

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 607-7983
Marshall S. Huebner
Damian S. Schaible
Elliot Moskowitz
James I. McClammy

*Counsel to the Debtors
and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 12-12900 (SCC)

(Jointly Administered)

DEBTORS' PROPOSED FINDINGS OF FACT

In connection with three pending motions to transfer venue [Dkt. Nos. 127, 287, 407 (the “**Motions**”)] and the hearing that occurred on September 11 and 12, 2012, the Debtors respectfully submit the following proposed findings of fact, virtually all of which are undisputed. The five parties listed on **Exhibit A** hereto, each of whom was invited by the Court to file a post-hearing pleading, join in this submission.

I. The Parties and the Procedural History

1. On July 9, 2012 (the “**Petition Date**”), Patriot Coal Corporation (“**Patriot**”) and those of its subsidiaries that are debtors and debtors in possession in the above-captioned chapter

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.

11 cases (collectively, the “**Debtors**”), each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A total of ninety-nine entities filed for chapter 11 relief. (Schroeder First Day Decl. ¶ 4 & Exhibit 1.)

2. On July 18, 2012, the United Mine Workers of America (the “**Union**”) filed a motion to transfer the above-captioned chapter 11 cases to the Southern District of West Virginia. On July 19, 2012, the Union filed a corrected version of the motion. [Dkt. Nos. 116, 127.]

3. The Union’s motion to transfer venue was initially scheduled to be heard on August 2, 2012. [Dkt. No. 127.]

4. On July 25, 2012, by agreement of the Debtors, the Official Committee of Unsecured Creditors (the “**Creditors’ Committee**”), and the Union, the hearing to consider the Union’s motion was adjourned to September 11, 2012. [Dkt. No. 183.]

5. On July 26, 2012, the Debtors filed a notice setting relevant deadlines. Pursuant to that notice, all joinders to the Union’s motion were to be filed by August 20, 2012, all objections to the Union’s motion were to be filed by August 24, 2012, and any reply by the Union or joinder to any objection was to be filed by August 29, 2012. [Dkt. No. 196.]

6. On August 7, 2012, Argonaut Insurance Company, Indemnity National Insurance Company, US Specialty Insurance, and Westchester Fire Insurance Company (together, the “**Sureties**”) filed a motion to transfer the above-captioned chapter 11 cases to the Southern District of West Virginia. [Dkt. No. 287.] The Sureties motion’ and the Union motion were placed on the same schedule and the two were to be addressed at a single hearing. [Dkt. No. 317.]

7. August 20, 2012 at 4:00 p.m. was the deadline for filing joinders to the Union's motion and the Sureties' motion. [Dkt. No. 196.] Two joinders and one "Notice" in support were filed on or before the deadline. Two joinders were filed after the August 20, 2012 deadline. See *infra* at ¶¶ 123-128.

8. On August 22, 2012, the United States Trustee (the "**U.S. Trustee**") filed a motion for entry of an order transferring the above-captioned chapter 11 cases "to a district where venue is proper." [Dkt. Nos. 406, 407.]

9. On August 23, 2012, the Court directed the parties to adjust the briefing schedule as follows: all objections and responses to the Motions by the Debtors and by the Creditors' Committee were to be filed by August 27, 2012 at 11:59 p.m.; any replies by the Movants² were to be filed by August 31, 2012 at 11:59 p.m.; and any joinders to any objection were to be filed by August 31, 2012 at 11:59 p.m. Pursuant to this notice, the U.S. Trustee's Motion was placed on the same schedule as the earlier-filed Motions and would be addressed at the September 11, 2012 hearing. [Dkt. No. 409.]

10. On August 27, 2012, the Debtors' filed an objection to the Motions [Dkt. No. 425 ("**Debtors' Objection**")] and a declaration from Patriot's Senior Vice President and Chief Financial Officer. (Declaration of Mark N. Schroeder in Opposition to (i) Motion of the United Mine Workers of America to Transfer the Case to the Southern District of West Virginia, (ii) Sureties' Motion to Transfer Jointly Administered Cases to Southern District of West Virginia, and (iii) Motion of the United States Trustee to Transfer in the Interest of Justice, dated Aug. 27, 2012 [Dkt. No. 426] ("**Schroeder Venue Decl.**").³)

² Capitalized terms not defined herein have the meaning ascribed to them in the Debtors' Objection.

³ Mr. Schroeder's present title is Senior Vice President of Financial Planning. Patriot's new Chief Financial Officer is John E. Lushefski.

11. On August 27, 2012, two additional objections to the Motions were filed:

(a) The Creditors' Committee filed an objection to the Motions and the Declaration of Jordan Kaye in Support of the Creditors' Committee Objection (“**Kay Decl.**”). [Dkt. No. 424, 424-1; see infra at ¶ 131.]

(b) Citibank, N.A., as administrative agent for the new money lenders and letter of credit issuers (the “**First Out DIP Lenders**”) under that certain Superpriority Secured Debtor-in-Possession Credit Agreement, dated as of July 9, 2012, filed an objection to the Motions and a joinder to the Debtors' objection. [Dkt. No. 427; see infra at ¶ 132.]

12. August 31, 2012 at 11:59 p.m. was the deadline for filing joinders to the objections. Thirty-five joinders to the Debtors' Objection were filed before the deadline. See infra at ¶ 133 & Ex. B.

13. On September 10, 2012, all of the Movants, the Debtors, and the Creditors' Committee filed a Stipulation of Facts for the Purposes of a Hearing on the Motions to Transfer Venue. (Stipulation of Facts for the Purposes of a Hearing on the Motions to Transfer Venue, dated Sept. 10, 2012 [Dkt. No. 546] (the “**Stipulation**”).).

14. Pursuant to the Stipulation, the parties agreed “that the declarations . . . and exhibits submitted by the Parties in connection with the Motions and the responses thereto may be admitted into evidence.” The parties also stipulated to the admission of the Schroeder First Day Declaration and certain other documents identified therein. (Stipulation ¶ 1.) The parties further “agreed to not examine (either through direct or cross) any of the declarants, including with respect to the: (i) Stipulation of Facts, (ii) documents listed in the Stipulation of Facts, or

(iii) Declarations and exhibits annexed thereto, and the facts contained therein are stipulated to expressly by the Parties.” (Stipulation ¶ 2.)

15. As a result of the Stipulation, none of the facts submitted by any of the parties was contested and every fact contained in these Proposed Findings of Fact was stipulated to by the parties. No party-in-interest served a single document request or deposition subpoena or requested any discovery from the Debtors or from any other party. Prior to the second day of the hearing on the Motions, when counsel to United Mine Workers of America 1992 Benefit Plan, United Mine Workers of America 1993 Benefit Plan, United Mine Workers of America 1974 Pension Trust, and United Mine Workers of America Combined Fund without notice sought to call a witness, no party-in-interest indicated any desire to call a witness or otherwise obtain evidence from the Debtors or from any other party.

16. At the conclusion of this Court’s hearing on the Motions on September 11 and 12, 2012 (the “**Hearing**”), the factual record closed. See Hearing Tr. Day 2 at 450:25-451:19.

17. The three Motions remain pending.

II. Overview of the Debtors’ Business

18. The Debtors supply different qualities of coal to a diverse base of domestic and international customers, including electricity generators, industrial users, and steel and coke producers in various countries across North America, Europe, South America and Asia, including Belgium, Bosnia and Herzegovina, Brazil, Canada, China, France, Hungary, Italy, Japan, Mexico, South Korea, Spain, Sweden, the Ukraine, and the United Kingdom, and various states in the United States, including Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin. (Schroeder Venue Decl. ¶ 4.)

19. Prior to October 31, 2007, Patriot and a number of its subsidiaries were wholly-owned subsidiaries of Peabody, the world's largest private-sector coal company, and their operations were a part of Peabody's. On October 31, 2007, Patriot was spun off from Peabody through a dividend of all outstanding shares of Patriot. (Schroeder Venue Decl. ¶ 5.)

20. On July 23, 2008, Patriot acquired Magnum Coal Company. (Schroeder Venue Decl. ¶ 6.)

21. A number of events led to the commencement of the above-captioned chapter 11 cases, including reduced demand for coal, increased regulation of power plants and coal mining, and substantial legacy labor costs. (Declaration of Mark N. Schroeder Pursuant to Local Bankruptcy Rule 1007-2, dated July 9, 2012 [Dkt. No. 4] ("**Schroeder First Day Decl.**") at ¶¶ 21-39.)

22. In recent years, the demand for coal has decreased, in large part because alternative sources of energy have become increasingly attractive to electricity generators in light of declining natural gas prices and more burdensome regulation of the coal industry. (Schroeder First Day Decl. ¶ 21.)

23. At the same time, the Debtors' liabilities have increased as the Debtors face sharply rising costs to comply with such regulations. (Schroeder First Day Decl. ¶ 21.)

