

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12900 (SCC)

- - - - -x

In the Matter of:

PATRIOT COAL CORPORATION, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 16, 2012

11:13 AM

B E F O R E:

HON. SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Doc# 7 Debtors' Motion for an Order Establishing Certain Notice, Case Management and Administrative Procedures filed by Damian Schaible on behalf of Patriot Coal Corporation.

Doc# 10 Debtors' Motion for Authorization to (i) Enter into, Perform under, Roll Over, Adjust, Modify, Settle, Terminate and Engage in Certain Derivative Contracts and (ii) Pledge Collateral under Certain Derivative Contracts filed by Damian Schaible on behalf of Patriot Coal Corporation.

Doc# 11 Debtors' Motion for an Order Authorizing (i) the Debtors to Honor Prepetition Obligations to Customers in the Ordinary Course of Business and (ii) Financial Institutions to Honor and Process Related Checks and Transfers filed by Damian Schaible on behalf of Patriot Coal Corporation.

Doc# 14 Debtors' Motion for an Order Authorizing (i) Payment of Certain Prepetition Claims of Critical Vendors and (ii) Financial Institutions to Honor and Process Related Checks and Transfers filed by Damian Schaible on behalf of Patriot Coal Corporation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Doc# 16 Debtors' Motion for Authority to (i) Enter into and Perform under Coal Sale Contracts in the Ordinary Course of Business and (ii) Establish Certain Procedures with Respect thereto filed by Damian Schaible on behalf of Patriot Coal Corporation

Doc# 17 Debtors' Motion for an Order Authorizing (i) Debtors to Continue and Renew their Liability, Property, Casualty and Other Insurance Programs and Honor All Obligations in Respect thereof and (ii) Financial Institutions to Honor and Process Related Checks and Transfers filed by Damian Schaible on behalf of Patriot Coal Corporation.

Doc# 18 Debtors' Motion for an Order Authorizing the Debtors to Continue and Renew Surety Bond Program filed by Damian Schaible on behalf of Patriot Coal Corporation

Doc# 21 Debtors' Motion for an Order Authorizing (i) Debtors to Pay Certain Prepetition Taxes, Governmental Assessments and Fees and (ii) Financial Institutions to Honor and Process Related Checks and Transfers filed by Damian Schaible on behalf of Patriot Coal Corporation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Doc# 26 Debtors' Motion for an Order Authorizing Debtors to
File Under Seal the Letter Agreements Relating to Debtors'
Motion to Obtain Postpetition Financing filed by Brian Resnick
on behalf of Patriot Coal Corporation.

Transcribed by: Penina Wolicki
eScribers, LLC
700 West 192nd Street, Suite #607
New York, NY 10040
(973)406-2250
operations@escribers.net

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S :

DAVIS POLK & WARDWELL LLP

Attorneys for Debtors

450 Lexington Avenue

New York, NY 10017

BY: MARSHALL S. HUEBNER, ESQ.

DAMIAN S. SCHAIBLE, ESQ.

BRIAN M. RESNICK, ESQ.

U.S. DEPARTMENT OF JUSTICE

Office of the United States Trustee

33 Whitehall Street

21st Floor

New York, NY 10004

BY: ELISABETTA G. GASPARINI, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP
Proposed Conflicts Counsel to Debtors
101 Park Avenue
New York, NY 10178

BY: MICHAEL A. COHEN, ESQ.

ANDREWS KURTH LLP
Attorneys for Wilmington Trust,
Indenture Trustee for 8.25 Bonds
450 Lexington Avenue
New York, NY 10017

BY: PAUL SILVERSTEIN, ESQ.

WEIL, GOTSHAL & MANGES LLP
Attorneys for Citibank, N.A. & Barclays Bank PLC
767 Fifth Avenue
New York, NY 10153

BY: JOSEPH H. SMOLINSKY, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WILLKIE FARR & GALLAGHER LLP

Attorneys for Bank of America as 2nd Out DIP Agent

and Prepetition Agent

787 Seventh Avenue

New York, NY 10019

BY: MARGOT SCHONHOLTZ, ESQ.

ANA M. ALFONSO, ESQ.

MANIER & HEROD

Attorneys for Federal Insurance

150 4th Avenue N

Suite 2200

Nashville, TN 37219

BY: SCOTT C. WILLIAMS, ESQ. (TELEPHONICALLY)

ALSO PRESENT:

MARK N. SCHROEDER, ESQ., Patriot Coal Corp.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE COURT: Mr. Huebner, how are you?

MR. HUEBNER: I am well, Your Honor. Good morning.

THE COURT: Good morning. Before you get started, let me say a few things. First of all, I appreciate everybody working with Judge Gropper in my absence last week. And of course I thank Judge Gropper for so ably and generously covering for me while I was away. So that's the first point.

And my understanding is that Judge Gropper has now entered all of the orders from the first day, with the exception of the sealing order, which we're going to take up today.

MR. HUEBNER: We are, Your Honor.

THE COURT: Okay. So that's point number one. Point number two is, as is my custom in cases where it's appropriate, I'd like to make certain disclosures, and this is one of those cases. I note that Ms. Schonholtz is in the courtroom. She's a partner of Willkie, Farr & Gallagher.

MS. SCHONHOLTZ: Good morning, Your Honor.

THE COURT: Good morning. As many of you may know, I too was a partner at Willkie, Farr & Gallagher until about ten months before taking my current job. At that time, Ms. Schnholtz was not a partner at Willkie, Farr & Gallagher, so we never were partners at Willkie, Farr & Gallagher or elsewhere. But Willkie, Farr & Gallagher is appearing in this case, so I

1 make that disclosure.

2 In addition, I'd point out that one of my law clerks,
3 Ms. Eisen, whom you see here today, was an associate at
4 Willkie, Farr & Gallagher from 2002, when she was a summer
5 associate, and she joined the firm the following year. And she
6 and I, of course, worked together on many matters at the firm,
7 and joined me as a law clerk here in March of 2010.

8 To be clear, I have no financial connection with
9 Willkie, Farr & Gallagher, and I have not had any financial
10 connection with Willkie, Farr & Gallagher for some time. Not
11 surprisingly, I do continue to have connections of a personal
12 and professional nature with folks at Willkie, Farr &
13 Gallagher, and I will not take up everybody's time this morning
14 to list them. There are many of them. There are many
15 conferences that I work on; there are many educational
16 activities; there are many philanthropic activities, in which
17 my paths cross.

18 I will not be having any contact with Ms. Schonholtz
19 or anyone else who's working on this matter, during the
20 pendency of this matter. So that's the Willkie, Farr &
21 Gallagher category of disclosures.

22 The next category of disclosures are with respect to
23 you, Mr. Huebner. Fewer people may know that Mr. Huebner and I
24 worked together. He was my associate, I'm proud to say, when I
25 was a partner at Sidley & Austin. He departed sometime, I'm

1 going to say, in the 1990s. I don't remember exactly when.

2 MR. HUEBNER: August 1999, Your Honor.

3 THE COURT: Okay. There you go. Just barely in the
4 1990s. And then of course he joined Davis Polk after that.
5 But we did work together.

6 Let me see. Other disclosures. Ms. Goldstein is not
7 here today. I see Mr. Smolinsky. Ms. Goldstein and I, for a
8 time, served together on the board of In Motion, which is a pro
9 bono legal services organization that provides legal services
10 to women in domestic crisis. Ms. Goldstein is still a member
11 of the board, and I have recently become a member of the senior
12 advisory council. So our names appear on the same letterhead,
13 and from time to time, she and I may appear at certain
14 functions together.

15 I make these disclosures and also tell you that none
16 of them cause me to believe that I will have any trouble being
17 impartial in this matter. I'm not asking you for a waiver.
18 I'm not permitted to ask you for a waiver, in fact. But I do
19 make the disclosures to afford all parties the opportunity to
20 express any questions or concerns they may have now or at any
21 time in the future.

22 MR. HUEBNER: Your Honor, the only thing I would say
23 is we're just delighted that after thirty years, Ms. Schonholtz
24 finally did make partner at Willkie Farr, which is wonderful
25 for her and the rest of us. We have no issues whatsoever, Your

1 Honor.

2 THE COURT: Okay.

3 MR. HUEBNER: I actually was going to address our
4 prior working relationship --

5 THE COURT: Okay.

6 MR. HUEBNER: -- as part of my remarks. But given
7 that it ended more than twelve years ago --

8 THE COURT: Right.

9 MR. HUEBNER: -- and I was an associate at the time,
10 other than perhaps being blamed for being deficient in some
11 time card, hopefully there will be nothing else that's legally
12 relevant.

13 THE COURT: All right. All right, let's get started.

14 MR. HUEBNER: Good afternoon, Your Honor. For the
15 record, I am Marshall Huebner of Davis Polk & Wardwell, LLP, on
16 behalf of Patriot Coal and its ninety-eight subsidiaries that
17 are debtors in these Chapter 11 matters.

18 Your Honor, I was going to begin with several thanks
19 yours, one of which was to Judge Gropper and his chambers, who
20 read an extraordinary amount of papers in an extremely short
21 time, and as is his practice, marked up many of our orders,
22 proving just how excruciatingly carefully he and his chambers
23 went through them, and in fact, entered every order we asked
24 for, with what we view as very de minimis changes. And we
25 agreed in advance, or instantly on the record, which ones

1 simply did not need to be heard --

2 THE COURT: Right.

3 MR. HUEBNER: -- on that time frame, and kick the rest
4 to today.

5 THE COURT: My understanding is that one of the things
6 that he did was to remove the provision that enabled certain of
7 the orders to become final without an additional hearing, which
8 is a change that I too would make.

