

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)	<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)
<b>PLAINTIFFS</b> Patriot Coal Corporation and Heritage Coal Company	<b>DEFENDANTS</b> Peabody Holding Company, LLC and Peabody Energy Corporation
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.) Davis Polk & Wardwell LLP, 450 Lexington Ave., New York, NY, 212.450.4000	<b>ATTORNEYS</b> (If Known) Jones Day, 901 Lakeside Avenue, Cleveland, OH 216.586.3939
<b>PARTY</b> (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)  Declaratory judgment pursuant to 28 U.S.C. 2201 and Federal Rule of Bankruptcy Procedure 7001	
<b>NATURE OF SUIT</b>  (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)	
<p><b>FRBP 7001(1) – Recovery of Money/Property</b></p> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other <p><b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b></p> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property <p><b>FRBP 7001(3) – Approval of Sale of Property</b></p> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) <p><b>FRBP 7001(4) – Objection/Revocation of Discharge</b></p> <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) <p><b>FRBP 7001(5) – Revocation of Confirmation</b></p> <input type="checkbox"/> 51-Revocation of confirmation <p><b>FRBP 7001(6) – Dischargeability</b></p> <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <p style="text-align: center;">(continued next column)</p>	<p><b>FRBP 7001(6) – Dischargeability (continued)</b></p> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other <p><b>FRBP 7001(7) – Injunctive Relief</b></p> <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other <p><b>FRBP 7001(8) Subordination of Claim or Interest</b></p> <input type="checkbox"/> 81-Subordination of claim or interest <p><b>FRBP 7001(9) Declaratory Judgment</b></p> <input checked="" type="checkbox"/> 91-Declaratory judgment <p><b>FRBP 7001(10) Determination of Removed Action</b></p> <input type="checkbox"/> 01-Determination of removed claim or cause <p><b>Other</b></p> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et.seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$
Other Relief Sought Declaratory judgment	

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Patriot Coal Corp., et al.	BANKRUPTCY CASE NO. 12-51502-659	
DISTRICT IN WHICH CASE IS PENDING E.D. Mo.	DIVISION OFFICE Eastern	NAME OF JUDGE Surratt-States
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)  /s/ Elliot Moskowitz		
DATE 3/14/13	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Elliot Moskowitz	

### INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet. When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**In re:**

**PATRIOT COAL CORPORATION, *et al.*,**

**Debtors.**

**Chapter 11  
Case No. 12-51502-659  
(Jointly Administered)**

**PATRIOT COAL CORPORATION and  
HERITAGE COAL COMPANY,**

**Plaintiffs,**

**-against-**

**PEABODY HOLDING COMPANY, LLC and  
PEABODY ENERGY CORPORATION,**

**Defendants.**

**Adversary Proceeding No.**

**COMPLAINT**

Plaintiffs Patriot Coal Corporation, as debtor-in-possession (“**Patriot**”), and Heritage Coal Company, formerly known as Peabody Coal Company, LLC (“**Heritage**”), by their undersigned counsel, as and for their complaint against Peabody Holding Company, LLC (“**Peabody Holding**”) and Peabody Energy Corporation (“**Peabody Energy**,” and, together with Peabody Holding, “**Peabody**”), hereby allege upon personal knowledge as to Patriot’s and Heritage’s own acts, and upon information and belief as to all other matters, as follows:

**I.**

**NATURE OF ACTION AND NEED FOR RELIEF**

1. Patriot seeks a declaration regarding the operation of Section 1(d) of the NBCWA Individual Employer Plan Liabilities Assumption Agreement, dated October 22, 2007, entered into by Patriot, Heritage, Peabody Holding, and Peabody Energy (the “**NBCWA Liabilities Assumption Agreement**”) (Ex. A). Without such a declaration, (a) Patriot will require broader relief through its motion under Section 1114 of the Bankruptcy Code (the “**1114 Motion**”), filed concurrently herewith, and (b) Peabody—a company that is not in chapter 11 bankruptcy and reported over \$8 billion in revenues in 2012—may reap a windfall and escape its own retiree healthcare obligations as a result of any relief Patriot is able to obtain pursuant to the 1114 Motion.

2. Under the NBCWA Liabilities Assumption Agreement, Peabody Holding assumed responsibility for healthcare liabilities associated with certain retirees of Heritage and their eligible dependents (the “**Assumed Retirees**”). Peabody Holding pays for the health benefits provided to the Assumed Retirees under Heritage’s individual employer plan pursuant to Article XX of the National Bituminous Coal Wage Agreement (the “**NBCWA**”), including any

increases in benefit levels in future labor agreements with the United Mine Workers of America (the “**UMWA**”) to which Heritage is signatory.

