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

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 12-[] (___)

(Jointly Administered)

**DEBTORS' MOTION FOR AN ORDER AUTHORIZING (i) DEBTORS TO
(a) PAY PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS AND
OTHER COMPENSATION AND (b) MAINTAIN EMPLOYEE BENEFITS
PROGRAMS AND PAY RELATED ADMINISTRATIVE OBLIGATIONS,
(ii) EMPLOYEES AND RETIREES TO PROCEED WITH OUTSTANDING
WORKERS' COMPENSATION CLAIMS AND (iii) FINANCIAL INSTITUTIONS
TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Patriot Coal Corporation and its subsidiaries that are debtors and debtors in
possession in these proceedings (collectively, the "**Debtors**") respectfully represent:

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.

Relief Requested

1. By this motion (the “**Motion**”), and pursuant to sections 105(a), 362(d) and 363(b) of the Bankruptcy Code, the Debtors seek entry of an order in the form attached hereto as Exhibit A: (a) authorizing, but not requiring, them to pay, in their sole discretion, all or a portion of the amounts owing (and associated costs) under or related to Wages, Withholding Obligations, Reimbursement Obligations, Relocation Obligations, Health and Welfare Plan Obligations, Vacation and Sick Leave Obligations, S&A Obligations, Savings Plans Obligations, NBCWA Retirement Obligations, Severance Obligations, Workers’ Compensation Obligations, Contingent Workers Obligations, Bonus Obligations, Allowance Programs and Other Employee Programs (each as individually defined below and, collectively, the “**Prepetition Employee Obligations**”), (b) unless otherwise set forth herein, authorizing, but not requiring, them to continue, in their sole discretion, their plans, practices, programs and policies for their Employees and Retirees (each as defined below), as those plans, practices, programs and policies were in effect as of the Petition Date and as may be modified, terminated, amended or supplemented from time to time, in their sole discretion, and to make payments pursuant to such plans, practices, programs and policies in the ordinary course of business, as well as to pay related administrative obligations, (c) permitting Employees and Retirees holding claims under the Workers’ Compensation Programs to proceed with such claims in the appropriate judicial or administrative fora and to permit insurers to continue to access collateral and security provided by the Debtors pursuant to the Workers’ Compensation Programs and (d) authorizing applicable banks and other financial institutions to receive, process and pay any and all checks drawn on the Debtors’ payroll

and general disbursement accounts and automatic payroll and other transfers to the extent that those checks or transfers relate to any of the foregoing.

2. **By seeking the authorization requested herein, it should not be presumed that the Debtors have determined, as of this time, which of the Prepetition Employee Obligations they will pay or honor, nor should any party rely on this Motion as to any specific claim or benefit.**

Background and Jurisdiction

3. On July 9, 2012 (the “**Petition Date**”), each Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

5. Additional information about the Debtors’ businesses and the events leading up to the Petition Date can be found in the Declaration of Mark N. Schroeder, Patriot Coal Corporation’s Senior Vice President and Chief Financial Officer, which is incorporated herein by reference.

6. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and may be determined by the Bankruptcy Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Prepetition Employee Obligations

Wages, Salaries and Other Compensation

7. Collectively, the Debtors currently employ approximately 4,000 people in an active status,² working in both full and part-time positions, including miners, engineers, truck drivers, mechanics, electricians, managers, administrative support staff and other personnel (together with current members of the Debtors' boards of directors, the "**Employees**"). As of June 11, 2012, more than 42% of the Debtors' Employees were represented by the United Mine Workers of America (the "**UMWA**").

8. The Debtors' Employees are paid semi-monthly, bi-weekly or weekly. The Debtors' average weekly gross payroll is approximately \$9 million (the "**Wages**"). The Debtors do not believe that any individual is owed prepetition Wages that, together with prepetition Relocation Obligations and prepetition Vacation and Sick Leave Obligations, would exceed the \$11,725 cap, and the Debtors will not pay any individual prepetition Wages that, together with prepetition Relocation Obligations and prepetition Vacation and Sick Leave Obligations, would exceed such cap prior to entry of an order granting the relief requested herein on a final basis.

Withholding Obligations

9. The Debtors routinely withhold from Employees' wages certain amounts that the Debtors are required to transmit to third parties for such purposes as Social

² In addition, approximately 645 of the Debtors' Employees are on furlough, long-term disability, military leave, some form of personal leave or otherwise in an inactive status. While such Employees are not receiving wages, some may be receiving other benefits, including, but not limited to, disability payments from health and welfare benefit plans, workers' compensation benefits from state-mandated programs, severance benefits, continuation of medical benefits and/or certain life insurance benefits, depending on the type of leave and/or years of service.

Security, Medicare, federal and state income taxes, Health and Welfare Plans (as defined below) contributions, defined contribution retirement plan contributions and payroll deduction payment programs for various optional insurance programs, uniform deductions, charitable deductions, loan payments, union dues and garnishment, child support and other similar orders (collectively, the “**Withholding Obligations**”). The Debtors believe that such withheld funds, to the extent that they were in the Debtors’ possession as of the Petition Date and/or remain in the Debtors’ possession, are not property of the Debtors’ bankruptcy estates.