9 MR. HUEBNER: Yes.

10 THE COURT: All right. Okay.

11 MR. HUEBNER: Well, what we always do, Your Honor; I
12 think under Second Circuit law you actually always must have a
13 separate final order. Some judges like the mechanic where if
14 there are no objections, it just gets submitted to chambers.
15 Some judges, like Your Honor, prefer that final orders actually
16 be brought to the hearing --

17 THE COURT: Right.

18 MR. HUEBNER: -- even if there are no objections. And
19 we made all those conforming changes to the orders --

20 THE COURT: Okay.

21 MR. HUEBNER: -- that were entered.

22 THE COURT: As I'm looking out, I realize there was
23 one more disclosure I wanted to make, and that is that I am
24 currently serving as the judicial co-chair of the ABI Mid-Level
25 New York Conference. And Mr. Schaible of the Davis Polk firm

1 is a co-chair of that conference. I am currently working with
2 him on the upcoming conference which is scheduled for November
3 of 2012. So I will be having contact with him from time to
4 time, but solely with respect to my role in putting together
5 panels for that conference. Sorry to interrupt you.

6 MR. HUEBNER: Thank you, Your Honor. The next thank
7 you goes to the U.S. Trustee, who frankly worked -- and in
8 particular to Ms. Gasparini, by name, who also worked day and
9 night and night and day with us. And we're delighted to report
10 that on the full volume of orders, with really very, very, very
11 minor exceptions, we worked out dozens and dozens of issues.
12 The hearing last week was fully consensual. There's one small
13 issue to discuss today. But we have crossed many lakes
14 together with one very small stream only yet in front of us
15 that separates us.

16 The clerk's office, as well, Your Honor, as they
17 always are, was fantastic in terms of both working through our
18 noticing issues and making sure that we could relieve them of
19 burdens where appropriate, as well as getting us both a
20 temporary judge and our permanent judge, on the expected time
21 frame.

22 And, Your Honor, a few introductions, since this is
23 the first time --

24 THE COURT: Right.

25 MR. HUEBNER: -- you're meeting the core Patriot team.

1 Mr. Schaible, who you already know professionally and Brian
2 Resnick next to him, and I, together form the core bankruptcy
3 partner team at Davis Polk. I think you will probably pretty
4 rarely see all three of us, because we don't do things that way
5 generally. We try to be very lean when we can --

6 THE COURT: Good.

7 MR. HUEBNER: -- but for the introductory hearing,
8 especially since the torrent was split up at the outset, the
9 three of us are here today.

10 THE COURT: All right.

11 MR. HUEBNER: And our two key star associates on this
12 particular case, are Darren Klein and Michelle McGreal, who are
13 sitting next to one another in the front row.

14 THE COURT: Okay.

15 MR. HUEBNER: Your Honor, as you see when we file our
16 retention papers, we already have conflicts counsel in place,
17 because we take that stuff very seriously and don't want to be
18 involved, and should not be and cannot be involved in issues
19 where conflicts do arise. And so, Mr. Steve Reisman of the
20 Curtis Mallet firm is the debtors' proposed conflicts counsel.

21 Our financial advisors are the Blackstone Group,
22 proposed, obviously subject to the Court hearing and entering
23 their retention order. Mr. Flip Huffard, whose name is
24 actually Paul, as he was forced to disclose on the record when
25 Judge Gropper nailed him on it, is here in court today. And

1 then with us are two very important people from Patriot itself.
2 One is our first-day declarant, Mark Schroeder -- it's spelled
3 Schroeder but pronounced "Schrader" -- who is the company's
4 CFO, who, as with last week's hearing, is very much hoping not
5 to leave his seat today, if at all possible, and not join us in
6 the witness box; and also Mr. Joe Bean, who is the company's
7 general counsel.

8 I think Your Honor probably already knows from your
9 review of the events to date, that Weil Gotshal is counsel to
10 Barclays and Citibank, who are our new money senior DIP agents,
11 today in the form of Mr. Smolinsky; that Margot Schonholtz and
12 Ana Alfonso of the Willkie firm, are counsel to BofA, who was
13 the pre-petition agent, but now, on an interim basis,
14 subject -- as was discussed at the hearing -- to traditional
15 unwind which we do not expect to ever be relevant here, is our
16 second out DIP agent.

17 THE COURT: All right.

18 MR. HUEBNER: So those, Your Honor --

19 THE COURT: Before we go further, I have a host of
20 parties on the phone. And I've just been looking at the
21 CourtCall list. I think the only party that is on live is Mr.
22 Williams. Are you there, sir?

23 MR. WILLIAMS: Yes, Your Honor.

24 THE COURT: All right. Is anyone else on the phone in
25 live mode? All right, thank you.

1 MR. HUEBNER: So, Your Honor, since the first-day
2 declaration is relatively detailed, and there was a transcript
3 from the first hearing, I'm not going to belabor the Court with
4 a twenty-five minute description of the company. I thought
5 that I would hit, in a very summary form, a few key points --

6 THE COURT: All right.

7 MR. HUEBNER: -- just so that the Court and the clerks
8 and people who were not able to join us last week, who are here
9 today --

10 THE COURT: Yes. I don't want twenty-five minutes,
11 but I would like you to give me a sense of how we got here and
12 where we're going.

13 MR. HUEBNER: Yes. And that's --

14 THE COURT: Okay.

15 MR. HUEBNER: -- that's pared down to I think probably
16 about six --

17 THE COURT: Okay.

18 MR. HUEBNER: -- which I'm hoping is about the right
19 amount of time.

20 Your Honor, Patriot, simply stated, is one of the
21 leading producers and marketers of coal in the United States.
22 It ships its coal all over the world: North America, South
23 America, Europe, Asia, and domestically. Most fundamentally,
24 there are two type of coal. Number one is what's called steam
25 or thermal coal. That's the coal that is basically burned for

1 heat or electricity, used primarily by power plants. The
2 second type of coal, at the most fundamental level, is called
3 metallurgical or met coal. That primarily produces coke, and
4 is used in the coking process for the manufacture of steel. So
5 they have different markets, different pricings, different
6 sensitivities.

7 One of the interesting thing that I learned in the
8 last few months is that, in fact, there aren't really two types
9 of coal, in fact, there are an infinite number of types of
10 coal, because each mine very often produces coal that is
11 actually quite different from the mine down the road or from
12 the region that is sort of down the way. And we were sort of
13 joking at one point that it's almost like an alloy as opposed
14 to a commodity, but one that happens to be made -- arguably,
15 depending on your theology -- by either god or geology, as
16 opposed to being directly manmade.

17 And so coal supply contracts very often have extremely
18 specific specifications about what the coal that the purchaser
19 is buying has to look like; because their power plant may only
20 be able to burn coal that falls within a specific sulfa
21 content, a specific BTU content, et cetera, et cetera. And
22 it's most fundamental, you'll probably hear talk throughout the
23 case, about steam coal or met coal.

24 We have twelve active mining complexes, and we're one
25 of the country's largest producers. We have nineteen surface

1 and underground mines. And we have 1.9 billion tons of what's
2 called proven and probable coal reserves; which is sort of the
3 way it works. They sort of take core samplings and other
4 geological indicia that tell you how much coal lies underneath
5 your economic control. And that's how the value of a coal
6 company is essentially reached. And that's how its expected
7 production, its ability to promise people what it will sell to
8 them over a time horizon, is arrived at.

9 As I said before, we really ship coal all over the
10 world. It's primarily North America, Europe, South America,
11 and Asia. So I guess not much in Antarctica or Australia, but
12 other than that, I think we hit most of the major markets. And
13 just by way of example, we sold 31.1 million tons of coal in
14 2011.

15 In terms of the people who work --

16 THE COURT: What's the percentage breakdown between
17 what you sell domestically and what you sell overseas?

18 MR. HUEBNER: If my memory is right, twenty-nine
19 percent of our coal is export sales and the remainder is
20 domestic.

21 THE COURT: Okay.

22 MR. HUEBNER: So in terms of people, Your Honor, there
23 are about a little over 4,000 employees at the debtors. One
24 fact that is very interesting -- and again surprised me as
25 someone who did not previously know much about the industry --

1 is that about forty percent, forty-two percent of our work
2 force is unionized, with the balance nonunionized. And the
3 interesting fact sort of within that fact, is that we are
4 actually the second biggest employer of unionized coal workers
5 in the United States.

6 THE COURT: So let me ask you a question about this.
7 Are all of the miners unionized, or are only some of them --

8 MR. HUEBNER: No.

9 THE COURT: -- unionized?

10 MR. HUEBNER: Virtually everybody at Patriot Coal is a
11 miner. So the majority of our miners are nonunionized, and the
12 minority, forty-two percent, probably forty percent of the
13 miners are unionized. What's interesting, because again, just
14 as someone who was ignorant of the industry, I envisioned
15 almost all coal miners as unionized. That's not true at all.
16 In fact, nationally, only about 11.5 percent of coal miners are
17 unionized. The rest are nonunion. So we are actually an
18 anomaly in that we have such a high proportion of unionized
19 miners as compared to virtually all of the other domestic coal
20 producers.

21 THE COURT: And does that break down by geographic
22 location or are there are unionized and nonunionized at a
23 specific geographic location?

24 MR. HUEBNER: Your Honor, may I ask for help in the
25 gallery?

1 THE COURT: Yes.

2 MR. HUEBNER: That's beyond my knowledge.

3 MR. SCHROEDER: At an individual complex, everyone
4 will either be union or nonunion. But there are complexes next
5 to other complexes, some being union, some being nonunion.

6 THE COURT: All right. Thank you.

7 MR. SCHROEDER: It does not matter by geography.

8 THE COURT: Thank you.

9 MR. HUEBNER: So for the record, just because the mic
10 might not have picked up Mr. Schroeder from the gallery, any
11 individual mining complex is one or the other. It's either a
12 union shop or a nonunion shop. But within geographies, it's
13 not like all the miners in Western Appalachia are unionized.
14 Literally side-by-side there can be complexes that are both
15 union --

16 THE COURT: All right.

17 MR. HUEBNER: -- and nonunion.

18 THE COURT: And then to pick up on your earlier
19 observation that most of the 4,000 are miners, can you give me
20 something more specific? Are there 100 administrative and
21 executive employees?

