

Objection Deadline: December 7, 2012 at 4:00 pm (prevailing Eastern Time)
Hearing Date (if necessary): TBD

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 607-7983
Amelia T.R. Starr
Marshall S. Huebner
Damian S. Schaible
Brian M. Resnick
Jonathan D. Martin

*Counsel to the Debtors
and Debtors in Possession*

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

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 12-12900 (SCC)

(Jointly Administered)

**DEBTORS' MOTION FOR APPROVAL OF THE
EXECUTION OF CERTAIN AGREEMENTS WITH ARCH**

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

¹ The Debtors are the entities listed on Schedule 1 attached hereto. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

Relief Requested

1. The Debtors seek an order in the form attached hereto as Exhibit A (the “**Order**”) approving the agreement (the “**Agreement**”) between Debtors Patriot and Magnum Coal Company LLC (“**Magnum**”), and Arch Coal, Inc. (“**Arch Coal**”) and Arch Coal Sales Company, Inc. (“**Arch Sales**”) (together, “**Arch**,” and collectively with Patriot and Magnum, the “**Parties**”) in which the Parties agree, *inter alia*, that (a) Arch will not contest the Debtors’ motion filed September 20, 2012 [ECF No. 780] (the “**Rejection Motion**”) to reject certain agreements (the “**Rejected Agreements**”) (each as defined below and as listed in the schedule attached hereto as Exhibit B)² and (b) the currently existing surety agreement executed on March 27, 2008 by and between Arch Coal and Magnum, as amended by Amendment No. 1, dated as of February 5, 2009 and Amendment No. 2, dated as of April 1, 2011 and the guarantee, dated as of April 1, 2011, by Patriot in favor of Arch Coal (collectively, the “**Terminated Agreements**”) will be terminated and replaced and superseded by a new surety agreement and guarantee dated November 27, 2012, between Patriot and Magnum, and Arch Coal (the “**Surety Agreement**,” and together with the Agreement, the “**Agreements**”). This Motion seeking the Court’s approval of the execution of the Agreements encompasses a request that the Court enter the Order (i) authorizing the execution of the Agreements, the termination of the Terminated Agreements, and the rejection of the Rejected Agreements,

² Additional details relating to the Rejected Agreements are provided in the Rejection Motion.

and (ii) declaring the absence of obligations by the Debtors under certain coal supply agreements between Arch and third parties (the “**Third Party Contracts**”).³

Background and Jurisdiction

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

3. These chapter 11 cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the Court’s Joint Administration Order entered on July 10, 2012 [ECF No. 30].

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

The Rejection Motion and the Agreements

5. On September 20, 2012, the Debtors filed the Rejection Motion pursuant to section 365(a) of the Bankruptcy Code, Rule 6006 of the Bankruptcy Rules, Local

³ Pursuant to the Order Establishing Certain Notice, Case Management and Administrative Procedures entered October 18, 2012 [ECF No. 1386] (the “**Case Management Order**”), because the Agreement, Rejected Agreements, Terminated Agreements, and Surety Agreement contain sensitive commercial information, the Debtors have not attached copies to this motion but will provide copies to the Court and the United States Trustee, as well as to the advisors to the official committee of unsecured creditors (the “**Committee**”) and advisors to the agents under the Debtors’ postpetition lending facility, in each case on a professional-eyes-only basis; *provided, however*, that such copies may be shared with the members of the subcommittee of the Committee formed to address coal sale contracts. Failure to describe in this Motion any provision of the Agreements will not affect their enforceability.

Rule 6006-1, and the Court's Order dated August 16, 2012 Establishing Procedures for the Rejection of Executory Contracts and Unexpired Leases and for the Abandonment of Personal Property [ECF No. 370] (the "**Rejection Procedures Order**") to reject the Rejected Agreements pursuant to which Magnum agreed to sell, and Arch Sales agreed to buy, the coal required to satisfy Arch Sales' independent obligations under the Third Party Contracts.