Business Expense Reimbursement

10. The Debtors customarily reimburse Employees who incur business expenses in the ordinary course of performing their business duties on behalf of the Debtors. These reimbursement obligations include lodging, transportation, meals, customer entertainment expenses, professional courses and seminars, membership dues for professional organizations and other miscellaneous business expenses (collectively, the “**Reimbursement Obligations**”).

11. Reimbursement is made directly to the Employee, on a weekly basis, for business expenses paid by Employees. It is difficult for the Debtors to determine the exact amount of Reimbursement Obligations outstanding at any particular time because of the generally unpredictable and irregular nature of the Reimbursement Obligations. Historically, Reimbursement Obligations are approximately \$28,000 per month. The Debtors do not believe that any insider (as defined in section 101(31) of the Bankruptcy Code) is owed any prepetition Reimbursement Obligations that, together with prepetition Wages, prepetition Relocation Obligations and prepetition Vacation and Sick Leave

Obligations, would exceed the \$11,725 cap, and the Debtors will not pay any insider prepetition Reimbursement Obligations that, together with prepetition Wages, prepetition Relocation Obligations and prepetition Vacation and Sick Leave Obligations, would exceed such cap prior to entry of an order granting the relief requested herein on a final basis.

Relocation Benefits

12. The Debtors also offer relocation benefits to Employees who relocate at the request of the Debtors in furtherance of the Debtors' business needs (the "**Relocation Obligations**"). No payments will be made on account of Relocation Obligations, and the Debtors are not requesting authority to pay any Relocation Obligations, prior to entry of an order granting the relief requested herein on a final basis.

Health and Welfare Benefits

13. The Debtors offer several health and welfare benefit plans (collectively, the "**Health and Welfare Plans**") for represented and non-represented Employees, certain former employees and certain retirees (the "**Retirees**"), including coverage for medical, medical premium and expense reimbursement, prescription, dental, vision, life, short-term and long-term disability, accidental death and dismemberment, health flexible spending accounts and dependent care flexible spending accounts, business travel and accident insurance and employee assistance programs (collectively, the "**Health and Welfare Plan Obligations**"). Certain Health and Welfare Plans are administered by third-parties that, among other things, process and administer claims and seek reimbursement for compensable claims from the Debtors. Because of the manner in which such expenses are incurred and claims are processed under the Health and Welfare

Plans, it is difficult for the Debtors to determine the extent of their obligations under the Health and Welfare Plans outstanding at any particular time. Based on historical experience and expected future trends, the Debtors estimate that the monthly cost of the Health and Welfare Plan Obligations (including administrative payments to the third-party administrators) is approximately \$14.6 million, of which approximately \$9.5 million is paid pursuant to collective bargaining agreements and \$1.2 million is paid pursuant to the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. § 9701 et seq.³ Prior to entry of an order granting the relief requested herein on a final basis, the Debtors will not pay any amounts on account of Health and Welfare Plan Obligations before the applicable due dates.

Vacation Policy and Sick Leave

14. Pursuant to the Debtors' vacation policies, eligible Employees are paid their regularly scheduled full or part time wage, for each vacation day, up to the maximum number of days accrued. Additionally, at the beginning of each calendar year, the Debtors offer Employees "floating" holidays. Employees may use these "floating" holidays at any time during such calendar year, but cannot carry "floating" holidays over to the following year. For Employees terminating their employment with the Debtors, accrued and unused vacation days, but not "floating" holidays, are monetized and paid out. The Debtors have prepetition accrued vacation, personal and sick leave obligations for Employees (the "**Vacation and Sick Leave Obligations**"), to be honored in the

³ Nothing contained in this Motion or any order granting the relief requested herein, shall constitute an assumption or postpetition reaffirmation of any of the Health and Welfare Plan Obligations. The Debtors expressly reserve their rights to seek to modify or terminate any benefits provided under any agreements in any manner permitted by law, including, as applicable, pursuant to sections 1113 and 1114 of the Bankruptcy Code or otherwise.

ordinary course of business. The Debtors estimate that these average monthly obligations are approximately \$1.5 million, of which approximately \$1.3 million is on account of obligations under collective bargaining agreements. Additionally, prior to 2000, the Debtors allowed Employees to defer vacation days for later use or payout. The Debtors have accrued deferred vacation obligations to current Employees totaling approximately \$2.4 million.

15. The Debtors also provide sickness and accident benefits to certain non-represented and represented Employees (collectively, the “**S&A Obligations**”). Eligible non-represented Employees can receive these benefits for up to 52 weeks during each period of disability. Eligible represented Employees can receive benefits for disability resulting from an accident, either on or off the job, for a maximum of 52 weeks, regardless of the length of the Employee’s classified employment at the time of the accident. Represented Employees’ benefits for disability resulting from sickness are payable based on the length of classified employment at the date the disability commences up to a maximum of 52 weeks. The Debtors estimate that annual S&A Obligations total approximately \$1 million, of which approximately \$790,000 is on account of obligations under collective bargaining agreements.