24. The Debtors also have substantial legacy costs, primarily in the form of medical benefits and pension obligations. The Debtors currently provide benefits to more than three times the number of retirees and non-active employees and those parties' dependents than to active employees. (Schroeder First Day Decl. ¶ 33.)

25. As a result of these challenges, the Debtors' financial performance has experienced a significant decline. For the twelve months ended March 31, 2012, the Debtors

reported revenues of \$2.33 billion and Adjusted EBITDA of \$164 million from the sale of approximately 29.4 million tons of coal. The Debtors' net loss during the same period was \$198.5 million. (Schroeder First Day Decl. ¶ 13.)

III. Venue Facts

A. The Debtors Exercised Their Fiduciary Duty and Determined that Filing in New York was in the Best Interest of the Estate

26. The Debtors have a widespread national and international presence. The Debtors' creditors and stakeholders are also spread out broadly throughout the United States, located in at least forty-nine states, and sixteen countries on four continents. (Schroeder Venue Decl. ¶¶ 4, 44 & Ex. A.)

27. The Debtors elected to commence their chapter 11 cases in New York because they determined that it was in the best interests of all stakeholders to do so. As Mr. Schroeder testified: "[t]he Debtors determined that the Southern District of New York (the "SDNY") is the optimal venue for the Debtors' chapter 11 cases and in the best interests of the Debtors, their creditors and other stakeholders and these estates. The Debtors' legal and financial advisors are all located in New York, and the Debtors' significant financial creditors, along with their professional advisors, are also located in New York. Moreover, along with their advisors, the agent under the proposed "first out" DIP financing facility and two of the three arrangers under the proposed DIP financing facilities are New York-based institutions, and the DIP financing contemplates that the Debtors' cases be venued in the SDNY. I believe that had we filed in one of the other jurisdictions that were also available to us (i) most of our domestic and foreign creditors would have been inconvenienced and (ii) the costs and inefficiency of administration of the estates would have materially increased." (Schroeder First Day Decl. ¶ 43.)

B. The Debtors' Compliance with Section 1408 Is Undisputed

28. The Movants do not seek relief under 28 U.S.C. § 1408. See, e.g., Hearing Tr. Day 2 at 427:1-2; Hearing Tr. Day 2 at 283:20-22.

29. On June 1, 2012, PCX Enterprises, Inc. (“**PCX**”) was incorporated under the laws of the State of New York. Its principal assets are located in the Southern District of New York. (Stipulation ¶ 3(a), (c).) PCX, like seventy-six other Debtors, does not have employees.⁴ (Schroeder Venue Decl. ¶ 37.)

30. On June 14, 2012, Patriot Beaver Dam Holdings, LLC (“**Patriot Beaver Dam**”) was formed under the laws of the State of New York. Its principal assets are located in the Southern District of New York. (Stipulation ¶ 3(b)-(c).) Patriot Beaver Dam, like seventy-six other Debtors, does not have employees. (Schroeder Venue Decl. ¶ 37.)

31. On July 9, 2012, Patriot Beaver Dam filed a Voluntary Petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. The petition lists the county of residence of Patriot Beaver Dam as “New York County, NY” and indicates that the principal assets of Patriot Beaver Dam are located in “New York, NY.” Patriot Beaver Dam filed in this district because the “[d]ebtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.” (In re Patriot Beaver Dam Holdings, LLC, No. 12-12898-scc [Dkt. No. 1].)

⁴ On August 23, 2012, Patriot Senior Vice President and Chief Financial Officer Mark N. Schroeder answered questions at a meeting of creditors pursuant to Section 341 of the Bankruptcy Code (the “**341 Meeting**”). [Dkt. No. 510.] The movants cite the testimony of Mr. Schroeder at the 341 Meeting for the proposition that neither Patriot Beaver Dam nor PCX has employees in New York. These facts are not contested but they are not relevant to the issues before the Court. As is common in many corporate families, seventy-seven of the ninety-nine Debtors are corporate or reserve holding companies without employees. (Schroeder Venue Decl. ¶ 37.)

32. On July 9, 2012, PCX filed a Voluntary Petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. The petition lists the county of residence of PCX as “New York County, NY” and indicates that the principal assets of PCX are located in “New York, NY.” PCX filed in this district because the “[d]ebtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District” and because “[t]here is a bankruptcy case concerning debtor’s affiliate, general partner, or partnership pending in this District.” (In re PCX Enterprises, Inc., No. 12-12899-scc [Dkt. No. 1].)

33. The parties stipulated prior to the Hearing that the Debtors formed both PCX and Patriot Beaver Dam to ensure that the provisions of 28 U.S.C. § 1408(1) were satisfied, and for no other purpose. (Stipulation ¶3(d).)

34. On July 9, 2012, Patriot filed a Voluntary Petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. The petition lists the county of residence of Patriot as “Saint Louis County, MO” and indicates that the principal assets of Patriot are located in “New York, NY.” According to the petition, Patriot filed in this district because “[t]here is a bankruptcy case concerning debtor’s affiliate, general partner, or partnership pending in this District.” (In re Patriot Coal Corporation, No. 12-12900-scc [Dkt. No. 1].)

35. On July 9, 2012, the ninety-six other Debtors each filed a Voluntary Petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. Each of these Debtors filed in this district because “[t]here is a

bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District."

C. The Parties in Interest Are Widely Dispersed

1. Location of the Debtors' Corporate Headquarters, Executive Offices, and Management

36. Of the ninety-nine Debtors, thirty-seven were formed in West Virginia; the other sixty-two were formed in other states, including fifty in Delaware, five in Virginia, four in Kentucky, two in New York, and one in Indiana. (Schroeder Venue Decl. ¶ 7.)

37. The Debtors' corporate headquarters and executive offices are located in St. Louis, Missouri. Many of the Debtors' key corporate functions are based in St. Louis. These include the following departments: Accounting, Accounts Payable, Accounts Receivable, Financial Reporting, Treasury, Tax, Internal Audit, Legal, Sales and Market Research, Contract Management, Payroll, Corporate Development, Planning, Information Services, Human Resources, and Benefits. (Schroeder Venue Decl. ¶ 8.)

38. At the time of the Hearing, there were six members of Patriot's executive management team: Irl F. Engelhardt, Chairman and Chief Executive Officer; Bennett K. Hatfield, President and Chief Operating Officer; Robert W. Bennett, Senior Vice President and Chief Marketing Officer; Charles A. Ebetino, Jr., Senior Vice President – Global Strategy and Corporate Development; Joseph W. Bean, Senior Vice President of Law and Administration, General Counsel, and Assistant Secretary; and Mr. Schroeder. (Schroeder Venue Decl. ¶ 10.)⁵

39. Three members of the executive management team – Mr. Engelhardt, Mr. Bean, and Mr. Schroeder – work in St. Louis, Missouri and reside in Missouri or Illinois. A fourth

⁵ In light of the appointment of Mr. Lushefski as Chief Financial Officer on September 21, 2012, there are now seven members of Patriot's executive management team. Mr. Lushefski resides in New Jersey and works in Patriot's corporate headquarters in St. Louis, Missouri.

member of the executive management team, Mr. Ebetino, resides in Ohio and has an office in Patriot's corporate headquarters in St. Louis, Missouri and an office in Charleston, West Virginia. The two remaining members of the executive management team, Mr. Hatfield and Mr. Bennett, reside in West Virginia and have offices in Charleston, West Virginia and in Patriot's corporate headquarters in St. Louis, Missouri. (Schroeder Venue Decl. ¶ 11.)

2. Location of the Debtors' Board of Directors

40. At the time of the Hearing, there were eight directors on Patriot's board of directors (the "**Board**"): J. Joe Adorjan; Bobby R. Brown; Mr. Engelhardt; Michael P. Johnson; Janiece M. Longoria; John E. Lushefski; Michael M. Scharf; and Robert O. Viets.⁶ (Schroeder Venue Decl. ¶ 12.)

41. None of the eight directors on the Board reside in West Virginia. The directors reside in Arkansas, Florida, Illinois, Missouri, New Jersey, Oklahoma, and Texas. (Schroeder Venue Decl. ¶ 13.)

42. At the time of the Hearing, there had been approximately fifty-five meetings of the Board following Patriot's spin-off from Peabody in October 2007. Of Patriot's fifty-five Board meetings, one was held in West Virginia. Thirty-two of the fifty-five meetings were held in person, including twenty-nine in Missouri, one in West Virginia, one in Texas, and one in Florida. The remaining twenty-three meetings were conducted telephonically. (Schroeder Venue Decl. ¶ 14.)

3. The Debtors' Operations

43. As of the Petition Date, the Debtors conduct mining operations at twelve active mining complexes consisting of nineteen surface and underground mines in the Appalachia and

⁶ Mr. Lushefski resigned from the Board when he was named Chief Financial Officer of Patriot.

the Illinois Basin coal regions. Nine of those mining complexes are located in West Virginia, and three are located in Kentucky. (Schroeder Venue Decl. ¶ 15; Stipulation at ¶ 3(e).)

