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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12900-scc

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In the Matter of:

PATRIOT COAL CORPORATION, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court  
One Bowling Green  
New York, New York

November 15, 2012  
11:06 AM

B E F O R E:  
HON. SHELLEY C. CHAPMAN  
U.S. BANKRUPTCY JUDGE

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Debtors' motion for an order extending debtors' exclusive periods within which to file a plan of reorganization and solicit votes thereon.

Motion of the Official Committee of Unsecured Creditors for entry of an order (a) establishing information sharing procedures, and (b) granting related relief.

Debtors' motion pursuant to Section 362 of the Bankruptcy Code and Bankruptcy Rule 4001 for an order modifying the automatic stay to permit payments of defense costs under certain insurance policies.

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ALSO PRESENT: (TELEPHONICALLY)

JOSEPH W. BEAN, ESQ., Patriot Coal

MONTY L. KEHL, Mesirow Financial Consulting

1 P R O C E E D I N G S

2 THE COURT: Good morning. Please have a seat. All  
3 right. How are you? Welcome back to Bowling Green. It's our  
4 grand reopening.

5 We have a number of people on the phone. Let me go  
6 through who is with us. We have Mr. Joseph Bean from Patriot;  
7 Ms. Chan from Aurelius; Mr. Gruzka from Chicago Fundamental  
8 Investment Partners, I believe; Mr. Kehl from Mesiro; Mr.  
9 Persinger on behalf of the Southernland Company; Mr. Thau, GMP  
10 Securities; Ms. Thompson, Barclays Capital; Mr. or Ms. Tiwana  
11 for CRT Capital Group; and Ms. Wong from Kramer Levin.

12 Is anybody else on the phone who'd like to note their  
13 appearance?

14 Okay.

15 MR. RESNICK: Thank you, Your Honor. Good morning,  
16 this is Brian Resnick of Davis Polk & Wardwell on behalf of  
17 Patriot and its affiliated debtors. Thank you for having us  
18 this morning. And it's good to be back at One Bowling Green,  
19 and thank you for accommodating us during the storm and  
20 agreeing to hold the hearing in Brooklyn, and then canceling  
21 that for the second storm. And it's nice to be back here at  
22 Bowling Green.

23 So before I dive into the agenda, I just wanted to  
24 mention that Susan Golden, on behalf of the U.S. Trustee's  
25 Office, e-mailed that she's stuck in horrendous traffic. But

1 she said that she had -- she was just here to monitor and had  
2 nothing to say and --

3 THE COURT: Okay.

4 MR. RESNICK: -- said we could go ahead without her.

5 So on the agenda today are two motions filed by the  
6 debtors and one filed by the committee. Unless Your Honor  
7 would prefer a different order, it would probably make sense to  
8 take the two uncontested --

9 THE COURT: Sure.

10 MR. RESNICK: -- matters first, starting with the  
11 debtors' exclusivity motion, followed by the committee's  
12 information sharing procedures motion. Then we can turn to the  
13 debtors' lift stay motion, which does have one limited  
14 objection pending.

15 So as we turn to the exclusivity motion, it seems like  
16 an appropriate time to provide the Court with a brief status of  
17 the case and what we have accomplished and what we --

18 THE COURT: Sure.

19 MR. RESNICK: -- have yet to accomplish.

20 So as Your Honor is well aware, the first four months  
21 of this case have been very active and, we think, quite  
22 productive. Debtors and their advisors have been working quite  
23 diligently around the clock to stabilize their business and  
24 take steps necessary to ultimately develop a confirmable plan  
25 of reorganization, all while remaining dedicated to the goal of

1 preserving our very valuable workforce.

2 This progress was accomplished during an increasingly  
3 challenging business environment, and while defending against  
4 multiple motion to transfer venue of these cases, a motion to  
5 appoint an equity committee, and various automatic stay issues,  
6 among others. Despite these challenges, the debtors have  
7 successfully completed their transition into Chapter 11,  
8 including obtaining critical first-day relief to continue to  
9 operate their business, obtain approval of a complex 802  
10 million dollar DIP facility, which is funding the cases,  
11 preparing and filing the debtors' schedules and statements of  
12 financial affairs, participating in a two-part Section 341  
13 meeting, et cetera.