Savings Plans, Pension Plans and Non-Medical Retirement Obligations

16. The Debtors maintain a qualified defined contribution plan that meets the requirements of section 401(k) of the Internal Revenue Code for certain non-represented Employees, and a qualified plan for certain represented Employees (together, the “**Savings Plans**”). Generally, the Debtors either match voluntary contributions or make defined contributions to the Savings Plans up to specified levels. A performance

contribution feature under the qualified non-represented Savings Plan allows for additional contributions based upon meeting specified performance targets. Additionally, certain of the Debtors make *de minimis* payments on account of a legacy program to certain salaried employees (together with payments made under the Savings Plans, the “**Savings Plans Obligations**”). The total cost of the Savings Plans for the year ending December 31, 2011 was approximately \$12 million, of which \$800,000 in payments were made pursuant to collective bargaining agreements. Prior to entry of an order granting the relief requested herein on a final basis, the Debtors will not pay any amounts on account of Savings Plans Obligations before the applicable due dates.

17. In addition the Debtors maintain a supplemental, non-qualified savings plan (the “**Supplemental Savings Plan**”) for certain salaried employees. The Debtors are not requesting authority to pay any prepetition amounts owed to participants under the Supplemental Savings Plan at this time. The Debtors are requesting the authority, in their sole discretion, to continue to administer the Supplemental Savings Plan in the ordinary course of business; *provided* that any postpetition amounts contributed to the Supplemental Savings Plan shall be deemed administrative expenses; *provided further* that no prepetition Supplemental Savings Plan amounts will be paid during these cases absent further order of the Court.

18. Certain of the Debtors participate in a defined benefit multi-employer pension plan known as the UMWA 1974 Pension Plan pursuant to the 2007 National Bituminous Coal Wage Agreement (as may have been amended or modified by the 2011 National Bituminous Coal Wage Agreement and/or various memoranda of understanding with respect to certain of the Debtors, the “**NBCWA**”). Certain of the Debtors also have

additional payment obligations related to represented Employees and Retirees pursuant to the NBCWA (the “**Non-Medical Retirement Obligations** and, together with the payments to the UMWA 1974 Pension Plan, the “**NBCWA Retirement Obligations**”). The Debtors estimate their annual NBCWA Retirement Obligations to be approximately \$30 million.⁴ Prior to entry of an order granting the relief requested herein on a final basis, the Debtors will not pay any amounts on account of NBCWA Retirement Obligations before the applicable due dates.

Severance

19. In the ordinary course of business, the Debtors maintain a practice of (i) providing one month’s pay to certain terminated Employees, none of whom are senior management and (ii) reimbursing certain former Employees, none of whom are senior management, for legal fees incurred in connection with their employment by the Debtors ((i) and (ii) collectively, the “**Severance Obligations**”). No payments will be made on account of Severance Obligations, and the Debtors are not requesting authority to pay any Severance Obligations, prior to entry of an order granting the relief requested herein on a final basis.

Workers’ Compensation Program

20. Under applicable law, the Debtors are required, through self-insurance or third-party insurers, to provide their Employees and Retirees with workers’ compensation insurance coverage for claims arising from or related to their employment with the

⁴ Nothing contained in this Motion or any order granting the relief requested herein, shall constitute an assumption or postpetition reaffirmation of any of the NBCWA Retirement Obligations. The Debtors expressly reserve their rights to seek to modify or terminate any benefits provided under any agreements in any manner permitted by law, including, as applicable, pursuant to section 1114 of the Bankruptcy Code or otherwise.

Debtors, including claims under the Federal Mine Safety and Health Act of 1977 (the Black Lung Benefits Act), 30 USC § 901 et seq., (the “**Workers’ Compensation Programs**”), and to satisfy the Debtors’ obligations arising under or related to these programs (the “**Workers’ Compensation Obligations**”). In order to secure the payment of their self-insured Workers’ Compensation Obligations, the Debtors were required to post, in the aggregate, approximately \$100 million in letters of credit to the states of Kentucky, Illinois and West Virginia, and \$15 million in treasury-bills to the Department of Labor. The Debtors’ self-insured Workers’ Compensation Obligations are administered through claims administrators pursuant to separate claims services agreements with Chartis Claims, Inc. (“**Chartis**”), Frank Gates / Avizent Risk, and Underwriters Safety & Claims, Inc. (“**US&C**”) (collectively, the “**Claims Administrators**”). Under these agreements, the Claims Administrators, among other things, administer and advise on claims, provide the Debtors with managed care services, defend against claims and seek reimbursement from the Debtors for compensable claims.

21. For certain of their Workers’ Compensation Obligations, the self-insured Debtors also maintain an excess insurance policy with a \$2 million retention through National Union Fire Insurance Company of Pittsburgh, Pa and a zero-deductible policy with BrickStreet Insurance. Additionally certain of the Debtors who are not authorized to be self-insurers maintain an insurance policy with a \$500,000 deductible through Chartis to satisfy their Workers’ Compensation Obligations. The Debtors collateralize their Chartis Workers’ Compensation Obligations and a legacy Workers’ Compensation policy with approximately \$25.3 million in letters of credit. The total amount of annual

Workers' Compensation Obligations (including administrative payments to the Claims Administrators) is approximately \$25 million.

