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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)
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HIGHLAND MINING COMPANY, LLC,	: Adv. Pro. No. _____
Plaintiff,	: COMPLAINT FOR
v.	: DECLARATORY RELIEF
TAMPA ELECTRIC COMPANY,	:
Defendant.	:
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Plaintiff Highland Mining Company, LLC (“**Highland**” or “**Plaintiff**”), one of the affiliated debtor entities in the above-captioned chapter 11 case, by and through its undersigned attorneys, alleges upon personal knowledge as to Highland and its own acts, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION AND THE NEED FOR RELIEF

1. Highland brings this adversary proceeding seeking a declaratory judgment that the Henderson Conveyance (defined below) is not an executory contract for purposes of section 365 of title 11 of the United States Code (the “**Bankruptcy Code**”).¹

2. As set forth below, the Henderson Conveyance provides for Highland to make ongoing overriding royalty payments to Tampa Electric Company (“**Tampa**”) for coal that is mined and sold from certain coal reserves in Kentucky. Tampa does not have any continuing obligations to perform under the Henderson Conveyance.

3. An actual controversy exists between the parties as to whether the Henderson Conveyance is non-executory and whether the Henderson Conveyance is integrated with or severable from any other agreement.

4. In order to facilitate Highland’s prompt and efficient restructuring of its liabilities, Highland requests that the Court enter an order declaring: (a) that the Henderson Conveyance is a non-executory contract pursuant to which Tampa has no further duties to perform; and (b) that the Henderson Conveyance is not integrated with, or is severable from, any other agreement.

JURISDICTION AND VENUE

5. On July 9, 2012, Patriot Coal Corporation (“**Patriot**”) and its affiliated debtor entities (collectively, the “**Debtors**”)² each commenced with this Court a voluntary case under

¹ Contemporaneously herewith, the Debtors filed a Motion for an Order Approving Rejection of the Henderson Conveyance pursuant to section 365 of the Bankruptcy Code, effective *nunc pro tunc* to the date hereof, to the extent the Henderson Conveyance is an executory contract, thereby reserving the Debtors’ right to schedule a hearing before the Court with respect to the relief set forth in such motion.

² The Debtors are the following entities: Affinity Mining Company; Apogee Coal Company, LLC; Appalachia Mine Services, LLC; Beaver Dam Coal Company, LLC; Big Eagle, LLC; Big Eagle Rail, LLC; Black Stallion Coal Company, LLC; Black Walnut Coal Company; Bluegrass Mine Services, LLC; Brook Trout Coal, LLC; Catenary Coal Company, LLC; Central States Coal Reserves of Kentucky, LLC; Charles Coal Company, LLC; Cleaton Coal Company; Coal Clean LLC; Coal Properties, LLC; Coal Reserve Holding Limited Liability Company No. 2; Colony Bay Coal Company; Cook Mountain Coal Company, LLC; Corydon Resources LLC; Coventry Mining Services, (...continued)

chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. These cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the Court's Joint Administration Order entered on July 10, 2012 [ECF No. 30].

7. The Court has core jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b) and 1334. Alternatively, this Court has noncore, concurrent jurisdiction over this proceeding under 28 U.S.C. §§ 1334(b) and 157(a), as this cause of action is directly related to Highland's bankruptcy case and will have a significant impact on Highland's estate.

8. This adversary proceeding is initiated under Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") 7001(9) and 7003 and 28 U.S.C. § 2201.

9. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

(continued...)

