

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

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

**DECLARATION OF ANDREW DOVE IN SUPPORT OF JOINT MOTION OF
THE DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO COMPEL PRODUCTION OF DOCUMENTS
BY PEABODY ENERGY CORPORATION**

Andrew Dove declares as follows:

1. I am an associate at Kramer Levin Naftalis & Frankel LLP, counsel for the Official Committee of Unsecured Creditors of Patriot Coal Corporation. I submit this declaration in support of the Debtors' and Committee's Joint Motion to Compel the Production of Documents (the "Motion").¹

I. Initial Negotiations

2. As part of their investigation of potential estate claims, the Fiduciaries wrote to Peabody on January 11, 2013, providing a copy of a proposed Rule 2004 subpoena and asking to meet and confer. Thereafter, the parties entered into negotiations. These negotiations were not primarily focused on the substance of the requests, but rather on a series of collateral matters: changes in Peabody's electronic data systems, the range of potential custodians of

¹ Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

electronic data, the proper date-range of discovery, the availability of electronic data contained on earlier systems, and the logistics and cost of the restoration of that data. Confidentiality also played a prominent role – in particular, Peabody’s attempt to limit the disclosure of Rule 2004 materials to the UMWA, a Committee member.

3. During the course of discussions in February and March, Peabody’s counsel represented that responsive hardcopy documents had already been assembled and would be produced promptly, pending the entry of a protective order.

4. After the Court granted the Fiduciaries’ motion for authorization to take discovery under Rule 2004, the parties negotiated a form of order relating to the Court’s ruling. The Fiduciaries provided the first draft of that order on April 30, 2013. Agreement was not reached until June 5, 2013.

5. The Fiduciaries and Peabody also negotiated the terms of a stipulated protective order. The Fiduciaries provided the first draft of that order on March 26, 2013. Agreement was not reached until June 5, 2013.

6. The Fiduciaries served the approved form of Rule 2001 subpoena on Peabody on June 10, 2013. Peabody served a formal objection to the subpoena on June 20, 2013. In subsequent conferences and correspondence, Peabody clarified that it was responding to the subpoena subject to the parties’ agreements.

II. The State of Production

7. As of June 10, 2013, the Fiduciaries and Peabody were continuing to negotiate two issues specific to electronically stored information: the selection of dates for the restoration of archival backup tapes; and the “search terms” that would be employed by Peabody to minimize its production burden by eliminating electronic documents unlikely to be responsive.

A. Restoration dates

8. On May 22, 2013, the Fiduciaries identified 15 dates for the restoration of backup tapes. On June 5, 2013, two weeks later, Peabody reported that tapes were unavailable for five of the selected dates and identified adjacent dates for which tapes were available.

9. The next day, the Fiduciaries identified substitute dates chosen to reduce gaps in coverage. Twelve days later, on June 18, 2013, Peabody informed the Fiduciaries that tapes for three of the substitute dates were also missing (again identifying adjacent days on which tapes were available).

10. The next day, the Fiduciaries responded, seeking information regarding Peabody's deletion and backup protocols in order to inform its selection of alternate dates. By July 1, 2013, twelve days later, Peabody had not replied. On that date, the Fiduciaries sent Peabody a letter that identified new substitute dates in the absence of the outstanding information. *See Ex. A*

11. On July 3, Peabody wrote to the Fiduciaries that it was delivering a complete set of tapes for the dates identified in the July 1 letter to a vendor for the purpose of restoration.

12. On July 25, Peabody informed the Fiduciaries that one of the tapes sent to the vendor was "corrupted" and identified adjacent dates for which tapes were available. Once again, the next day, the Fiduciaries responded identifying a substitute date.

13. The Fiduciaries have not been notified of any other problems with the restoration of archived electronic documents.

B. Search terms for electronic documents

14. To help streamline the discovery process, the Committee engaged H5, an information retrieval consultant, to assist in the development of search terms to guide Peabody's search of its electronic information.