Contingent Workers

22. From time to time, the Debtors use the personal services of individuals employed by, and provided through, staffing agencies and of individuals providing personal services directly as independent contractors (collectively, the "**Contingent Workers**"). Such services are necessary to the operation of the Debtors' businesses. The Contingent Workers include, but are not limited to, temporary workers, on-site security workers, contract miners and laborers, transportation workers, fill-in mechanics and repairmen and construction workers used to supplement the Debtors' workforce when necessary. Payments to the Contingent Workers vary according to the terms of the Contingent Workers' individual contracts with the Debtors or according to the terms of the Debtors' contract with the appropriate staffing agencies. It is difficult for the Debtors to determine the total accrued and unpaid prepetition obligations to the Contingent Workers because of the generally unpredictable and irregular nature of the Obligations. While difficult to estimate, the Debtors believe that their total accrued and unpaid prepetition obligations to Contingent Workers do not exceed \$6.5 million (the "**Contingent Workers Obligations**"). The Debtors do not believe that any Contingent Worker is owed prepetition amounts that would exceed the \$11,725 cap.

Bonus Plans⁵

23. Certain of the Debtors also maintain annual bonus plans at specific mining locations for achieving targets related to production volume, safety, environmental and individual objectives covering approximately 750 Employees, none of whom are senior management or insiders (as defined in section 101(31) of the Bankruptcy Code). The Debtors estimate that the total annual payments under these bonus programs are approximately \$5.6 million (the “**Operations Bonus Obligations**”). No payments will be made on account of Operations Bonus Obligations prior to entry of an order granting the relief requested herein on a final basis.

24. Additionally, certain Debtors maintain mine-specific monthly bonus plans for achieving goals such as safety and production targets covering approximately 3,250 Employees, none of whom are senior management or insiders (as defined in section 101(31) of the Bankruptcy Code). The Debtors estimate that total annual payments under these bonus programs are approximately \$7 million (the “**Safety Bonus Obligations**” together with the Operations Bonus Obligations, the “**Bonus Obligations**”).

Allowance Programs

25. In addition to the foregoing, the Debtors have in place various allowance programs that are offered to certain Employees at mining locations, including vehicle, tool, clothing, bathhouse and housing (collectively, the “**Allowance Programs**”). The Debtors believe that the Allowance Programs are critical to operating the Debtors’ businesses and, in some cases, are contractually required. For example, because the

⁵ The Debtors also maintain retention programs and an annual performance-based incentive plan program in the ordinary course of business. The Debtors do not expect that any amounts will be due under these programs in the first several weeks after the Petition Date. Accordingly, the Debtors intend to seek Court approval to continue these programs at a later date by separate motion.

nature of the Debtors' businesses requires that certain Employees travel to supervise production on-site, the Debtors make payments on account of various vehicle and gasoline allowance programs. While the Debtors are currently exploring options to reduce costs across their businesses, including in this area, the Debtors believe that failing to honor expected benefits under the Allowance Programs would have a significant adverse effect on the Debtors' businesses and estates. The total amount of annual payments under the Allowance Programs is approximately \$5.3 million.

Other Employee Programs

26. In addition to the foregoing, the Debtors have in place miscellaneous practices, programs and policies that provide benefits and protections to various groups of Employees, including, but not limited to, low-cost tuition assistance and health and wellness programs (collectively, the "**Other Employee Programs**"). The Debtors believe that the Other Employee Programs are important to maintaining Employee morale and assisting in the retention of the Debtors' workforce. The monthly cost of such programs for the Debtors is negligible in the context of the Debtors' aggregate compensation and benefit obligations. No payments will be made on account of Other Employee Programs, and the Debtors are not requesting authority to make any payments on account of Other Employee Programs, prior to entry of an order granting the relief requested herein on a final basis.

**Cause Exists to Authorize Paying the
Prepetition Employee Obligations**

27. Pursuant to sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, an individual's claims for "wages, salaries, or commissions, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date, and claims against

the Debtors for contributions to employee benefit plans arising from services rendered within 180 days before the Petition Date, are each afforded unsecured priority status of \$11,725 per employee. Furthermore, section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” Section 105(a) of the Bankruptcy Code further provides, in relevant part, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

28. The Debtors believe that many of their Prepetition Employee Obligations constitute priority claims. The Debtors submit that payment of these Prepetition Employee Obligations, is necessary and appropriate and is authorized under section 105(a) of the Bankruptcy Code pursuant to the “necessity of payment” doctrine, which “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).

29. Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” A bankruptcy court’s use of its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175. “Under 11 U.S.C. § 105, a court can permit pre-plan payment of pre-petition obligations when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177). Furthermore,

Bankruptcy Rule 6003 permits the payment of prepetition obligations within the first 21 days of a case where doing so is “necessary to avoid immediate and irreparable harm.”

30. In a long line of well-established cases, federal courts have consistently permitted postpetition payment of certain prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport Ry.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent “stoppage of [crucial] business relations”); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285-86 (S.D.N.Y. 1987), *appeal dismissed*, 838 F.2d 59 (2d Cir. 1988) (approving lower court order authorizing payment of prepetition wages, salaries, expenses and benefits).

31. This “doctrine of necessity” functions in a chapter 11 reorganization as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors’ continued operation). The doctrine is frequently invoked early in a reorganization, particularly in connection with those chapter 11 sections that relate to payment of prepetition claims. The court in *In re Structurelite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) indicated its accord with “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least

proportionately.” The court stated that “a per se rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” *Id.* at 932. Accordingly, pursuant to section 105(a) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

32. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow the debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Debtors’ decisions to use, sell or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a section 363(b) application must find from the evidence presented before him or her a good business reason to grant such application); *see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting the standard for determining a section 363(b) motion is “a good business reason”).