3. Section 1(d) of the NBCWA Liabilities Assumption Agreement provides that, “for purposes of any successor [Heritage] labor contract,” the liabilities for which Peabody Holding is responsible “shall be based on benefits that are the lesser of (i) benefits provided in any future UMWA labor agreement with Eastern Associated Coal, LLC [(“**Eastern Associated**”)] and (ii) benefits provided in any future NBCWA labor agreement or any successor labor agreement and offered to [Eastern Associated], or which [Eastern Associated] had the opportunity to sign.”

4. The 1114 Motion seeks to modify the healthcare benefits of retirees of Eastern Associated, as would any resolution negotiated with the UMWA.

5. An actual controversy exists between the parties as to whether a modification of the benefits provided to Heritage or Eastern Associated retirees as a result of the 1114 Motion or a negotiated resolution of that motion will alter Peabody Holding’s contractual obligations with respect to the Assumed Retirees.

6. Patriot needs this dispute resolved in order to obtain the appropriate relief under Section 1114 and to facilitate the prompt and efficient restructuring of its liabilities. Unless this Court declares that Peabody Holding’s obligations with respect to the Assumed Retirees will not be affected by Patriot’s 1114 Motion, the 1114 Motion will apply to the Assumed Retirees because Patriot cannot afford to pay for their retiree healthcare.

7. Patriot requests that the Court enter an order declaring that Patriot’s modification of the benefits of retirees of Heritage or Eastern Associated pursuant to Section 1114 does not relieve Peabody Holding of its obligation to pay for the healthcare benefits of the Assumed

Retirees as currently provided by Heritage's 2011 individual employer plan and the NBCWA Liabilities Assumption Agreement.

## II.

### PARTIES, JURISDICTION, AND VENUE

8. On July 9, 2012, Patriot and those of its subsidiaries that are debtors and debtors in possession in the above-captioned chapter 11 case (the "**Debtors**") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Patriot has continued to operate its business and manage its property as debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

9. Heritage is a current subsidiary of Patriot and is a debtor in possession in the above captioned chapter 11 case.

10. Peabody Energy is the former parent company of Patriot and certain of its subsidiaries, including Heritage and Eastern Associated. On October 31, 2007, the shares of common stock of Patriot were distributed to the stockholders of Peabody Energy (the "**Spin-Off**").

11. Peabody Holding is a current subsidiary of Peabody Energy.

12. This Court has jurisdiction over these proceedings pursuant to 28 U.S.C. §§ 157(a), 157(b)(1), 157(b)(2), and 1334 and Local Rule 9.01(B)(1). This proceeding is a core proceeding under 28 U.S.C. § 157. In addition, this is a proceeding arising in or related to a case under Title 11 that will have a significant impact on Patriot's and Heritage's estates.

13. Venue properly lies in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

14. This adversary proceeding is initiated under Federal Rule of Bankruptcy Procedure 7001(7) and (9), and 28 U.S.C. § 2201.

### III.

#### **FACTUAL BACKGROUND**

##### **A. The NBCWA Liabilities Assumption Agreement**

15. The NBCWA is a periodically renegotiated agreement governing the benefits to be provided to members of the UMWA by their employers that are signatory to the NBCWA or to a “me too” agreement binding the employer to the terms of the NBCWA.<sup>1</sup> Historically, renegotiated versions of the NBCWA provided greater levels of benefits to UMWA members than had earlier versions.

16. Prior to the Spin-Off, a number of Peabody subsidiaries were signatories to the then-applicable version of the NBCWA or to “me too” agreements. As part of the Spin-Off, Peabody distributed, among other assets, its eastern operating companies with UMWA-represented labor to Patriot. These companies—including Heritage and Eastern Associated, both of which are still Patriot subsidiaries—carried significant liabilities attributable to their obligations to their retirees under the NBCWA.

17. To reduce the liabilities of the newly formed Patriot, Peabody and Patriot entered into three agreements, including the NBCWA Liabilities Assumption Agreement, pursuant to which Peabody Holding assumed responsibility for certain retiree healthcare obligations of the Patriot entities. The agreements were drafted by counsel to Peabody.