15. With H5's assistance, the Fiduciaries developed a proposed set of sophisticated, targeted search terms, which they transmitted to Peabody on April 1. Peabody did not respond for over a month.

16. After several reminders, on May 7, 2013, Peabody provided high-level comments. Thereafter, on May 16, 2013, the Fiduciaries provided a revised set of search terms. Thirteen days later, on May 28, 2013, Peabody responded by email with a markup that flagged "open issues" that it felt "should be the subject of an actual discussion before going any further with finalizing search terms."

17. On May 29, 2013, the Fiduciaries and Peabody conducted a conference call, concluding with an agreement by both sides to revert on specific points as soon as possible. Two days later, the Fiduciaries did so during a teleconference scheduled at the Fiduciaries' request. Peabody did not revert substantively until June 13, 2013, when it provided its first complete markup setting forth search terms acceptable to Peabody. Among other things, Peabody stated that ten terms out of 43 initially proposed by the Fiduciaries were acceptable to Peabody.

18. On July 1, 2013, the Fiduciaries sent Peabody their revised terms by letter. The letter also stated that any further objections to the proposed terms needed to be evidence-based – meaning that Peabody should test disputed search terms against the electronic information it had collected to determine if the term was overly broad:

Should Peabody contend that particular search terms present an undue review burden, Peabody should run the remaining terms and begin review and production of responsive documents. For those terms that it contends are unduly burdensome, Peabody should provide the number of unique results for each term and estimate the percentage of results that are responsive to the Estate Fiduciaries' Rule 2004 subpoena.

Ex. A.

19. On July 3, 2013, Peabody agreed to use 26 of the 43 search terms (60%) as proposed by the Fiduciaries, while continuing to evaluate the remaining 17 terms. After an additional round of comments from Peabody and the Fiduciaries, these remaining 17 search terms were also agreed upon, which Peabody’s counsel confirmed by email on July 25.

C. Productions to date

20. After service of the Rule 2004 subpoena on June 10, 2013, Peabody has made seven productions that appear to comprise, with limited exceptions, scans of hardcopy documents. The following table summarizes Peabody’s various productions to date:

<i>Production Date</i>	<i>Starting Bates Number</i>	<i>Ending Bates Number</i>	<i>Documents</i>	<i>Images/Pages</i>
06/14/2013	PEC00000001	PEC00003123	620	3,122
07/02/2013	PEC00003124	PEC00016642	840	13,519
07/10/2013	PEC00016643	PEC00017404	94	762
07/11/2013	PEC00017405	PEC00018049	143	645
07/23/2013	PEC00018050	PEC00024610	892	6,561
08/06/2013	PEC00024611	PEC00033828	461	9,218
08/16/2013	PEC00033829	PEC00039065	378	5,237
Total			3,428	39,064

D. The August 20 Conference

21. On July 16, 2013, the Fiduciaries sent Peabody an email inquiring about, among other things, the status of Peabody’s review of email from its “live” system (meaning email that did not need to be restored from backup tapes) and an estimate of when its review of emails obtained from backup tapes would begin and end. In a reply sent on July 19, Peabody declined to answer the Fiduciaries’ inquiries and expressly disclaimed any obligation to provide updates on the status or mechanics of its review. Peabody asserted that it “is under no obligations to provide updates about the mechanics of its document review, or to produce responsive documents or email in any particular order, and Peabody declines to undertake such

burdens voluntarily.”

22. The Fiduciaries proposed to address these issues with the Court at a status conference. Peabody took the position that additional discussions among the parties or formal briefing was more appropriate.

23. In an email dated August 15, Peabody argued that providing information concerning the status of production would constitute a “new” obligation, which could only be imposed after the expense and delay of a formal motion.

24. By the time of the August 20 conference, the Fiduciaries and Peabody had conducted approximately 30 conference calls and exchanged over 100 emails and letters concerning the Rule 2004 discovery.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 29th day of August, 2013.