14 At the outset of these cases, the debtors also  
15 initiated communications and negotiations with key  
16 stakeholders, including the creditors' committee, which has  
17 continued and will continue during these cases, as the debtors  
18 move towards their goal of completing a plan of reorganization  
19 and creating a competitive cost structure.

20 The debtors have also begun the process of addressing  
21 the costs associated with their labor and retiree obligations.  
22 At this time, the debtors have entered into a protective  
23 stipulation with the union governing the sharing of  
24 confidential information and have provided the union with a  
25 substantial amount of information through a virtual data room.



1           The debtors have negotiated and entered into coal  
2 supply agreement stipulations, restructured several key coal  
3 supply agreements; and the debtors are in the process of  
4 analyzing thousands of leases and executory contracts to  
5 identify those that are beneficial to the estates and those  
6 that should be rejected. Thus far, the debtors have rejected  
7 seventy-eight equipment leases.

8           Moreover, the claims analysis and reconciliation  
9 process is underway. Intercompany accounts analyses are  
10 underway. The debtors are processing reclamation claims, and  
11 are on track to file their reclamation report on November 30th.  
12 A bar date for the filing of claims has been established, and  
13 bar date notices and employee and retiree letters have all been  
14 mailed out.

15           So as you can see, Your Honor, tangible process (sic)  
16 has been made. However, these are very complex cases, and  
17 there is a lot more that needs to be done. Thus, at this stage  
18 in the case, the debtors believe that an extension of  
19 exclusivity is warranted. Specifically, an extension of  
20 exclusivity would enable the debtors to continue to refine  
21 their business model, in order to deliver both a more efficient  
22 cost structure and future revenue growth.

23           Specifically, one of the primary restructuring  
24 initiatives is to achieve savings with respect to the debtors'  
25 labor and retiree obligations, an effort that has just begun

1 and may involve the debtors' use of the 1113/1114 process,  
2 which, as Your Honor knows, takes some time. After the bar  
3 date passes on December 14th, the debtors will need time to  
4 analyze, reconcile, and if and when appropriate, object to  
5 claims. And of course, at this stage in the case, the debtors  
6 are understandably in no position to develop a plan of  
7 reorganization reflecting the restructuring initiatives that  
8 are underway, or to secure the liquidity necessary to fund an  
9 emergence.

10 Accordingly, Your Honor, the debtors are seeking,  
11 pursuant to Section 1121(d) of the Bankruptcy Code, an  
12 extension of their exclusive period by 180 days, which we think  
13 is the appropriate amount of time at this juncture, from  
14 November 6th, which was extended pursuant to Your Honor's  
15 bridge order, which would take that to May 5th, 2013, and  
16 consequently the extension of the right to solicit votes in a  
17 plan to July 4th, 2013.

18 We believe good cause exists to grant these  
19 extensions, and if Your Honor has any questions or would like  
20 me to walk through the factors, I'd be happy.

21 THE COURT: All right, thank you. Does the committee  
22 want to add anything?

23 MR. ROGOFF: Good morning, Your Honor. Adam Rogoff,  
24 Kramer Levin, on behalf of the committee. The committee did  
25 not object and does not object to the requested extension. It

1 has not objected for a couple of reasons. One, we agree that  
2 there is much that still needs to be done. And we think that  
3 the six-month request is a reasonable opportunity to try to  
4 accomplish what does need to be done over the next six months.  
5 We have had discussions with the company, particularly  
6 regarding information access, diligence, and the like,  
7 including the committee in various processes without limiting,  
8 for example, the process of dealing with the labor and pension  
9 claims and how the company intends to address that.