18. Under the NBCWA Liabilities Assumption Agreement, Peabody Holding “assume[d], and agree[d] to pay and discharge when due in accordance herewith, the NBCWA

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<sup>1</sup> Patriot is a plaintiff in this action because it is party to the NBCWA Liabilities Assumption Agreement. However, Patriot is not signatory to the NBCWA or a “me too” agreement and therefore does not itself have any NBCWA obligations. Rather, the liabilities at issue in this action belong solely to Heritage as signatory to the NBCWA. In addition to Heritage, certain other Debtors also have obligations under the NBCWA (collectively, the “Obligor Companies”).

Individual Employer Plan Liabilities.” The term “NBCWA Individual Employer Plan Liabilities” is in turn defined, in part, as “amounts [Heritage] pays for benefits to those retirees of [Heritage] identified on Attachment A hereto, and such retirees’ eligible dependents, under the terms of the NBCWA Individual Employer Plan . . . .” The term “NBCWA Individual Employer Plan” is itself defined as “a plan for the provision of healthcare benefits to retirees of [Heritage] and their eligible dependents maintained by [Heritage] pursuant to Article XX of the NBCWA.”

19. The NBCWA Liabilities Assumption Agreement states the following regarding Heritage’s “future” or “successor” labor contracts with the UMWA:

Changes to benefit levels, cost containment programs, plan design or other such modifications contained in [Heritage’s] future UMWA labor agreements that are applicable to the retirees and eligible dependents subject to this Agreement shall be included for the purposes of the definition of “NBCWA Individual Employer Plan Liabilities”; *provided* that, for purposes of any successor [Heritage] labor contract, “NBCWA Individual Employer Plan Liabilities” shall be based on benefits that are the lesser of (i) benefits provided in any future UMWA labor agreement with [Eastern Associated] and (ii) benefits provided in any future NBCWA labor agreement or any successor labor agreement and offered to [Eastern Associated], or which [Eastern Associated] had the opportunity to sign.

20. In August of 2007, Peabody Holding and the UMWA entered into an Acknowledgment and Assent (the “**Acknowledgment and Assent**”), also agreed to in limited part by Heritage, that described Peabody Holding’s obligations under the NBCWA Liabilities Assumption Agreement. The Acknowledgment and Assent provides that, under the NBCWA Liabilities Assumption Agreement, “[Peabody Holding] will agree to be primarily obligated to pay for benefits of retirees of [Heritage] and such retirees’ eligible dependents under the terms of an employee welfare plan maintained by [Heritage] pursuant to Article XX of the [Heritage] Labor Contract . . . or any [Heritage] successor labor agreement.” It further notes that the

“[Heritage] Labor Contract” “incorporates by reference Article XX of the [2007 NBCWA],” the then-current national agreement negotiated by the UMWA.

21. Under the plain language of the NBCWA Liabilities Assumption Agreement, only a “successor [Heritage] labor contract” with the UMWA can change the NBCWA Individual Employer Plan Liabilities that Peabody Holding is obligated to pay. The 1114 Motion, or any negotiated resolution of that motion, will not result in a “successor [Heritage] labor contract” with the UMWA. Accordingly, Peabody Holding remains primarily obligated to pay for the benefits provided to the Assumed Retirees under Heritage’s current individual employer plan. Peabody Holding cannot claim that changes to retiree benefit levels that result from the 1114 Motion, or any negotiated resolution of that motion, will change the NBCWA Individual Employer Plan Liabilities that it is contractually obligated to pay.

22. For the same reasons, Peabody Holding’s obligation to pay the NBCWA Individual Employer Plan Liabilities will not be affected by any changes to retiree benefits at Eastern Associated as a result of the 1114 Motion or any negotiated resolution of that motion. The 1114 Motion, or any negotiated resolution of that motion, will not result in a “successor labor contract” or a “future UMWA labor agreement” for either Heritage or Eastern Associated.

23. As demonstrated by the plain language of the NBCWA Liabilities Assumption Agreement, Peabody Holding’s obligations with respect to the Assumed Retirees are governed solely by “labor contracts” negotiated with the UMWA. Accordingly, Peabody has no basis for an argument that the 1114 Motion, or any negotiated resolution of that motion, will change Peabody Holding’s obligations with respect to the Assumed Retirees. Peabody Holding remains obligated to pay for benefits provided to the Assumed Retirees under Heritage’s current labor contract with the UMWA.