44. The Debtors' operations include company-operated mines, contractor-operated mines, coal preparation facilities, and train, barge, and truck loading facilities. The Debtors also export coal under various throughput arrangements through ship loading terminals located in: Baltimore, Maryland; Hampton Roads, Virginia; Newport News, Virginia; and New Orleans, Louisiana. (Schroeder Venue Decl. ¶ 15.)

45. In 2011, the Debtors sold a total of 31.1 million tons of coal. Nearly ninety-five percent of this coal was sold to customers outside of West Virginia. Roughly 1 million tons of coal – or approximately 3 percent of total sales volume – were sold to customers in New York and an additional 29 percent of the total sales volume was exported to international customers. (Schroeder Venue Decl. ¶ 16.)

46. The Debtors have been involved in lawsuits in many jurisdictions around the country, and have been named as defendants in cases commenced in Illinois, Indiana, Kentucky, Louisiana, Missouri, New York, North Carolina, and Pennsylvania. (Schroeder Venue Decl. ¶ 21.)

4. The Debtors' Material Contracts

47. Approximately 78 percent of the Debtors' 2011 coal sales were under term (one year or longer) coal supply agreements that specify the coal sources, quality and technical specifications, shipping arrangements, pricing, force majeure, and other provisions unique to agreements reached with each purchaser. (Schroeder Venue Decl. ¶ 17.)

48. New York law governs forty-one of the Debtors' sixty-five coal sales contracts, almost two-thirds of the total. These contracts represent approximately 43 percent of the

Debtors' committed sales. By contrast, two of the Debtors' sales contracts are governed by West Virginia law, amounting to 5 percent of the Debtors' committed sales volume. (Schroeder Venue Decl. ¶ 18.)

49. The Debtors have entered into a master equipment lease with each of their twenty equipment lessors. The twenty equipment lessors are headquartered in at least a dozen states, including California, Connecticut, Illinois, and New Jersey. None of the equipment lessors is headquartered in West Virginia. Additionally, of the twenty master leases, four are governed by New York law. None is governed by West Virginia law. (Schroeder Venue Decl. ¶ 19.)

50. The Debtors entered into indemnity agreements with the sureties that issue surety bonds on the Debtors' behalf. The indemnity agreement that governs the relationship between the Debtors and Westchester Fire Insurance Company – one of the four Sureties – is governed by New York law and includes a New York forum selection clause. None of the other three indemnity agreements is governed by West Virginia law. (Schroeder Venue Decl. ¶ 20.)

51. Nearly all of the Debtors' pre-petition debt is governed by New York law. (Schroeder Venue Decl. ¶ 23; see also infra at ¶¶ 55-64.)

52. The agreements relating to Patriot's October 31, 2007 spin-off from Peabody included a Delaware choice of law provision. (Schroeder Venue Decl. ¶ 5; see also supra at ¶ 19.)

53. Patriot's July 23, 2008 acquisition of Magnum Coal Company included a Delaware choice of law provision. (Schroeder Venue Decl. ¶ 6.)

54. Prior to its acquisition by Patriot, Magnum acquired certain assets of Arch Coal, Inc. This earlier acquisition was pursuant to agreements that included a New York choice of law provision. (Schroeder Venue Decl. ¶ 6.)

5. The Debtors' Pre-Petition Capital Structure

55. Patriot, as borrower, and substantially all of the other Debtors, as guarantors, were parties to that certain \$427.5 million Amended and Restated Credit Agreement, dated as of May 5, 2010 (as amended, supplemented, modified, or amended and restated from time to time, the “**Credit Facility**”) by and among substantially all of the Debtors, Bank of America, N.A., as administrative agent, and the lenders party thereto. The Credit Facility provided for the issuance of letters of credit and direct borrowings, was governed by New York law, and included a New York forum selection clause. (Schroeder Venue Decl. ¶ 24.)

56. The Credit Facility has been replaced by Debtor-in-Possession (“**DIP**”) facilities, which are described in further detail in paragraphs 78 to 87 below. (Schroeder Venue Decl. ¶ 24 n.1.)

57. Patriot was also party to a \$125 million accounts receivable securitization program, which provided for the issuance of letters of credit and direct borrowings. The operative agreement, dated as of March 2, 2010, was governed by New York law and included a New York forum selection clause. This agreement was among non-Debtor Patriot Coal Receivables (SPV) Ltd., Debtor Patriot Coal Corporation, as Servicer, various purchasers and LC participants, and Fifth Third Bank, as Administrator and as LC Bank. (Schroeder Venue Decl. ¶ 27; Stipulation at ¶ 3(f).)

58. Patriot has issued two series of unsecured notes: (a) \$250 million in 8.25% senior unsecured notes due 2018 (the “**Senior Bonds**”); and (b) \$200 million in 3.25% unsecured convertible notes due 2013 (the “**Convertible Bonds**”). The indenture trustees named in these debt instruments are located in Delaware and Minnesota, respectively [Dkt. No. 98 at 3] and the instruments are governed by New York law. (Schroeder Venue Decl. ¶ 28.)

59. The Debtors have received data from GCG, Inc. (“GCG”), the Debtors’ claims and noticing agent in these cases, that reflect the residence of many of the holders of the Senior Bonds and the Convertible Bonds as of July 11, 2012. (Schroeder Venue Decl. ¶ 29; see also Dkt. No. 45.)

60. The data that the Debtors received from GCG indicate the state of residence of the holders of \$154.1 million of the Senior Bonds. Of these known holders, New York entities appear to hold the largest amount – \$48.4 million – which represents approximately 31 percent of the known total and 19 percent of the face amount of the Senior Bonds. West Virginia entities appear to hold \$69,000 worth of the Senior Bonds, less than one percent of the known total. (Schroeder Venue Decl. ¶ 30.)

61. The data that the Debtors received from GCG indicate the state of residence of the holders of \$125.2 million of the Convertible Bonds. Of these known holders, New York entities appear to hold the largest amount – \$49.9 million – which represents approximately 40 percent of the known total and 25 percent of the face amount of the Convertible Bonds. West Virginia entities appear to hold \$104,000 worth of the Convertible Bonds, less than one percent of the known total. (Schroeder Venue Decl. ¶ 31.)

62. The holders of Patriot’s Senior Bonds and Convertible Bonds together reside in at least 49 states. (Schroeder Venue Decl., Ex. A.)

63. According to the Verified Statement of Brown Rudnick LLP Pursuant to Bankruptcy Rule 2019(b), filed on September 10, 2012, an Ad Hoc Consortium of Senior Noteholders was then comprised of eight institutions, which collectively hold approximately \$102.5 million (or 41.0 percent) of the Senior Bonds. [Dkt. No. 544.] The eight institutions are:

(a) Beacon Asset Management, LLC, which is identified as holding \$1,000,000 worth of the Senior Bonds. According to the filing, Beacon Asset Management, LLC is located in Southfield, Michigan.

(b) Claren Road Asset Management, LLC, which is identified as holding \$17,511,000 worth of the Senior Bonds. According to the filing, Claren Road Asset Management, LLC is located in New York, New York.

(c) Knighthead Capital Management, LLC, which is identified as holding \$14,000,000 worth of the Senior Bonds. According to the filing, Knighthead Capital Management, LLC is located in New York, New York.

(d) Mason Street Advisors, LLC, which is identified as holding \$25,150,000 worth of the Senior Bonds. According to the filing, Mason Street Advisors, LLC is located in Milwaukee, Wisconsin.

(e) Merrill Lynch & Co., which is identified as holding \$11,500,000 worth of the Senior Bonds. According to the filing, Merrill Lynch & Co. is located in New York, New York.

(f) PineBridge Investments, LLC, which is identified as holding \$6,922,000 worth of the Senior Bonds. According to the filing, PineBridge Investments, LLC is located in Houston, Texas.

(g) TPG Credit Management, L.P., which is identified as holding \$6,020,000 worth of the Senior Bonds. According to the filing, TPG Credit Management, L.P. is located in Minneapolis, Minnesota.

(h) Whitebox Advisors, LLC, which is identified as holding \$20,388,000 worth of the Senior Bonds. According to the filing, Whitebox Advisors, LLC is located in Minneapolis, Minnesota.

64. In 2005, one of the Debtors, Cleaton Coal Company, issued unsecured promissory notes in conjunction with an exchange transaction involving the acquisition of Illinois Basin coal reserves. The promissory notes and related interest are payable in annual installments of \$1.7 million and mature in January 2017. These instruments are governed by Kentucky law.

(Schroeder Venue Decl. ¶ 33.)