/s/ Andrew M. Dove
Andrew M. Dove

EXHIBIT A

July 1 Letter

New York
Menlo Park
Washington DC
São Paulo
London

Paris
Madrid
Tokyo
Beijing
Hong Kong

Davis Polk

Michael J. Russano

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July 1, 2013

Re: *In re Patriot Coal Corporation, et al.*, Case No. 12- 51502 (Jointly Administered)

Paula Batt Wilson, Esq.
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

Steven N. Cousins, Esq.
Armstrong Teasdale LLP
7700 Forsyth Boulevard, Suite 1800
St. Louis, Missouri 63105

Dear Paula and Steve:

Please find attached a list of search terms for Peabody to use to locate potentially responsive documents when the number of documents collected from a single source is too large for a manual document-by-document review in the first instance. This list of terms represents the final proposal of the Debtors and the Official Committee of Unsecured Creditors (together, the “**Estate Fiduciaries**”), and responds to Peabody’s most recent proposal transmitted on June 13, 2013.

As you know, the Estate Fiduciaries first provided a list of proposed search terms to Peabody on April 1, 2013. Since that time, the parties have exchanged proposals and engaged in numerous telephonic meet-and-confer sessions. The Estate Fiduciaries have carefully evaluated the concerns Peabody has raised regarding certain terms, and the Debtors have tested certain terms and phrases against documents collected from their own files to confirm that the terms are appropriately tailored – an exercise that Peabody has refused to perform itself. Moreover, our efforts to create and refine appropriate search terms have been supported from the outset by H5, a consulting firm specializing in data search and retrieval for discovery purposes. H5’s linguists have contributed their expertise in language usage (e.g. discourse and sentence structure, lexical relationships, word choice variation) and the nuances that language often manifests in email and other forms of communication.

Accordingly, the Estate Fiduciaries have revised certain terms to address Peabody’s concerns – even though Peabody’s assertions that certain terms may be burdensome remain unsupported by samples of search results or by any other evidence. For example, we have agreed to limit certain search terms by requiring that a document containing these terms either (1) include terms from a list of words related to Patriot or the Spinoff (“Schedule A” of the attached); (2) that the document was either emailed to (including cc or bcc) or sent by a limited set of custodians; or (3) that the document was created during 2007, the time of greatest activity relating to the Spinoff. We believe this strikes a balance between the approach Peabody suggested – to limit these searches to documents mentioning the Spinoff or Patriot or its subsidiaries by name – and the reality that relevant business communications among key personnel or during the critical time

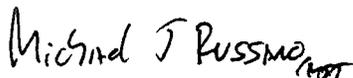
period surrounding the Spinoff will frequently relate to Patriot and the Spinoff without mentioning either. Likewise, we have rejected Peabody's other proposed revisions that are likely to exclude a substantial number of responsive documents.

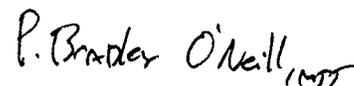
We expect that Peabody will run the attached terms¹ on the electronic documents it has collected and begin review of the results of these searches. Peabody should also immediately begin restoring data from backup tapes for the fifteen dates noted below and run the attached terms on the restored data as soon as it is available.² We are still awaiting an answer to our inquiry regarding Peabody's email deletion and backup practices in response to your informing us that Peabody cannot locate backup tapes for certain dates in both our initial selection of May 22 and our replacement selection of June 6. Yet, we are selecting this third set of dates without the requested information so that Peabody's inability to locate tapes for certain dates will not continue to delay the court-ordered restoration.

Should Peabody contend that particular search terms present an undue review burden, Peabody should run the remaining terms and begin review and production of responsive documents. For those terms that it contends are unduly burdensome, Peabody should provide the number of unique results for each term and estimate the percentage of results that are responsive to the Estate Fiduciaries' Rule 2004 subpoena.

