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Unsecured Creditors of Patriot Coal Corporation, et al.*

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

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In re: : Chapter 11
: :
PATRIOT COAL CORPORATION, *et al.*, : Case No. 12-12900 (SCC)
: :
Debtors. : Jointly Administered
: :
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**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS’
STATEMENT IN SUPPORT OF CERTAIN DEBTORS’ MOTION
FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. § 362(d)
AUTHORIZING LIMITED RELIEF FROM THE AUTOMATIC STAY**

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

The Official Committee of Unsecured Creditors (the “**Committee**”)¹ of the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”)² hereby files this Statement in Support (“**Statement in Support**”) to Certain Debtors’ Motion for Entry of an Order Pursuant to 11 U.S.C. § 362(d) Authorizing Limited Relief from the Automatic Stay (the “**Limited Lift Stay Motion**”). The Committee’s support, however, is based upon the limited

¹ Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.
² In addition to Patriot Coal Corporation, there are 98 other Debtors in these jointly administered proceedings. A complete list of the Debtors in these chapter 11 cases may be found at Exhibit 1 of the Declaration of Mark N. Schroeder Pursuant to Local Bankruptcy Rule 1007-2 (Docket No. 4). The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

nature of the relief sought and the reasons discussed more fully below. In support of the Limited Lift Stay Motion, the Committee respectfully states as follows:

FACTUAL BACKGROUND

1. Prior to the Petition Date, three subsidiaries of Patriot Coal Corporation (“**Patriot Coal**”), (i) Hobet Mining LLC (“**Hobet**”); (ii) Apogee Coal Company, LLC (“**Apogee**”); and (iii) Catenary Coal Company, LLC (“**Catenary**”, collectively, the “**Selenium Debtors**” and, the Selenium Debtors together with Patriot Coal, the “**Movants**”), were named as defendants in three separate litigations (collectively, the “**Environmental Proceedings**”) brought by certain non-governmental environmental organizations, including, among others, the Ohio Valley Environmental Coalition, Inc., the Sierra Club and the West Virginia Highlands Conservancy, Inc. (collectively, the “**Private Plaintiffs**”), regarding the Selenium Debtors’ compliance with selenium limits pursuant to permits issued to them in relation to their large-scale surface mining activities. The three litigations resulted in certain Prepetition Orders³ issued by the United States District Court for the Southern District of West Virginia (“**SDWV District Court**”) that subject the Selenium Debtors and, with respect to only one consent decree, Patriot Coal (either collectively or individually) to a compliance schedule by which the Selenium Debtors (Hobet, Apogee and Catenary) must reduce the selenium effluence levels in the water to meet the permit requirements.⁴ None of the other Debtors are subject to any of the Prepetition

³ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Limited Lift Stay Motion. The Prepetition Orders consist of: (i) the Hobet 22 Order (September and October 2010) and (ii) the Consent Decree from 2012 (the “**2012 Consent Decree**”) which was entered into in *Ohio Valley Env'tl. Coal., Inc. v. Patriot Coal Corp., et al., No. 3:11-0115 (S.D. W. Va.)* (the “**2011 Environmental Proceeding**”).

⁴ Patriot Coal was named as a defendant in only one of the three Environmental Proceedings – specifically, the 2011 Environmental Proceeding that led to the 2012 Consent Decree, based upon theories of director operator liability and alter-ego (as compared with being an entity to which a discharge permit had been issued). Patriot Coal may have obligations under the 2012 Consent Decree, but neither Patriot Coal (with respect to the 2012 Consent Decree) nor the other Movants (with respect to all of the Environmental Proceedings) have admitted to any of the allegations in the 2011 Environmental Proceeding.

Orders. The Prepetition Orders require considerable short-term expenditures by the Selenium Debtors, including, but not limited to, \$29 million prior to the end of 2013 while also requiring significant reserves to be held for the Selenium Debtors' water treatment. The Committee understands that no other Debtors (other than the Movants) were named as defendants nor are subject to the same discharge permits (with respect to the Selenium Debtors) and therefore are not subject to the Prepetition Orders.

2. As a result of the Movants' chapter 11 filings (the "**Bankruptcy Cases**"), section 362 of the Bankruptcy Code automatically stayed any attempt by the Private Plaintiffs to enforce or otherwise pursue the Environmental Proceedings, including enforcement of the Prepetition Orders. While the SDWV District Court has previously authorized short extensions of the compliance deadlines to allow the Movants to continue settlement discussions with the Private Plaintiffs, the Private Plaintiffs properly recognized the impact of the automatic stay. Accordingly, the Movants have made a request for limited modification of the stay.