6. The Debtors' Property Ownership and Leaseholds

65. The Debtors own, lease, or hold under other arrangement coal reserves, surface property, and other real estate interests in various counties in many states, including in Illinois, Indiana, Kentucky, Missouri, Ohio, Pennsylvania, and West Virginia. (Schroeder Venue Decl. ¶ 34.)

66. While the Debtors operate a number of coal mines located in West Virginia, nine of the largest fifteen lessors from whom they lease these properties, measured by coal reserves, are headquartered outside West Virginia. (Schroeder Venue Decl. ¶ 35.)

7. The Debtors' Current and Former Employees

67. At the time of the Hearing, the Debtors collectively employed more than 4,000 people in active status, working in both full-time and part-time positions. These employees include miners, engineers, truck drivers, mechanics, electricians, administrative support staff, managers, directors and executives. Approximately 42 percent of these employees are unionized and are represented by the United Mine Workers of America (the "UMWA") under collective bargaining agreements. (Schroeder Venue Decl. ¶ 36.)

68. There are approximately 11,860 retirees covered as primary insureds under benefit plans administered by the Debtors as of July 2012 (“**Retirees**”). The Retirees reside in 41 different states, with approximately 62 percent living somewhere other than West Virginia. Of the 11,860 Retirees, 10,388 were union members, who reside in 39 different states, with approximately 61 percent living somewhere other than West Virginia. Approximately 50 percent of both unionized and non-unionized Retirees live in the Illinois Basin coal region, which includes Illinois, Indiana, and Kentucky.⁷ (Schroeder Venue Decl. ¶¶ 39, 40.)

69. Only nine of the ninety-nine chapter 11 debtors are signatories to collective bargaining agreements. The nine debtors are: Highland Mining Company, LLC; Hobet Mining, LLC; Apogee Coal Company, LLC; Heritage Coal Company LLC; Pine Ridge Coal Company, LLC; Mountain View Coal Company, LLC; Colony Bay Coal Company; Eastern Associated Coal, LLC; and Gateway Eagle Coal Company, LLC. (Schroeder Venue Decl. ¶ 38.)

8. The Debtors’ Creditors and Claimholders

70. None of the Debtors’ five largest secured creditors is located in West Virginia. According to the “List of Creditors Holding 5 Largest Secured Claims” [Dkt. No. 4, Schedule A], they are located in California, Illinois, Missouri, New Jersey, and Ohio. Several of these creditors have offices and operations across the country and throughout the world. (Schroeder Venue Decl. ¶ 41.)

71. There are seven members of the Creditors’ Committee. The members, who were appointed on July 18, 2012, are: (1) Wilmington Trust Company, located in Wilmington, Delaware; (2) U.S. Bank National Association, located in Boston, Massachusetts; (3) United

⁷ According to the Union, “[t]here are [] approximately 4,000 retired members in Local Unions in Illinois, Indiana, and Western Kentucky.” (Declaration of Micheal Buckner in Support of Omnibus Reply to the United Mine Workers of America To Objections To Motion of the United Mine Workers of America To Transfer the Case to the Southern District of New York, dated Aug. 31, 2012 [Dkt. No. 507].)

Mine Workers of America, located in Triangle, Virginia; (4) United Mine Workers of America 1974 Pension Plan and Trust, located in Washington, D.C.; (5) Gulf Coast Capital Partners, LLC, located in Naples, Florida; (6) Cecil Walker Machinery, located in Louisville, Kentucky; and (7) American Electric Power, located in Columbus, Ohio. (Schroeder Venue Decl. ¶ 42.)

72. No member of the Creditors' Committee is located in West Virginia. (Schroeder Venue Decl. ¶ 43.)

73. The Debtors' fifty largest unsecured creditors hold approximately \$507 million in liquidated claims. This total does not include the value of unliquidated claims. (Schroeder Venue Decl. ¶ 44.)

74. Of the unsecured creditors on the fifty largest list, ten are based in West Virginia, and their claims account for approximately \$9.6 million of the more than \$507 million in liquidated claims against the Debtors. More than 98 percent of the total amount of liquidated claims listed on the top fifty list are from creditors from seventeen states outside of West Virginia. (Schroeder Venue Decl. ¶ 45.)

75. The Debtors' largest unsecured creditor from West Virginia ranks 13th on their list of the largest unsecured claims, with an unliquidated claim estimated at less than \$3.2 million. By contrast, the Debtors' largest unsecured creditor, Wilmington Trust Company, which is located in Wilmington, Delaware, has a \$250 million claim – almost 80 times larger than the largest West Virginia claim. (Schroeder Venue Decl. ¶ 46.)

76. As described below, twenty of the fifty largest unsecured creditors – including six of the ten creditors from West Virginia – filed timely joinders in support of the Debtors' Objection. In addition, five of the remaining top-fifty creditors, including two from West Virginia, timely submitted letters or e-mails to the Debtors, requesting that the Debtors represent

to the Court that they oppose the Motions and support these cases remaining in the Southern District of New York. Two top-fifty creditors offered untimely support for the Debtors' Objection, for a total of twenty-seven out of the top-fifty unsecured creditor supporting this Court retaining venue. See infra at ¶¶ 134-135 & Ex. B.

77. Based on company data, the twenty top vendors of the Debtors for the first six months of 2012 have headquarters in twelve different states, with five located in West Virginia and two located in New York. (Schroeder Venue Decl. ¶ 47; Stipulation at ¶ 3(g).) Of the five top-twenty vendors in West Virginia, two supported retaining venue in the Southern District of New York and none supported transferring these cases. See Hearing Tr. Day 2 at 165:13-19.

9. The Debtors' DIP Financing

78. On July 9, 2012, Patriot entered into the Superpriority Secured Debtor-in-Possession Credit Agreement (the "**First Out DIP Facility**"). The First Out DIP Facility matures in October 2013, with a possible extension to December 2013. [Dkt. No. 78-1 at § 1.01.]

79. On July 11, 2012, Patriot entered into the Amended and Restated Superpriority Secured Debtor-in-Possession Credit Agreement (the "**Second Out DIP Facility**"). The Second Out DIP Facility matures in October 2013, with a possible extension to December 2013. [Dkt. No. 78-1 at § 1.01.]

80. On August 3, 2012, the Court authorized the financing contemplated by the First Out DIP Facility and the Second Out DIP Facility (the "**DIP Facilities**") on a final basis, pursuant to which Patriot may borrow and obtain letters of credit up to an aggregate principal or face amount of \$802,000,000. [Dkt. No. 275 at ¶ 6(a).]

81. All of the DIP agents and joint lead arrangers are based outside of West Virginia, with three of these five lenders headquartered in New York. (Schroeder Venue Decl. ¶ 48.)

82. Citibank, N.A. is the DIP agent (the “**DIP Agent**”) for the First Out DIP Facility and is located in New York. (Schroeder Venue Decl. ¶ 49.)

83. Bank of America is the DIP Agent for the Second Out DIP Facility and is not based in New York but has offices in New York. (Schroeder Venue Decl. ¶ 50.)

84. There are three joint lead arrangers of the DIP Facilities: Citigroup Global Markets Inc., which is located in New York; Barclays Bank, PLC, which is not based in New York but has offices in New York; and Merrill Lynch, Pierce, Fenner & Smith Incorporated, which is located in New York. (Schroeder Venue Decl. ¶ 51.)

85. Both the First Out DIP Facility and the Second Out DIP Facility contain a New York choice of law provision and a New York forum selection clause. (Schroeder Venue Decl. ¶ 52; Dkt. No. 78-1 at § 12.14(a)-(b); Dkt. No. 78-3 at § 10.14(a)-(b).)

86. Each of the First Out DIP Facility and the Second Out DIP Facility contains a covenant that obligates the Debtors to comply with applicable environmental laws and regulations. [Dkt. No. 78-1 at § 6.13; Dkt. No. 78-3 at § Article VI.]

87. As reflected on Schedule 2.01 to the Second Out DIP Facility, three of the four Sureties are beneficiaries of letters of credit in the outstanding principal amount of \$32.4 million. Under the Second Out DIP Agreement, each second out DIP lender agreed to make advances to reimburse the issuers of those letters of credit for amounts, if any, drawn by the Sureties. (Schroeder Venue Decl. ¶ 54.)

10. Professionals Retained in Connection with the Case

(a) Professionals Retained by Debtors

88. Virtually all of the professionals retained by the Debtors are located in New York or have substantial offices there. (Schroeder Venue Decl. ¶ 55.)

89. The Debtors' reorganization counsel, Davis Polk & Wardwell LLP ("**Davis Polk**"), is located in New York. Davis Polk has also provided legal counsel to Patriot since its creation in October 2007. Davis Polk does not have an office in West Virginia. (Schroeder Venue Decl. ¶ 56.)

90. The Debtors' conflicts counsel, Curtis, Mallet-Prevost, Colt & Mosle LLP ("**Curtis Mallet**"), is located in New York. Curtis Mallet does not have an office in West Virginia. (Schroeder Venue Decl. ¶ 57.)