22 MR. SCHROEDER: I would say somewhere around ten
23 percent or so, I think --

24 THE COURT: So 400 or so nonminer employees?

25 MR. SCHROEDER: Ballpark guess.

1 THE COURT: All right. Thank you.

2 MR. HUEBNER: And to be clear, Your Honor, that
3 includes safety supervisors, all sorts of people that are
4 not -- it's not that there are 400 people in management, by any
5 stretch --

6 THE COURT: Understood.

7 MR. HUEBNER: -- there are 400 people doing -- and
8 it's probably more like between 250 and 400, if I had to guess,
9 doing all of the other jobs of the company other than being --

10 THE COURT: Okay.

11 MR. HUEBNER: -- an actual miner down in the mines.

12 THE COURT: All right.

13 MR. HUEBNER: So, and then I should say one more thing
14 which is sort of more nuancy. Not only are we anomalous, in
15 that we're a very high union shop compared to almost everybody
16 else -- again, the national average being the eleven to twelve
17 percent range of all miners -- but even when you look only at
18 the United Mine -- we have a single union, Your Honor. The
19 United Mine Workers of America, that we will probably end up
20 calling the UMWA during the case for just convenience sake,
21 even there, there is not a single contract. Some of the miners
22 are under what's called the national contract; but then there
23 are other agreements that have different pricing scales and
24 benefit scales. So even within the unionized miner world, as
25 you may have cause to learn during the case, there is a

1 variegation among the conditions and benefits under which
2 people work.

3 Your Honor, in terms of the pre-petition capital
4 structure, we actually -- it was actually pretty
5 straightforward and rather less funded debt than one might have
6 imagined for a company of this size.

7 THE COURT: Right.

8 MR. HUEBNER: There was -- at the time of the filing,
9 there was 302 million dollars of L/Cs, all undrawn, just
10 sitting as backstops for reclamation obligations, workers' comp
11 obligations. This is a company that has to make a lot of long-
12 term promises to pay, and those are generally backed,
13 ultimately, by letters of credit.

14 So while we had a much larger in face amount pre-
15 petition credit facility with Bank of America, at the time of
16 the filing, only 302 in L/Cs and one 25 million dollar loan of
17 actual money was outstanding. In addition, there was an
18 accounts receivable securitization facility with Fifth Third,
19 which had about fifty million dollars in L/Cs. No borrowed
20 money at all. Only letters of credit.

21 And so what happened in connection with the first-day
22 hearing, as again, I imagine Your Honor probably knows, but for
23 the benefit of others, is that the AR securitization facility
24 was back-to-back with the new DIP L/C. They therefore tendered
25 a payoff letter, released all the liens, making the full

1 accounts receivable collateral base available for the DIP
2 loans.

3 The 302 million dollars of L/Cs have been rolled up
4 and designated the second out DIP facility. And the frankly,
5 in the scheme of things, very small, 25 million dollar actual
6 loan outstanding, was paid off by the new 500 million dollar --
7 which itself is a two-tranche facility -- DIP loan being
8 provided Mr. Smolinsky's clients, Citibank and Barclays.

9 The only other capital structure we really have,
10 except for some very small notes that are outstanding due to a
11 prior transaction, is there is a 250 million dollar unsecured
12 bond issuance, and there is a 200 million dollar convertible
13 bond issuance. So --

14 THE COURT: All right. Who represents those parties?

15 MR. HUEBNER: I don't know -- oh, I apologize.

16 MR. SILVERSTEIN: Your Honor, Paul Silverstein,
17 Andrews Kurth --

18 THE COURT: All right.

19 MR. SILVERSTEIN: -- for Wilmington Trust.

20 THE COURT: Hello, Mr. Silverstein.

21 MR. SILVERSTEIN: Good morning. For Wilmington Trust,
22 the 8.25 percent bonds, the 250 --

23 THE COURT: Okay.

24 MR. SILVERSTEIN: -- million dollar issuance that Mr.
25 Huebner mentioned.

1 THE COURT: Okay.

2 MR. HUEBNER: On the converts, Your Honor, we had been
3 contacted over the weeks and months leading to the filing by
4 various law firms stating that they were working with various
5 combinations of convert holders or the regular bondholders. I
6 don't think that counsel for the indenture trustee for the
7 converts has yet surfaced.

8 THE COURT: All right.

9 MR. HUEBNER: I don't yet know which group, if any,
10 will really shake out with which counsel, if any. As you know,
11 very often, when you add up people's professed holdings during
12 the negotiation period, they magically own 943 percent of the
13 actual size of the facility, which didn't quite happen at those
14 numbers here, but people couldn't quite have represented what
15 each of them said they stood for.

16 THE COURT: Okay.

17 MR. HUEBNER: So you asked specifically about the
18 events leading up to the Chapter 11 filing. So with the
19 Court's pleasure, I'll turn to that now.

20 THE COURT: Sure.

21 MR. HUEBNER: As I think many of the people in the
22 courtroom are aware, the demand and the price paid for both
23 types of coal, both met coal and steam coal, have declined very
24 substantially, a decline that has been particularly material in
25 the last year. I think that if you look at sort of spot or

1 market prices -- contract prices for either met coal or steam
2 coal, even from as recently as a year ago, you'll see declines
3 in the thirty, forty -- and depending on the type of coal,
4 possibly even more than that -- percent range. And so we're
5 talking about massive price declines. These are not five, ten,
6 twenty percent. These are a third or even forty percent price
7 drops from as recently as a year ago. And a year ago was not
8 the high point, by any stretch.

9 And that's really due to a couple of factors. But to
10 highlight sort of where things have gone, one of the reasons we
11 are here, although there are unfortunately several very serious
12 ones as well, one of the things that we've experienced in the
13 recent months is customers calling and saying can we cancel;
14 can we delay; can we buy out at a discount; because people
15 have, as you'll hear in a minute, alternatives to coal, or the
16 spread between their contract price and the market price, when
17 they can find replacement coal, where it's not overly
18 customized, has grown.

19 And in particular, we had two people this year,
20 Bridgehouse Commodities Trading Ltd. and Keystone Industries,
21 LLC, that simply defaulted. They just did not take the coal
22 that they had promised to take, which was under contracts that
23 were highly advantageous to Patriot, and very in the money.
24 And those actions are already being pursued on one of those
25 parties, for sure -- maybe both -- that owes us tens of

1 millions of dollars, even if you were looking only at the
2 spread between market price and contract price, let alone the
3 fact that we have all this coal, that we sort of have to figure
4 out what to do with.

5 So, why? Why has there been a material drop? Well,
6 obviously, it's not really possible for anybody, let alone a
7 mere bankruptcy lawyer to sort of really know why markets for
8 things move the way they do, but there are, obviously, some big
9 indicia that enough people talk about that they're probably
10 pretty much a good summary of what's going on.

11 Number one is alternative sources of energy. One of
12 the great American success stories, I think, in the last few
13 years, has been the unlocking of America's natural gas deposits
14 through very sophisticated fracking. It's a type of shale
15 drilling that was not previously available, that was thought to
16 be uneconomic. And as technology has advanced, fracking has
17 resulted in tremendously increased reserves of natural gas, and
18 also lowered the price of natural gas. I think I just saw that
19 it, again, hit a ten-year low.

20 There was actually an interesting editorial in this
21 weekend's Wall Street Journal talking about specifically the
22 natural gas explosion in America as being one of the hallmarks
23 of capitalism, because individual land owners are free to sell
24 their mineral rights to explorers, who have an economic
25 incentive to sort of go for it. Whereas in Europe and other

1 places where they actually have reserves that may not end up
2 less than ours -- again, the Wall Street Journal, I'm not
3 speaking for them, just saying what the editorial said --

4 THE COURT: Well, that goes to the demand for steam
5 coal, right?

6 MR. HUEBNER: Correct. And we'll -- and I'll get to
7 met coal in just a minute.

8 THE COURT: Okay.

9 MR. HUEBNER: So issue number one has been alternative
10 sources of energy, and particularly natural gas. Number two is
11 just temperature. We had a very, very mild winter this year.
12 There was a lot less need for heating. And when you sell stuff
13 that is used to create heat and electricity and the average
14 temperature is, whatever it was, twelve, fourteen degrees
15 higher than a typical winter, we all enjoyed it; but coal
16 companies certainly did not.

17 The third issue, Your Honor, you're exactly right, and
18 I was going to get to it next, is there is a distinction in the
19 markets, which is why the market price for met coal, which is
20 down in a thirty-three percent drop in the last nine, ten
21 months range, is actually slightly less dramatic than the even
22 greater drops for certain types of steam coal -- depending on
23 the region, the chemical properties, the mine, the need of the
24 specific generator for only your coal from that mine shaft, all
25 of which, obviously, affect pricing -- has been just a decline

1 in worldwide economy.

2 Many entities are still reeling in one way or another
3 from the financial dislocations of 2008 and afterwards. And we
4 are very heavily dependent on steel production. I mean,
5 there's a very direct correlation. And so when new
6 construction and building booms and real estate lending dry up,
7 it hurts people all the way down the line, including the people
8 who make the raw materials that go into the steel, that go into
9 the buildings, that go into the loans made by the big banks, et
10 cetera.

11 So that is, in part, the demand side. But the problem
12 we have is, of course, like many debtors that come before you,
13 there's a cost problem as well as a price problem. And
14 unfortunately, we are constrained to have been hit by both of
15 those. So on the cost side -- and again, without passing
16 judgment in any way -- the objective fact is that the
17 environmental regulations and the cost of complying with
18 environmental regulations, directives, court rulings, and
19 proposed regulations, has hit us in sort of a twinned way.

20 Number one, it's on the coal industry itself. It's
21 just become much more complicated and much more expensive to
22 pull coal out of the ground in a way that is now deemed to
23 comply with ever-evolving environmental regulation. The second
24 is the regulation of power plants. Right? When you hear about
25 scrubbers and stacks and dual fire and we don't want you

1 burning coal anymore, there are certainly -- there's an
2 environmental atmosphere and regulation that certainly, let's
3 just say, does not have a preference for burning coal. And
4 that has resulted in substantially increased costs and
5 decreased demand. Because if you can get energy alternatives
6 that come with less cumbersome strictures and are at a price
7 point that now makes it economic, as a power plant generally
8 with a dual capacity plant, it would obviously be irrational
9 not to move to alternative number two.

