

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

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In re: : Chapter 11
: :
PATRIOT COAL CORPORATION et al., : Case No. 12-12900
: :
: (Jointly Administered)
Debtors. :
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**ORDER UNDER 11 U.S.C. §§ 328(a) AND 1103, FED. R. BANKR. P. 2014 AND 2016, AND S.D.N.Y. LBR 2014-1 AND 2016-1 AUTHORIZING EMPLOYMENT AND RETENTION OF HOULIHAN LOKEY CAPITAL, INC., AS FINANCIAL ADVISOR AND INVESTMENT BANKER TO OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF PATRIOT COAL CORPORATION, *ET AL.*
NUNC PRO TUNC TO JULY 24, 2012**

Upon the application dated September 27, 2012 (the “**Application**”) of the Official Committee of Unsecured Creditors (the “**Committee**”) appointed in the above-captioned chapter 11 cases for an order, pursuant to sections 328(a) and 1103 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “**Bankruptcy Code**”), rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”), authorizing, the Committee’s retention and employment of Houlihan Lokey Capital, Inc. (“**Houlihan Lokey**”) to provide investment banking and financial advisory services in its capacity as Financial Advisor and Investment Banker, *nunc pro tunc* to July 24, 2012, pursuant to the terms of the engagement letter between the Committee and Houlihan Lokey, dated as of July 24, 2012 (the “**Engagement Letter**”); and upon the Declaration of Matthew Mazzucchi (the “**Original Mazzucchi Declaration**”), a Managing Director of Houlihan Lokey, dated September 27, 2012 attached to the Application as **Exhibit D** in support of the

Application and the Supplemental Declaration of Matthew Mazzucchi (the “**Supplemental Mazzucchi Declaration**” and together with the Original Mazzucchi Declaration, the “**Mazzucchi Declarations**”), dated December 13, 2012, that was filed in support of the Application on December 13, 2012; and the Court being satisfied that based on the representations made in the Application, the Mazzucchi Declarations that Houlihan Lokey is “disinterested” as such term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and as required under section 328(c) of the Bankruptcy Code, and that Houlihan Lokey represents no interest adverse to the Committee with respect to the matters upon which it is to be engaged; and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. § 1334 and the Amended Standing Order M-341 of Referral of Cases to Bankruptcy Judges of the United States District Court for the Southern District of New York (Preska, Acting C.J.), dated January 31, 2012; and consideration of the Application and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue solely for purposes of this Order being proper before this Court pursuant to 28 U.S.C. § 1408; and due and proper notice of the Application having been provided, and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Application (the “**Hearing**”); and upon the record of the Hearing and all of the proceedings had before the Court; and the Court having reviewed the Application and determined that the employment of Houlihan Lokey by the Committee, as modified herein, is necessary and is in the best interest of the Debtors’ estates, creditors, and other parties in interest and that the terms of compensation being sought by the Application are

reasonable pursuant to section 328(a) of the Bankruptcy Code (subject to the reservation of rights of the United States Trustee to such terms and conditions of Houlihan's employment on all grounds including reasonableness under Section 330 of the Bankruptcy Code as provided herein); and the Court having determined that the legal and factual bases set forth in the Application and the Mazzucchi Declarations 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 therefore, it is hereby ORDERED that:

1. The Application is granted as provided herein.
2. In accordance with sections 328(a) and 1103 of the Bankruptcy Code, the Committee is authorized to employ and retain Houlihan Lokey *nunc pro tunc* to July 24, 2012 as its Financial Advisor and Investment Banker in the above-captioned bankruptcy cases on the terms set forth in the Application and the Engagement Letter, as modified herein, a copy of which is annexed to the Application as **Exhibit A**.
3. Houlihan Lokey is authorized to provide the services set forth in the Coordination of Responsibilities for Houlihan Lokey and Mesirow Financial Consulting, which is attached as Exhibit A to this Order.
4. Houlihan Lokey shall be compensated in accordance with and will file interim and final fee applications for allowance of its compensation and expenses and shall be subject to sections 328, 330 and 331 of the Bankruptcy Code (as set forth herein), the Bankruptcy Rules, the Local Rules, the Amended Guidelines for Fees and Disbursements for Professionals in the Southern District of New York, dated November 25, 2009, the

United States Trustee Fee Guidelines, the Standing Order Establishing Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals [M-412] (Dec. 21, 2010) (collectively, the “Fee Guidelines”), and the Order to Establish Procedures for Interim Monthly Compensation and Reimbursement of Expenses of Professionals entered in this case on August 2, 2012.