10 And so in short, there's much that needs to be done.  
11 We think that six months is a right time for the company  
12 working with the committee to try to accomplish that. Our not  
13 objecting today is not an indication that -- as to what our  
14 position would be for any further extensions of time. But we  
15 look forward to working with the company over the next six  
16 months and trying to make tangible progress towards these  
17 Chapter 11 cases.

18 THE COURT: All right. Thank you, Mr. Rogoff. Does  
19 anyone else wish to be heard with respect to the debtors'  
20 request to extend exclusivity?

21 All right. I'm going to grant your application.

22 This is probably a good time, just to say, as you  
23 noted, that there are pending motions to change venue. It had  
24 been my hope and expectation that I would have given you a  
25 decision by now, but we had Hurricane Sandy. And

1 notwithstanding our, I think, rather remarkable efforts of the  
2 court staff here and my personal staff to keep working out of  
3 my apartment and remotely and on buses and everything that we  
4 can think of, it has been very difficult to continue to move  
5 forward at our customary pace. But I can assure you, you're  
6 going to have a decision in the very near future.

7 MR. RESNICK: Thank you, Your Honor.

8 THE COURT: All right.

9 MS. YERRAMALLI: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MS. YERRAMALLI: Anu Yerramalli of Kramer Levin on  
12 behalf of the committee.

13 THE COURT: All right.

14 MS. YERRAMALLI: Before the Court today is the  
15 committee's 1102 motion to allow the committee to fulfill their  
16 statutory duties to establish procedures for communication with  
17 general unsecured creditors. These procedures were shared with  
18 the debtors in advance of filing, and we took comments from  
19 them that have been incorporated.

20 THE COURT: Okay.

21 MS. YERRAMALLI: The motion was also shared with Ms.  
22 Schwartz at the U.S. Trustee's Office, and there have been no  
23 objections filed with respect to the motion or other comments  
24 received.

25 THE COURT: Okay.

1 MS. YERRAMALLI: If Your Honor has questions, I can  
2 answer the questions or I could explain the procedures for the  
3 record; whichever you prefer.

4 THE COURT: I've read the papers. So I'll just ask if  
5 anyone else would like to add anything.

6 All right. Very well.

7 MS. YERRAMALLI: Thank you, Your Honor. We'll submit  
8 an order.

9 THE COURT: Great.

10 MS. STARR: Good morning, Your Honor. Amelia Starr  
11 from Davis Polk & Wardwell on behalf of the debtors. I'm here  
12 to address the motion for modification of the automatic stay,  
13 such that the insurance policy from XL can be accessed by  
14 certain former directors and officers, Mr. Whiting and Mr.  
15 Schroeder, in connection with the securities class action  
16 that's been recently filed.

17 THE COURT: [Shray-der].

18 MS. STARR: [Shray-der]. My apologies, Mr. Schroeder.  
19 This, I think, is listed as disputed, but I believe that we've  
20 now resolved the issues. So I can just briefly explain.

21 THE COURT: Okay.

22 MS. STARR: The remedy that we are seeking here is the  
23 lifting of the automatic stay with respect to the XL policy.  
24 ACE did have an objection to that motion, because of a  
25 particular provision of the order relating to reporting.

1 THE COURT: Right.

2 MS. STARR: We have revised the order so that --

3 THE COURT: Okay.

4 MS. STARR: -- and we can submit to Your Honor a clean  
5 version and a black-line showing the change.

6 THE COURT: All right. Do you have that now?

7 MS. STARR: Yes. Your Honor, the change that has been  
8 made to accommodate ACE's concern is on page 3 of the order,  
9 the paragraph at the top. You'll see that the word "insurance  
10 providers" has been deleted and it's been substituted with  
11 "XL", so that it's now clear that the order requires reporting  
12 by XL with respect to exhaustion of the XL policy. With that  
13 change, it's my understanding that ACE no longer objects.

14 MR. ABRAMOWITZ: Your Honor, Arthur Abramowitz of  
15 Cozen O'Connor on behalf of ACE. I would note that it's also  
16 reestablished on the prior page in the last paragraph that  
17 refers exclusively to the XL policy as well. So long as it  
18 applies only to XL, ACE has no objection to the relief  
19 requested.

