

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

	X	
	:	
In re	:	
	:	Chapter 11
PATRIOT COAL CORPORATION, <i>et al.</i> ,	:	Case No. 12-51502
	:	(Jointly Administered)
Debtors.	:	
	:	
	X	

**OBJECTION OF PEABODY ENERGY CORPORATION
AND PEABODY HOLDING COMPANY, LLC TO OFFICIAL COMMITTEE
OF SALARIED RETIREES' MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE EXAMINATION OF DEBTORS PURSUANT
TO RULE 2004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

Peabody Energy Corporation and Peabody Holding Company, LLC (together, "Peabody") hereby object (this "Objection") to the Motion for Entry of an Order Authorizing the Examination of Debtors Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (Docket No. 3280) (the "Motion"),¹ filed by the Official Committee of Salaried Retirees (the "Retiree Committee") appointed in the jointly administered chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the "Debtors"). Reserving its right to object substantively to the Motion under the seven-day time period permitted by the Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court for the Eastern District of Missouri (the "Local Rules"), Peabody objects to the Retiree Committee's request to (i) waive the meet-and-confer requirement of Local Rule 2004(A) and (ii) shorten the notice requirement of Local Rule 2004(C). In support of this Objection, Peabody respectfully represents as follows:

¹ Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

Objection Regarding Failure To Meet And Confer

1. At 3:43 PM (Central) on Wednesday, March 13, 2013, counsel for the Retiree Committee, Robert E. Eggmann, forwarded a request for documents in lieu of a motion pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") to counsel for Peabody, Steven N. Cousins, requesting a response by close of business the next day. Inexplicably, the request to Peabody includes Peabody Coal Company, LLC (the "former PCC"), which is no longer affiliated with Peabody and is now known as Heritage Coal Company LLC, a Debtor in these proceedings.

2. With respect to what the Retiree Committee defines as "Transferred Retiree Benefits," the request demands that Peabody and the former PCC provide the following broad categories of documents over a 43-year period, dating from January 1, 1970, to the present:

- Provide copies of any and all historical retiree benefit Plans and Summary Plan Descriptions (SPDs) for medical, dental, accidental death and dismemberment, disability (long and short term) and life insurance.
- All documents provided to salaried employees or salaried retirees describing any salaried retiree benefit plans or retiree benefits, changes to retiree benefits, summaries, retirement information, memos and other written materials relating to same from January 1, 1970 through the current date, other than provided in response to Request No. 1 above.
- All documents otherwise identifying the names of the benefit plans which became or relate to Transferred Retiree Benefits.
- All documents reflecting any and all agreements with any employees regarding early retirement, reduction in force agreements and/or other written contracts wherein any salaried retiree benefits are referred to in the context of an agreement to retire as of any particular timeframe.
- Any and all contractual documents reflecting the transfer of any salaried retiree benefits (including exhibits thereto) to Patriot.
- All non-privileged documents relating to and/or referring to any complaints, demand or disputes concerning whether PEC [Peabody Energy Corporation] had the right to modify or terminate any benefits for retirees who retired on or before March of 1990.

3. The Retiree Committee has made no representation, either in its draft request or in its Motion, that it has attempted to secure documents from the Debtors before seeking documents from Peabody on an expedited basis, as would be appropriate, given that Peabody is not a party to any dispute between the Retiree Committee and the Debtors regarding salaried benefits.

4. On Thursday, March 14, 2013, counsel for Peabody, Steven N. Cousins and Paula Batt Wilson, contacted Mr. Eggman's office several times and eventually spoke with him in the afternoon, advising him that the necessary representatives of Peabody were unavailable and that they would contact him again on Friday, March 15, 2013.

5. Mr. Cousins and Mrs. Wilson called Mr. Eggmann again on Friday, March 15, 2013, to update the status of their efforts, but were unable to speak with him.

6. Counsel for Peabody represented to counsel for the Retiree Committee during these communications that they anticipated that Peabody would be willing to produce at least some of the documents requested, but that they required more time to consult with their client before providing a complete response.

7. On Monday morning, March 18, 2013, Mr. Cousins called Mr. Eggmann's office and left word with his associate to advise that Mr. Cousins would be in Court on a Patriot matter all afternoon, and that he and Mrs. Wilson would call again on Monday evening or Tuesday morning. That afternoon, while Mr. Cousins was in Court, the Retiree Committee filed its Motion for examination under Bankruptcy Rule 2004.

8. Peabody submits that the Retiree Committee has shown no cause whatsoever for asking the Court to absolve the Retiree Committee of the requirement that it meet and confer in good faith pursuant to Local Rule 2004(A). First, the Retiree Committee's initial

demand that Peabody respond to an extremely broad document request — covering more than 40 years' worth of documents — in one day was unreasonable on its face. Second, after Peabody's counsel had reached out to communicate several times about the status of their attempts to reach the appropriate personnel at Peabody, counsel for the Retiree Committee proceeded to file its Bankruptcy Rule 2004 Motion without waiting to confer, knowing that Peabody's counsel was in Court.

Objection Regarding Request To Shorten Notice Period

9. The Retiree Committee has not attempted to show cause for seeking to require Peabody to provide a detailed response to the Motion in three days, especially when the Motion pertains to broad requests that cover more than 40 years. For the Retiree Committee to state that Peabody "has had notice of these requests since March 13, 2013," with full knowledge of the attempts of Peabody's counsel to confer with their client and provide a response, flouts this Court's good-faith conference requirement. Given the Retiree Committee's perfunctory observance of this Court's rules, there is no reason for the Court to hear this matter before Peabody even has the seven days permitted by rule to respond.