24. On February 26, 2013, counsel for Patriot asked counsel for Peabody whether Peabody would take the position that the amount Peabody Holding is obligated to pay for healthcare for the Assumed Retirees would be affected by a modification of the benefits of Eastern Associated retirees pursuant to the Section 1114 process. On March 1, 2013, notwithstanding the plain language of the contract, counsel for Peabody responded that Peabody may assert that argument. Contrary to Peabody's public declarations that it has "lived up to its obligations" and "continues to do so" (Ex. B), Peabody appears poised to exploit Patriot's requested relief under Section 1114 as a purported way to avoid paying for the healthcare benefits of the thousands of individuals comprising the Assumed Retirees.

**B. The Section 1114 Motion**

25. In connection with their chapter 11 case, the Debtors have filed the 1114 Motion simultaneously herewith to modify the benefits of UMWA-represented retirees. The 1114 Motion proposes to transition all of the NBCWA retiree healthcare benefits for which the Obligor Companies are responsible into a trust structured as a voluntary employees' beneficiary association ("VEBA"). The VEBA would serve as the exclusive vehicle to administer all healthcare costs for the relevant retirees. The VEBA would be funded by an initial contribution from the Obligor Companies, an allowed unsecured claim against the Debtors' estate, and any additional contributions from a profit-sharing arrangement.

26. The Debtors' Section 1114 proposal provides: "Since the Obligor Companies cannot afford to pay for the healthcare of the [Assumed Retirees] if Peabody's obligations are relieved or reduced, the 1114 Proposal shall apply to . . . the [Assumed Retirees], unless the Bankruptcy Court rules in Patriot's favor on [this action], in which case (a) if such ruling is issued before the Court rules on the [1114 Motion], the 1114 Proposal shall not apply to the

[Assumed Retirees]; and (b) if such ruling is issued after the Court rules on the [1114 Motion], the 1114 Proposal shall be modified *nunc pro tunc* to the date of the [1114 Motion] and shall not apply to the [Assumed Retirees].”

27. If the Court grants the relief sought in this complaint, the 1114 Motion shall not extend to the Assumed Retirees, and that group will continue to be covered by Peabody. If the Court either denies the relief sought in this complaint or fails to act, then the 1114 Motion shall extend to the Assumed Retirees because the Obligor Companies cannot afford to pay for the healthcare of *any* retirees, let alone retirees whose benefits have been paid for by Peabody since the Spin-Off.

28. If Peabody—a financially healthy company—is able to use the Debtors’ requested relief under Section 1114 as a means to escape its obligations to the Assumed Retirees, Peabody will realize a windfall worth hundreds of millions of dollars as a result of the Debtors’ bankruptcy, a manifestly unjust result.

## COUNT I

### **Declaratory Judgment** **(Declaration of Rights Under the NBCWA Liabilities Assumption Agreement)**

29. Patriot and Heritage incorporate by reference as though fully set forth herein the allegations in paragraphs 1 through 28, above.

30. An actual controversy exists between Patriot and Heritage on the one hand and Peabody on the other regarding whether Peabody Holding’s contractual obligations to pay for all healthcare benefits provided to the Assumed Retirees pursuant to Heritage’s 2011 individual employer plan will be altered by the 1114 Motion or any negotiated resolution of that motion.

31. Accordingly, pursuant to 28 U.S.C. § 2201 and Bankruptcy Rule 7001, Patriot and Heritage respectfully request that this Court enter an order declaring: A modification of the benefits of retirees of Heritage or Eastern Associated under Section 1114 does not relieve Peabody Holding of its obligation to pay for the healthcare benefits of the Assumed Retirees as currently provided by Heritage's 2011 individual employer plan and the NBCWA Liabilities Assumption Agreement.

#### **IV.**

#### **CONCLUSION**

For all of these reasons, Patriot and Heritage respectfully request that the Court enter a Judgment:

(1) declaring that Peabody Holding's obligations with respect to the healthcare benefits owed to the Assumed Retirees will not be affected by modification of the benefits of retirees of Heritage or Eastern Associated under Section 1114; and

(2) awarding Patriot and Heritage such other and further relief that this Court deems just and proper.

Dated: March 14, 2013  
New York, New York

Respectfully submitted,

/s/ Elliot Moskowitz

DAVIS POLK & WARDWELL LLP

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ATTORNEYS FOR THE PLAINTIFFS

# EXHIBIT A

Exhibit 10.10

EXECUTION COPY

NBCWA INDIVIDUAL EMPLOYER PLAN  
LIABILITIES ASSUMPTION AGREEMENT

This NBCWA INDIVIDUAL EMPLOYER PLAN LIABILITIES ASSUMPTION AGREEMENT (“Agreement”) is made on the 22nd day of October, 2007 by and between Peabody Holding Company, LLC (“PHC”), a Delaware limited liability company with principal offices at 701 Market Street, St. Louis, MO 63101, Patriot Coal Corporation (“Patriot”), a Delaware corporation with principal offices at 12312 Olive Boulevard, Suite 400, St. Louis, Missouri, Peabody Coal Company, LLC (“PCC”), a Delaware limited liability company with principal offices at 12312 Olive Boulevard, Suite 400, St. Louis, Missouri, and, solely with respect to its obligations under Section 7 hereof, Peabody Energy Corporation (“PEC”), a Delaware corporation with principal offices at 701 Market Street, St. Louis, MO 63101 (each of the foregoing being sometimes referred to hereinafter individually as “a party” or jointly as “the parties”).

