

Rescheduled Hearing Date and Time: December 11, 2012 at 10:00 a.m.
Objection Deadline: November 30, 2012 at 4:30 p.m.

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

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In re	: Chapter 11
	:
PATRIOT COAL CORPORATION, <i>et al.</i> ,	: Case No. 12-12900 (SCC)
	:
Debtors.	: (Jointly Administered)
	:
-----X	

**RESPONSE OF PEABODY ENERGY CORPORATION TO THE MOTION OF
CERTAIN INTERESTED SHAREHOLDERS FOR ENTRY OF AN ORDER
DIRECTING THE APPOINTMENT OF AN OFFICIAL COMMITTEE OF EQUITY
SECURITY HOLDERS PURSUANT TO BANKRUPTCY CODE § 1102(a)(2)**

Peabody Energy Corporation ("Peabody") hereby submits this response
(this "Response") to the Motion of Certain Interested Shareholders for Entry of an Order
Directing the Appointment of an Official Committee of Equity Security Holders Pursuant to
Bankruptcy Code § 1102(a)(2) (Docket No. 417) (the "Motion") filed by certain shareholders
(the "Shareholders") of Patriot Coal Corporation ("Patriot" and, together with its affiliates in the

above-captioned bankruptcy case, the "Debtors"). In support of this Response, Peabody respectfully represents as follows:

RESPONSE

1. While Peabody takes no position with respect to the relief requested in the Motion, Peabody rejects as meritless the Shareholders' unsupported assertions that (a) Peabody "saddled" the Debtors with more than \$1 billion in liabilities in connection with the spin-off of certain of the Debtor entities from Peabody in 2007 (the "Spin-Off"), (b) there may be "significant fraudulent transfer and other claims" against Peabody arising from the Spin-Off and (c) a six-year look-back period applies to any fraudulent transfer actions related to the Spin-Off. (See Motion ¶¶ 1(c) and 23).¹

2. The Shareholders have suggested that there may be claims against Peabody without any basis other than the mere occurrence of the Spin-Off. Peabody files this Response now to avoid the risk that its silence in the face of such sketchy claims would result in their gaining some unfounded credibility.

3. Peabody, which is incorporated in Delaware and maintains its corporate headquarters in St. Louis, Missouri, is an international coal company that owns and operates mines in Arizona, Colorado, New Mexico, Wyoming, Illinois, Indiana, and Australia.² The Spin-Off was designed to allow Peabody and Patriot to pursue distinct growth plans and business

¹ While any determination regarding such assertions is beyond the issues framed by the Motion and any ruling on the Motion would not resolve any dispute between the parties, Peabody responds here to clarify that (a) those assertions are contested and (b) they will be fully met, if necessary, in response to any pleadings properly raising the issues. See The Finova Grp., Inc. v. Official Comm. of Equity Security Holders (In re The Finova Grp., Inc.), Case No. 01-0698, 2008 WL 522965, at *3 (D. Del. Feb. 26, 2008) (finding that an order appointing an equity committee is not an immediately appealable final order because such an order "is procedural in nature and does not resolve with finality any dispute among the parties").

² See generally Peabody Energy Corporation, 2011 Annual Report, Feb. 27, 2012.

focus.³ Peabody was, and remains, focused on the transformation of its earnings base as it expands its global operating platform, increases its presence in the Western United States and Illinois Basin and accelerates its worldwide trading activities.⁴ Patriot, on the other hand, with assets and operations in West Virginia and Kentucky, is a leading Eastern U.S. coal producer.⁵

4. While this is neither the time nor the place to respond in detail to the assertions of the Shareholders or other parties in interest with respect to the Spin-Off, the following is relevant to dispel the notion that there exists fraudulent transfer or other claims against Peabody in connection with the Spin-Off:

- The necessary element of the lack of fair consideration is not present to support a fraudulent transfer allegation. In fact, it is evident from publicly available documents and filings that an affiliate of Peabody actually assumed the Debtors' payment obligations for \$617 million of retiree healthcare benefits in connection with the Spin-Off.⁶
- The necessary element of insolvency or inadequate capitalization is not present to support a fraudulent transfer allegation. The following facts are already in the Bankruptcy Court's record in Patriot's chapter 11 cases or are a matter of public record:
 - As noted above, in connection with the Spin-Off a Peabody affiliate assumed the Debtors' payment obligations for \$617 million of the Debtors' retiree healthcare liabilities relating to the operation of their businesses.⁷
 - The Debtors were able to obtain a \$500 million credit facility at the time of the Spin-Off.⁸
 - The Debtors acquired Magnum Coal Company (a company nearly twice its size) in July 2008, well after the Spin-Off, and, in connection

³ See Peabody Approves Spin-Off of Patriot Coal, Evansville Courier & Press, Oct. 12, 2007.