LLC; Coyote Coal Company LLC; Cub Branch Coal Company LLC; Dakota LLC; Day LLC; Dixon Mining Company, LLC; Dodge Hill Holding JV, LLC; Dodge Hill Mining Company, LLC; Dodge Hill of Kentucky, LLC; EACC Camps, Inc.; Eastern Associated Coal, LLC; Eastern Coal Company, LLC; Eastern Royalty, LLC; Emerald Processing, L.L.C.; Gateway Eagle Coal Company, LLC; Grand Eagle Mining, LLC; Heritage Coal Company LLC; Highland Mining Company, LLC; Hillside Mining Company; Hobet Mining, LLC; Indian Hill Company LLC; Infinity Coal Sales, LLC; Interior Holdings, LLC; IO Coal LLC; Jarrell's Branch Coal Company; Jupiter Holdings LLC; Kanawha Eagle Coal, LLC; Kanawha River Ventures I, LLC; Kanawha River Ventures II, LLC; Kanawha River Ventures III, LLC; KE Ventures, LLC; Little Creek LLC; Logan Fork Coal Company; Magnum Coal Company LLC; Magnum Coal Sales LLC; Martinka Coal Company, LLC; Midland Trail Energy LLC; Midwest Coal Resources II, LLC; Mountain View Coal Company, LLC; New Trout Coal Holdings II, LLC; Newtown Energy, Inc.; North Page Coal Corp.; Ohio County Coal Company, LLC; Panther LLC; Patriot Beaver Dam Holdings, LLC; Patriot Coal Company, L.P.; Patriot Coal Corporation; Patriot Coal Sales LLC; Patriot Coal Services LLC; Patriot Leasing Company LLC; Patriot Midwest Holdings, LLC; Patriot Reserve Holdings, LLC; Patriot Trading LLC; PCX Enterprises, Inc.; Pine Ridge Coal Company, LLC; Pond Creek Land Resources, LLC; Pond Fork Processing LLC; Remington Holdings LLC; Remington II LLC; Remington LLC; Rivers Edge Mining, Inc.; Robin Land Company, LLC; Sentry Mining, LLC; Snowberry Land Company; Speed Mining LLC; Sterling Smokeless Coal Company, LLC; TC Sales Company, LLC; The Presidents Energy Company LLC; Thunderhill Coal LLC; Trout Coal Holdings, LLC; Union County Coal Co., LLC; Viper LLC; Weatherby Processing LLC; Wildcat Energy LLC; Wildcat, LLC; Will Scarlet Properties LLC; Winchester LLC; Winifrede Dock Limited Liability Company; and Yankeetown Dock, LLC. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

PARTIES

10. Highland is a Delaware limited liability company. Prior to October 31, 2007, Highland was an affiliate of Peabody Energy Corporation (“**Peabody**”), a producer and supplier of coal in the United States. After October 31, 2007, when Patriot was spun off from Peabody, Highland became a wholly owned subsidiary of Patriot.

11. On information and belief, Tampa is a Florida corporation and is a public utility engaged in the generation, purchase, transmission, distribution and sale of electricity within Florida.

BACKGROUND

12. A Settlement Agreement and Mutual Release dated July 8, 1983 (“**Tampa Settlement Agreement**”) was executed by and between Peabody Coal Company (“**PCC**”) (now known as Heritage Coal Company LLC, a debtor entity) and Tampa, mutually releasing each party of all claims arising before April 1, 1983 out of a 1973 Coal Supply Agreement between the parties. A true and correct copy of the Tampa Settlement Agreement will be filed under seal as Exhibit A contemporaneously with the filing of this Complaint.

13. Pursuant to the Tampa Settlement Agreement, Tampa and PCC also executed on July 8, 1983 the Henderson Conveyance (the “**Henderson Conveyance**”), which provides that PCC will make ongoing “overriding royalty” payments (the “**Override Payments**”) from the mining and sale of coal from the Henderson Reserves (as defined in the Henderson Conveyance). The Henderson Conveyance does not provide for any duties to perform on the part of Tampa. Attached as Exhibit B is a redacted, true and correct copy of the Henderson Conveyance.

14. Since 2002, the Override Payments have been made by Highland, a Debtor entity, after PCC assigned its obligations under the Henderson Conveyance to Highland.

15. Tampa has no further duties to perform under either the Settlement Agreement or the Henderson Conveyance, nor does Tampa have an ownership or security interest in the Henderson Reserves.

16. Because the Henderson Conveyance requires ongoing performance only by Highland – *i.e.*, making Override Payments to Tampa – and requires no ongoing performance by Tampa, it is not an executory contract.

COUNT I

Declaratory Judgment

17. Patriot repeats and incorporates the allegations in paragraphs 1 through 16 of this complaint.

18. An actual controversy exists between the parties as to whether the Henderson Conveyance is non-executory, and whether the Henderson Conveyance is integrated with or severable from any other agreement.

19. Accordingly, pursuant to 28 U.S.C. § 2201 and Bankruptcy Rule 7001, Highland respectfully requests that this Court enter a Declaratory Judgment: (a) that the Henderson Conveyance is a non-executory contract for purposes of section 365 of the Bankruptcy Code; and (b) that the Henderson Conveyance is not integrated with, or is severable from, any other agreement.