## RECITALS

WHEREAS, contemporaneously herewith, all of the shares of common stock of Patriot have been distributed to the stockholders of PEC, PHC’s ultimate parent company, and Patriot will indirectly own all of the capital stock of PCC; and

WHEREAS, PCC is signatory to a collective bargaining agreement with the International Union, United Mine Workers of America known as the National Bituminous Coal Wage Agreement of 2007 (“NBCWA”); and

WHEREAS, PCC has an obligation to provide retiree healthcare pursuant to its “me too” labor contract which incorporates by reference Article XX of the NBCWA; and

WHEREAS, the parties desire that PCC continue to provide the retiree healthcare required by Article XX of the NBCWA (or any successor PCC labor contract);

WHEREAS, PHC has agreed to assume the liabilities of PCC for provision of healthcare pursuant to Article XX of the NBCWA (or any successor PCC labor contract) to certain retirees and their eligible dependents to the extent expressly set forth in this Agreement; and

WHEREAS, contemporaneously herewith PHC and Patriot have entered an Administrative Service Agreement pursuant to which Patriot will take certain actions necessary and appropriate for the administration of any NBCWA Individual Employer Plans (as defined below) and delivery of benefits constituting NBCWA Individual Employer Plan Liabilities (as defined below).

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the parties do hereby agree as follows:

Section 1. Defined Terms.

(a) The term "Effective Date" shall mean the date first hereinabove entered.

(b) The term "NBCWA" shall mean the National Bituminous Coal Wage Agreement of 2007, as may be amended, supplemented or replaced from time to time (subject to the proviso of the definition of "NBCWA Individual Employer Plan Liabilities").

(c) The term "NBCWA Individual Employer Plan" shall mean a plan for the provision of healthcare benefits to retirees of PCC and their eligible dependents maintained by PCC pursuant to Article XX of the NBCWA.

(d) The term "NBCWA Individual Employer Plan Liabilities" shall mean amounts PCC pays for benefits to those retirees of PCC identified on Attachment A hereto, and such retirees' eligible dependents, under the terms of the NBCWA Individual Employer Plan, *provided* that such retirees had vested in a right to receive retiree health benefits under the NBCWA Individual Employer Plan as of December 31, 2006 and that such retirees were retired from coal mine employment as of December 31, 2006 and did not thereafter return to employment with any company signatory to a labor agreement which requires the employer to provide health benefits to its UMWA retirees. Changes to benefit levels, cost containment programs, plan design or other such modifications contained in PCC's future UMWA labor agreements that are applicable to the retirees and eligible dependents subject to this Agreement shall be included for the purposes of the definition of "NBCWA Individual Employer Plan Liabilities"; *provided* that, for purposes of any successor PCC labor contract, "NBCWA Individual Employer Plan Liabilities" shall be based on benefits that are the lesser of (i) benefits provided in any future UMWA labor agreement with Eastern Associated Coal, LLC or any successor of Eastern Associated Coal, LLC and (ii) benefits provided in any future NBCWA labor agreement or any successor labor agreement and offered to Eastern Associated Coal, LLC or any successor of Eastern Associated Coal, LLC, or which Eastern Associated Coal, LLC or any successor of Eastern Associated Coal, LLC had the opportunity to sign.

#### Section 2. PHC Assumption of Liabilities.

(a) PHC assumes, and agrees to pay and discharge when due in accordance herewith, the NBCWA Individual Employer Plan Liabilities.

(b) Patriot shall instruct each third party administrator to deliver each invoice with respect to the NBCWA Individual Employer Plan Liabilities directly to PHC in accordance with such third party administrator's normal billing cycle, and PHC shall pay each such invoice in full (solely to the extent such amounts relate to the NBCWA Individual Employer Plan Liabilities) by wire transfer in immediately available funds when due. PHC shall pay the fees of the third-party administrators of the medical and prescription drug services to the retirees identified on Attachment A, and their eligible dependents, when due. The parties hereto acknowledge that the current practice is to include such fees in the last invoice of the month related to such medical or prescription drug services.