91. The Debtors' investment banker, the Blackstone Group ("**Blackstone**"), is located in New York. Blackstone does not have an office in West Virginia. (Schroeder Venue Decl. ¶ 58.)

92. The Debtors' financial advisors, AP Services, LLC ("**APS**" or "**AlixPartners**"), have an office in New York and the team of advisors retained in this case includes individuals from the Chicago, Atlanta, Detroit, Dallas, and St. Louis offices of the company. AlixPartners does not have an office in West Virginia. (Schroeder Venue Decl. ¶ 59.)

(b) Professionals Retained by Creditors and DIP Lenders

93. Many other professionals are located in New York, including counsel to key creditors and the DIP lenders. (Schroeder Venue Decl. ¶ 60.)

94. Counsel to the indenture trustees for the Senior Bonds and the Convertible Bonds – Dorsey & Whitney LLP and Andrews Kurth LLP – are located in New York. Neither law firm has an office in West Virginia. (Schroeder Venue Decl. ¶ 61.)

95. Citibank, N.A., the DIP Agent for the First Out Facility, is represented by Weil, Gotshal & Manges LLP (“**Weil Gotshal**”), which is located in New York. Weil Gotshal does not have an office in West Virginia. (Schroeder Venue Decl. ¶ 62.)

96. Bank of America, the DIP Agent for the Second Out Facility, is represented by Willkie Farr & Gallagher LLP (“**Willkie Farr**”), which is located in New York. Willkie Farr does not have an office in West Virginia. (Schroeder Venue Decl. ¶ 63.)

97. The three Joint Lead Arrangers of the DIP financing are represented by New York legal advisors: Citigroup Global Markets, Inc. is represented by Weil Gotshal; Barclays Bank, PLC is represented by Weil Gotshal; and Merrill Lynch, Pierce, Fenner & Smith Incorporated is represented by Willkie Farr. (Schroeder Venue Decl. ¶ 64.)

D. New York Is Easily Accessible

98. New York City is a major hub for travel by plane, train or automobile. It is at least as accessible as Charleston, West Virginia for the holders of unsecured claims in these cases. (Kaye Decl. ¶¶ 7, 8, 15-28).

E. The Debtors Have Extensive, Longstanding Ties to New York

99. Based on available data, New York entities hold – by a wide margin – the largest amount of Patriot’s Senior Bonds and Convertible Bonds. Notably, New York entities appear to hold \$48.4 million worth of the Senior Bonds and \$49.9 million worth of the Convertible Bonds. West Virginia entities appear to hold \$69,000 worth of the Senior Bonds and \$104,000 worth of the Convertible Bonds. See supra ¶¶ 58-61.

100. 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. See supra ¶¶ 51, 55-58.

101. New York law governs forty-one of the Debtors' sixty-five sales contracts – almost two-thirds of the total. By contrast, only two of the Debtors' sales contracts are governed by West Virginia law. See supra ¶ 48.

102. The Debtors have entered into a master equipment lease with each of their twenty equipment lessors. Of the twenty master leases, four are governed by New York law. Not one master lease is governed by West Virginia law. See supra ¶ 49.

103. In 2011, the Debtors sold a total of 31.1 million tons of coal. Roughly one million tons of coal – or approximately three percent of total sales volume – was sold to customers in New York. Nearly ninety-five percent of this coal was sold to customers outside of West Virginia. See supra ¶ 45.

104. The twenty top vendors of the Debtors for the first six months of 2012 have headquarters in twelve different states, with two located in New York and five located in West Virginia. Of the five vendors located in West Virginia, two have filed joinders in support of the Debtors' Objection and the other three have not asserted a position. See supra ¶ 77.

105. The key business information of Patriot and its subsidiaries has been hosted at a data center located in Rochester, New York since shortly after Patriot's spin-off from Peabody in October 2007. Patriot owns servers at that New York location and contracts with a vendor for related information technology services there. (Schroeder Venue Decl. ¶ 22.)

F. The Debtors' New York Subsidiaries Had a Need to Reorganize

106. Pursuant to an assumption agreement, effective as of June 1, 2012, PCX became a guarantor of Patriot's obligations under the Credit Facility. Pursuant to an assumption agreement, effective as of June 14, 2012, Patriot Beaver Dam became a guarantor of Patriot's obligations under the Credit Facility. (Schroeder Venue Decl. ¶ 25.)

107. Pursuant to pledge supplements, effective as of June 1, 2012 and June 14, 2012, PCX and Patriot Beaver Dam, respectively, granted a security interest in all of their respective rights, titles and interests in and to all of their personal property to secure their guarantee obligations. In connection with these secured guarantees, Bank of America, N.A., as administrative agent of the Credit Facility, filed UCC Financing Statements in June 2012 that cover "all of the assets . . . whether now existing or hereafter arising" of PCX and Patriot Beaver Dam. (Schroeder Venue Decl. ¶ 26.)

108. Pursuant to the Fourth Supplemental Indenture, dated as of June 22, 2012, PCX and Patriot Beaver Dam are guarantors of the obligations of Patriot, as issuer, to pay the principal of, premium, if any, and interest on the Senior Bonds. (Schroeder Venue Decl. ¶ 32.)

109. Pursuant to the Second Out DIP Agreement, and the Final Order (I) Authorizing Debtors (A) To Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e), and (B) To Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Prepetition Secured Lenders Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 [Dkt. No. 275], dated August 3, 2012, the DIP agents have superpriority liens on the assets of PCX and Patriot Beaver Dam. (Schroeder Venue Decl. ¶ 53.)

110. Under the DIP facilities, all Debtors had to guarantee the DIP and pledge their assets. (Superpriority Secured Debtor-in-Possession Credit Agreement [Dkt. No. 78-1] at § 4.01(a); Amended and Restated Superpriority Secured Debtor-in-Possession Credit Agreement [Dkt. No. 78-3] at § 4.01(a).)

V. The Movants and the Parties Joining the Movants Are Not Based In West Virginia

A. The Union

111. The Union has its international headquarters outside of Washington, D.C., and has regional, district, and sub-district offices in Alabama, Colorado, Illinois, Kentucky, Ohio, Pennsylvania, Utah, Virginia, West Virginia, and Canada. (Debtors' Objection at 41 (citing Union website).)

112. As of December 31, 2011, the Union had approximately 80,000 members and net assets of \$171.9 million as of December 31, 2011. (Debtors' Objection at 41 (citing UMWA, Labor Organization Annual Report (Form LM-2) (Apr. 30, 2012)).)

B. The Sureties

113. Argonaut Insurance Company is domiciled in Illinois, operates out of Texas, and is authorized to do business in New York. (Debtors' Objection at 15 (citing New York Department of Financial Services data).)

114. US Specialty Insurance Company is domiciled in Texas, operates out of Texas, and is authorized to do business in New York. (Debtors' Objection at 15 (citing New York Department of Financial Services data).)

115. Westchester Fire Insurance Company is domiciled in Pennsylvania, operates out of Pennsylvania, and is authorized to do business in New York. (Debtors' Objection at 15 (citing New York Department of Financial Services data).)

116. Indemnity National Insurance Company is domiciled in Mississippi and operates out of Tennessee. (Debtors' Objection at 15 (citing Tennessee Department of Commerce and Insurance data).)

117. No surety bond has ever been called in Patriot's history. (Debtors' Objection at 3.)

118. The four Sureties have collectively issued approximately \$69.7 million in surety bonds. (Sureties' Mem. Ex. C; Schroeder First Day Decl. Schedule 5.) Of the \$69.7 million in bonds, approximately \$23.9 million support non-West Virginia obligations. (Surety Mem. Ex. C; Schroeder First Day Decl. Schedule 5.) In addition, three of the four Sureties are beneficiaries of letters of credit issued by Bank of America, N.A. under the Second Out DIP Facility in the outstanding principal amount of approximately \$32.4 million. (Schroeder Venue Decl. ¶ 54; Schroeder First Day Decl. Schedule 5.) The net maximum contingent exposure for the Sureties' West-Virginia-related obligations is \$25.4 million, and can be disaggregated as follows:

(a) Argonaut Insurance Company issued \$26,480,455 in surety bonds, \$6,183,275 of which supported non-West Virginia obligations. After using its available letter of credit for full satisfaction of its non-West Virginia obligations, Argonaut Insurance Company's would have a \$5,591,725 letter of credit available. As a result, Argonaut Insurance Company's net maximum West-Virginia-related exposure is \$14,705,455. (Sureties' Mem. Ex. C; Schroeder First Day Decl. Schedule 5.)

(b) Indemnity National Insurance Company issued \$14,304,558 in surety bonds, \$14,304,558 of which supported non-West Virginia obligations.⁸ Letters of credit for the

⁸ According to Schedule 5 of the Schroeder First Day Declaration, Indemnity National Insurance Company issued \$14,304,558 in surety bonds. According to the Debtors' records, one bond valued at \$150,000 bond may

amount of \$5,778,000 are available to Indemnity National Insurance Company. As a result, Indemnity National Insurance Company's net maximum West-Virginia-related exposure is \$0. (Sureties' Mem. Ex. C; Schroeder First Day Decl. Schedule 5.)