Continued discussions of the proposed search terms in the absence of supporting evidence will serve only to further delay Peabody's production. We ask that you confirm, by July 3, 2013, that Peabody will begin its review and production of electronic documents as outlined above. Otherwise, the Estate Fiduciaries intend to apply to the Court for expedited telephonic hearing of this matter as set out in the Rule 2004 order. We have asked the Court's deputy to inform us of several dates in the coming weeks on which the Court will be available for a telephonic hearing should that prove necessary. We will inform you of these dates when we receive them.

Very truly yours,


Michael J. Russano


P. Bradley O'Neill

Attachment
By Electronic Mail

¹ The Estate Fiduciaries are willing to make minor changes to the attached proposal to address any typographical errors or mistakes in search syntax. To that end, we request that Peabody provide a copy of the term syntax file used by its e-discovery vendor to ensure that the terms' syntax operates as intended.

² The fifteen dates for which Peabody should restore email backup tapes are as follows: 8/30/2005; 3/14/2006; 5/14/2006; 7/12/2006; 9/10/2006; 11/9/2006; 1/7/2007; 3/8/2007; 5/7/2007; 7/6/2007; 9/6/2007; 11/4/2007; 1/2/2008; 3/2/2008; 5/1/2008.

Debtors' and Committee's Proposed Search Terms for Peabody Search

July 1, 2013

1. (reallcat* OR allocat* OR shift* OR swap* OR switch* OR carv* OR transfer* OR split* OR divest* OR guarantee* OR roll* OR carr* OR dump* OR strip* OR hid* OR hid OR hiding) w/100 (asset* OR liabilit* OR debt* OR pension* OR retir* OR Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)
2. ((reallcat* OR allocat* OR shift* OR swap* OR switch* OR carv* OR transfer* OR split* OR divest* OR guarantee* OR roll* OR carr* OR dump* OR strip* OR hid*) w/100 (medical OR black lung OR obligation* OR balance* OR reserve* OR mine* OR operat* OR plant* OR facilit* OR leas* OR royalt* OR equity)) AND [Schedule B terms]
3. (investigat* OR audit*) w/100 [Schedule B terms]
4. (model* OR forecast* OR plan* OR project* OR analyz* OR analys* OR estimat*) w/100 (allocat* OR asset* OR cost* OR liabilit* OR obligation* OR financ* OR viab* OR pension* OR retir* OR debt* OR Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)
5. ((model* OR forecast* OR plan* OR project* OR analyz* OR analys* OR estimat*) w/100 (medical OR black lung OR balance* OR operat* OR reserve* OR plant* OR facilit* OR leas* OR royalt* OR equity OR profit* OR loss* OR PL OR P L OR pnl OR revenue*)) AND [Schedule B terms]
6. ((model* OR forecast* OR plan* OR projection* OR analyz* OR analys* OR estimat*) w/100 (mine* OR mining)) w/100 [Schedule A terms]
7. (coal w/25 (pric* OR revenue* OR suppl* OR demand* OR curve* OR model* OR forecast* OR project* OR sale* OR market OR profit* OR loss* OR PL OR P L OR pnl)) AND [Schedule B terms]
8. ((credit (rating* OR facility OR agreement*)) OR (revolv* w/5 credit) OR (financ* w/5 equity) OR ((standby OR back up) fund*)) AND [Schedule B terms]
9. insolven* OR solven* OR bankrup* OR fraud*
10. ((financial (health OR condition OR position OR strength)) OR EBITDA OR (Earnings before)) AND [Schedule B terms]
11. (valu* OR assess* OR apprais* OR estimat* OR worth OR price* OR pricing OR cost* OR fair market* OR FMV) w/100 (retir* OR Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)