10 The new regulations, the new interpretations of
11 existing law, citizens' suits, and the like, have collectively
12 imposed costs that are in the hundreds and hundreds of millions
13 of dollars on Patriot: water treatment, waste treatment,
14 reclamation obligations. Again, the cost burden has just gone
15 up exponentially. At the same --

16 THE COURT: Are the burdens qualitatively or
17 quantitatively different as between Patriot and those companies
18 you would characterize as its competitors?

19 MR. HUEBNER: You know --

20 THE COURT: And the concept of a competitor in this is
21 a little interesting, but I'll ask the question anyway.

22 MR. HUEBNER: Yes. So I'll answer it, I think, in
23 part, which is, when we get to the next issue, which is legacy
24 costs, I think there is a much bigger gap between Patriot and
25 many of its "competitors". I think the environmental laws -- I

1 mean, we're all selling to similar power plants, the same
2 technological -- these are laws that, in general, apply across
3 the board. Yet, certainly, there are some issues where we have
4 been, we sort of feel, especially heavily targeted by citizens'
5 suits for specific minerals in specific areas. Sometimes you
6 can get a single judge who gets hold of an issue and for good
7 or for bad, again, without expressing judgment on the merits,
8 that one situation itself can have a multi-year, multi-hundred
9 million dollar tail.

10 And so we do have some specific sort of hot spots,
11 where I think our costs have been maybe somewhat out of line.
12 But I think as a general rule, the general regulatory and
13 environmental climate, I think, is equally affecting coal
14 producers in the United States, generally.

15 I think it's also right that as coal reserves continue
16 to get explored and exploited, also, outside the United States,
17 the relative imbalance in substantially less strict
18 environmental regimes elsewhere, also hits the domestics as a
19 whole, right -- Indonesian coal or coal from X, Y, and Z --
20 because it would pulled, produced, and shipped for much less,
21 because they don't have the type of selenium water -- one
22 billionth of a particle per gallon of water type remediation
23 obligations that domestic producers do.

24 But again, Your Honor, your intuition is spot on.
25 Because one of the interesting questions is always, well, why

1 are you here and not others. Right? And maybe the others will
2 all be here at some point. It's hard to know. Obviously there
3 are -- certainly several industries we have all seen come and
4 go over the decades, where there was one, then it was three,
5 then it was five, and then it was -- you know, I think at one
6 point, sixty-five percent of the nation's airline seats were
7 flying through the protection of the Chapter 11 system.

8 Whether that day is coming for the coal industry as a
9 whole, is beyond my skill set, and frankly, given the work we
10 have to do here, happily beyond my need to try to get my arms
11 around.

12 But there is one way in which I think we are a little
13 bit different from many of our peers, and that is our legacy
14 costs. As I said before, Your Honor, Patriot is much, much
15 more heavily unionized than the typical U.S. coal producer.
16 When we were spun off by Peabody, essentially, it was Peabody's
17 union operations that were spun off into Patriot. And they
18 created a very heavily unioned shop. And so when you look at
19 just some simple statistics about our particular legacy
20 obligations, I think it begins to speak for itself, relatively
21 quickly.

22 So currently, for example, with just over 4,000
23 employees, we currently provide healthcare and other analogous
24 benefits, to more than 22,000 active and retired employees and
25 their dependants. There are more than three times the number

1 of retirees and dependants who receive medical benefits from us
2 as there are active employees and their dependants. So it's
3 unfortunately sort of a classic legacy situation, but actually
4 much worse than at least many that I have seen.

5 When you look at the pension, for example, it's much
6 worse. Under the national pension plan, that's a multi-
7 employer plan to which we are currently a participant, I think
8 the number, Your Honor, is something like there are ten
9 pensioners for every one active, working, unionized miner. And
10 in balance, it continues to grow over time. As demand shrinks
11 and companies shrink and the number of active miners shrink,
12 and especially the number of nonunion miners grow, the mismatch
13 between the legacy burden that's being carried and the ability
14 of a company to generate revenue to fund it, grows ever worse.

15 Just to give you some numbers which I, at least, found
16 pretty shocking. We currently pay, I think, something like
17 12,000 dollars per active employee -- active represented
18 employee, towards this pension plan. By 2020, so in just eight
19 years, that number could grow to 45,000 dollars per represented
20 employee, solely for the pension fund contribution.

21 THE COURT: All right. I'm just going to ask you to
22 slightly adjust some of the words that you're using.
23 "Shocking" is not a word that I would use. "Worse" is not a
24 word that I would use. Those have a qualitative aspect to them
25 that I think I'd like to avoid.

1 MR. HUEBNER: Sure.

2 THE COURT: The numbers certainly speak for themselves
3 in terms of the order of magnitude that they represent on a
4 relative basis to what you're telling me.

5 MR. HUEBNER: Yes.

6 THE COURT: But I'm very sensitive to the way things
7 are characterized here, in particular, since it has happened
8 that things get taken out of context, from time to time.

9 MR. HUEBNER: I quite agree. And Your Honor, just to
10 be clear, words like "extremely painful" and "difficult" would
11 have soon been followed, because we are unfortunately very well
12 aware of the human aspect of all of these things. You know,
13 we've lived through these types of cases before. It's --

14 THE COURT: Is somebody -- is the union represented or
15 the retirees represented? Can you do a little bit of a segue
16 or a footnote to bring me up to speed on that --

17 MR. HUEBNER: Sure.

18 THE COURT: -- set of issues?

19 MR. HUEBNER: So the union is represented. We
20 obviously have a relationship with the union that goes back a
21 long time on the business-to-business level. Recently, a
22 notice of appearance was filed, I think, in the middle of last
23 week, by a New York law firm with which we had not previously
24 had contact, representing --

25 THE COURT: On behalf of?

1 MR. HUEBNER: -- one of the -- on behalf of the United
2 Mine Workers of America.

3 THE COURT: Okay.

4 MR. HUEBNER: They have a pretty elaborate in-house
5 apparatus. And so if I had to guess, I would think that we
6 will be dealing primarily with the Mine Workers' people who are
7 just --

8 THE COURT: Okay.

9 MR. HUEBNER: -- outside Washington, D.C. The
10 retirees, Your Honor, we don't yet know whether the Mine
11 Workers are going to agree to represent the retirees. As Your
12 Honor certainly knows, and other people in the courtroom
13 probably know as well, 1114 provides for the union to either
14 accept or decline --

15 THE COURT: Yes.

16 MR. HUEBNER: -- being the official representative.
17 We just don't know yet.

18 THE COURT: Okay.

19 MR. HUEBNER: We are setting up. And obviously the
20 lines of communication are open. They were one of the very
21 first calls that was made in connection with the filing. And
22 we very well and deeply understand that working constructively,
23 productively, and god-willing, consensually with the actives
24 and the retirees, are likely going to be at the cornerstone of
25 this case. And we are doing everything we can to be ready to

1 do that.

2 In terms of the numbers, I think they're largely in
3 the declaration, so I don't think I'm going to --

4 THE COURT: They are.

5 MR. HUEBNER: -- rattle through them. The only thing
6 I would note is that the coal industry is also different in
7 that in addition to contractual promises, either in CBAs or
8 even to nonunionized workers that are sometimes made both
9 respect to pension and retiree medical, when you're dealing
10 with the coal industry, there is also a statutory overlay. And
11 there are certain types of benefits, in particular what's
12 called the Black Lung Act liabilities --

13 THE COURT: Right.

14 MR. HUEBNER: -- and the Coal Act liabilities, for
15 which there are reticulated statutory schemes. And there we
16 will be in a yet different legal environment than even the
17 typical, relatively convoluted bankruptcy environment, where
18 you have the overlay of regular nonbankruptcy law, ERISA,
19 contractual promises, 1113, 1114. Here there are specific
20 statutes as well that govern, at least in some case, some of
21 our obligations.

22 THE COURT: Okay. Can I ask you to backtrack, Mr.
23 Huebner, and tell me a little bit more about the spinoff?

24 MR. HUEBNER: Sure. The spinoff, Your Honor, happened
25 in 2007. The Patriot entities were created as, I think they

1 typically would be, a few months before the spin -- I'll sort
2 of turn around and if I misspeak, I think I'll get some raised
3 eyebrows, as some of these gentlemen were actually there at the
4 time.

5 The spin happened in, I think, the fall of 2007. But
6 Patriot is not merely the companies that were spun off from
7 Peabody, because there was actually a major acquisition that
8 was done in the next year. There was originally a company
9 called Arch, which was also like Pea -- Peabody, I believe,
10 still is the country's largest coal producer. Arch is another
11 one of the sort of very large, I believe also, one of the top
12 five, as is Patriot, by the way.

13 So we also bought, in 2008, substantial coal assets
14 that were originally owned by Arch. What happened was, Arch
15 themselves spun those assets off. And there was a sort of
16 merger of sorts with a financial investor that was called
17 ArcLight. They then owned those assets. Those assets were
18 then bought and absorbed, I think, in a stock for stock deal,
19 into the Patriot family in 2008.

20 It appears I have not misspoken, due to the shaking of
21 the heads. So that --

22 THE COURT: Okay.

23 MR. HUEBNER: -- that would be sort of how Patriot
24 sort of came to be. So I'm almost done, Your Honor. I was
25 just going to sort of quickly hit two last things as part of my

1 initial presentation. One is, of course, the debtor has not
2 been silent in the face of these challenges. 2011/12 were
3 obviously a very challenging year, in light of substantial
4 price declines and increases that were continuing in our cost
5 structure on both the environmental and legacy side. And a
6 variety of actions, as you might imagine, evasive maneuvers,
7 were taken to try to adjust the company to the new environment.

8 Thermal coal production, where, as Your Honor honed
9 right in, was where the bigger price drops were happening, was
10 reduced, because certain mines just become uneconomic at
11 certain price points. So if that mine is very rich, very
12 efficient, high BTU coal, we can run that one even at 203
13 dollars a ton, whereas that one, if it's not 212, we just shut
14 it down; it doesn't make any sense to run.

