

**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 AUTHORIZING THE DEBTORS TO
EMPLOY ORDINARY COURSE PROFESSIONALS,
NUNC PRO TUNC TO THE PETITION DATE**

Upon the motion (the “**Motion**”)² of Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) for an order pursuant to sections 105(a), 327(e), 328 and 330 of the Bankruptcy Code and Bankruptcy Rule 2014(a), authorizing the Debtors and the Board to retain and compensate certain ordinary course professionals (“**Ordinary Course Professionals**”) utilized in the ordinary course of the Debtors’ business, as more fully described in the Motion; and upon consideration of the Declaration of Mark N. Schroeder, Patriot Coal Corporation’s Senior Vice President and Chief Financial Officer, filed on July 9, 2012 [ECF No. 4] (the “**Declaration**”); 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

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.

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 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 the Declaration 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 105(a), 327, 328, and 330 of the Bankruptcy Code and Bankruptcy Rule 2014(a), the relief requested in the Motion is hereby granted as set forth herein; and it is further

ORDERED that pursuant to sections 105(a), 327, 328, and 330 of the Bankruptcy Code, to the extent deemed necessary or appropriate by the Debtors, the Debtors are authorized, but not required or directed, to employ Ordinary Course Professionals in the ordinary course of business, effective as of the Petition Date; *provided, however*, that as a condition of such employment, each such Ordinary Course Professional shall comply with the procedures detailed herein; and it is further

ORDERED that within 15 days of the later of the entry of this Order or the date on which the retained Ordinary Course Professional commences services for the Debtors, each Ordinary Course Professional shall provide the Debtors' attorneys with (a) a declaration (the "**Ordinary Course Professional Declaration**"), substantially in the form attached to the Motion as Exhibit C, certifying that the professional does not represent or hold any interest adverse to the Debtors or their estates with respect to the matter on which the professional is to be employed and (b) a completed retention questionnaire (the "**Retention Questionnaire**"), substantially in the form attached to the Motion as Exhibit D, and shall periodically update such Ordinary Course Professional Declaration and/or Retention Questionnaire to the extent necessary to reflect new facts or circumstances relevant to their retention; and it is further

ORDERED that the Debtors' attorneys shall promptly file the Ordinary Course Professional Declaration and Retention Questionnaire with the Court and serve them upon (i) the Office of the United States Trustee for the Southern District of New York (the "**U.S. Trustee**") and (ii) counsel for the official committee of unsecured creditors (the "**Committee**", and together with the U.S. Trustee, the "**Notice Parties**"). The Notice Parties shall then have 15 days following service to notify the Debtors in writing of any objection to the retention stemming from the contents of the Ordinary Course Professional Declaration or Retention Questionnaire (which 15-day period can be extended with the prior written consent of the Debtors); and it is further

ORDERED that if the Notice Parties have not so notified the Debtors within 15 days, the Debtors are authorized and empowered (but not directed) to pay 100% of the fees and expenses incurred after the Petition Date by each of the Ordinary Course

Professionals retained pursuant to this Order in the customary manner upon submission of appropriate invoices setting forth in reasonable detail the nature of the services rendered and disbursements incurred without a prior application to the Court, up to (a) \$50,000 per month (the “**Monthly Cap**”) per Ordinary Course Professional or (b) \$500,000 in the aggregate per Ordinary Course Professional over the life of these cases (the “**Aggregate Cap**” and together with the Monthly Cap, the “**Ordinary Course Professional Fee Caps**”); *provided* that if an objection is asserted by the U.S. Trustee before the applicable objection deadline and such objection is not resolved within 20 days of such assertion, the Debtors shall schedule the matter for a hearing before the Court; and it is further

ORDERED that in the event that an Ordinary Course Professional seeks more than the Monthly Cap in a single month, that professional shall, on or before the 20th day of the month following the month for which the additional fees and disbursements are being sought, serve a monthly statement (“**Monthly Statement**”) for the full amount of fees and disbursements sought in such month, by hand or overnight delivery, on (a) the Debtors, Patriot Coal Corporation, 12312 Olive Boulevard, Suite 400, St. Louis, Missouri 63141, Attn: Jacquelyn A. Jones, Vice President – Associate General Counsel and Corporate Secretary, (b) proposed counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick, (c) attorneys for the administrative agents for the Debtors’ postpetition lenders, (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and (ii) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Margot B. Schonholtz

and Ana Alfonso, (d) proposed counsel for the Committee, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Adam C. Rogoff, Esq. and Gregory G. Plotko, Esq., and (e) the U.S. Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Elisabetta G. Gasparini and Paul K. Schwartzberg (the “**Interested Parties**”);

(a) If any Interested Party has an objection to the compensation or reimbursement sought in a particular Monthly Statement, he or she shall, by no later than the 15th day following the service of the relevant Monthly Statement, serve upon the Ordinary Course Professional whose Monthly Statement is objected to, and upon the other Interested Parties, a written “Notice of Objection to Fee Statement” setting forth the nature of the objection and the amount of fees or expenses at issue.

(b) After the 15th day following the service of the relevant Monthly Statement, the Debtors shall promptly pay all fees and expenses identified in each Monthly Statement to which no objection has timely been served in accordance with paragraph (b) above.

(c) If the Debtors receive an Objection to a particular Monthly Statement, unless the Court, upon notice and a hearing, directs payment to be made, they shall withhold payment of that portion of the Monthly Statement to which the objection is directed and promptly pay the remainder of the fees and disbursements.

(d) If the parties to an objection are able to resolve their dispute following the timely filing of an objection and if the party whose Monthly

Statement was objected to serves upon the other Interested Parties a statement indicating that the objection is withdrawn and describing in detail the terms of the resolution, then the Debtors shall promptly pay that portion of the Monthly Statement no longer subject to an objection.

(e) All objections not resolved by the relevant parties shall be preserved and presented to the Court on notice;

and it is further

ORDERED that, in the event that an Ordinary Course Professional seeks more than the Aggregate Cap in the aggregate during these chapter 11 cases, such Ordinary Course Professional shall, unless the Court orders otherwise, be required to file a separate application to be retained as a professional pursuant to sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a); and it is further

ORDERED that the Debtors shall pay no Ordinary Course Professional any amounts for invoiced fees and expense reimbursement until the Ordinary Course Professional Declaration and Retention Questionnaire have been filed with the Court and the applicable objection deadline has passed with no objection filed or, in the event an objection is filed, until such objection is resolved or upon order of the Court; and it is further

ORDERED that at three month intervals during the pendency of these chapter 11 cases (each, a “**Quarter**”), the Debtors shall file with the Court and serve on the Interested Parties no later than 40 days after the end of such Quarter, a statement that shall include the following information for each Ordinary Course Professional: (i) the name of the Ordinary Course Professional, (ii) the aggregate amounts paid as

compensation for services rendered and reimbursement of expenses incurred by that Ordinary Course Professional during the reported Quarter and (iii) all postpetition payments made to that Ordinary Course Professional through the reported Quarter; and it is further

ORDERED that the Debtors' right to dispute any invoices shall not be affected or prejudiced in any manner by the relief granted in this Order; and it is further

ORDERED that this Order shall not apply to any professional retained by the Debtors pursuant to a separate order of the Court; and it is further

ORDERED that the Debtors are authorized to employ and pay the fees and expenses incurred by Additional Professional Persons without any further application to or order of the Court; and it is further

ORDERED that the entry of this Order is without prejudice to the Debtors' rights to request modification of the Aggregate Cap or Monthly Cap; 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 parties with notice and an opportunity to object and be heard at a hearing; 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: August 2, 2012
New York, New York

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