12. ((valu* OR assess* OR apprais* OR estimat* OR worth OR price* OR pricing OR cost* OR fair market* OR FMV) w/100 (asset* OR liabilit* OR debt* OR pension* OR medical OR black lung OR obligation* OR balance* OR operation* OR reserve* OR plant* OR facilit* OR leas* OR royalt* OR equity OR mine* OR mining)) AND [Schedule A terms]
13. (sale case OR SaleCo OR Reverse Morris OR parallel path* OR pitch* OR prospectus* OR roadshow* OR teaser*) w/100 (asset* OR liabilit* OR debt* OR pension* OR retir* OR obligation* OR balance* OR operation* OR reserve* OR mine* OR operat* OR plant* OR facilit* OR leas* OR equipment OR royalt* OR equity OR Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)
14. market w/100 (Elk Creek OR Putnam OR (Bond w/25 (County OR reserve* OR coal)) OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)
15. offer* memo* AND [Schedule B terms]
16. Magnum OR Arch OR ArcLight
17. (Cerberus OR ((Natural Resource Partners OR NRP) AND Quintana) OR TIACME OR WL Ross OR W L Ross OR W.L. Ross) AND DATE:1/1/07-11/01/07
18. (reallocat* OR allocat* OR shift* OR swap* OR switch* OR carv* OR transfer* OR split* OR divest* OR guarantee* OR roll* OR carr* OR dump* OR strip*) w/100 (opinion* OR ruling* OR impact* OR implicat* OR ramification* OR downside* OR down side* OR upside* OR up side*)
19. Duff OR duffandphelps* OR ((DP OR D P OR D&P) w/100 (audit* OR incom* OR pro forma OR proforma OR balanc* OR legac* OR liabilit* OR obligation* OR debt* OR coal OR forecast* OR pric*))
20. spin* OR spun OR restructur* OR step plan* OR newco
21. (reorganiz* OR disol* OR reform*) AND [Schedule B terms]
22. (sustain* OR maintain*) w/100 (stand alone OR independent compan* OR independent entit* OR independent corp*)
23. Patriot OR PCC OR Gemini OR (Indian w/5 project) OR EAC OR EACC OR eastern op*
24. Appalachia* OR Illinois Basin OR ILLB OR ILB OR NAPP OR N App* OR N. App* OR North* App* OR CAPP OR C App* OR C. App* OR Central App* OR Pitt* seam

25. (minimiz* OR reduc* OR mitigat* OR lessen* OR eliminat* OR shrink* OR shift* OR transfer*) w/100 (debt* OR liabilit* OR obligation* OR exposure OR black lung OR pension* OR retir* OR medical OR Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)
26. ((minimiz* OR reduc* OR mitigat* OR lessen* OR eliminat* OR shrink* OR shift* OR transfer*) w/100 (loss* OR asset* OR cost* OR profit* OR PL OR P L OR revenue* OR balance* OR operation* OR reserve* OR mine* OR operat* OR plant* OR facilit* OR leas* OR royalt* OR equity)) AND [Schedule B terms]
27. (liabilit* OR obligat* OR promis*) w/100 (assum* OR retain* OR regulat* OR environment* OR retir* OR healthcare OR health care OR RHC OR (worker* w/5 comp*) OR benefit* OR black lung OR reclam* OR reclaim* OR ARO OR rid* OR dump* OR viab* OR mortalit* OR actuar* OR legac* OR indemn* OR insur* OR pension*)
28. ((black lung OR BL) w/100 (excise* OR tax* OR refund*)) OR BLET
29. ((compensat* OR comp OR incentiv* OR pay package* OR benefit* OR retirement* OR healthcare OR health OR indemnif* OR insurance* OR stock* OR option OR options) w/100 (executive* OR senior (manage* OR mgmt) OR sr (manage* OR mgmt) OR [Schedule C terms])) AND [Schedule B terms]
30. (tax* w/100 (opinion* OR ruling* OR impact* OR implicat* OR ramification* OR outcome* OR effect OR effects OR treatment* OR downside* OR down side* OR upside* OR up side*)) AND [Schedule B terms]
31. Ernst OR (EY w/1 com) OR ((E Y OR E.Y. OR EY OR E&Y) AND tax*) AND [Schedule B terms]
32. (Am* Electric OR AEP OR Tenn* Valley OR TVA) w/100 (subsid* OR renegotiat* OR reptic* OR below market OR underwater OR under water OR sweetheart OR sweet heart)
33. ((Am* Electric OR AEP OR Tenn* Valley OR TVA) w/100 (supply OR agreement OR contract OR negotiat*)) AND [Schedule B terms]
34. coal suppl* w/100 (subsid* OR renegotiat* OR reptic* OR below market OR underwater OR under water OR sweetheart OR sweet heart)
35. (coal suppl* w/100 (agreement OR contract OR negotiat*)) AND [Schedule B terms]
36. (Armstrong AND (tax* OR accelerat* OR settl*)) AND NOT Teasdale
37. (Consol OR CNX) AND Federal
38. NBCWA OR National Bituminous OR Coal Act OR UMW* OR United Mine