⁴ See generally Id.; Peabody Energy Corporation, 2011 Annual Report, Feb. 27, 2012, at pgs. 2-5.

⁵ See generally Patriot Coal Corporation, 2011 Annual Report, Feb. 23, 2012, at pgs. 8-12.

⁶ See Peabody Energy Corporation, 2007 Annual Report, Feb. 28, 2008, at pg. F-14.

⁷ See Id.

⁸ See Patriot Coal Corporation, 2007 Annual Report, Mar. 14, 2008, at pg. 55.

with the acquisition assumed \$1.9 billion of additional liabilities and issued \$200 million of new debt.⁹

- Subsequent to the announcement of the Magnum transaction, in July 2008, Patriot's stock traded above \$80 per share, as adjusted for the 2-for-1 stock split that occurred in August 2008. (At the Spin-Off, the stock traded at less than \$18 per share, as adjusted for the 2-for-1 stock split that occurred in August 2008.) Immediately after the stock split, Patriot had a market capitalization of approximately \$4 billion, while in Patriot's first annual report issued shortly after the Spin-Off, Patriot's market capitalization was reported as less than \$1 billion.¹⁰
- In June 2009, the Debtors were able to raise almost \$90 million of additional equity through the issuance of common stock.¹¹
- In May 2010, the Debtors issued another \$250 million of new debt.¹²
- In addition, even though the above-referenced facts dispel any claim that a fraudulent transfer occurred, there is no basis for the assertion that New York's six-year statute of limitation applies to any fraudulent transfer action relating to the Spin-Off, given that Patriot's principal place of business is in Missouri, its state of incorporation is Delaware and the majority of its assets are located in West Virginia,¹³ all of which have four year statutes of limitations for fraudulent transfer actions. This is particularly true given this Court's recent Memorandum Decision on Motions to Transfer Venue Pursuant to 28 U.S.C § 1412 (Docket No. 1629) transferring these chapter 11 cases to the Eastern District of Missouri (the "Venue Transfer Order").
- Finally, there is no support for the assertion that the Debtors were "saddled" with legacy liabilities in connection with the Spin-Off. In fact, as noted above, the Debtors' obligations for legacy liabilities were substantially reduced by the assumption by a Peabody affiliate of the Debtors' payment obligations for the \$617 million of retiree healthcare liabilities referenced above. Similarly, there is no support for the allegations made by the United Mine Workers of America (the "UMWA") in a variety of venues¹⁴ that (a) Peabody is somehow legally liable for

⁹ See Patriot Coal Corporation, 2008 Annual Report, Mar. 2, 2009, at pg. F-16.

¹⁰ See Patriot Coal Corporation, 2007 Annual Report, Mar. 14, 2008, at pg. 1; Patriot Coal Corporation, 2008 Annual Report, Mar. 2, 2009, at pgs. 1 and 47.

¹¹ See Patriot Coal Corporation, Quarterly Report for the Quarterly Period Ended June 30, 2009, Aug. 7, 2009, at pg. 7.

¹² See Patriot Coal Corporation, Quarterly Report for the Quarterly Period Ended June 30, 2010, Aug. 6, 2010, at pg. 9.

¹³ See generally Patriot Coal Corporation, 2008 Annual Report, Mar. 2, 2009, at pgs. 1, 4-9.

¹⁴ See generally Venue Transfer Order at pg. 53.

healthcare obligations beyond those retiree healthcare payment obligations assumed by its affiliate in connection with the Spin-Off, as discussed above, or (b) that the Peabody affiliate is not satisfying its existing obligations to the Debtors' retirees. Since the Spin-Off, the Peabody affiliate has continued to pay for the assumed retiree healthcare obligations referenced above. Moreover, the Peabody affiliate's assumption and payment of the Debtors' payment obligations in connection with the Spin-Off was expressly acknowledged and assented to by the UMWA two months before the Spin-Off in the Acknowledgment and Assent Agreement executed by Cecil Roberts on August 14, 2007, a copy of which is attached hereto as Exhibit A.

5. As set forth in paragraph 4 above, the Debtors were not only solvent and adequately capitalized at the time of the Spin-Off, but they also grew dramatically and incurred additional debt in the years subsequent to the Spin-Off as a result of post Spin-Off decisions by Patriot's own management and board — decisions that were affirmed by independent third-party lenders' determinations to lend to Patriot and by the public markets' valuations of Patriot's debt and equity. Whatever the reasons for their recent fall into financial distress and chapter 11, the Spin-Off transaction was not one of them.