33. The business judgment rule is satisfied “when the following elements are present: (1) a business decision, (2) disinterestedness, (3) due care, (4) good faith, and (5) according to some courts and commentators, no abuse of discretion or waste of corporate assets.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2d Cir. 1993) (internal quotations omitted). In fact, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s

conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp.* (*In re Johns-Manville Corp.*), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this district have consistently and appropriately been loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and will uphold a board’s decisions as long as they are attributable to any “rational business purpose.” *In re Integrated Res. Inc.*, 147 B.R. at 656.

34. The Debtors submit that the requested relief represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm, and is justified under section 363(b), as well as under section 105(a) of the Bankruptcy Code and Bankruptcy Rule 6003. This is because any delay in paying Prepetition Employee Obligations will adversely impact the Debtors’ relationships with their Employees and could irreparably impair the Employees’ morale, dedication, confidence and cooperation. The Debtors’ businesses hinge on their relationships with their customers, and the ability to provide superior services is vital. The Employees’ support for the Debtors’ reorganization efforts is critical to the success of those efforts. At this early stage, the Debtors simply cannot risk the substantial damage to their businesses that would inevitably attend any decline in their Employees’ morale attributable to the Debtors’ failure to pay wages, salaries, benefits and other similar items.

35. Absent an order granting the relief requested, many Employees will undoubtedly suffer hardship and, in many instances, serious financial difficulties, as the amounts in question are needed to enable certain of the Employees to meet their own personal financial obligations. Without the requested relief, the stability of the Debtors will be undermined, perhaps irreparably, by the possibility that otherwise loyal

Employees will seek other employment alternatives. Consequently, all of the Debtors' creditors will benefit if the requested relief is granted.

36. In the overwhelming majority of large corporate filings, courts have approved payment of employee prepetition claims for compensation, benefits and expense reimbursements similar to those described herein. *See, e.g., In re Pinnacle Airlines Corp.*, Case No. 12-11343 (REG) (Bankr. S.D.N.Y. Apr. 2, 2012); *In re Eastman Kodak Co.*, Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. Jan. 20, 2012); *In re Hostess Brands, Inc.*, Case No. 12-22052 (RDD) (Bankr. S.D.N.Y. Jan. 13, 2012); *In re AMR Corp.*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Nov. 29, 2011); *In re Sbarro, Inc.*, Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. May 4, 2011); *In re Mesa Air Group, Inc.*, Case No. 10-10018 (MG) (Bankr. S.D.N.Y. Feb. 23, 2010); *In re Star Tribune Holdings Corp.* Case No. 09-10244 (RDD) (Bankr. S.D.N.Y. Feb. 6, 2009); *In re Lyondell Chemical Co.*, Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Jan. 26, 2009); *In re Frontier Airlines Holdings, Inc.*, Case No. 08-11298 (RDD) (Bankr. S.D.N.Y. Apr. 14, 2008); *In re PLVTZ, Inc.*, Case No. 07-13532 (Bankr. S.D.N.Y. Nov. 9, 2007); *In re Dana Corp.*, Case No. 06-10354 (Bankr. S.D.N.Y. Mar. 3, 2006); *In re Calpine Corp.*, Case No. 05-60200 (Bankr. S.D.N.Y. Dec. 21, 2005); *In re Delphi Corp.*, No. 05-44481 (Bankr. S.D.N.Y. Oct. 13, 2005); *In re Delta Air Lines, Inc.*, Case No. 05-17923 (Bankr. S.D.N.Y. Sept. 16, 2005); *In re Aerovias Nacionales de Colombia S.A. Avianca (In re Avianca, Inc.)*, Case Nos. 03-11678 and 03-11679 (Bankr. S.D.N.Y. Mar. 21, 2003); *In re WorldCom, Inc.*, Case No. 02-13533 (Bankr. S.D.N.Y. July 23, 2002); *In re Adelphia Bus. Solutions, Inc.*, Case No. 02-11389 (Bankr. S.D.N.Y. Mar. 28, 2002); *In re Global*

Crossing Ltd., Case No. 02-40188 (Bankr. S.D.N.Y. Jan. 28, 2002); *In re Enron Corp., Inc.*, Case No. 01-16034 (Bankr. S.D.N.Y. Dec. 3, 2001) (modified on Jan. 15, 2002).

**The Automatic Stay Should be Modified
as it Applies to Employees' and Retirees' Claims
Under the Workers' Compensation Programs**

37. It is imperative that the Debtors be permitted to continue to pay and/or honor any and all Workers' Compensation Obligations, including all prepetition premiums, claims (including claim settlements), losses and expenses in connection with their Workers' Compensation Obligations and to pay all costs and expenses associated with the Workers' Compensation Programs, including such costs and expenses related to administration, servicing, processing, adjusting, paying and settling claims and losses under these programs. In connection with their Workers' Compensation Obligations, the Debtors also seek authority for the insurers to continue to use collateral and security, as provided under the Workers' Compensation Programs, without further order of the Court.

38. It is crucial for employee morale and the operations of the Debtors' businesses for the Debtors to continue to pay workers' compensation benefits and honor their obligations under the Workers' Compensation Programs described herein. The Debtors anticipate that they will obtain debtor-in-possession financing and will have sufficient cash on hand to make these payments, which is in the best interests of the Debtors, their estates and their creditors.