5. Pursuant to the terms of the Engagement Letter, Houlihan Lokey is entitled to reimbursement by the Debtors for reasonable expenses incurred in connection with the performance of its engagement under the Engagement Letter, including, without limitation, the reasonable fees, disbursements and other charges of Houlihan Lokey’s counsel (which counsel shall not be required to be retained pursuant to section 327 of the Bankruptcy Code or otherwise), in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, any applicable orders of this Court and the Fee Guidelines promulgated by the Office of the United States Trustee, *provided*, that Houlihan Lokey may only seek reasonable reimbursement for its counsel’s services (i) in connection with the preparation and negotiation of, and any litigation regarding, Houlihan Lokey’s retention and fee applications, and (ii) as otherwise provided herein with respect to claims for indemnification and, *provided further*, that Houlihan Lokey shall submit the invoices of its counsel together with Houlihan Lokey’s own application seeking allowance of reimbursement for the fees, disbursements and other charges of its counsel.

6. All compensation and reimbursement of expenses to be paid to Houlihan Lokey shall be subject to the standard of review provided in section 328(a) of the Bankruptcy

Code, and not subject to the standard of review under section 330 of the Bankruptcy Code.

7. Notwithstanding the preceding paragraph, the United States Trustee shall retain the right to object to the compensation (both fees and expenses) to be paid to Houlihan pursuant to the Application and the Engagement Letter, including without limitation, the Monthly Fee and the Deferred Fee based upon the reasonableness standard provided for in section 330 of the Bankruptcy Code and the Court shall consider any such objection by the United States Trustee under section 330 of the Bankruptcy Code.

8. In light of the services to be provided by Houlihan Lokey and the compensation structure in the Engagement Letter, Houlihan Lokey and its professionals shall be excused from the requirement to maintain or provide detailed time records in accordance with Bankruptcy Rule 2016(a), Local Rule 2016-1 and the U.S. Trustee Fee Guidelines or conform to a schedule of hourly rates for its professionals; provided, however, that Houlihan Lokey shall keep reasonably detailed time records in half-hour increments and will submit, with any interim or final fee application, together with the time records, a narrative summary, by project category, of services rendered and will identify each professional rendering services and the category of services rendered.

9. Houlihan Lokey shall use its best efforts to avoid any duplication of services provided by any of the Committee's other retained professionals in these chapter 11 cases.

10. Houlihan Lokey will not seek to use affiliates, independent contractors, subcontractors or subsidiaries of Houlihan Lokey to perform services under the Engagement Letter without separate Court approval.

11. Should the Committee prior to confirmation of a chapter 11 plan(s) seek to expand the role of Houlihan Lokey beyond the matters listed above, Houlihan Lokey will promptly seek approval from this Court to perform such services to the extent Houlihan Lokey will seek additional compensation as a result of the expanded role. In such case, notice shall be given in accordance with the Bankruptcy Rules, Local Rules and any orders of this Court.

12. The indemnification provisions set forth in the Engagement Letter are approved, subject to the following modifications:

- a. All requests of Houlihan Lokey for payment of indemnity pursuant to the Engagement Letter shall be made by means of an application (interim or final as the case may be) and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Engagement Letter and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought.
- b. In no event shall any Indemnified Party be indemnified in the case of its own bad-faith, self-dealing, breach of fiduciary duty (if any), intentional fraud, gross negligence, or willful misconduct.
- c. In the event that Houlihan Lokey seeks reimbursement from the Debtors for reasonable attorneys' fees in connection with a request by Houlihan Lokey for payment of indemnity pursuant to the Engagement Letter, as modified by this Order, the invoices and supporting time records from such attorneys shall be included in Houlihan Lokey's own application (both interim and final) and such invoices and time records shall be subject to the Fee Guidelines and the approval of the Court under the standards of sections 330 and 331 of the Bankruptcy Code without regard to whether such attorney has been retained under sections 327 or

1103 of the Bankruptcy Code and without regard to whether such attorneys' services satisfy section 330(a)(3)(C) of the Bankruptcy Code.