Section 3. Mutual Cooperation. Each of PHC, Patriot and PCC will use their commercially reasonable efforts to cooperate with each other to give full effect to the transactions contemplated by this Agreement. If PHC provides written notice that any amounts

were paid under this agreement in excess of the actual NBCWA Individual Employer Plan Liabilities, Patriot and PCC will use its commercially reasonable efforts to recover such excess amounts for PHC's benefit.

Section 4. Settlement of Claims. Patriot shall immediately notify PHC when Patriot or any of its subsidiaries is sued by the UMWA or a former employee or his or her eligible dependents or when an administrative claim has been filed with the trustees under the NBCWA, in each case regarding the NBCWA Individual Employer Plan Liabilities. Patriot and PCC may not settle any such dispute without the prior written consent of PHC, not to be unreasonably withheld or delayed. If Patriot or PCC settles any such claim without the prior written consent of PHC, then PHC shall not be liable for reimbursement of any amounts paid by Patriot or PCC as a result of such un-consented settlement under this Agreement.

Section 5. PHC Right to Pursue a Claim or Defense. If PHC determines that Patriot and/or PCC is failing to pursue with reasonable diligence a claim or defense related to any NBCWA Individual Employer Plan Liabilities, it shall notify Patriot and/or PCC in writing of such failure. If Patriot and/or PCC fails or refuses to pursue such claim or defense diligently within thirty (30) days of such notice, then PHC at its option may elect to pursue such claim or defense at its cost in the name of Patriot or PCC. Any contest assumed by PHC pursuant to this provision shall be conducted by attorneys employed or retained by PHC (subject to the right of Patriot and/or PCC to participate in such prosecution or defense at Patriot's or PCC's cost) and PHC may settle or compromise the claim or defense without the consent of Patriot and/or PCC, so long as such settlement or compromise does not include any payment or other obligation of Patriot, PCC or their respective controlled affiliates. PHC, Patriot and PCC shall use their commercially reasonable efforts to cooperate with each other in the continued prosecution or defense of any such claim, including the provision of witnesses and production of documents.

Section 6. Maintenance of Books and Records; Inspection. Patriot shall, at all times during the continuance of this Agreement, maintain full and complete books of account and other records with respect to all activities under this Agreement including, but not limited to, records of all payments made in connection with, or as a result of, such activities and all contracts entered and evaluations performed with respect to payment of NBCWA Individual Employer Plan Liabilities. PHC shall, at all times during the continuance of this Agreement, have the right to inspect, copy, and/or audit all account books and other records with respect to this Agreement at Patriot's offices and during regular business hours; *provided that* (i) PHC is not entitled to inspect such books and records more than once every six months, (ii) PHC shall provide at least forty-eight (48) hours advance notification, including reasonable detail of the materials to be reviewed, and (iii) no such inspection or audit shall unreasonably interfere with the normal and regular conduct of Patriot's business.

Section 7. PEC Guarantee. PEC hereby irrevocably and unconditionally guarantees the prompt and full payment by PHC of all amounts owed by it under this Agreement, subject to its right of setoff set forth in the Separation Agreement, Plan of Reorganization and Distribution, dated as of October 22, 2007 (the "Separation Agreement") by and between PEC and Patriot. Such guaranty shall be a guaranty of payment and not merely of collection, and shall not be conditioned or contingent upon the pursuit of any remedies against PHC. The liability of PEC under this guaranty shall, to the fullest extent permitted under applicable law, be absolute,

unconditional and irrevocable. PEC hereby waives any and all notice of the creation, renewal, extension or accrual of any of the guaranteed obligations and notice of or proof of reliance by Patriot or PCC upon this guaranty or acceptance of this guaranty. The guaranteed obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this guaranty. When pursuing its rights and remedies hereunder against PEC, neither Patriot nor PCC shall be under any obligation to pursue such rights and remedies it may have against PHC or any right of offset with respect thereto, and any failure by Patriot or PCC to pursue such other rights or remedies or to collect any payments from PHC or to realize upon or to exercise any such right of offset shall not relieve PEC of any liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of Patriot or PCC. PEC irrevocably waives acceptance hereof, presentment, demand, protest, promptness, diligence, obligation to protect, secure or perfect any security interest and any notice. Neither Patriot nor PCC shall be obligated to file any claim relating to any guaranteed obligation in the event that PHC becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of Patriot or PCC to so file shall not affect PEC's obligations hereunder. In the event that any payment to Patriot or PCC in respect of any guaranteed obligation is rescinded or must otherwise be returned for any reason whatsoever, PEC shall remain liable hereunder with respect to the guaranteed obligation as if such payment had not been made, and the guaranty shall be reinstated and shall continue even if otherwise terminated.