15 So our thermal production was reduced but just over
16 five million tons in the last year, which is a very material
17 amount. We delayed the expansion programs. You know, we have
18 a lot of met coal, which is the more valuable coal. But there
19 also, expanding and drilling and opening costs a lot. And when
20 met coal per ton prices dropped from 305 to 206 in the nine-
21 month period, things that made sense at 300 just don't make
22 sense anymore. And so that was adjusted.

23 Capital spending, as you might imagine, since some of
24 it, although not all of it, is sort of discretionary, is one
25 place you look to save money when your liquidity begins to get

1 strained. We've been working very creatively with our
2 customers to sort of rejiggle and rejuggle where we can, and
3 lock in maybe longer and better agreements for more coal at
4 adjusted pricing and the like. And we also reduced our
5 workforce substantially in connection with closing some of the
6 mines.

7 We also, Your Honor -- some of the mines, as you may
8 have seen in connection with the wages motion, also are run by
9 contract miners. It's pretty small, but it is sort of a third
10 category. Because we have our own people who are unionized.
11 We have our own people who are nonunionized. Sometimes you
12 actually hire an outside company to actually provide the miners
13 and do the mining. And sometimes, and at some price points,
14 that's actually more efficient than building the internal
15 infrastructure of your own employee base, supplementally so,
16 staff that mine. Sometimes it's not. One of the things we did
17 a bunch of in the last year was actually move away from
18 contract miners, and take things back over ourselves.

19 THE COURT: And I think I read that you have laid off
20 approximately 1,000 employees in the last year, perhaps?

21 MR. HUEBNER: Yes. That number is pretty much spot
22 on.

23 THE COURT: Okay.

24 MR. HUEBNER: And so, the closing thoughts, Your
25 Honor, before I turn it over to Mr. Schaible to cover most of

1 the balance of the first days that were adjourned to today.
2 There's going to be some very painful work and some serious
3 look at what's going to be done to adjust Patriot's cost
4 structure to its ability to generate revenue. We're in a very
5 different revenue world than coal, I think, has been in, in the
6 past. And currently, the misalignment, unfortunately, has left
7 us no choice but to restructure under the Bankruptcy Code.

8 One thing I want to be very clear about for the record
9 is Davis Polk and Patriot, and where necessary, Curtis Mallet,
10 fully and passionately intend to resolve everything possible,
11 consensually, constructively, and without litigation. So I'm
12 putting out an open notice. Don't file papers, just call us.
13 If we can work it out, we'll work it out.

14 THE COURT: Well, those of you who are familiar with
15 the way I operate know that that's one of the most important
16 rules. I am all in favor of lawyers earning the fees. But I
17 don't want there to be any unnecessary litigation, motion
18 practice, and the like that would have the effect of depriving
19 unsecured creditors or other interest holders of value. So I
20 appreciate that comment, and I certainly agree with it.

21 One thing I'd like to add that's important to me, as
22 I'm sure it's important to you and to many of you, is that, as
23 you pointed out, Mr. Huebner, in additional to the financial
24 capital structure, if you will, aspect of this case, we have
25 4,000 workers and 22,000 in the extended family, by your count.

1 And the issues that we're going to be facing, I believe, are
2 complex and difficult.

3 But that being said, I think it's essential that the
4 debtor expend all necessary resources to keep the workers and
5 their families and the retirees informed as to what's happening
6 here, and to keep the lines of communications open. I know
7 that in some other cases that are pending in this building, in
8 cases that I've had, we've put in place procedures and measures
9 to ensure that folks can get their questions answered, just
10 from the most basic of: my child needs to go to the dentist,
11 am I going to lose my dental coverage; to what's going to
12 happen to my pension.

13 Some questions you're not going to be able to answer.
14 Some questions you are. But we have to keep in mind that those
15 of us who do this from day to day, we can understand a lot of
16 the words on these pages. But ordinary people who are bright,
17 don't have as easy a time. And I want to make this a very
18 accessible proceeding. And I'll leave it to you and your team
19 and the folks at the company, in order to implement that.

20 I don't know what can be found on the website that I
21 see that you've created. I'm sure that it's been put together
22 thoughtfully. But I just want to emphasize, from my
23 perspective, I'm sure I'll be getting letters from individuals,
24 that we do in cases of this kind. And I just wanted to put on
25 the record my concern and my expectation that you and the

1 company's other advisors will facilitate the information flow,
2 the dialing into the hearings, and all of those other things.

3 MR. HUEBNER: Yes, Your Honor. Let me give you
4 comfort on that, if I may?

5 THE COURT: Okay, sure.

6 MR. HUEBNER: Because we actually think very much
7 those ways -- and in fact, one of the things of which we're
8 most proud. We typically judge our success in a case not only
9 by the emergence, but by how many omnibus hearings we got to
10 cancel in toto, because we resolved every single matter on the
11 docket. As Your Honor certainly would not know, but we do know
12 and take pride in, in three of our prior labor cases, we worked
13 out consensual deals almost across the board on 1113 and 1114.
14 The one in Delta, I think, was actually hailed as
15 groundbreaking at the time. And so we stand absolutely open to
16 do that, and ready, and willing and able.

17 THE COURT: I'm going to ask you now, if you are done
18 patting yourself on the back, and if you need any assistance
19 with shoulder pain, Mr. Huebner.

20 MR. HUEBNER: I don't, Your Honor. But I will say,
21 that something we had no connection to, but the company did,
22 and they do deserve a pat on the back, exactly the type of help
23 lines that you're talking about, with live people --

24 THE COURT: Yes.

25 MR. HUEBNER: -- ready to talk to retirees --

1 THE COURT: That's what I --

2 MR. HUEBNER: -- it's already done.

3 THE COURT: -- that's what I want.

4 MR. HUEBNER: It's been in process since the petition
5 date. They worked with a special communications advisor to put
6 together dedicated toll-free numbers, both for actives and for
7 retirees. And I actually believe the retirees got the highest
8 level of service --

9 THE COURT: Okay.

10 MR. HUEBNER: -- and the most live human beings, not
11 just menu options. You know, it's sort of like the Rawlsian
12 curtain of ignorance where looking at the people who are least
13 able to derive the information themselves from these bulletin
14 court pleadings, are the ones on which we actually spent quite
15 a bit of time and money designing detailed Q&As.

16 THE COURT: Okay.

17 MR. HUEBNER: And when I say "we", I emphatically do
18 not mean Davis Polk; I mean Patriot and the people who actually
19 have to help these folks figure out the labyrinth of their
20 benefits.

21 So before I put any more toes in mouth, Your Honor,
22 I'm done for this morning. And what I'd like to do, unless
23 Your Honor has further questions from me in particular, is turn
24 the podium over to Mr. Schaible.

25 THE COURT: Very well. Thank you.

1 MR. SCHAIBLE: Your Honor, for the record --

2 THE COURT: How are you?

3 MR. SCHAIBLE: -- Damian Schaible, of Davis Polk &
4 Wardwell, representing the debtors. We are here on the motion
5 front, as we set forth in the amended agenda, on eight motions
6 that we did not need to trouble Judge Gropper with last week,
7 but that we do need to trouble you with this week, if Your
8 Honor will hear us.

9 THE COURT: All right. I have the amended notice of
10 proposed agenda.

11 MR. SCHAIBLE: So I'll be covering the first eight,
12 and then the ninth is the seal motion related to the DIP.

13 THE COURT: Okay, fine. All right. So first is case
14 management. Correct?

15 MR. SCHAIBLE: Yes, Your Honor. I know that you've
16 read everything, so I don't know how you would like to proceed.
17 I can explain it or, you can --

18 THE COURT: No. So the first item is the case
19 management motion. I'll simply ask if anyone in the courtroom
20 or on the line wishes to be heard with respect to the debtors'
21 motion for an order establishing certain notice, case
22 management, and administrative procedures.

23 Mr. Silverstein, you're rising.

24 MR. SILVERSTEIN: Yes, Your Honor. May I?

25 THE COURT: Sure.

1 MR. SILVERSTEIN: Thank you. Briefly, Your Honor, for
2 the record, Paul Silverstein, Andrews Kurth, counsel to the
3 Wilmington Trust as indenture trustee for the 8.25 percent
4 senior unsecured notes of June 2018.

5 As Mr. Huebner mentioned, the 8.25 notes are 250
6 million principal amount. Wilmington anticipates being
7 appointed to the official creditors' committee that will be
8 appointed in two days, on Wednesday. The committee will then,
9 obviously, hire counsel and financial professionals and will
10 obviously be a significant player in these cases.

11 The issue for Wilmington today, is simple and it
12 relates to all of the motions that are on today. And the
13 question is, what's the impact, magnitude, cost, and effect of
14 these motions and orders between now and August 2nd, which is
15 the final hearing date on --

16 THE COURT: Right.

17 MR. SILVERSTEIN: -- first days, and the impact
18 between now and when a committee is appointed and has the
19 opportunity to review and evaluate these matters. We obviously
20 appreciate Mr. Huebner's comments that this will be a
21 consensual case. Obviously I expect it to be.

22 But I think that obviously, to the extent emergency or
23 interim relief is necessary, that should be dealt with on a
24 case-by-case-specific basis. I note that some of the orders
25 specifically provide for that they're interim orders, and

1 they're providing for interim relief. But it's not really
2 clear to me what exactly that means.

3 So what I'm asking is -- what I would ask is that
4 Court be particularly sensitive to the impact, effect, and
5 magnitude of whatever relief's being granted today, so that it
6 can be looked at again, once a committee is formed. And that's
7 it.

8 THE COURT: That's the point of an interim hearing.

9 MR. SILVERSTEIN: Well, I understand --

10 THE COURT: I'm going to do exactly that. No worries.

11 MR. SILVERSTEIN: Thank you, Your Honor.

12 THE COURT: Okay. But you have no specific
13 objection --

14 MR. SILVERSTEIN: I have no specific objection.

15 THE COURT: -- to the case management order?

16 MR. SILVERSTEIN: No.

17 THE COURT: Well, they're going to go through, in
18 particular, the critical vendors motion, and we're going to --

19 MR. SILVERSTEIN: And again, the case management,
20 critical vendors, obviously, it's a lot more comfortable when a
21 committee has evaluated it. But we are where we are, and we
22 have to deal with it. But I understand Your Honor's
23 sensitivity, and I need not say any more.