39. Section 362(a) of the Bankruptcy Code, commonly known as the automatic stay, operates to stay, among other things:

the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the

debtor that arose before the commencement of the case under this title.

Section 362, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.” 11 U.S.C. § 362(d)(1).

40. To the extent any of the Employees or Retirees hold claims pursuant to the Workers’ Compensation Programs, the Debtors seek authorization under section 362(d) of the Bankruptcy Code, in the Debtors’ sole discretion, to permit such Employees or Retirees to proceed with such claims in the appropriate judicial or administrative fora. The Debtors believe cause exists to grant them authority to modify the automatic stay, where the Debtors deem it appropriate to do so, because staying such claims could have a detrimental effect on the financial (and medical) well-being and morale of the Debtors’ Employees and Retirees and lead to the departure of certain Employees. Such departures could cause a severe disruption in the Debtors’ businesses, to the detriment of all parties in interest. To this end, the Debtors seek an order granting (a) relief from the automatic stay as it relates to Employee and Retiree claims under the Workers’ Compensation Programs and the insurers’ continued use of collateral and security provided by the Debtors pursuant to the Workers’ Compensation Programs and (b) waiver of the corresponding notice requirements under Bankruptcy Rule 4001(d).

41. Pursuant to this Motion, the Debtors do not seek a waiver, termination or modification of the automatic stay with respect to any other claims.

Applicable Banks Should be Authorized to Honor and Pay Checks Issued and Make Other Transfers to Pay the Prepetition Employee Obligations

42. The Debtors further request that the Court authorize all of the Debtors’ banks to receive, process, honor and pay all prepetition and postpetition checks issued or

to be issued, and fund transfers requested or to be requested, by the Debtors for the Prepetition Employee Obligations. The Debtors also seek authority to issue new postpetition checks, or effect new fund transfers, for Prepetition Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected and to reimburse their Employees and Retirees or the applicable payee, as the case may be, for any fees or costs incurred by them in connection with a dishonored or voided check or funds transfer.

43. As a result of the commencement of the Debtors' chapter 11 cases, and in the absence of an order of the Court providing otherwise, the Debtors' checks, wire transfers and direct deposit transfers for Prepetition Employee Obligations may be dishonored or rejected by the banks.

44. The Debtors represent that each of these checks or transfers is or will be drawn on the Debtors' payroll and general disbursement accounts and can be readily identified as relating directly to payment of the Prepetition Employee Obligations. Accordingly, the Debtors believe that prepetition checks and transfers other than those for Prepetition Employee Obligations will not be honored inadvertently.

45. Authorization to pay any amounts for Prepetition Employee Obligations shall not be deemed to constitute a postpetition assumption, reaffirmation or adoption of any contract, program, plan or policy pursuant to section 365 of the Bankruptcy Code. The Debtors are in the process of reviewing these matters and reserve all of their rights under the Bankruptcy Code with respect thereto. Moreover, authorization to pay Prepetition Employee Obligations shall not affect the Debtors' right to contest the amount

or validity of any Prepetition Employee Obligations, including any payroll taxes that may be due to any taxing authority.

Interim Order

46. The Debtors seek the relief requested in this Motion in the form of the interim order (the “**Interim Order**”) attached hereto. Within three business days of the entry of the Interim Order, the Debtors will serve a copy of the Interim Order and this Motion on (a) the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”), (b) those creditors holding the five largest secured claims against the Debtors’ estates on a consolidated basis, (c) those creditors holding the 50 largest unsecured claims against the Debtors’ estates on a consolidated basis, (d) attorneys for the administrative agents for the Debtors’ proposed postpetition lenders, (e) the Internal Revenue Service, (f) the Securities and Exchange Commission, (g) the United States Environmental Protection Agency and (h) the United States Attorney’s Office for the Southern District of New York.

47. The Debtors request that the deadline to file an objection (“**Objection**”) to the Motion shall be 4:00 p.m. (prevailing Eastern Time) on a date established by the Court that is at least seven calendar days prior to any hearing scheduled by the Court with respect to the relief sought herein on a final basis (the “**Objection Deadline**”). An Objection shall be considered timely only if, on or prior to the Objection Deadline, it is (a) filed with the Court and (b) served upon and actually received by (i) the U.S. Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Elisabetta G. Gasparini and Paul K. Schwartzberg, (ii) proposed counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S.

Huebner and Brian M. Resnick, (iii) attorneys for the administrative agents for the Debtors' proposed postpetition lenders, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Margot B. Schonholtz and Ana Alfonso and (iv) the attorneys for any official committee of unsecured creditors then appointed in these cases.

48. Unless otherwise ordered by the Court, a reply to an Objection may be filed with the Court and served on or before 12:00 p.m. (prevailing Eastern Time) on the day that is at least two days before the date of the applicable hearing.

49. If no Objections are timely filed and served as set forth herein, the Debtors shall, on or after the Objection Deadline, submit to the Court a final order granting the relief requested herein, which order shall be submitted and may be entered with no further notice or opportunity to be heard afforded to any party. If an Objection is timely filed, a hearing will be held at a date and time to be established by the Court.