Section 8. Indemnification. PHC agrees that it shall indemnify, defend and hold harmless each of Patriot, PCC and their respective affiliates and the successors, assigns, employees, officers, directors and agents of each, from and against any claims, actions or causes of action, damages, penalties, fines, assessments, attorney fees or other costs or expenses principally resulting from the failure of PHC to timely pay and discharge the NBCWA Individual Employer Plan Liabilities.

Section 9. Resolution of Disputes. Any party or parties to a dispute or disagreement under this Agreement ("Covered Dispute") (including but not limited to any issue as to the arbitrability of such Covered Dispute) may give the other parties to the Covered Dispute written notice of the Covered Dispute initiating the provisions hereunder. Within ten days after delivery of the notice of a Covered Dispute, the receiving parties shall submit to the other a written response. The notice and the response shall include a statement of each party's respective position and a summary of arguments supporting that position and the name and title of the executive who will represent the claimants and of any other individual who will accompany such executive in resolving the Covered Dispute. Within twenty (20) days after delivery of the first notice, such executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, and shall negotiate in good faith to attempt to resolve the Covered Dispute. All reasonable requests for information made by one party to the other will be honored. If the Covered Dispute has not been resolved by negotiation within thirty (30) days of the first notice of the Covered Dispute, the parties to the Covered Dispute may, by their mutual consent, submit the Covered Dispute to arbitration in St. Louis, Missouri. Arbitration of any Covered Dispute shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect on the date of the first notice of the Covered Dispute. The parties agree to use 3 arbitrators for any Covered Dispute in excess of Two Million Dollars (\$2,000,000.00). Any decision of the arbitrator (or arbitrators) agreed upon or appointed and acting pursuant to this Section 9 shall be final and binding upon the parties and judgment

may be entered thereon, upon the application of any of the parties, by any court of competent jurisdiction. The arbitrator may also award reasonable attorney's fees and the costs of the arbitration to the prevailing party. This Section 9 shall not preclude any of the parties from seeking a temporary restraining order, preliminary injunction or other temporary injunctive relief necessary to enforce this Section 9 or protect rights under this Agreement. If the parties do not mutually agree to arbitrate the Covered Dispute, the Covered Dispute shall be resolved pursuant to Section 15.08 of the Separation Agreement.

Section 10. Waiver. The failure of any party to comply with any of its obligations or agreements or to fulfill any conditions contained in this Agreement may be excused only by a written waiver from the other parties. Failure by any party to exercise, or delay by any party in exercising, any right under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder by a party preclude any other or future exercise of that right or any other right hereunder by such party.

Section 11. Notices. All notices, requests or other communications required or permitted hereunder shall be given in writing by hand delivery, registered mail, certified mail or overnight courier, return receipt requested, postage prepaid, to the party to receive the same at its respective address set forth below, or at such other address as may from time to time be designated by such party to the others in accordance with this Section 11.

If to Patriot, to:

Joseph W. Bean  
Senior Vice President, General Counsel and Corporate Secretary  
Patriot Coal Corporation  
12312 Olive Boulevard, Suite 400  
St. Louis, MO 63141  
Fax:

If to PCC, to:

Joseph W. Bean  
Senior Vice President, General Counsel and Corporate Secretary  
Patriot Coal Corporation  
12312 Olive Boulevard, Suite 400  
St. Louis, MO 63141  
Fax:

If to PHC, to:

Alexander Schoch, Esq.  
Executive Vice President Law and Chief Legal Officer  
Peabody Holding Company, LLC  
701 Market Street  
St. Louis, MO 63101  
Fax: 314-342-3419

All such notices and communications hereunder shall be deemed given when received, as evidenced by the acknowledgment of receipt issued with respect thereto by the applicable postal authorities or the signed acknowledgment of receipt of the person to whom such notice or communication shall have been addressed or his or her authorized representative.

Section 12. No Third-Party Beneficiaries. Neither this Agreement nor any provision of it shall create any right in favor of or impose any obligation upon any person or entity other than the parties hereto and their respective successors and permitted assigns. Without limiting the generality of the foregoing, this Agreement is not intended to, and does not, create any rights, third party or otherwise, on behalf of the United Mine Workers of America, any retiree or dependent, or any other person or individual. No third party shall be entitled to any subrogation rights with respect to any obligation of any party under this Agreement.