(c) Westchester Fire Insurance Company issued \$4,153,725 in surety bonds, \$3,378,565 of which supported non-West Virginia obligations. No letters of credit are available to Westchester Fire Insurance Company. As a result, Westchester Fire Insurance Company's net maximum West-Virginia-related exposure is \$775,160.⁹

(d) US Specialty Insurance Company issued \$24,786,440 in surety bonds, \$0 of which supported non-West Virginia obligations. Letters of credit for the amount of \$14,871,864 are available to US Specialty Insurance Company. As a result, US Specialty Insurance Company's net maximum West-Virginia-related exposure is \$9,914,576. (Sureties' Mem. Ex. C; Schroeder First Day Decl. Schedule 5.)

C. Utilities

119. American Electric Power is located in Canton, Ohio. [Dkt. No. 98.]

120. Monongahela Power Company (f/k/a Allegheny Power) is located in Greensburg, Pennsylvania. [Dkt. No. 98.]

121. Hope Gas, Inc. (d/b/a Dominion Hope) lists its corporate address in Clarksburg, West Virginia. See <https://www.dom.com/contact/phone-numbers-and-addresses.jsp> (last visited Oct. 2, 2012).

have been omitted from Schedule 5. This bond supported non-West Virginia obligations and therefore Indemnity National Insurance Company's net maximum West-Virginia-related exposure remains \$0.

⁹ One surety bond, which supports West Virginia obligations, was included twice on Schedule 5 of the Schroeder First Day Declaration. This bond (K08442770) is valued at \$4,000, so Westchester Fire Insurance Company's net maximum West-Virginia-related exposure may be \$4,000 less than indicated on Schedule 5.

D. UMWA Health and Retirement Funds

122. The United Mine Workers of America 1992 Benefit Plan, the United Mine Workers of America 1993 Benefit Plan, the United Mine Workers of America 1974 Pension Trust and the United Mine Workers of America Combined Benefit Fund (collectively, the “**UMWA Health and Retirement Funds**”) are located in Washington, D.C. and have counsel in Washington, D.C. and Philadelphia, Pennsylvania. See Hearing Tr. Day 2 at 105:23-106:3.

VI. Creditors Do Not Support Transfer

A. Joinders to the Motions

123. As discussed above, two joinders and one “Notice” in support of one of more of the Motions were filed on or before August 20, 2012. Two joinders in support of one of more of the Motions were filed after the August 20, 2012 deadline.

124. On July 25, 2012, American Electric Power, Monongahela Power Company and Hope Gas, Inc., d/b/a Dominion Hope filed a joinder to the Union’s motion. [Dkt. No. 178.]

(a) American Electric Power is creditor number 15 on the Debtors’ Revised List of Creditors Holding 50 Largest Unsecured Claims [Dkt. No. 98] (the “**Top 50 List**”), is identified as holding an unliquidated claim, and is a member of the Creditors’ Committee. [Dkt. No. 118.]

(b) Monongahela Power Company (f/k/a Allegheny Power) is creditor number 33 on the Top 50 List. It is not a member of the Creditors’ Committee. [Dkt. Nos. 98, 118.]

(c) Hope Gas, Inc. is not on the Top 50 List, the List of Creditors Holding 5 Largest Secured Claims [Dkt. No. 4, Schedule 2] (the “**Top 5 List**”), and it is not a member of the Creditors’ Committee. [Dkt. Nos. 4, 98, 118.]

125. On August 20, 2012, the West Virginia Attorney General filed a joinder to the Union's motion. [Dkt. No. 390.] The West Virginia Attorney General is not on the Top 50 List, the Top 5 List, and it is not a member of the Creditors' Committee. [Dkt. Nos. 4, 98, 118.]

126. On August 20, 2012, the Commonwealth of Kentucky, Energy and Environmental Cabinet, Department for Natural Resources (the "**Kentucky DNR**") filed a notice in which it declined to join the Motions but expressed support for the transfer to the Southern District of West Virginia. [Dkt. No. 392.] The Kentucky DNR is not on the Top 50 List, the Top 5 List, and it is not a member of the Creditors' Committee. [Dkt. Nos. 4, 98, 118.] In the notice, the Kentucky DNR stated that it would file a supplemental pleading when its application to be admitted pro hac vice was granted. The Court granted the motion the next day, but the Kentucky DNR never filed a supplemental pleading. [Dkt. No. 399.]

127. On August 27, 2012, the United Mine Workers of America 1992 Benefit Plan, the United Mine Workers of America 1993 Benefit Plan, the United Mine Workers of America 1974 Pension Trust and the United Mine Workers of America Combined Benefit Fund (collectively, the "**UMWA Health and Retirement Funds**") filed a joinder to the U.S. Trustee's motion only. [Dkt. No. 423.] The UMWA Health and Retirement Funds declined to join the motion of the Union or the Sureties or otherwise support transfer to West Virginia. The United Mine Workers of America 1974 Pension Plan and Trust is on the Creditors' Committee. The joinder was untimely pursuant to scheduling orders of this Court. See supra at ¶ 7.

128. On August 28, 2012, CompassPoint Partners, L.P., Frank Williams, and Eric Wagoner, an informal group of holders of common stock of Patriot (collectively, the "**Interested Shareholders**"), filed a joinder to the U.S. Trustee's motion only. [Dkt. No. 433.] The

Interested Shareholders are located in Connecticut and Virginia. [Dkt. No. 529]. The joinder was untimely pursuant to scheduling orders of this Court. See supra at ¶ 7.

B. Objections to the Motions

129. Three objections to the Motions were filed on or before August 27, 2012.

130. On August 27, 2012, the Debtors filed an objection to the Motions. [Dkt. No. 425; see also supra at ¶ 10.]

131. On August 27, 2012, the Creditors' Committee filed an objection to the Motions [Dkt. No. 424, 424-1.]

132. On August 27, 2012, Citibank, N.A. filed an objection to the Motions and a joinder to the Debtors' objection. [Dkt. No. 427.]

C. Joinders to the Objections

133. Thirty-five joinders to the Debtors' Objection were filed on or before August 31, 2012. Two additional joinders were filed after the August 31, 2012 deadline. A detailed summary of these joinders is attached hereto as **Exhibit B**.

134. Joinders to the Debtors' Objection were timely filed by twenty of the top-fifty unsecured creditors, including six of the ten top-fifty creditors from West Virginia. One late joinder was filed by a top-fifty creditor. In total, twenty-one of the top-fifty unsecured creditors filed joinders. (Declaration of Jacquelyn A. Jones, dated October 5, 2012 ("**Jones Decl.**") at ¶ 19 & Ex. A; see also infra at Ex. B.)

135. Joinders to the Debtors' Objection were timely filed by two of the top-five secured creditors. Bank of America was included on the Top 5 List in its capacities as swingline lender and as Agent under the Debtors' Credit Facility, which was subsequently refinanced pursuant to the DIP Facilities. Bank of America, N.A. filed a joinder in its capacity as Second

Out DIP Agent. The other two remaining top-five secured creditors did not join the Motions.
(Jones Decl., at ¶ 20 & Ex. A; see also infra at Ex. B.)

136. Twenty-nine of the thirty-five timely-filed joinders were filed by outside counsel; three were filed by in-house counsel; and three were filed by an executive of the joinder party.
(Jones Decl., at ¶ 16 & Ex. A; see also infra at Ex. B.)

137. Twenty-nine of the thirty-five timely-filed joinders appear to have been prepared on the Debtors' template. (Jones Decl., at ¶ 14 & Ex. A; see also infra at Ex. B.)

D. Letters and E-mail in Support of the Objections

138. The Debtors received timely support correspondence from fourteen creditors. Of those fourteen creditors, five were top-fifty creditors, including two from West Virginia. In addition, the correspondence that was received after August 31, 2012 was from a top-fifty creditor. (Jones Decl., at ¶ 19 n.4 & Ex. B.) A summary of this support correspondence is attached hereto as **Exhibit C**.

139. The Debtors received timely support – in the form of a joinder or support correspondence – from twenty-five of the top-fifty creditors, including eight of ten from West Virginia. The other two top-fifty West Virginia creditors – JMAC Leasing, Inc. and Chisler Brothers Contracting LLC – did not file a joinder on behalf of either the Movants or the Debtors.
(Jones Decl., at ¶ 19 & Exs. A, B; see also infra at Ex. B, C.)

140. The Debtors received support – in the form of both timely and untimely joinder or support correspondence – from twenty-seven of the top-fifty creditors, including eight of ten from West Virginia. (Jones Decl., at ¶ 19 & n. 4; id. Exs. A, B; see also infra at Ex. B, C.)