50. The foregoing notice procedures satisfy Bankruptcy Rule 9014 by providing parties with notice and an opportunity to object and be heard at a hearing. *See, e.g., In re Drexel Burnham Lambert*, 160 B.R. 729, 734 (S.D.N.Y. 1993) (an opportunity to present objections satisfies due process); *In re Colorado Mountain Cellars, Inc.*, 226 B.R. 244, 246 (D. Colo. 1998) (a hearing is not required to satisfy Bankruptcy Rule 9014). Furthermore, the proposed notice procedures protect the due process rights of the parties in interest without unnecessarily exposing the Debtors' estates to unwarranted administrative expenses.

Necessity for Immediate Relief

51. Bankruptcy Rule 6003 provides that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” If the Debtors are not permitted to continue their ordinary business operations by continuing to pay and provide benefits to employees, and to assure their employees that authority has been granted to honor all such claims, immediate and irreparable harm will result.

Accordingly, the interim relief requested herein is consistent with Bankruptcy Rule 6003.

Request for Waiver of Stay

52. In addition, by this Motion, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As set forth above, the Debtors require immediate relief to continue ordinary business operations for the benefit of all parties in interest. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

Notice

53. No trustee, examiner or creditors’ committee has been appointed in these chapter 11 cases. The Debtors have served notice of this Motion on (a) the Office of the United States Trustee for the Southern District of New York, (b) those creditors holding

the five largest secured claims against the Debtors' estates on a consolidated basis, (c) those creditors holding the 50 largest unsecured claims against the Debtors' estates on a consolidated basis, (d) attorneys for the administrative agents for the Debtors' proposed postpetition lenders, (e) the Internal Revenue Service, (f) the Securities and Exchange Commission, (g) the United States Environmental Protection Agency and (h) the United States Attorney's Office for the Southern District of New York.

No Previous Request

54. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just and proper.

Dated: New York, New York
July 9, 2012

By: /s/ Damian S. Schaible
Marshall S. Huebner
Damian S. Schaible
Brian M. Resnick
Michelle M. McGreal

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 607-7983

*Proposed 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

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

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 12-[] (___)

(Jointly Administered)

**INTERIM ORDER AUTHORIZING (i) DEBTORS TO (a) PAY PREPETITION
WAGES, SALARIES, EMPLOYEE BENEFITS AND OTHER COMPENSATION
AND (b) MAINTAIN EMPLOYEE BENEFITS PROGRAMS AND PAY
RELATED ADMINISTRATIVE OBLIGATIONS, (ii) EMPLOYEES AND
RETIREES TO PROCEED WITH OUTSTANDING WORKERS'
COMPENSATION CLAIMS AND (iii) FINANCIAL INSTITUTIONS TO HONOR
AND PROCESS
RELATED CHECKS AND TRANSFERS**

Upon the motion (the “**Motion**”)² of Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) for an order pursuant to sections 105(a), 362(d) and 363(b) of the Bankruptcy Code, authorizing (i) the Debtors to (a) pay certain prepetition wages, salaries, and other compensation owing to Employees and Retirees and, (b) maintain the Employee Programs and pay related administrative obligations, (c) permit Employees and Retirees with claims under the Workers’ Compensation Programs to proceed with such claims and insurers to continue using collateral and security under the Workers’ Compensation Programs and (d) authorize applicable banks and other financial institutions to receive,

¹ The Debtors are the entities listed on Schedule 1 attached to the Motion.

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

process, honor and process related checks and transfers, as more fully described in the Motion; and upon consideration of the Declaration of Mark N. Schroeder, Patriot Coal Corporation's Senior Vice President and Chief Financial Officer, filed in support of the Debtors' first-day pleadings; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.) as amended by Standing Order M-431, dated February 1, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion having been provided to (a) the Office of the United States Trustee for the Southern District of New York (the "**U.S. Trustee**"), (b) those creditors holding the five largest secured claims against the Debtors' estates on a consolidated basis, (c) those creditors holding the 50 largest unsecured claims against the Debtors' estates on a consolidated basis, (d) attorneys for the administrative agents for the Debtors' proposed postpetition lenders, (e) the Internal Revenue Service, (f) the Securities and Exchange Commission, (g) the United States Environmental Protection Agency and (h) the United States Attorney's Office for the Southern District of New York; and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion and having held a hearing with appearances of parties in interest noted in the transcript thereof (the "**Hearing**"); and the Court having determined that the legal and

factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the Court having determined that immediate relief is necessary to avoid irreparable harm; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that, pursuant to sections 105(a), 362(d) and 363(b) of the Bankruptcy Code, the relief requested in the Motion is hereby granted as set forth herein; and it is further

ORDERED that the Debtors shall be, and hereby are, authorized, but not required, to pay, in their sole discretion, all amounts required under or related to the Prepetition Employee Obligations (other than any payments that would contravene section 503(c) of the Bankruptcy Code, including with respect to insiders); *provided* that, prior to entry of an order granting the relief requested herein on a final basis, the Debtors shall not pay any individual an aggregate amount in excess of \$11,725 on account of prepetition Wages, prepetition Relocation Obligations or prepetition Vacation and Sick Leave Obligations; *provided further* that nothing in this Interim Order authorizes the Debtors to make payments on account of Relocation Obligations, Severance Obligations or Other Employee Programs prior to entry of an order approving the relief requested in the Motion on a final basis; *provided further* that, prior to entry of an order granting the relief requested herein on a final basis, the Debtors will not pay any amounts on account of the (i) Prepetition Employee Obligations before the applicable due dates or (ii) Operations Bonus Obligations; and it is further