6. Following the filing of the Rejection Motion, Arch informed Patriot and Magnum that it intended to contest the Rejection Motion. Thereafter, the Parties engaged in extensive arms-length negotiations, and as a result of their negotiations, on November 27, 2012, agreed to the terms and conditions of the Agreement, the key provisions of which are summarized as follows:

- Arch agreed not to contest any of the relief sought in the Rejection Motion, including the entry of an order by this Court effectuating the rejection of the Rejected Agreements and declaring, *inter alia*, that the Debtors do not have any obligations under the Third Party Contracts.
- Concurrent with the execution of the Agreement, the Parties entered into the Surety Agreement, which replaced and superseded the Terminated Agreements.

7. Under the Terminated Agreements, Patriot posted a letter of credit in favor of Arch equal to approximately 46% of the amount of the surety bonds posted by Arch in favor of Magnum (the "**Surety Bonds**"), which secured mining permits at former Arch mines. The Terminated Agreements required Magnum to use "best faith" efforts to replace the Surety Bonds and release Arch from its obligation to post them. Under the Terminated Agreements, if one of the Rejected Agreements was terminated for any reason, (i) Arch could demand that Magnum cease coal production under the permits

secured by the Surety Bonds and (ii) Magnum was required to post a letter of credit equal to the full amount of the Surety Bonds (the “**Default Provisions**”).

8. Under the new Surety Agreement, Magnum agrees to use “commercially reasonable efforts” to replace the Surety Bonds within seven years of the date of the Surety Agreement and agrees to post a letter of credit equal to the full amount of the Surety Bonds if it fails to replace the Surety Bonds within three years after emergence from bankruptcy following this Court’s confirmation of a plan of reorganization for the Debtors.

9. Patriot guaranteed Magnum’s obligations under the Terminated Agreements and guarantees Magnum’s obligations under the Surety Agreement.

Basis for the Relief Requested

10. The Debtors seek approval of the execution of the Agreements pursuant to section 363(b) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code authorizes a debtor, after notice and a hearing, to “use” property other than in the ordinary course of business. Courts in the Second Circuit have required that decisions by debtors to use estate property pursuant to section 363(b)(1) be based upon the sound business judgment of the debtor. *See Official Comm. of Unsecured Creditors of LTV Aerospace and Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (determining approval of section 363(b) application requires a finding from the evidence presented a good business reason to grant such application); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003)

(“courts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence” (citing *Official Comm. of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992)).

11. The Agreement, which provides for, *inter alia*, (i) Arch’s consent to the rejection of the Rejected Agreements; (ii) Arch’s consent to the entry of an order declaring that the Debtors have no obligations under the Third Party Contracts, (iii) the termination of the Terminated Agreements, and (iv) the Parties’ execution of the Surety Agreement, is in the best interests of the Debtors and their estates and was entered into in their sound business judgment. Entering into the Agreements benefits the Debtors by, *inter alia*, (i) eliminating the risk and expense associated with litigating the Rejection Motion; (ii) providing the Debtors with approximately \$63 million in cost savings by virtue of rejecting the Rejected Agreements; (iii) providing Magnum with three years after emergence from bankruptcy to release Arch from its obligations or to post additional collateral to secure Arch’s obligations under the Surety Bonds; and (iv) avoiding the onerous Default Provisions in the Terminated Agreements otherwise triggered by the Debtors’ rejection of the Rejected Agreements. If the Debtors were to reject the Rejected Agreements without entering into the Agreements, Arch could demand pursuant to the terms of one of the Terminated Agreements that Magnum cease all coal production at certain facilities, and Magnum would be required to either post a letter of credit equal to the full amount of the Surety Bonds upon emergence from

bankruptcy or reject other valuable agreements.⁴ Further, the Agreements contain an express reservation of rights and preservation of all possible claims between the Parties. Consequently, the Debtors seek entry of the Order (i) authorizing the execution of the Agreements, the termination of the Terminated Agreements, and the rejection of the Rejected Agreements,⁵ and (ii) declaring the absence of obligations by the Debtors under the Third Party Contracts.

Relief Under Bankruptcy Rule 6004(h)

12. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” The Debtors request that any order granting the relief requested herein be effective immediately by providing that the 14-day stay under Bankruptcy Rule 6004(h) is waived.