STATEMENT IN SUPPORT

3. The Committee supports the Movants' request for a limited modification of the automatic stay for the sole purpose of seeking an extension of deadlines in the SDWV District Court where the Environmental Proceedings are pending. To the extent that the SDWV District Court grants the request to extend deadlines under the Prepetition Orders, the Movants and their creditors, including the Committee, need not immediately address potentially disputed issues concerning, among other issues, environmental claims in these Bankruptcy Cases.

4. These Bankruptcy Cases were only filed approximately eight weeks ago and the Committee is still in the process of analyzing environmental claims in these cases, including those pertaining to the Prepetition Orders. The Committee is particularly sensitive to the enormous potential liabilities that may stem from these environmental matters. Patriot Coal

reports, on a consolidated basis for all of the Debtors and their affiliates, more than \$487 million such environmental liabilities on its Form 10-Q for the period ending June 30, 2012, which include those under the Prepetition Orders. These are significant matters that will require thorough review and analysis by, among others, the Committee. As such, the Committee is reserving all of its rights with respect to the assertion of environmental claims against the Debtors which matters are not directly implicated by the specific relief sought in the Limited Stay Relief Motion, which is narrow.

5. The Committee shares the Movants' concerns with the current timeframes established by the Prepetition Orders and, thus, supports a limited modification of the stay to allow more time to address these matters.

6. The Movants have limited resources to stabilize their operations, effectively deal with their labor and legacy obligations, and ultimately move towards a reorganization. Due to the limited capabilities, significant expenditures at this time could simply derail these Bankruptcy Cases without producing the desired results. Preserving the Movants' immediate liquidity while the parties in these cases analyze the long-term restructuring of the Movants and other Debtors benefits all parties. In the event that the SDWV District Court extends the prepetition deadlines, emergency consideration by the parties in this Court over the nature of the environmental claims, including the obligations of the Movants, is avoided. In the event, however, that the SDWV District Court were not to extend the deadlines under the Prepetition Orders, the automatic stay should remain in effect to permit the Committee and the numerous other creditors affected by the Environmental Proceedings to address appropriate next steps.

7. For the foregoing reasons, the Committee supports a limited modification of the stay to seek to obtain an extension of time while these important environmental issues are addressed with appropriate input from all of the relevant and affected parties in interest. Granting of the Limited Lift Stay Motion will neither prejudice any of parties' otherwise applicable rights, nor waive any other aspect of the automatic stay under 11 U.S.C. 362(a).

**THE RELIEF SOUGHT IN THE PRIVATE PLAINTIFF'S OBJECTION ("LIMITED OBJECTION")
IS PROCEDURALLY IMPROPER AND THE COMMITTEE RESERVES ALL OF ITS RIGHTS**

8. In their recently filed Limited Objection, the Private Plaintiffs not only oppose the Debtors' Limited Lift Stay Motion but cross-move for relief from the automatic stay for "all purposes" (including unspecified enforcement rights) related to the Environmental Proceedings. The Limited Objection – to the extent that it seeks more than to simply object to the motion – raises a numerous, serious and significant issues that, in the appropriate manner, will need to be addressed by the Committee and other parties in interest.

9. Importantly, it is procedurally improper – and indeed prejudicial to the rights of creditors in these cases – for such a request to be made without compliance with the procedures established by the Case Management Order which will allow all parties, including the Movants, the Committee and other parties in interest, to evaluate a properly filed motion and appropriately respond. The Private Plaintiffs themselves acknowledge the complexity of the issues in the Environmental Proceedings in their Limited Objection – issues and matters that should be addressed only once a proper motion (or cross-motion) on due and sufficient notice has been filed by the Private Plaintiffs.

10. At this time, the Committee is not responding to the substantive assertions in the Limited Objection as the asserted basis for the "cross-motion" and reserves all of its rights to do so at the appropriate time. However, the Committee notes that the Limited Objection

contains sweeping and unsubstantiated statements seeking critical substantive relief without any support, including, without limitation, characterizations that the entirety of the underlying obligations are not “dischargeable” and, in any event, should be paid irrespective of cost or appropriate funding sources and without any further accountability to this Court, the Committee or other parties in interest. These are material issues that can only be addressed after thorough analysis and proper pleadings are submitted to the Court.

Dated: New York, New York
October 5, 2012

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