a fact and circumstances inquiry. This Court's ruling here is, by definition, limited to the present facts and circumstances. The facts here show that, contrary to Movants' assertions (and the caselaw relied upon by them), the Debtors have numerous and important ties to this district. *See, e.g.*, Schroeder Decl.; Tr., September 12 Hg., at 231-32. These ties, in addition to the Debtors' compliance with the terms of the venue statute, make it entirely proper for the Court to allow these cases to remain in this district.

20. In sum, it cannot be in the "interest of justice" to transfer these cases when (i) *all* parties concede that venue is, in the first instance, proper in this district and the Debtors filed their cases in good faith, (ii) the primary interested parties in these cases (including the Debtors, the Committee and a substantial majority of the Debtors' creditors) object to the transfer of venue, and (iii) the costs to the Debtors' estates and their creditors and delay in administration of these cases would likely be material in the event of a transfer of venue. Movants' arguments

cannot outweigh the convenience to all parties and the efficiencies presented by allowing these cases to remain in New York, a proper venue under the statute.

21. Movants have not met, and cannot meet, their heavy burden to show that it would be more convenient for parties in interest or in the interest of justice to transfer venue out of the Southern District of New York to West Virginia (or any other district). For the reasons set forth herein, in the Objections and presented at the Venue Hearing, and on the basis of the record before it, the Court should deny the Venue Motions.

Dated: October 5, 2012
New York, New York

Respectfully submitted,

ANDREWS KURTH LLP

By: Paul N. Silverstein

Paul N. Silverstein (PS 5098)
Jonathan I. Levine (JL 9674)
Jeremy B. Reckmeyer (JR 7536)
450 Lexington Avenue, 15th Floor
New York, New York 10017
Telephone: (212) 850-2800
Facsimile: (212) 850-2929

Counsel to Wilmington Trust Company, as Indenture Trustee for 8.25% Senior Notes Due 2018