20 THE COURT: Okay. I think I'm a little confused. So  
21 can you -- I thought the objection was that by its terms, was  
22 that there's a confidentiality provision and that the insurer  
23 was not going to agree to provide any information.

24 MS. STARR: I think there are -- there're two --  
25 basically we sought relief primarily with respect to the ACE

1 policy -- sorry, the XL policy which we were just discussing.  
2 If the Court is not willing or is not inclined to grant our  
3 motion to lift the stay, then we asked, in the alternative, for  
4 an order clarifying that the ACE policy, which is actually  
5 about 80 million dollars up the insurance stack, and benefits  
6 only the directors and officers, that the Court issue an order  
7 stating that that's not subject to the automatic stay.

8 ACE does have an objection to that relief, which we  
9 may not even have to get to, because they object to releasing  
10 information about the policy. The order that's before Your  
11 Honor, which relates only to XL, XL has reviewed, and has no  
12 objections to. And they have not expressed any concern to us  
13 in --

14 THE COURT: I'm sorry. You're just going to have to  
15 explain this one more time.

16 MS. STARR: Sure.

17 THE COURT: Because I've now gone from -- when last  
18 seen and I looked at your reply to the objection, I was looking  
19 at something that had only to do with ACE.

20 MS. STARR: Oh, so --

21 THE COURT: Am I missing something? When -- what --

22 MS. STARR: Well --

23 THE COURT: -- what I'm looking at has to do with the  
24 objection of ACE. And the order has to do with ACE. And so I  
25 completely don't understand what's going on.

1 MS. STARR: Okay. Let me -- I apologize. Let me  
2 start again. There are -- we brought a motion -- our original  
3 motion seeks one form of relief and then in the alternative, a  
4 second form of relief. So the first form of relief we seek is  
5 a stay -- a lift stay for the XL policy, which is the first  
6 policy in the insurance stack, and the policy that we are  
7 required, by contract, to seek to access.

8 THE COURT: Okay.

9 MS. STARR: XL has no objection to this, hasn't  
10 appeared. ACE expressed an objection to that XL piece, solely  
11 on the grounds that in the XL order, it said that the  
12 "insurance providers" will provide information about the  
13 exhaustion of the policy.

14 THE COURT: I see.

15 MS. STARR: So we, to try to accommodate ACE, changed  
16 "insurance provider" to "XL", so it was clear that this bound  
17 XL only. I think it was clear it bound XL only anyway, but now  
18 it's doubly clear.

19 If Your Honor is inclined to grant that order, we are  
20 done. If Your Honor -- and there are no objections to that  
21 order now. If Your Honor is not inclined to lift the stay, we  
22 have asked, in the alternative, for a separate relief, which is  
23 with respect to the ACE policy, which is in -- Patriot has an  
24 insurance -- has about 150 million of insurance, the first 80  
25 of which XL is the very first of the policies, applies to the



1 directors and the officers in the company. Starting after 80  
2 million dollars, there are yet another group of insurers who  
3 cover just the Ds and Os. ACE is the first policy in that  
4 second piece of the stack.

5 THE COURT: Right.

6 MS. STARR: If Your Honor grants the first motion,  
7 then we have no need to get to the ACE motion. And so at that  
8 point, it becomes moot. If Your Honor doesn't grant the motion  
9 to lift the stay, then there is an objection from ACE that we  
10 would need to discuss.

11 MR. ABRAMOWITZ: Maybe I can crystallize it just a  
12 little more, if I could? We have an excess policy.

13 THE COURT: You have an excess policy. Right.

14 MR. ABRAMOWITZ: We may never get there.

15 THE COURT: Right.

16 MR. ABRAMOWITZ: And I think what --

17 THE COURT: So that's why changing the language to  
18 just deal with XL defers your issue to another day.

19 MR. ABRAMOWITZ: That's correct. And the point is  
20 that the parties are reserving their rights. We may or may not  
21 be reached. We think that this is an accommodation where  
22 clearly XL has no issue. We do. At the point, if and when it  
23 ever reaches us, we'll either reach some type of consent or be  
24 back in court. But it seemed to us that this was a very good  
25 resolution without turning the world upside down on this issue.