24 THE COURT: Okay.

25 MR. SILVERSTEIN: Thank you.

1 THE COURT: All right. Ms. Gasparini, you're having
2 your formation meeting on the 18th?

3 MS. GASPARINI: That is right, Your Honor. It's going
4 to be on the 18th, which is this Wednesday, at 11:30. And it's
5 going to be at the Downtown Marriott.

6 THE COURT: All right. Very well. Okay, the case
7 management motion is approved.

8 MR. SCHAIBLE: The next motion on for today is the
9 derivatives contracts motion.

10 THE COURT: All right.

11 MR. SCHAIBLE: Again, Your Honor, I don't want to take
12 up your time, but this is a --

13 THE COURT: Why don't you give the briefest of
14 descriptions of it for the benefit of those in the courtroom
15 and the line --

16 MR. SCHAIBLE: Perfect.

17 THE COURT: -- that may not have read it.

18 MR. SCHAIBLE: Perfect, Your Honor. The debtors, in
19 the ordinary course of their business, enter into derivatives,
20 mostly commodity derivatives, to hedge the prices of heating
21 oil and ultra-low sulfur diesel. The fuel obviously goes into
22 their trucks and helps them to mine. And the heating oil hedge
23 is a hedge against their business pricing. They also hedge
24 against the cost of explosives and steel, both of which are
25 very important in their businesses.

1 This is largely a comfort order, seeking the ability
2 to -- confirmation of our ability to continue to operate in the
3 ordinary course under the derivatives contracts. We
4 implemented some changes requested by the U.S. Trustee's
5 Office, and we would ask Your Honor to enter the order.

6 We're hearing -- as Your Honor well knows, we're
7 hearing already from various counterparties who may not be as
8 sophisticated as some of us in this courtroom, about what
9 debtors can and can't do in bankruptcy. And it gets rather
10 expensive for us to be able to keep trying to explain over and
11 over again, what we can do pursuant to general principles of
12 bankruptcy, rather than being able to show them an order saying
13 we're allowed to continue --

14 THE COURT: Right.

15 MR. SCHAIBLE: -- our derivatives program.

16 THE COURT: Okay. You mentioned comments that you had
17 incorporated. And I'm just looking at the black-line of the
18 order. Were those comments incorporated prior to the one I
19 have?

20 MR. SCHAIBLE: They were, Your Honor.

21 THE COURT: I see.

22 MR. SCHAIBLE: They were.

23 THE COURT: Okay.

24 MR. SCHAIBLE: Largely, it's with respect to this
25 motion and with respect to all the motions, and it very much,

1 actually, speaks to your statements before and Mr.
2 Silverstein's statements before. The U.S. Trustee wanted us to
3 be clear that during the first twenty-one days of the case, we
4 were not going to be pre-paying anything. We were only going
5 to be paying things as they absolutely become due. Which was
6 something that we were, of course, intending to do anyway. So
7 it was easy for us to add into all the orders that we wouldn't
8 do that.

9 THE COURT: Okay. All right. I got it. All right,
10 does anyone else wish to be heard with respect to the debtors'
11 motion regarding derivative contracts and pledging of
12 collateral under certain of the derivative contracts?

13 All right. That'll be approved.

14 MR. SCHAIBLE: Thank you, Your Honor. The next motion
15 is very similar. This relates to our ordinary-course customer
16 obligations. As you could imagine, in the ordinary course of
17 our business we have various obligations with respect to our
18 ongoing customers, including dealing with deposits, returning
19 deposits, taking deposits, truing up various contracts over
20 time. And this is again, seeking relief that we can show to
21 our customers to the effect that we're going to continue to be
22 able to do business with them post-petition, as we did pre-
23 petition, which is obviously of value to the estates.

24 THE COURT: I would also note that with respect to
25 many of these motions, the papers reflect that the debtor has

1 put in place what I would call a detailed tracking mechanism
2 for determining who's been contacted, who's being paid, and the
3 consequences of the behavior not being what's expected.

4 MR. SCHAIBLE: Yes, Your Honor.

5 THE COURT: So that's a good thing.

6 MR. SCHAIBLE: Yes, Your Honor. And we were very
7 focused on that. Our DIP lenders were very focused on that.
8 And the U.S. Trustee was, of course, very focused on that, as
9 will be the creditors' committee, when they're appointed, in
10 two days.

11 THE COURT: Okay. All right. All right, does anyone
12 else wish to be heard with respect to the debtors' motion
13 seeking authority to honor its customer obligations?

14 All right. That's approved.

15 MR. SCHAIBLE: Thank you, Your Honor. The next motion
16 is critical vendors. I can say before you, Your Honor, that I
17 have, I think, the most compelling case for a critical vendors
18 motion, certainly in my short career, and probably ever.

19 I sat down with the clients last week and I said we
20 have to be -- I should begin by saying our DIP lenders, as well
21 as our clients, were very focused on not sending money out the
22 door where we didn't absolutely need to. And so, I pushed back
23 on our clients more than I would say most debtors' counsel push
24 back on their clients, with regard to what they absolutely
25 think they need to pay; what they don't need to pay; what they

1 can avoid paying.

2 We had a series of very long and difficult
3 conversations. What I can tell you is, that what we have this
4 down to, Your Honor, are the most compelling arguments for
5 critical vendors I've seen, at least. For instance, safety
6 obligations. The people who make the bolts that hold the roof
7 of the caves up; and the people who make shelters that are
8 built into the mines that miners run to in the case of an
9 explosion; the people who make the rock dust which tamps down
10 the explosions; the people who make the individual oxygen
11 breathing units that the miners are carrying with them. From
12 an environmental perspective, it's the people who are
13 designing, even as we speak, our selenium water treatment
14 systems that we're using to comply with court order and clean
15 water throughout our mine complexes.

16 From the fuel and lubricant providers. You have mines
17 that are many hundreds of miles away from the nearest Texaco
18 station, and you need to be able to have huge amounts of fuel
19 shipped in those hundreds of miles, put into tanks that we can
20 then use to continue our operations.

21 THE COURT: All right. Slow down. I appreciate how
22 strongly you feel about it. Let's try to take it category by
23 category.

24 MR. SCHAIBLE: Sure.

25 THE COURT: All right. So I'm on page 5 at paragraph

1 12, "Safety Equipment Suppliers and the Service Providers".
2 And I do agree that there's a uniqueness element to that group
3 of vendors. Can you give me any numbers around that particular
4 category with respect to what you would anticipate paying on an
5 interim basis, and what you think would be the outside number,
6 at the end of the day?

7 MR. SCHAIBLE: Your Honor, I have not divided them
8 into the different -- between safety and environmental and
9 fuel.

10 THE COURT: So the four categories that I would
11 identify would be the safety equipment, the environmental, the
12 fuel and lubricant, and the unique mining and part suppliers.

13 MR. SCHAIBLE: That's right, Your Honor.

14 THE COURT: So you haven't bucketed those categories?

15 MR. SCHAIBLE: We haven't. And the reason why is, to
16 be honest, if you look at the types -- if you look at who the
17 business people would call critical in each of those
18 categories, you end up with a number approximately four to five
19 times higher than the seventeen million dollars that we have as
20 the non 503(b)(9) subcap. And what we basically did was say,
21 in our view, we think we can get away with holding this guy
22 off; we think we can get away with paying ten percent of this
23 guy. But if I were to go in more detail, it would be a little
24 bit false. And if I were to provide more information about who
25 we think we're going to need to pay, that would just --

1 THE COURT: Well, that I don't --

2 MR. SCHAIBLE: -- prejudice us.

3 THE COURT: -- that I don't want you to do. So let's
4 focus on the seventeen million dollars. That's the non
5 503(b)(9), right?

6 MR. SCHAIBLE: Yes, Your Honor.

7 THE COURT: And that's the outside number, that's not
8 the interim number?

9 MR. SCHAIBLE: That's right. That's the outside
10 number. And that's also with the addition that we're not
11 intending to pay anyone before they're due.

12 THE COURT: All right. So without getting into the
13 breakdown into the four categories or naming any names, can you
14 give me an estimate of what it is that you would expect to or
15 intend to pay before the committee is up and running, A, or
16 B) prior to the final hearing? That's the number I'm really
17 interested in.

18 And I don't mean to put you on the spot. If you'd
19 like to take a moment to speak to Mr. Schroeder or anyone else
20 at the company, that would be fine.

21 MR. SCHAIBLE: If Your Honor doesn't mind, I may need
22 to use them.

23 THE COURT: Please, go ahead.

24 (Pause)

25 MR. SCHAIBLE: Your Honor, on the fly, I can tell you,

1 as I think we said in our motion, that we estimate that
2 approximately twelve million total will become due during the
3 first twenty-one days. Now, of that twelve million, how much
4 we think we would need to pay, we don't yet know. We're doing
5 our best to negotiate down. But it's twelve million which I
6 would call the kind of first twenty-one day subcap, of what we
7 think we need to be able to potentially pay, although we hope
8 to pay much less than that.

9 THE COURT: What's the -- do you have a number for
10 what, overall, what the unsecured claims you think look like in
11 this case? Sorry, I keep asking --

12 MR. SCHAIBLE: No, no problem.

13 THE COURT: -- I don't mean to keep asking you
14 questions that are --

15 MR. HUEBNER: If I could help for a second, Your
16 Honor? I think --

17 THE COURT: I asked the question imprecisely. I mean,
18 there are unsecured claims and there are unsecured claims.

19 MR. HUEBNER: And so there are two answers. Number
20 one, our sort of payables balance --

21 THE COURT: Yes.

22 MR. HUEBNER: -- is close to 200 million dollars.

23 THE COURT: Okay.

24 MR. HUEBNER: Where you might have been going is, I
25 can give you the comfort that this is a pretty small

1 fraction --

2 THE COURT: Exactly.

3 MR. HUEBNER: -- of your overall --

4 THE COURT: Of the trade payables.

5 MR. HUEBNER: -- potential trade payables.

6 THE COURT: Right.

7 MR. HUEBNER: I think it's like 160, sort of the
8 average monthly trade payables. And I'm hearing -- seeing some
9 nodding. Obviously the overall ultimate magnitude, especially
10 since 1114 provides for claims --

11 THE COURT: Right.

12 MR. HUEBNER: -- that we won't go --

13 THE COURT: But you've answered my question with
14 respect to its relationship to the trade --

15 MR. HUEBNER: Thank you, Your Honor.

16 THE COURT: -- trade payables overall. Okay.

17 Mr. Silverstein, since you -- I think this is your
18 specific concern, do you have anything further that you'd like
19 to alert me to or ask in this regard?