- d. Houlihan Lokey shall not be entitled to reimbursement by the Debtors for any fees, disbursements and other charges of Houlihan Lokey's counsel other than those incurred in connection with a request of Houlihan Lokey for payment of indemnity.
- e. In no event shall Houlihan Lokey be indemnified if the Committee or a representative of the Committee asserts a claim for, and a court determines by final order that such claims arose out of, Houlihan Lokey's own bad-faith, self-dealing, breach of fiduciary duty (if any), intentional fraud, gross negligence, or willful misconduct.

13. The relief granted herein shall be binding upon any chapter 11 trustee appointed in these chapter 11 cases, or upon any chapter 11 trustee appointed in the event of a subsequent conversion of these chapter 11 cases to cases under chapter 7 of the Bankruptcy Code.

14. For the avoidance of doubt, the second sentence of section 3(iv) of the Engagement Letter shall be replaced with "The Deferred Fee shall be earned upon the confirmation of a Chapter 11 plan of reorganization or a Chapter 11 plan of liquidation with respect to the Debtors (an "Approved Plan"), and shall be paid on the effective date of such Approved Plan."

15. The Committee and Houlihan Lokey are authorized and empowered to take all actions necessary to implement the relief granted in and pursuant to this Order in accordance with the Application and the Mazzucchi Declarations.

16. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or other Bankruptcy Rules.

17. To the extent this Order is inconsistent with the Engagement Letter or the Application, this Order shall govern.

18. This Court shall retain jurisdiction with respect to all matters arising or related to the implementation of this order.

Dated: December 18, 2012
New York, New York

/s/ Shelley C. Chapman
HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Work Plan

**IN RE PATRIOT COAL CORPORATION, ET AL.
CASE NO. 12-12900 (SCC)**

COORDINATION OF RESPONSIBILITIES FOR HOULIHAN LOKEY AND MESIROW FINANCIAL CONSULTING

With respect to the projects listed below, where appropriate the parties may coordinate with each other while avoiding duplication of efforts.

<p align="center"><u>HOULIHAN LOKEY</u></p> <p align="center">(FINANCIAL ADVISOR AND INVESTMENT BANKER)</p>	<p align="center"><u>MESIROW FINANCIAL CONSULTING</u></p> <p align="center">(FINANCIAL ADVISOR)</p>
<ul style="list-style-type: none"> • Analysis of DIP financing, including historical analysis of negotiations resulting in proposed DIP facility and other options • Monitor and analyze liquidity/cash flow including variances and near-term cash forecast • Analysis of impact of intercompany claims on valuation and recoveries for other general unsecured creditors. Analysis of potential future treatment of intercompany claims in connection with potential plan(s) of reorganization or other sale or financing transactions. • Analysis of first and second day motions • Business plan and operations analysis, including development of improvements • Analyze and advise Committee regarding strategic and restructuring alternatives, including providing advice with respect to decisions regarding asset sales, strategic transactions, joint ventures and capital and financing needs • Analysis and review of SEC filings, MORs, other financial reports, SOFAs and schedules (other than intercompany transactions) • Analyze and advise Committee regarding an appropriate capital structure at emergence, including providing advice with respect to debt capacity and potential exit financing alternatives • Valuation analysis and testimony, including solvency analyses and accompanying valuation in connection with plan, exit strategy, and “NOL preservation” orders • Collateral analysis and review/Committee lien investigation • Section 1113/1114 overall strategic analysis • Executory contracts analysis 	<ul style="list-style-type: none"> • Provide litigation support services, which may include but are not limited to assisting with discovery, advising on damages and providing expert testimony if necessary to assist the Committee in analyzing potential causes of action (the “Causes of Action”), including potential preferences and fraudulent conveyances, specifically, including the investigation of transactions with Peabody, Arch, and ArcLite and specific valuation analyses related thereto • Analyze existing and proposed employee compensation programs including any proposed annual incentive bonus program/KEIP as well as OPEB¹/Pension/Labor obligations, including funding status and financial analysis • Provide tax analyses and tax advice regarding any proposed Plan of Reorganization, including any post-confirmation trust that may be established • Reconciliation of prepetition and postpetition intercompany claims and analysis of intercompany payables/receivables, including as set forth on the Debtors’ Schedules/Statements of Financial Affairs

¹ OPEB means “Other Post-Employment Benefits.”