1 THE COURT: All right. I understand now. It's the  
2 kind of issue that also could have been resolved without having  
3 to file papers, for future reference. I think that a couple of  
4 phone calls would have been a better way to deal with it,  
5 but --

6 MR. ABRAMOWITZ: We -- just for the record, we had  
7 numerous phone calls and e-mails on the issue.

8 THE COURT: Thank you. All right. Thank you for the  
9 clarification. Does anyone else wish to be heard with respect  
10 to the debtors' request for an order granting this limited  
11 modification of the automatic stay?

12 All right, then. We will enter -- you'll give us the  
13 version that you just handed me, the revised order.

14 MS. STARR: Yes. Yes, Your Honor.

15 THE COURT: And we'll enter that one. Okay.

16 MS. STARR: Thank you very much.

17 THE COURT: Thank you very much. Is that all we have?

18 MR. RESNICK: That is, Your Honor.

19 THE COURT: Okay.

20 MR. ROGOFF: May -- actually, Your Honor, if I could  
21 just give a brief status update --

22 THE COURT: Sure.

23 MR. ROGOFF: -- on the engagement of the committee  
24 professionals, just so Your Honor knows where that stands from  
25 the last hearing that we had.

1           Your Honor had approved, subject to working out the  
2 language of the order with the U.S. Trustee's Office, the  
3 engagement of Mesirow and Houlihan Lokey as financial advisors  
4 for the committee. With respect to Mesirow, I believe -- and  
5 because Ms. Golden is not here and Ms. Schwartz is unavailable,  
6 I don't want to say that it's definitive, but I believe that  
7 they are done on the form of the order. There were revised  
8 orders that were provided to the U.S. Trustee's Office.

9           THE COURT: Okay.

10          MR. ROGOFF: And I believe everything is in agreement.  
11 There may be one clarification that we just need to provide --

12          THE COURT: Okay.

13          MR. ROGOFF: -- and explain that there's no overlap on  
14 certain intercompany claims analysis. With respect to  
15 Houlihan, unfortunately, they have not yet reached an agreement  
16 on the form of the order and the open issues. Both as Your  
17 Honor mentioned, the displacement that happened as a result of  
18 the hurricane, Ms. Schwartz, who I understand has had an  
19 accident has also been unavailable, understandably. And so  
20 counsel for Houlihan had been reaching out to the U.S.  
21 Trustee's Office to resolve it. I just wanted to underscore  
22 that the delay is not for a lack of trying to get it  
23 resolved --

24          THE COURT: Sure.

25          MR. ROGOFF: -- by the parties. It's just either act

1 of God or misfortune that has interceded. I do hope that we  
2 will be in a position to notice or to submit to chambers  
3 directly the Mesirow retention order --

4 THE COURT: Okay.

5 MR. ROGOFF: -- which I believe is done. And on  
6 Houlihan, hopefully their counsel and the U.S. Trustee will be  
7 able to coordinate on the order.

8 THE COURT: Okay. Very well.

9 MR. ROGOFF: Thank you.

10 THE COURT: We'll stand by and wait. Thank you. All  
11 right.

12 Did I understand that there was also a request for a  
13 conference on something?

14 MS. STARR: Yes, Your Honor. A request for a  
15 conference in connection with the equity committee motion,  
16 which we asked to take in chambers if possible.

17 THE COURT: Okay. We will do that. All right. Very  
18 well. We're adjourned, then. Thank you.

19 (Whereupon these proceedings were concluded at 11:26 AM)

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I N D E X

RULINGS

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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*

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PENINA WOLICKI

AAERT Certified Electronic Transcriber CET\*\*D-569

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Date: November 16, 2012