CONCLUSION

6. As noted above, Peabody takes no position regarding the relief requested in the Motion. Peabody, however, cannot stand by while parties make unsupported assertions against Peabody and its affiliates and fully reserves all of its rights with respect to any such assertions.

Dated: November 30, 2012

Respectfully submitted,

/s/ Haben Goitom

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ATTORNEYS FOR PEABODY ENERGY
CORPORATION

EXHIBIT A

ACKNOWLEDGEMENT AND ASSENT

The International Union, United Mine Workers of America ("UMWA") and Peabody Holding Company, LLC ("PHC") agree as follows:

A. The UMWA acknowledges that PHC has provided it with the following information:

1. All the shares of Peabody Coal Company, LLC ("PCC"), a signatory to a "me too" labor contract ("PCC Labor Contract") that incorporates by reference Article XX of the National Bituminous Coal Wage Agreement of 2007 ("2007 NBCWA"), will be transferred, directly or indirectly, to an ultimate parent entity, Patriot Coal Corporation ("Patriot"), that will not be related to, or affiliated with, PHC upon the completion of the spin-off of Patriot.
2. At the completion of the spin-off of Patriot, PHC will enter into an agreement ("NBCWA Liability Assumption Agreement") with PCC and/or Patriot pursuant to which PHC will agree to be primarily obligated to pay for benefits of retirees of PCC and such retirees' eligible dependents under the terms of an employee welfare plan maintained by PCC pursuant to Article XX of the PCC Labor Contract ("PCC Individual Employer Plan") or any PCC successor labor agreement, *provided* that such retirees had vested in a right to receive retiree health benefits under the PCC Individual Employer Plan as of December 31, 2006 (e.g. those who are disabled, or age 55, or who have 20 or more years of service), and that, as of December 31, 2006, such retirees were retired from coal mining employment with PCC within the meaning of the UMWA 1974 Pension Plan, and did not thereafter return to employment with any company signatory to a labor agreement with the UMWA which contains Article XX benefits under such circumstances whereby PCC would cease to be responsible for their retiree health benefits as provided under the Individual Employer Plan in effect at such date if such return to employment was with an employer other than PCC.

3. Although PHC will agree initially that Patriot or a Patriot subsidiary shall administer the PCC Individual Employer Plan and assure the delivery of benefits, the agreement will provide that, at PHC's sole discretion, PHC may elect to undertake, directly or through a contractor, the administration and delivery of benefits under the PCC Individual Employer Plan.

4. PHC and PCC will further agree that PHC's assumption of liability for retiree healthcare as described above and/or PHC's election to directly administer the PCC Individual Employer Plan, including the delivery of benefits, does not create any third party beneficiary rights in any other person, individual, or entity, including but not limited to the UMWA and its members, retirees, and their eligible dependents except as expressly provided in B.2.c. below.

B. In recognition of the benefits to UMWA retirees and their eligible dependents from an agreement between PHC and PCC through which PHC would undertake the assumption of liabilities as described above, the UMWA:

1. Assents to the entry of such an agreement between PHC and PCC (and/or Patriot) as set forth in this document in connection with the spin-off of Patriot; and
2. Agrees that the entry of the NBCWA Liability Assumption Agreement will not:
 - a. make PHC a party to any collective bargaining agreement with the UMWA;
 - b. create a labor law relationship between PHC and the UMWA; or

c. create any right of action by the UMWA or its members or retirees against PHC for benefits under any provision of the PCC Labor Contract or any other labor agreement, including but not limited to Article XX of the 2007 NBCWA except that the UMWA and its members shall have the right to file a lawsuit against PHC in a court with jurisdiction over the parties for any benefits PHC has agreed to pay under the NBCWA Liability Assumption Agreement, or as otherwise provided under the Individual Employer Plan.

C. PCC acknowledges that nothing in this Acknowledgement and Assent is intended to be, or is evidence of, the UMWA's waiver of any right it may have to pursue a claim or action against PCC in the event that a PCC retiree or eligible dependent is not provided benefits that the UMWA believes the retiree is eligible to receive from the PCC Individual Employer Plan.

To memorialize this Acknowledgement and Assent, the UMWA and Peabody Holding Company, LLC each set forth its signature on the date set forth herein.

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA

PEABODY HOLDING COMPANY, LLC

By: Cecil E. Roberts

By: J. Brent Stenhouse

Its: President

Its: Senior Vice President

Date: August 14, 2007

Date: August 13, 2007

AGREED AS TO PARAGRAPH C

PEABODY COAL COMPANY, LLC

By: J. Nunn

Its: President

Date: August 13, 2007