ORDERED that the Debtors are authorized, but not required, to, in their sole discretion, continue to pay and honor their obligations arising under or related to their plans, practices, programs and policies for their Employees and Retirees as set forth in the Motion, including, without limitation, those giving rise to the Prepetition Employee Obligations (collectively, the “**Employee Programs**”), as those Employee Programs were in effect as of the Petition Date and as such Employee Programs may be modified, terminated, amended or supplemented from time to time in the ordinary course of the Debtors’ businesses (other than any payments that would contravene section 503(c) of the Bankruptcy Code, including with respect to insiders); and it is further

ORDERED that the Debtors are authorized, in their sole discretion, to continue to administer the Supplemental Savings Plan; *provided* that any postpetition amounts contributed to the Supplemental Savings Plan shall be deemed administrative expenses pursuant to section 503 of the Bankruptcy Code; *provided further* that nothing in this Order authorizes the Debtors to make any payments on account of prepetition contributions to the Supplemental Savings Plan; and it is further

ORDERED that (a) the automatic stay is modified solely to the extent necessary to allow Employees and Retirees to proceed with claims under the Workers’ Compensation Programs in the appropriate judicial or administrative fora and to permit insurers under the Workers’ Compensation Programs to continue to access collateral and security provided by the Debtors pursuant to the Workers’ Compensation Programs and (b) the notice requirements under Bankruptcy Rule 4001(d) with respect to (c) above are waived; and it is further

ORDERED that all applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests or automated clearing house transfers evidencing amounts paid by the Debtors under this Order whether presented prior to or after the Petition Date to the extent the Debtors have good funds standing to their credit with such bank or other financial institution. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions; and it is further

ORDERED that nothing in the Motion or this Order, nor any payments made pursuant to this Order, shall be deemed to, or constitute an admission as to, the validity or priority of any claim against the Debtors, or constitute an assumption or postpetition reaffirmation of any agreement, plan, practice, program, policy, executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code or a waiver of any rights of the Debtors; and it is further

Nothing in the Motion or this Order shall impair the ability of the Debtors to contest the validity or amount of any payment made pursuant to this Order; and it is further

ORDERED that nothing in the Motion or this Order shall be construed as impairing the Debtors' right to contest the validity or amount of any Prepetition Employee Obligation, including payroll taxes that may be due to any taxing authority; and it is further

ORDERED that to the extent that there may be any inconsistency between the terms of the interim or final order approving the proposed debtor in possession financing, if and when entered, and this Interim Order, the terms of the interim or final order approving the proposed debtor in possession financing, as applicable, shall govern; and it is further

ORDERED that within three business days of the entry of this interim order (the “**Interim Order**”), the Debtors shall serve a copy of the Interim Order and the Motion on (a) the U.S. Trustee, (b) those creditors holding the five largest secured claims against the Debtors’ estates on a consolidated basis, (c) those creditors holding the 50 largest unsecured claims against the Debtors’ estates on a consolidated basis, (d) attorneys for the administrative agents for the Debtors’ proposed postpetition lenders, (e) the Internal Revenue Service, (f) the Securities and Exchange Commission, (g) the United States Environmental Protection Agency and (h) the United States Attorney’s Office for the Southern District of New York; and it is further

ORDERED that any objection to the relief requested in the Motion on a permanent basis must, by 4:00 p.m. (prevailing Eastern Time) on _____ (the “**Objection Deadline**”), be: (a) filed with the Court and (b) actually received by (i) the U.S. Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Elisabetta G. Gasparini and Paul K. Schwartzberg, (ii) proposed counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick, (iii) attorneys for the administrative agents for Debtors’ proposed postpetition lenders, Weil, Gotshal & Manges LLP, 767

Fifth Avenue, New York, NY 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Margot B. Schonholtz and Ana Alfonso and (iv) the attorneys for any official committee of unsecured creditors then appointed in these cases; and it is further

ORDERED that a reply to an Objection may be filed with the Court and served on or before 12:00 p.m. (prevailing Eastern Time) on the day that is at least two days before the date of the applicable hearing; and it is further

ORDERED that if timely objections are received, there shall be a hearing held on _____, 2012, at _____ (prevailing Eastern Time) to consider the timely objections to the Motion; and it is further

ORDERED that if no Objections are timely filed and served as set forth herein, the Debtors shall, on or after the Objection Deadline, submit to the Court a final order substantially in the form of this Interim Order, which Order shall be submitted and may be entered with no further notice or opportunity to be heard afforded any party, and the Motion shall be approved *nunc pro tunc* to the date of the commencement of these chapter 11 cases; and it is further

ORDERED that the notice procedures set forth in the Motion are good and sufficient notice and satisfy Bankruptcy Rule 9014 by providing parties with a notice and an opportunity to object and be heard at a hearing; and it is further

ORDERED that the requirements of Bankruptcy Rule 6003 are satisfied by the contents of the Motion and the arguments and evidence presented at the hearing; and it is further

ORDERED that notwithstanding Bankruptcy Rule 6003 and the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated: New York, New York

_____, 2012

UNITED STATES BANKRUPTCY JUDGE