REQUEST FOR RELIEF

WHEREFORE, for the foregoing reasons, Highland respectfully requests that this Court enter an order:

- (a) that the Henderson Conveyance is a non-executory contract for purposes of section 365 of the Bankruptcy Code; and
- (b) that the Henderson Conveyance is not integrated with, or is severable from, any other agreement.

Dated: New York, New York
August 10, 2012

HIGHLAND MINING COMPANY, LLC

By: /s/ Timothy Graulich

Marshall S. Huebner

Timothy Graulich

Brian M. Resnick

Antonio J. Perez-Marques

Jonathan D. Martin

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*Counsel to Plaintiff/Debtor
and Debtor in Possession*

EXHIBIT A – Filed Under Seal

EXHIBIT B

HENDERSON CONVEYANCE

Peabody Coal Company ("Peabody"), a Delaware corporation, for and in consideration of good and valuable consideration DOES HEREBY GRANT, CONVEY AND ASSIGN to Tampa Electric Company ("Tampa"), a Florida corporation, a right to receive an overriding royalty ("Overriding Royalty Interest"), in the amount and under the conditions specified herein, from the mining and sale of coal from

REDACTED

as shown on the map attached hereto as Exhibit A; provided, however, that nothing herein shall be construed to require Peabody to mine coal from

REDACTED

, or to require Peabody to preserve any or all of REDACTED, or acquire any other interests in connection therewith.

TO HAVE AND TO HOLD, until REDACTED

has been paid hereunder, whereupon the Overriding Royalty Interest shall lapse. For purposes of the rule against perpetuities, this conveyance shall be interpreted according to the laws of Kentucky which are in effect at the time this conveyance is executed. Notwithstanding anything in this conveyance to the contrary, no interest created in this conveyance may vest more than 21 years after the last to die of the current employees of Tampa Electric Company and Peabody Coal Company and the now living children of those employees. Pursuant to Ky. Rev. Stat., Section 381.216, the possibility that an interest will not vest before the expiration of that time will not constitute a violation of the rule against perpetuities.

Payments of the overriding royalty due hereunder will be paid to Tampa on a monthly basis and all such overriding royalty due from the mining and sale of coal from the Henderson Reserves for a calendar month shall be due and payable not later than the 25th day of the following month.

Payment of the overriding royalty due hereunder shall be at the rate of REDACTED

REDACTED

unless sooner terminated as herein provided. Peabody or its successor in interest, shall keep accurate accounts and records of coal mined from the Henderson Reserves, and such accounts and records shall be open to examination of Tampa's agents at all reasonable times and upon reasonable notice.

The Overriding Royalty Interest conveyed hereby shall be construed as a covenant running with the lands, and shall be binding on the successors and assigns of the Henderson Reserves, but no conveyance or assignment hereof by either Party shall be valid unless the assigning Party shall have given written notice thereof to the other Party at least 30 days before the date on which such conveyance or assignment shall be designated to be effective, and the other party shall agree in writing within 15 days to the assignment, which agreement shall not be unreasonably withheld. If Peabody shall convey or assign the Henderson Reserves, or any part thereof, to a subsidiary or affiliate of Peabody, Peabody shall remain obligated to make any

payments due hereunder from the proceeds of the mining and sale of coal from the Henderson Reserves by such subsidiary or affiliate.

Neither Party shall record this conveyance nor any short-form, memorandum or notice thereof, but if Peabody should convey all or any portion of the Henderson Reserves without having secured from the grantee or assignee thereof an undertaking to pay the overriding royalty to Tampa as provided herein, Peabody shall remain liable therefor to Tampa, notwithstanding the fact that Peabody may not be mining coal with respect to which the overriding royalty is due and owing hereunder.

Payments of the overriding royalty due hereunder shall be sent to the following address until and unless Tampa notifies Peabody or its successor in interest of a change of name or address:

Tampa Electric Company
P. O. Box 111
Tampa, Florida 33601

IN WITNESS WHEREOF, this conveyance has been executed and delivered and accepted by Tampa this 8th day of July, 1983.

ATTEST:

By James C. Seume

PEABODY COAL COMPANY
P. O. Box 235
St. Louis, Missouri 63166

Wayne T. Ewing

*OK
moy*

ATTEST:

By [Signature]

TAMPA ELECTRIC COMPANY
P.O. Box 111
Tampa, Florida 33601

By [Signature]

REDACTED