20 MR. SILVERSTEIN: Can I use this mic?

21 THE COURT: Sure.

22 MR. SILVERSTEIN: Thank you, Judge. I just think
23 there should be some sort of cap or understanding as to what
24 will be spent in the next several days.

25 THE COURT: Well, but Mr. Schaible, I think, has

1 correctly pointed out, that it's somewhat of a moving target,
2 and there's an expectation -- I mean, he's given us a cap in
3 the sense of saying that he believes that only twelve million
4 is due within the next twenty-one days.

5 MR. SILVERSTEIN: But he --

6 THE COURT: So that represents the upper limit. And
7 what I'm being assured is that the company's going to do
8 whatever it can to not pay as much of that twelve million as it
9 can. And at the end of the day, I think we have to let the
10 company do its thing, so to speak, and make judgments on a
11 case-by-case basis, as to when they have to pay and when they
12 can afford, if you will, to not pay.

13 MR. SILVERSTEIN: I agree, Your Honor. I think we
14 have to rely on that judgment. And --

15 THE COURT: Yes.

16 MR. SILVERSTEIN: -- if they're wrong, I'm sure
17 they'll hear from me.

18 THE COURT: I'm sure they will.

19 MR. SILVERSTEIN: Thank you, Your Honor.

20 THE COURT: Yes, Ms. Gasparini.

21 MS. GASPARINI: Your Honor, I just want to make a
22 statement for the record. This is one of the motions that we
23 heavily negotiated with debtors' counsel. We do always, as we
24 always do, have a concern of any money that goes out before a
25 committee is put in place. And as I stated to Your Honor, the

1 organizational meeting is presently scheduled for Wednesday.

2 Having said that, there is an understanding, and
3 actually the order does reflect, that there is not going to be
4 any pre-payment. We made sure that it's not in their
5 discretion as to what can be pre-paid. And we only expect what
6 is really due to go out, especially in the next few days. And
7 once the committee is in place, then they certainly can start
8 communicating.

9 And there's also a provision in the order that states
10 that they're going to keep track of what gets paid and make
11 reports to the Office of the United States Trustee as well as
12 the committee. So our concern does remain. Having said that,
13 we have negotiated provisions that we think alleviate, to some
14 extent, the concern that our office has expressed. Thank you.

15 MR. SILVERSTEIN: Your Honor, just one other --

16 THE COURT: Go ahead.

17 MR. SILVERSTEIN: Paul Silverstein, for the record. I
18 think that's the best we can do under the circumstances.

19 THE COURT: All right.

20 MR. SILVERSTEIN: And I think we'll see what happens.
21 Thank you. I'm glad, however, that there's the sensitivity,
22 which is apparent.

23 THE COURT: Sure. Well, ordinarily -- certainly with
24 respect to the safety equipment and other unique equipment
25 issues, that's an easy one for me. Ordinarily, one would think

1 that the fuel and lubricant one would not be a critical vendor.
2 But I think that the papers highlight the special circumstances
3 here, which is the geographic challenge of getting the fuel and
4 the lubricants locally. So I make that comment just because if
5 one generically saw that, I think you would react that --

6 MR. SCHAIBLE: Understood.

7 THE COURT: -- that might not be critical. But I
8 think you've made out the case for including that --

9 MR. SCHAIBLE: Thank you.

10 THE COURT: -- in these categories. So subject to or
11 in light of the clarifications that you've made and that have
12 been made in response to the other comments here, I'll grant
13 the motion.

14 MR. SCHAIBLE: Thank you, Your Honor. We appreciate
15 that.

16 The next motion, motion 5, is the coal sale contracts.
17 This is an exceedingly important motion --

18 THE COURT: Right. But this is truly -- this is your
19 business.

20 MR. SCHAIBLE: This is business.

21 THE COURT: This is truly --

22 MR. SCHAIBLE: That's right.

23 THE COURT: -- a comfort order, as far as I'm
24 concerned.

25 MR. SCHAIBLE: That's right, Your Honor. We have

1 already, though, realized the need for it, as we are beginning
2 to enter into contracts for August and beginning to enter into
3 steam coal contracts for the coming year, actually, where
4 suppliers or purchasers are saying, are you able to enter into
5 this? What's the delay? And these really are contracts that
6 are entered into on a very quick turnaround.

7 So what we did was, Your Honor, recognizing the need
8 to balance our need to operate our business and bring in money
9 for the creditors of this estate with the need for stakeholders
10 to be able to be comfortable that we're not giving away the
11 store with respect to new contracts; we negotiated a process
12 with the Office of the U.S. Trustee and with our DIP lenders
13 that would allow us to have tiers of contracts, levels that we
14 can enter into.

15 And what we've done to address the fact that we do not
16 yet have a creditors' committee, and we expect the creditors'
17 committee to be a very big and very involved partner in this
18 going forward, is that tier 2, which relies on the creditors'
19 committee really, in addition to the U.S. Trustee, will not be
20 used, as it says in the order, I know you know, Your Honor,
21 until the creditors' committee is up and running.

22 So in the interim, we only have what we would
23 categorize as the more de minimis tier; and then we have the
24 major tier, which we'd have to go through more fulsome
25 processes for.

1 THE COURT: Okay.

2 MR. SCHAIBLE: And so with that, Your Honor, I can
3 obviously provide more information, but we'd ask the Court to
4 consider entering this order.

5 THE COURT: All right. Does anyone else wish to be
6 heard with respect to the debtors' motion for authority to
7 enter into and perform under coal sale contracts in the
8 ordinary course?

9 All right. I'll approve that, Mr. Schaible.

10 MR. SCHAIBLE: Thank you, Your Honor.

11 The next motion is with respect to insurance. And
12 this is a very stock-standard first day. We have myriad
13 different types of insurance; 14.6 million dollars were spent
14 in 2011. We estimate that 1.3 million dollars will be payable
15 in July of 2012. We simply need to be able to continue the
16 various types of insurance: personal injury, property, damage,
17 pollution, vehicles, business interruption, those types of
18 insurance.

19 And you know well from many of your cases before, that
20 insurance carriers don't take any risk. And so the insurance
21 carriers want the same order that they've seen in every other
22 case, saying that we're allowed to continue to pay them, and
23 they're allowed to continue to insure us.

24 THE COURT: All right. Does anyone else wish to be
25 heard with respect to the debtors' insurance motion?

1 All right. That's approved.

2 MR. SCHAIBLE: Thank you, Your Honor.

3 Similarly -- you're noticing a theme -- with respect
4 to surety bonds. This is a major part of our business. Before
5 you enter into a new mine complex, when you're changing
6 different things in a mine complex, you have to issue surety
7 bonds to the regulators and to municipalities, to federal and
8 state agencies, and to judicial authorities, related to your
9 operations. So issuing surety bonds or purchasing the issuance
10 of surety bonds is an absolutely major and very necessary
11 aspect of our business.

12 Again, we're only seeking the authority to continue
13 our existing program. Per the United States Trustee, we have
14 entered -- we have added the provision that appears in all the
15 others that we're not pre-paying anything during the first
16 twenty-one days. And we expect to be able to obviously get the
17 creditors' committee up to speed in two days on our surety bond
18 program. But these are bonds that effectively provide comfort
19 to the regulators and to the municipalities. So long as we
20 continue to operate, they're not drawn on, and all is right
21 with the world. But if the surety bond providers begin to be
22 concerned that we don't somehow have authority to continue the
23 surety bonds, it begins to cause problems.

24 THE COURT: I'm just pausing to glance at the
25 schedule. All right, does anyone else wish to be heard with

1 respect to the debtors' motion for an order authorizing it to
2 continue its surety bond program?

3 All right. That's approved as well.

4 MR. SCHAIBLE: Thank you, Your Honor.

5 And the last motion for me is the fairly stock-
6 standard pre-petition taxes motion. And again, we don't seek
7 to -- this is the normal motion you're used to seeing, where
8 the debtors seek authority but are not required to make pre-
9 petition tax payments, in particular where we believe they
10 frankly have priority anyway.

11 Here there's actually an additional overlay than I'm
12 used to in my other cases. Here, if you don't pay certain fees
13 and obligations and taxes to state and federal authorities, you
14 can get what's called "permit blocked" in the industry. And
15 that means that the governmental entities will take the
16 position that because you owe them money and you haven't paid
17 them, they're not going to issue you any new permits, and you
18 can be -- essentially cease business on one day, if you are
19 "permit blocked".

20 We would like to avoid that. We do not intend to make
21 any payments that we don't have to make. But we do think it's
22 important that we have the authority to make tax payments.

23 THE COURT: All right. Does anyone else wish to be
24 heard with respect to the debtors' motion regarding payment of
25 pre-petition taxes?

1 All right. That's approved as well.

2 MR. SCHAIBLE: Thank you, Your Honor. Unless you have
3 any questions from me, that finishes off the motions that I
4 have for Your Honor.

5 THE COURT: Well, I guess we can wait till after we
6 deal with the sealing motion. But I think you have August 2nd
7 as the date for the final hearing, correct?

8 MR. SCHAIBLE: Yes, Your Honor.

9 THE COURT: And do we need to give you other omnibus
10 dates going forward?

11 MR. SCHAIBLE: I believe that we've already been in
12 touch with your chambers about a few dates going forward,
13 although I could be wrong.