Notice

13. Consistent with the Case Management Order, the Debtors will serve notice of this Motion on (a) the Core Parties, (b) the Non-ECF Service Parties (as those terms

⁴ Rejecting the Rejected Agreements and the Terminated Agreements is not as beneficial to the Debtors as is entering into the Agreements because that rejection would not terminate Magnum’s obligation to provide a 100% letter of credit for the remaining Surety Bonds. Under the Purchase and Sale Agreement between Magnum and Arch executed on December 31, 2005 and amended by Amendment No. 1, dated as of February 7, 2006; Amendment No. 2, dated as of April 27, 2006; and Amendment No. 3, dated as of August 29, 2007 (the “**Purchase and Sale Agreement**”), Magnum has a similar obligation to post a letter of credit equal to the bonds reflected as liabilities on the books and records of Magnum. In order to escape all obligations to post a 100% letter of credit, Magnum would need to reject the Purchase and Sale Agreement as well. The Debtors believe such a rejection would not be in their best interests as they would forfeit valuable indemnification rights contained in the Purchase and Sale Agreement by rejecting that agreement.

⁵ The grounds for approving the rejection of the Rejected Agreements are fully set forth in the Rejection Motion, but the relief requested under both the Rejection Motion and this Motion is included in the Order attached hereto. Thus, the Debtors no longer seek approval of the order attached as exhibit A to the Rejection Motion.

are defined in the Case Management Order), (c) counsel to the counterparties to the Rejected Agreements as set forth on Exhibit B (the “**Counterparties**”) and any other parties requiring notice under the terms of the respective Rejected Agreements. All parties who have requested electronic notice of filings in these cases through the Court’s ECF system will automatically receive notice of this motion through the ECF system no later than the day after its filing with the Court. A copy of this motion and any order approving it will also be made available on the Debtors’ Case Information Website (located at *www.PatriotCaseInfo.com*). In light of the relief requested, the Debtors submit that no further notice is necessary. Pursuant to paragraph 22 of the Case Management Order, if no objections are timely filed and served in accordance therewith, an order granting the relief requested herein may be entered without a hearing.

No Previous Request

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

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

Dated: New York, New York
November 27, 2012

By: /s/ Amelia T.R. Starr

Amelia T.R. Starr
Marshall S. Huebner
Damian S. Schaible
Brian M. Resnick
Jonathan D. Martin

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

*Counsel to the Debtors
and Debtors in Possession*

SCHEDULE 1
(Debtor Entities)