Dated: New York, New York
October 5, 2012

DAVIS POLK & WARDWELL LLP

By: /s/ Marshall S. Huebner

Marshall S. Huebner

Damian S. Schaible

Elliot Moskowitz

James I. McClammy

450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 607-7983

*Counsel to the Debtors
and Debtors in Possession*

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. 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 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, L.L.C.
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, L.P.
67. Patriot Coal Corporation
68. Patriot Coal Sales LLC
69. Patriot Coal Services LLC
70. Patriot Leasing Company LLC
71. Patriot Midwest Holdings, LLC
72. Patriot Reserve Holdings, LLC
73. Patriot Trading LLC
74. PCX Enterprises, Inc.
75. Pine Ridge Coal Company, LLC
76. Pond Creek Land Resources, LLC
77. Pond Fork Processing LLC
78. Remington Holdings LLC
79. Remington II LLC
80. Remington LLC
81. Rivers Edge Mining, Inc.
82. Robin Land Company, LLC
83. Sentry Mining, LLC
84. Snowberry Land Company
85. Speed Mining LLC
86. Sterling Smokeless Coal Company, LLC
87. TC Sales Company, LLC
88. The Presidents Energy Company LLC
89. Thunderhill Coal LLC
90. Trout Coal Holdings, LLC
91. Union County Coal Co., LLC
92. Viper LLC
93. Weatherby Processing LLC
94. Wildcat Energy LLC
95. Wildcat, LLC
96. Will Scarlet Properties LLC
97. Winchester LLC
98. Winifrede Dock Limited Liability Company
99. Yankeetown Dock, LLC

EXHIBIT A

The following parties join in the Debtors' proposed findings of fact:

Party	Nature of Venue Filing	ECF No.
Ad Hoc Consortium of Senior Noteholders	Joinder	480
Bank of America, N.A.	Joinder	428
Caterpillar Inc., Caterpillar Financial Services Corporation and Caterpillar Global Mining LLC	Joinder	481
Citibank, N.A.	Objection and Joinder	427
Official Committee of Unsecured Creditors	Objection	424

EXHIBIT B

#	Party ¹	Joinder Date	Party Location ²	Creditor Type (Top-50, Top-5, Creditors' Committee, DIP Agent) (Record)	Claim Amount (Record)	Joinder Filed By	Prepared on Debtors' Template?	Source(s)
1	Phillips Machine Service, Inc.	July 25, 2012	--	--	--	Outside Counsel	Yes	Dkt. No. 179; Jones Decl., Ex. A
2	Potter Grandchildren LLC and Potter Family, LLC	July 26, 2012	--	--	--	Outside Counsel	No	Dkt. No. 199; Jones Decl., Ex. A
3	Komatsu Financial Limited Partnership	August 27, 2012	Chicago, Illinois	Top-50 (No. 35)	Unliquidated	Outside Counsel	Yes	Dkt. Nos. 98, 419; Jones Decl., Ex. A
4	Powell Construction Company, Inc. and Decanter Machine, Inc.	August 27, 2012	Johnson City, Tennessee	Top-50 (No. 31)	\$675,250	Outside Counsel	Yes	Dkt. Nos. 98, 420; Jones Decl., Ex. A
5	Bank of America, N.A.	August 27, 2012	Multiple	Second Out DIP Agent	<u>see infra</u> at ¶ 80	Outside Counsel	No	Dkt. No 428; Jones Decl., Ex. A
6	Veyance Technologies, Inc.	August 28, 2012	--	--	--	Outside Counsel	Yes	Dkt. No. 431; Jones Decl., Ex. A
7	American Freedom Innovations, LLC	August 28, 2012	Evansville, Indiana	Top-50 (No. 5)	Unliquidated	Company Executive	Yes	Dkt. Nos. 98, 434; Jones Decl., Ex. A

¹ The two joinders filed after the August 31, 2012 deadline are denoted with an asterisk (*).

² "Party Location" is listed where such a location is identified on the Top 50 List [Dkt. No. 98], the Creditors' Committee list [Dkt. No. 118], or the Top 5 List [Dkt. No. 4, Schedule 2.]

#	Party ¹	Joinder Date	Party Location ²	Creditor Type (Top-50, Top-5, Creditors' Committee, DIP Agent) (Record)	Claim Amount (Record)	Joinder Filed By	Prepared on Debtors' Template?	Source(s)
8	Penn Virginia Coal Company, Penn Virginia Operating Co., L.L.C., K-Rail LLC, Suncrest Resources LLC, Crimson Processing Company, and Carbon Fuel Company	August 28, 2012	--	--	--	Outside Counsel	Yes	Dkt. No. 437; Jones Decl., Ex. A
9	RBS Asset Finance, Inc.	August 29, 2012	Chicago, Illinois	Top-50 (No. 50)	Unliquidated	Outside Counsel	Yes	Dkt. Nos. 98, 454; Jones Decl., Ex. A
10	Pocahontas Land Corporation	August 29, 2012	--	--	--	Outside Counsel	Yes	Dkt. No. 456; Jones Decl., Ex. A
11	Shepard Boone Coal Company, LLC, WPP LLC, and ACIN LLC	August 29, 2012	--	--	--	Outside Counsel	Yes	Dkt. No. 460; Jones Decl., Ex. A
12	Industrial Supply Solutions, Inc.	August 30, 2012	St. Louis, Missouri	Top-50 (No. 19)	\$1,420,759	Outside Counsel	Yes	Dkt. Nos. 98, 465; Jones Decl., Ex. A
13	Nelson Brothers, LLC	August 30, 2012	Birmingham, Alabama	Top-50 (No. 18)	\$1,579,785	Outside Counsel	Yes	Dkt. Nos. 98, 467; Jones Decl., Ex. A

#	Party ¹	Joinder Date	Party Location ²	Creditor Type (Top-50, Top-5, Creditors' Committee, DIP Agent) (Record)	Claim Amount (Record)	Joinder Filed By	Prepared on Debtors' Template?	Source(s)
14	Southern Land Company Limited Partnership, Dickinson Properties Limited Partnership, Chesapeake Mining Company, The Imperial Coal Company, Quincy Center, Quincy Coal Company, Branch Banking & Trust Company, Nelle Ratrie Chilton, and Charles C. Dickinson, III, Successor Trustees of the C. C. Dickinson Testamentary Trust, Horse Creek Land & Mining Company, and Payne-Gallatin Company	August 30, 2012	--	--	--	Outside Counsel	Yes	Dkt. No. 468; Jones Decl., Ex. A
15	Raleigh Mine & Industrial Supply, Inc.	August 30, 2012	Mount Hope, West Virginia	Top-50 (No. 16)	\$2,380,494	Outside Counsel	Yes	Dkt. Nos. 98, 472; Jones Decl., Ex. A

#	Party ¹	Joinder Date	Party Location ²	Creditor Type (Top-50, Top-5, Creditors' Committee, DIP Agent) (Record)	Claim Amount (Record)	Joinder Filed By	Prepared on Debtors' Template?	Source(s)
16	Wilmington Trust Company	August 31, 2012	Wilmington, Delaware	Top-50 (No. 1); Creditors' Committee	\$250,000,000	Outside Counsel	No	Dkt. Nos. 98, 118, 476; Jones Decl., Ex. A
17	Ad Hoc Consortium of Senior Noteholders	August 31, 2012	Southfield, Michigan; New York, New York; Milwaukee, Wisconsin; Houston, Texas; Minneapolis, Minnesota	--	-- ³	Outside Counsel	No	Dkt. Nos. 480, 544; Jones Decl., Ex. A
18	Caterpillar Inc., Caterpillar Financial Services Corporation and Caterpillar Global Mining LLC	August 31, 2012	Houston, Pennsylvania; Pasadena, California	Top 5; Top 50 (No. 12)	\$287,102 [secured]; \$3,213,351 [unsecured]	Outside Counsel	No	Dkt. Nos. 4, 98, 481; Jones Decl., Ex. A
19	Quaker Chemical Corporation	August 31, 2012	Conshohocken, Pennsylvania	Top 50 (No. 48)	\$430,887	Outside Counsel	Yes	Dkt. Nos. 98, 482; Jones Decl., Ex. A

³ According to the Verified Statement of Brown Rudnick LLP Pursuant to Bankruptcy Rule 2019(b), filed on September 10, 2012, the Ad Hoc Consortium of Senior Noteholders was comprised of eight institutions, which collectively held approximately \$102.5 million (or 41.0 percent) of the Senior Bonds. [Dkt. No. 544.] The related joinder indicated that the bondholders collectively held approximately \$100.6 million of the Senior Bonds. [Dkt. No. 480.] These amounts are not reflected above because the value of the claim is reflected in the entry for Wilmington Trust Company, the indenture trustee for the Senior Bonds.