14 THE COURT: Okay. Should we put them on the record
15 now, so that folks know what they are?

16 MR. SCHAIBLE: Should in theory, if I had them -- oh,
17 we don't have them yet. I'm sorry. We don't have them yet.
18 I'm incorrect.

19 THE COURT: Okay. I think that they might have been
20 discussed, but they haven't been --

21 MR. SCHAIBLE: Okay.

22 THE COURT: -- formally given to you.

23 MR. SCHAIBLE: Okay. That would be perfect.

24 THE COURT: So why don't we do that.

25 MR. SCHAIBLE: That would be wonderful.

1 THE COURT: And make sure that all of the majore
2 constituencies and their counsel like the dates. Should we do
3 that now?

4 MR. SCHAIBLE: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. SCHAIBLE: And, Your Honor, just to be clear, we
7 have a date July 26th. We have a date before the final
8 hearing.

9 THE COURT: Yes, you do.

10 MR. SCHAIBLE: For that weird --

11 THE COURT: At 2 o'clock.

12 MR. SCHAIBLE: -- for that utilities issue, where I
13 never know if it's twenty days or thirty days. And so --

14 THE COURT: You're welcome to come in on the 26th.

15 MR. SCHAIBLE: Thanks. So we'll come in on the 26th,
16 just on that. Hopefully it will be uncontested. And then
17 we'll be back on the 2nd. And I understood Your Honor to be
18 saying this morning, that you'd like to follow -- you'd like us
19 to revise the remaining orders to provide that we will have a
20 hearing on August 2nd.

21 THE COURT: Correct.

22 MR. SCHAIBLE: And we'll do that --

23 THE COURT: Yes.

24 MR. SCHAIBLE: -- and resubmit those order to
25 chambers.

1 THE COURT: All right. And then I haven't had a
2 chance to go through the entire docket. I'm going to be seeing
3 a lot of retention applications, I suppose.

4 MR. SCHAIBLE: You will. You'll be seeing some. And
5 we have those underway. And we're working with the Office of
6 the U.S. Trustee on them.

7 THE COURT: Okay.

8 MR. SCHAIBLE: I think we would try to set those for
9 August 2nd, if we can.

10 THE COURT: Okay. We'll see what happens. That might
11 be a little tight.

12 MR. SCHAIBLE: Sure.

13 THE COURT: Mr. Huebner?

14 MR. HUEBNER: I mean, from our perspective, Your
15 Honor, to be clear, the only reason that we moved quickly on
16 them is because we don't want somebody to say later there's a
17 nunc pro tunc issue because you waited.

18 THE COURT: Understood.

19 MR. HUEBNER: We're happy to let it go to a later
20 hearing, if that's the Court's preference, as long as we don't
21 get tagged later with somebody saying you didn't have this
22 heard until September 1st, so now it shouldn't be nunc pro
23 tunc.

24 THE COURT: Understood. So you keep working, and
25 we'll see what happens.

1 MR. SCHAIBLE: That's what we figured.

2 THE COURT: Okay. All right. So let's talk about
3 dates. All right. You have August 2nd. And then the next
4 date I'd like to give you is September 5th, which is the
5 Wednesday after Labor Day. Does that work for folks?

6 I'm seeing some nods. Okay.

7 MR. SMOLINSKY: What time is that, Your Honor?

8 THE COURT: 10 o'clock. You know, let's talk about
9 that a little, because, because that's the Wednesday after
10 Labor Day, I don't want to unnecessarily put a burden on people
11 over Labor Day weekend to deal with objections and for your
12 team to deal with responding to objections, and people have
13 kids going back to school and all kinds of things. So would it
14 be better to -- and I can't resist -- having you come in on
15 September 11th, which is Patriot Day? Mr. Huebner?

16 MR. HUEBNER: Yes, that's fine with us, Your Honor.

17 THE COURT: Thursday the 6th, we could do. I just
18 don't like to unnecessarily burden people's lives without the
19 need to do that.

20 MR. SCHAIBLE: The 11th works fine, Your Honor.

21 THE COURT: All right. Then Patriot Day will be on
22 Patriot Day. And why don't we give you -- let's go into
23 October. Let's do -- how about October 11th, the Thursday?

24 MR. SCHAIBLE: Perfect. Thank you, Your Honor.

25 THE COURT: All right?

1 MR. SCHAIBLE: At 10 a.m., again?

2 THE COURT: Yes, please. And we can leave it at that,
3 for now --

4 MR. SCHAIBLE: That's fine.

5 THE COURT: -- and then see what develops.

6 MR. SCHAIBLE: We'll file a notice on the docket.

7 THE COURT: Okay.

8 MR. SCHAIBLE: Thank you.

9 THE COURT: All right. So I think that brings us to
10 the sealing motion.

11 Good afternoon, Mr. Resnick.

12 MR. RESNICK: Good afternoon, Your Honor. Brian
13 Resnick of Davis Polk & Wardwell LLP, on behalf of the debtors,
14 for the record.

15 THE COURT: So I think that there have been a number
16 of iterations of this --

17 MR. RESNICK: Yes.

18 THE COURT: -- order that we've received. And I think
19 the latest now has it right?

20 MR. RESNICK: Yes, I believe that's right.

21 THE COURT: So that what we're doing is we're filing a
22 redacted version on the docket. We're not filing an unredacted
23 version and sealing it, correct?

24 MR. RESNICK: That is correct. That is our
25 preference.

1 THE COURT: Okay. And the aggregate amount of the
2 fees have been disclosed, correct?

3 MS. GASPARINI: That is correct, Your Honor. They
4 were disclosed in the motion, pursuant to our request.

5 THE COURT: Okay. And that refers to, at page 12 of
6 the motion, in the chart reflecting the material terms.
7 Correct?

8 MR. RESNICK: That is correct, Your Honor.

9 THE COURT: Thirty-three million dollars, inclusive of
10 fees, paid pre-petition and fees to be paid out of loan
11 proceeds. And the U.S. Trustee is comfortable with there not
12 being a breakdown between amounts paid pre-petition and amounts
13 paid post-petition?

14 MS. GASPARINI: Your Honor, we have also been in
15 extensive discussions regarding this. Originally -- I mean, I
16 think we've made a lot of headway. Originally, everything was
17 going to be under seal, and we didn't even know the aggregate
18 amount of fees, which was of great concern to us.

19 We understand that certain of the figures in the fee
20 letters are confidential, the market flex.

21 THE COURT: Yes.

22 MS. GASPARINI: I am in no position to stand up here
23 and say exactly what is confidential out of these figures. We
24 always like to see redacted version as light as possible. So
25 as I stand here today, I'm in no position -- I think the burden

1 is on them to say what is actually confidential for whatever
2 reason, cannot be disclosed under 107. But I do feel
3 comfortable that the aggregate amount has been disclosed, and
4 that the fee letters have been redacted to some extent.

5 THE COURT: All right. So let me make sure I
6 understand this. In the chart, it says aggregate fees of
7 thirty-three and a half million dollars. And then there are
8 other individual categories of fees. Is the thirty three
9 million dollars the aggregate of all of the then-listed fees,
10 or is the thirty-three and a half million dollars some set of
11 fees, and then the others are more fees?

12 MR. RESNICK: I believe it is all included in the
13 thirty-three and a half million, but if I could just have a
14 moment to confirm that with the lenders?

15 THE COURT: Please.

16 MR. SMOLINSKY: Your Honor, Joe Smolinsky.

17 THE COURT: Mr. Smolinsky, yes?

18 MR. SMOLINSKY: I can confirm that the thirty-three
19 million dollars is inclusive of all fees paid pre-petition, all
20 fees that were paid post-petition, all fees in connection with
21 the second out DIP facility, all fees in connection with the
22 first out DIP facility.

23 THE COURT: Okay. So it's -- the thirty-three
24 million, as you go down the other categories, the underwriting,
25 the incentive, the DIP agent, the letter of credit, the

1 exist -- all of that is subsumed within the thirty-three and a
2 half million?

3 MR. SMOLINSKY: That's correct.

4 THE COURT: Okay. Revolver commitment fee, term
5 commitment fee, all of those?

6 MR. SMOLINSKY: Yes, ma'am.

7 THE COURT: Okay. All right. So, Ms. Gasparini, to
8 be clear, because your comments were a little ambiguous. You
9 are satisfied with the state of play as things are -- stand at
10 the moment?

11 MS. GASPARINI: I am, Your Honor.

12 THE COURT: All right. And then once a committee is
13 appointed, obviously, more detail will be shared with the
14 committee, consistent with what's been put in the order.

15 All right. This works for me. This is consistent
16 with what I've done in other cases. I'll ask if anyone else
17 wishes to be heard with respect to the motion for a sealing
18 order, although it's more accurately, I think, a motion with
19 respect to the disclosure of the DIP fees. And the subsequent
20 versions of the order that I've seen reflect refinements that
21 more accurately reflect the parties' actual understanding.
22 They don't really change the deal, so to speak.

23 MR. RESNICK: Correct.

24 THE COURT: All right. Anyone wish to be heard with
25 respect to this order?

1 All right. Then I'll approve it. And I'm just going
2 to ask you to make doubly sure that we have the correct version
3 when you e-mail it to my chambers.

4 MR. RESNICK: Certainly, Your Honor. Thank you.

5 THE COURT: Okay. Thank you. All right. Mr.
6 Schaible or Mr. Huebner, anything else we need to do today?

7 MR. HUEBNER: No, Your Honor.

8 THE COURT: Okay. Thank you, folks. Have a good day.

9 (Whereupon these proceedings were concluded at 12:30 PM)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

RULINGS

	Page	Line
Debtors' case management motion is granted.	46	6
Debtors' derivatives contracts motion is granted.	48	13
Debtors' customer obligations motion is granted.	49	14
Debtors' interim critical vendor motion granted.	57	12
Debtors' coal sale contracts motion is granted.	59	9
Debtors' insurance motion is granted.	60	1
Debtors' surety bond motion is granted.	61	3
Debtors' taxes motion is granted.	62	1
Debtors' seal motion is granted.	70	1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

Date: July 17, 2012