39. (incentiv* w/5 (plan* OR program* OR package*)) OR AIP OR AICP OR LTI* OR LTEI* OR ELTI* OR top hat OR restricted stock* OR RSU OR RSUs OR (vest* w/5 time* OR period* or schedule*)
40. Monsanto OR Solutia
41. Squaw AND Alcoa
42. Attachment A
43. (schedule* or list* or attachment* or exhibit*) AND (retir* OR defer* OR vest*)

SCHEDULE A (Disjunctive)

- Affinity
- Appalachia
- Beaver Dam
- Black Stallion
- Black Walnut
- Bluegrass
- Central States
- Charles
- Cleaton
- Coal Prop*
- Coal Reserve Holding OR CRH*
- Colony
- Cook
- Dixon
- Dodge Hill
- EAC OR EACC
- Eagle
- E Assoc* OR E. Assoc* OR East* Assoc*
- E Coal OR E. Coal OR East* Coal
- E Roy* OR E. Roy* OR East* Roy*
- Fort
- HCR
- Highland
- Hillside
- Indian Hill
- Jarrell*
- KE OR KEV
- Kanawha
- Knox
- Logan
- Martinka
- Midwest Coal OR MCR
- Mountain View OR Mt* View
- N Page OR North* Page
- Oh* County OR Oh* Cnty*
- Patriot
- Peabody Coal OR PCC
- Pine Ridge
- Pond Creek
- Rivers Edge
- Sentry
- Snowberry

- Sterling
- Squaw
- Tecumseh
- Union County OR Union Cnty*
- Winifrede
- Yankeetown
- Arid Op*
- Cyprus OR Cypress
- Dominion OR DTA
- Emerald
- Gold Fields
- James River OR JRC
- Newtown
- Peabody Term*
- Point Pleasant OR Pt* Pleasant
- Bond
- Dyson
- Elk Creek
- Lumaghi
- Paragon
- Putnam
- Thoroughbred OR Tbred OR T-Bred
- Troy
- Big Mountain OR Big Mt*
- Federal
- Harris
- Rocklick
- Wells
- East*
- Gemini
- Patriot
- Appalachia OR NAPP OR N App* OR N. App* OR North* App OR CAPP OR C App*
OR C. App* OR Central App*
- Illinois OR ILLB OR ILB OR IL Basin
- Ohio OR OH
- Kentucky OR KY
- W Virginia OR W. Virginia OR West* Virginia OR WV* OR W VA OR W. VA OR
West* VA
- Newco
- spin*
- Saleco
- restructur*

SCHEDULE B (Disjunctive)

- Any Schedule A term

OR

- TO/FROM/CC/BCC: (Bean OR Whiting OR Ebetino OR Haider OR Jones OR Williams OR Schroeder OR Brines OR Engelhardt OR Hagedorn OR Navarre OR Phillips OR Sevem)

OR

- DATE:1/1/07-12/31/07

SCHEDULE C (Disjunctive)

- (J OR J. OR Joe OR Jos*) w/2 Bean
- (C OR C. OR Chuck OR Char*) w/2 Ebetino
- (I OR I. OR Irl OR Earl) w/2 Engelhardt
- (J OR J. OR Jackie OR Jacq*) w/2 Jones
- (M OR M. OR Mark) w/2 Schroeder
- (R OR R. OR Rick OR Rich*) w/2 Whiting