1. Affinity Mining Company
2. Apogee Coal Company, LLC
3. Appalachia Mine Services, LLC
4. Beaver Dam Coal Company, LLC
5. Big Eagle, LLC
6. Big Eagle Rail, LLC
7. Black Stallion Coal Company, LLC
8. Black Walnut Coal Company
9. Bluegrass Mine Services, LLC
10. Brook Trout Coal, LLC
11. Catenary Coal Company, LLC
12. Central States Coal Reserves of Kentucky, LLC
13. Charles Coal Company, LLC
14. Cleaton Coal Company
15. Coal Clean LLC
16. Coal Properties, LLC
17. Coal Reserve Holding Limited Liability Company No. 2
18. Colony Bay Coal Company
19. Cook Mountain Coal Company, LLC
20. Corydon Resources LLC
21. Coventry Mining Services, LLC
22. Coyote Coal Company LLC
23. Cub Branch Coal Company LLC
24. Dakota LLC
25. Day LLC
26. Dixon Mining Company, LLC
27. Dodge Hill Holding JV, LLC
28. Dodge Hill Mining Company, LLC
29. Dodge Hill of Kentucky, LLC
30. EACC Camps, Inc.
31. Eastern Associated Coal, LLC
32. Eastern Coal Company, LLC
33. Eastern Royalty, LLC
34. Emerald Processing, L.L.C.
35. Gateway Eagle Coal Company, LLC
36. Grand Eagle Mining, LLC
37. Heritage Coal Company LLC
38. Highland Mining Company, LLC
39. Hillside Mining Company
40. Hobet Mining, LLC
41. Indian Hill Company LLC
42. Infinity Coal Sales, LLC
43. Interior Holdings, LLC
44. IO Coal LLC
45. Jarrell's Branch Coal Company
46. Jupiter Holdings LLC
47. Kanawha Eagle Coal, LLC
48. Kanawha River Ventures I, LLC
49. Kanawha River Ventures II, LLC
50. Kanawha River Ventures III, LLC
51. KE Ventures, LLC
52. Little Creek LLC
53. Logan Fork Coal Company
54. Magnum Coal Company LLC
55. Magnum Coal Sales LLC
56. Martinka Coal Company, LLC
57. Midland Trail Energy LLC
58. Midwest Coal Resources II, LLC
59. Mountain View Coal Company, LLC
60. New Trout Coal Holdings II, LLC
61. Newtown Energy, Inc.
62. North Page Coal Corp.
63. Ohio County Coal Company, LLC
64. Panther LLC
65. Patriot Beaver Dam Holdings, LLC
66. Patriot Coal Company, L.P.
67. Patriot Coal Corporation
68. Patriot Coal Sales LLC
69. Patriot Coal Services LLC
70. Patriot Leasing Company LLC
71. Patriot Midwest Holdings, LLC
72. Patriot Reserve Holdings, LLC
73. Patriot Trading LLC
74. PCX Enterprises, Inc.
75. Pine Ridge Coal Company, LLC
76. Pond Creek Land Resources, LLC
77. Pond Fork Processing LLC
78. Remington Holdings LLC
79. Remington II LLC
80. Remington LLC
81. Rivers Edge Mining, Inc.
82. Robin Land Company, LLC
83. Sentry Mining, LLC
84. Snowberry Land Company
85. Speed Mining LLC
86. Sterling Smokeless Coal Company, LLC
87. TC Sales Company, LLC
88. The Presidents Energy Company LLC
89. Thunderhill Coal LLC
90. Trout Coal Holdings, LLC
91. Union County Coal Co., LLC
92. Viper LLC
93. Weatherby Processing LLC
94. Wildcat Energy LLC
95. Wildcat, LLC
96. Will Scarlet Properties LLC
97. Winchester LLC
98. Winifrede Dock Limited Liability Company
99. Yankeetown Dock, LLC

Exhibit A

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

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 12-12900 (SCC)

(Jointly Administered)

**ORDER APPROVING THE EXECUTION OF
CERTAIN AGREEMENTS WITH ARCH**

Upon the motion (the “**Motion**”)² of Patriot Coal Corporation (“**Patriot**”) and its subsidiaries that are debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to sections 363(b) and 365(a) of the Bankruptcy Code, Bankruptcy Rules 6006 and 9014, Local Rule 6006-1, and the Rejection Procedures Order, seeking approval of the Agreements, including (i) authorizing the execution of the Agreements, the termination of the Terminated Agreements, and the rejection of the Rejected Agreements, and (ii) declaring the absence of obligations by the Debtors under the Third Party Contracts, as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.) as amended by Standing Order M-431, dated February 1, 2012 (Preska, C.J.); and consideration of the Motion and the requested

¹ The Debtors are the entities listed on Schedule 1 attached to the Motion. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

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

relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion having been provided in accordance with the Case Management Order, and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion [and having held a hearing with appearances of parties in interest noted in the transcript thereof (the “**Hearing**”)]; and the Court having determined that the legal and factual bases set forth in the Motion [and at the Hearing] establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that, pursuant to sections 363(b) and 365(a) of the Bankruptcy Code, Bankruptcy Rule 6006, Local Rule 6006-1, and the Rejection Procedures Order, the relief requested in the Motion and the Rejection Motion is hereby granted to the extent set forth herein; and it is further

ORDERED that the execution of the Agreement between Patriot and Magnum and Arch is hereby approved; and it is further

ORDERED that the execution of the Surety Agreement between Patriot and Magnum and Arch is hereby approved; and it is further

ORDERED that the termination of Terminated Agreements is hereby approved; and it is further

ORDERED that none of the Parties or their affiliates shall have any claims with respect to any past or current breach of the Terminated Agreements; and it is further

ORDERED that, pursuant to section 365(a) of the Bankruptcy Code, Bankruptcy Rule 6006, Local Rule 6006-1, and the Rejection Procedures Order, the Debtors' rejection of the Rejected Agreements as of September 20, 2012 (the "**Effective Date**"), is hereby approved and shall be effective as of the Effective Date; and it is further