#	Party ¹	Joinder Date	Party Location ²	Creditor Type (Top-50, Top-5, Creditors' Committee, DIP Agent) (Record)	Claim Amount (Record)	Joinder Filed By	Prepared on Debtors' Template?	Source(s)
20	Cole & Crane Real Estate Trust	August 31, 2012	--	--	--	Outside Counsel	Yes	Dkt. No. 483; Jones Decl., Ex. A
21	Little Coal Land Company	August 31, 2012	--	--	--	Outside Counsel	Yes	Dkt. No. 484; Jones Decl., Ex. A
22	United Central Industrial Supply Co., LLC	August 31, 2012	Madisonville, Kentucky	Top 50 (No. 11)	\$3,952,082	Outside Counsel	Yes	Dkt. Nos. 98, 485; Jones Decl., Ex. A
23	CapitalSource Bank	August 31, 2012	Chicago, Illinois	Top 5; Top 50 (No. 14)	\$242,298 [secured]; Unliquidated [unsecured]	Outside Counsel	Yes	Dkt. Nos. 4, 98, 486; Jones Decl., Ex. A
24	JABO Supply Corporation	August 31, 2012	Huntington, West Virginia	Top 50 (No. 21)	\$1,030,224	In-House Counsel	Yes	Dkt. No. 98, 487; Jones Decl., Ex. A
25	Logan Corporation	August 31, 2012	Clarksburg, West Virginia	Top 50 (No. 34)	\$595,806	Outside Counsel	Yes	Dkt. Nos. 98, 488; Jones Decl., Ex. A
26	David C. Olliver, as Attorney-in-Fact and/or Agent for lessors Brian L. Kirkpatrick, L.J. Kirkpatrick, Brett Alan Kirkpatrick, Elwood E. Hurt, Gerald L. Bowers, Christine E. Williams, and Waverly Coal Group	August 31, 2012	--	--	--	Outside Counsel	Yes	Dkt. No. 489; Jones Decl., Ex. A

#	Party ¹	Joinder Date	Party Location ²	Creditor Type (Top-50, Top-5, Creditors' Committee, DIP Agent) (Record)	Claim Amount (Record)	Joinder Filed By	Prepared on Debtors' Template?	Source(s)
27	J.H. Fletcher & Co.	August 31, 2012	--	--	--	Outside Counsel	Yes	Dkt. No. 491; Jones Decl., Ex. A
28	Environmine, Inc.	August 31, 2012	Charleston, West Virginia	Top 50 (No. 30)	\$694,286	Company Executive	Yes	Dkt. Nos. 98, 492; Jones Decl., Ex. A
29	Joy Technologies Inc., d/b/a Joy Mining Machinery, P&H Mining Equipment Inc., and Continental Crushing & Conveying Inc.	August 31, 2012	Mt. Vernon, Illinois	Top 50 (No. 10) ⁴	\$4,030,492	Outside Counsel	Yes	Dkt. No. 98, 494; Jones Decl., Ex. A
30	EDF Trading North America, LLC	August 31, 2012	--	--	--	Outside Counsel	No	Dkt. No. 495; Jones Decl., Ex. A
31	Flomin Coal, Inc.	August 31, 2012	Atlanta, Georgia	Top 50 (No. 28)	\$759,202	Outside Counsel	Yes	Dkt. Nos. 98, 496; Jones Decl., Ex. A
32	Rish Equipment Company	August 31, 2012	Logan, West Virginia	Top 50 (No. 20)	\$1,255,698	Company Executive	Yes	Dkt. No. 98, 499; Jones Decl., Ex. A

⁴ P & H Mine Pro Services is creditor number 44 on the Top 50 List, is identified as holding a claim for \$464,469, and is located in Milwaukee, Wisconsin. [Dkt. No. 98.] Although the record does not clarify whether P & H Mine Pro Services is affiliated with P&H Mining Equipment Inc., which filed the above-referenced joinder, it is the Debtors' understanding that the two entities are related. Nevertheless, P&H Mining Equipment Inc. is not included in the total number of Top 50 creditors supporting the Debtors' Objection.

#	Party ¹	Joinder Date	Party Location ²	Creditor Type (Top-50, Top-5, Creditors' Committee, DIP Agent) (Record)	Claim Amount (Record)	Joinder Filed By	Prepared on Debtors' Template?	Source(s)
33	CH2M HILL Engineers, Inc.	August 31, 2012	--	--	--	In-House Counsel	Yes	Dkt. No. 500; Jones Decl., Ex. A
34	Mine Equipment & Mill Supply Co.	August 31, 2012	Dawson Springs, Kentucky	Top 50 (No. 26)	\$793,957	Outside Counsel	Yes	Dkt. Nos. 98, 504; Jones Decl., Ex. A
35	Petroleum Products, LLC (formerly Petroleum Products, Inc.)	August 31, 2012	Belle, West Virginia	Top 50 (No. 17)	\$1,821,641	In-House Counsel	Yes	Dkt. Nos. 98, 505; Jones Decl., Ex. A
36*	Conveying Solutions, LLC	September 4, 2012	--	--	--	Outside Counsel	Yes	Dkt. No. 518; Jones Decl., Ex. A
37*	Carroll Engineering Company and Delta Electric Incorporated	September 7, 2012	Atlanta, Georgia	Top 50 (No. 32)	\$631,680	Outside Counsel	No	Dkt. Nos. 98, 532; Jones Decl., Ex. A

EXHIBIT C

#	Party ¹	Support Correspondence Date	Party Location ²	Creditor Type (Top-50, Top-5, Creditors' Committee, DIP Agent) (Record)	Claim Amount (Record)	Source(s)
1	Alley Trucking LLC	July 23, 2012	Belfry, Kentucky	Top 50 (No. 25)	\$806,006	Dkt. No. 98; Jones Decl., Ex. B
2	Chisler Inc.	July 25, 2012	Fairview, West Virginia	Top 50 (No. 27)	\$787,726	Dkt. No. 98; Jones Decl., Ex. B
3	Longwall Associates, Inc.	July 26, 2012	Chilhowie, Virginia	Top 50 (No. 42)	\$495,925	Dkt. No. 98; Jones Decl., Ex. B
4	B & M Repair Inc.	August 22, 2012	Chapmanville, West Virginia	--	--	Correspondence; Jones Decl., Ex. B
5	Holden Machine and Fabrication	August 23, 2012	Holden, West Virginia	--	--	Correspondence; Jones Decl., Ex. B
6	West River Conveyors & Machinery Company	August 23, 2012	Oakwood, Virginia	--	--	Correspondence; Jones Decl., Ex. B
7	CAI Industries	August 24, 2012	Hico, West Virginia	--	--	Correspondence; Jones Decl., Ex. B
8	Gauley-Robertson	August 24, 2012	Hico, West Virginia	--	--	Correspondence; Jones Decl., Ex. B
9	Peerless Block & Brick Company	August 24, 2012	St. Albans, West Virginia	--	--	Correspondence; Jones Decl., Ex. B
10	Tyler Trucking Company LLC	August 27, 2012	Seth, West Virginia	Top 50 (No. 41)	\$511,449	Dkt. No. 98; Jones Decl., Ex. B

¹ The support correspondence received after the August 31, 2012 joinder deadline is denoted with an asterisk (*).

² "Party Location" is listed where such a location is identified on the Top 50 List [Dkt. No. 98], the Creditors' Committee list [Dkt. No. 118], the Top 5 List [Dkt. No. 4, Schedule 2], or the support correspondence itself.

#	Party ¹	Support Correspondence Date	Party Location ²	Creditor Type (Top-50, Top-5, Creditors' Committee, DIP Agent) (Record)	Claim Amount (Record)	Source(s)
11	W.C. Hydraulics, LLC	August 27, 2012	Beaver, West Virginia	--	--	Correspondence; Jones Decl., Ex. B
12	Kanawha Electric & Machine Co.	August 28, 2012	Charleston, West Virginia	--	--	Correspondence; Jones Decl., Ex. B
13	Mountaineer Investigation & Security, Inc.	August 28, 2012	Athens, West Virginia	--	--	Correspondence; Jones Decl., Ex. B
14	Jennmar of Pennsylvania, LLC, Jennmar Corporation of West Virginia, Inc., Jennmar of Kentucky, Inc., Jennmar of West Kentucky, Inc., Jennmar Corporation of Virginia, Inc., Jennmar Corporation of East Virginia, Virginia Specialty Products (division of Jennmar Corporation of Virginia, Inc.), Jennchem, LLC, JLOK Co.	August 29, 2012	Pittsburgh, Pennsylvania	Top 50 (No. 7)	\$5,609,587	Dkt. No. 98; Jones Decl., Ex. B
15*	U.S. Bank National Association	September 10, 2012	St. Paul, Minnesota	Top 50 (No. 2); Creditors' Committee	\$200,000,000	Dkt. No. 98, 118; Jones Decl., Ex. B