WHEREFORE, for all of the foregoing reasons, Peabody respectfully requests that the Court (i) SUSTAIN this Objection, (ii) DENY the Motion to the extent it seeks to deprive Peabody of its full seven-day response period provided by Local Rule 2004(C), and (iii) GRANT Peabody such other relief as the law, justice and equity require.

Dated: March 19, 2013

Respectfully submitted,

/s/ Steven N. Cousins

John M. Newman, Jr. (*pro hac vice* motion pending)

Robert S. Faxon (*pro hac vice* motion pending)

Paula Batt Wilson (*pro hac vice* motion pending)

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ATTORNEYS FOR PEABODY ENERGY
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on March 19, 2013, a copy of the foregoing Objection was served via the Court's ECF electronic filing system, and served by first class mail upon the parties listed on the Core Party/Non-ECF Service List posted on the Garden City Group's website on March 19, 2013, a copy of which is attached hereto as Exhibit A.

Dated: March 19, 2013

Respectfully submitted,

/s/ Steven N. Cousins

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ATTORNEY FOR PEABODY ENERGY
CORPORATION AND PEABODY HOLDING
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EXHIBIT A

Core Party/Non-ECF Service List (Per the Case Management Order)
Patriot Coal Corporation et. al



Source *	Function/Party Represented	Company	Contact	Address 1	Address 2	City (Foreign Zip/Country)	State	Zip	Country	Fax
ADM	Conflicts Counsel for the Debtors	CURTIS, MALLET -PREVOST, COLT & MOSLE LLP	ATTN S. REISMAN, ESQ. AND MICHAEL COHEN, ESQ.	101 PARK AVE		NEW YORK	NY	10178	US	212-697-1559
MSL	Counsel for Debtors	DAVIS POLK & WARDWELL LLP	ATTN BRIAN M. RESNICK, ESQ. AND MARSHALL S. HUEBNER, ESQ.			NEW YORK	NY	10017	US	212-607-7983
MSL	Claims and Noticing Agent for Debtors	GCG, INC.	ATTN ELIZABETH VRATO	190 S LASALLE ST	STE 1520	CHICAGO	IL	60603	US	312-499-6999
NOA	Counsel for the Official Committee of Unsecured Creditors of Patriot Coal Corporation, et al.	KRAMER LEVIN NAFTALIS & FRANKEL LLP	ATTN ADAM C. ROGOFF, ESQ.	1177 AVENUE OF THE AMERICAS		NEW YORK	NY	10036	US	212-715-8000
NOA	Counsel for the Official Committee of Unsecured Creditors of Patriot Coal Corporation, et al.	KRAMER LEVIN NAFTALIS & FRANKEL LLP	ATTN THOMAS MOERS MAYER, ESQ.	1177 AVENUE OF THE AMERICAS		NEW YORK	NY	10036	US	212-715-8000
NOA	Counsel for the Official Committee of Unsecured Creditors of Patriot Coal Corporation, et al.	KRAMER LEVIN NAFTALIS & FRANKEL LLP	ATTN P. BRADLEY O'NEILL, ESQ.	1177 AVENUE OF THE AMERICAS		NEW YORK	NY	10036	US	212-715-8000
NOA	Counsel for the Official Committee of Unsecured Creditors of Patriot Coal Corporation, et al.	KRAMER LEVIN NAFTALIS & FRANKEL LLP	ATTN ROBERT T. SCHMIDT, ESQ.	1177 AVENUE OF THE AMERICAS		NEW YORK	NY	10036	US	212-715-8000
MSL	U.S. Trustee	OFFICE OF THE UNITED STATES TRUSTEE	ATTN LEONORAS. LONG, ESQ.	TRIAL ATTORNEY	111 S 10TH ST, STE 6.353	ST LOUIS	MO	63102	US	
NOA	Counsel for the Agent to the DIP Lenders, Citibank, N.A. as Administrative Agent (the "First Out DIP Agent")	WEIL, GOTSHAL & MANGES LLP	ATTN JOSEPH H. SMOLINSKY, ESQ.	767 FIFTH AVE		NEW YORK	NY	10153	US	212-310-8007
NOA	Counsel for the Agent to the DIP Lenders, Citibank, N.A. as Administrative Agent (the "First Out DIP Agent")	WEIL, GOTSHAL & MANGES LLP	ATTN MARCIA GOLDSTEIN, ESQ.	767 FIFTH AVE		NEW YORK	NY	10153	US	212-310-8007
NOA	Counsel for the Agent to the DIP Lenders, Bank of America, N.A., as Pre-Petition Agent and Second Out DIP Agent	WILLKIE FARR & GALLAGHER LLP	ATTN ANA M ALFONSO, ESQ.	787 SEVENTH AVE		NEW YORK	NY	10019	US	212-728-8111
NOA	Counsel for the Agent to the DIP Lenders, Bank of America, N.A., as Pre-Petition Agent and Second Out DIP Agent	WILLKIE FARR & GALLAGHER LLP	ATTN MARGOT B SCHONHOLTZ, ESQ.	787 SEVENTH AVE		NEW YORK	NY	10019	US	212-728-8111

* MSL = Master Service List
NOA = Notice of Appearance
** Subject for continuous update and review