ORDERED that the rejection of the Rejected Agreements shall not be deemed a default by the Debtors under any other agreement; and it is further

ORDERED that claims arising out of any rejections effected pursuant to this Order must timely be filed against the applicable Debtor(s) and in accordance with any order pursuant to Bankruptcy Rule 3003(c) establishing a deadline by which claims arising before the Petition Date must be filed (the "**Bar Date**"), on or before the later of (i) the Bar Date and (ii) 30 days after the date hereof, and that absent a timely filing, such claim will be irrevocably barred; and it is further

ORDERED that notice of the Motion and the relief requested herein satisfy Bankruptcy Rule 6006 and Local Bankruptcy Rule 6006-1 and the Rejection Procedures Order; and it is further

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

ORDERED that, without further order of this Court, the Counterparties to the Rejected Agreements are prohibited from setting off or otherwise utilizing any monies deposited by the Debtors with such Counterparty as a security deposit or pursuant to another similar arrangement; provided, however, that nothing herein shall affect any otherwise valid

right of any party, as allowed under applicable law, including the Bankruptcy Code, to draw down on any letter of credit or surety bond securing claims against the Debtors; and it is further

ORDERED that the Debtors shall be authorized to execute and deliver all instruments and documents, and take such other actions as may be necessary or appropriate to implement and effectuate this Order; and it is further

ORDERED that, except with respect to the Rejected Agreements and as set forth herein, nothing in this Order shall affect the Debtors' rights to assume or reject other agreements among the Debtors and the Counterparties or their affiliates, including the Purchase and Sale Agreement; and it is further

ORDERED that (i) none of the Debtors is a party to the April 8, 2003 coal supply agreement between Cardinal Operating Company and Arch Sales (the "**Cardinal CSA**"), (ii) none of the Debtors has any obligations under the Cardinal CSA, and (iii) Cardinal is not a creditor of any of the Debtors with respect to the Cardinal CSA; and it is further

ORDERED that the failure to specifically describe or include any particular provision of the Agreements in the Motion or this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Debtors are authorized to enter into the Agreements in their entirety; and it is further

ORDERED that neither the entry of this Order nor any statement contained in the Agreements is intended to be, and none should be construed as, a waiver or compromise of any rights, other than as expressly set forth herein or in the Agreements; and that, to the

contrary, all parties in interest, including, without limitation, the Parties, expressly reserve all of their other respective rights, and preserve all of their other respective claims, against one another, including, without limitation, (i) any right, claim or defense that any party in interest, including any Party, has or may have in connection with the above-captioned chapter 11 case, including but not limited to any causes of action under chapter 5 of the Bankruptcy Code or related claims and any defenses thereto, and (ii) any rights, claims or defenses that any party in interest, including the Parties, may have with respect to or under other contracts or agreements between Arch or any of its affiliates and any of the Debtors, including but not limited to the Purchase and Sale Agreement; and it is further

ORDERED that, notwithstanding the possible applicability of any Bankruptcy Rule that might otherwise delay the effectiveness of this Order, including, but not limited to, Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that this Court retains jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: New York, New York

_____, 2012

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Schedule

AGREEMENTS				
COUNTERPARTY/ COUNTERPARTIES	DEBTOR	TYPE	DATE OF CONTRACT	REJECTION EFFECTIVE DATE
Arch Coal Sales Company, Inc. One CityPlace Drive, Suite 300 St. Louis, MO 63141 Attn: Dave Warnecke	MAGNUM COAL COMPANY LLC f/k/a MAGNUM COAL COMPANY	Master Coal Sales and Services Agreement and related Letter Agreement	December 31, 2005 and March 27, 2012 (Letter Agreement)	September 20, 2012
Arch Coal Sales Company, Inc. One CityPlace Drive, Suite 300 St. Louis, MO 63141 Attn: VP of Contract Administration Cardinal Operating Company C/O AEP Energy Services, Inc. 155 West Nationwide Boulevard Columbus, OH 43215 Attn: Contract Administration	MAGNUM COAL COMPANY LLC f/k/a MAGNUM COAL COMPANY	Notice Letter	November 9, 2006	September 20, 2012