Section 13. Captions and Paragraph Headings. Captions and paragraph headings are used hereinafter for convenience only and are not a part of this Agreement and shall not be used in construing it.

Section 14. Entire Agreement. The making, execution and delivery of this Agreement by the parties has been induced by no representations, statements, warranties or agreements other than those herein expressed. Notwithstanding any provisions in any other agreement, this Agreement, together with the Separation Agreement and the other agreements contemplated thereby, including without limitation the Administrative Services Agreement, dated as of October 22, 2007, by and between PHC and Patriot, embodies the entire understanding of the parties and their respective subsidiaries and affiliates relating to the matters set forth herein. This Agreement may be modified only by a written instrument executed by the parties. The parties make no representation or warranties with respect to the subject matter of this Agreement not expressly set forth in this Agreement. This Agreement supersedes and terminates all other discussions, negotiations, understandings, arrangements and agreements between or among PHC and Patriot, or any respective affiliated companies, entities or persons relating to the subject matter hereof.

Section 15. Assignability. Neither of the parties hereto may assign this Agreement without the prior written consent of the other parties, which consent will not be unreasonably withheld or delayed. Any impermissible attempted assignment of this Agreement without such prior written consent shall be void, and the party assigning or attempting to assign this Agreement shall remain bound by and obligated by this Agreement as if no assignment or attempted assignment had occurred.

Section 16. Successors and Assigns. This Agreement and the provisions hereof shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

Section 17. Severability. In the event one or more of the provisions of this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other

provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not a part of this Agreement.

Section 18. Counterparts. This Agreement may be executed in any number of duplicate counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 19. Governing Law. The parties hereto have agreed that the validity, construction, operation and effect of any and all of the terms and provisions of this Agreement shall be determined and enforced in accordance with the laws and regulations of the State of Delaware, without giving effect to principles of conflicts of law thereunder.

IN WITNESS WHEREOF, the parties hereto have caused this NBCWA Individual Employer Plan Liabilities Assumption Agreement to be duly executed by one of their respective officers duly authorized and directed as of the date first written above.

PEABODY HOLDING COMPANY, LLC

By: /s/ Richard A. Navarre

Name: Richard A. Navarre

Title: Executive Vice President

Solely for purposes of Section 7 hereof:  
PEABODY ENERGY CORPORATION

By: /s/ Richard A. Navarre

Name: Richard A. Navarre

Title: Executive Vice President

PATRIOT COAL CORPORATION

By: /s/ Richard M. Whiting

Name: Richard M. Whiting

Title: President & Chief Financial Officer

PEABODY COAL COMPANY LLC

By: /s/ Mark N. Schroeder

Name: Mark N. Schroeder

Title: Vice President & Treasurer

# **EXHIBIT B**

## Peabody and Patriot

**Posted: Thursday, March 7, 2013 12:05 am**

Peabody Energy has been in the news recently due to protest activity by the United Mine Workers of America (UMWA) regarding the healthcare benefits for retirees of Patriot Coal, a company that declared bankruptcy last year.

No matter how often the UMWA stages protest activity against Peabody Energy, the issue of Patriot Coal's retiree healthcare is between the UMWA and Patriot – a company that has been independent for more than five years.

Patriot Coal was launched as an independent, publicly traded company in October 2007. It was highly successful following its launch, with significant assets, low debt levels and a market value that more than quadrupled in less than a year.

Patriot's difficulties came much later, after a major acquisition, the global financial crisis, an unprecedented drop in natural gas prices that weakened coal use, increased environmental compliance costs, and reduced metallurgical coal prices.

Patriot's launch only occurred after the UMWA and its leadership agreed to the current benefits payment structure. In 2011, Patriot and the UMWA renegotiated a collective bargaining agreement and chose not to change that benefit structure then. Peabody has lived up to its obligations on this matter, and continues to do so – it is now up to the bankruptcy court to determine Patriot's future.

Peabody is a good neighbor and a longstanding part of downtown St. Louis, even as others have moved away. We are a company that has brought back institutions like the opera house and helped raise record United Way funds in 2012.

We are proud to be here and we are confident that our commitment to Peabody's values, both within the company and in the wider St. Louis community, will ultimately speak for themselves.

Vic Svec, Senior Vice President

Investor Relations and Corporate Communications

Peabody Energy