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**Hearing Date and Time:**  
**September 11, 2012 at 1:30 p.m.**

**Objection Deadline:**  
**September 7, 2012 at 5:00 p.m.**

-and-

Robert G. Harken, Esq.  
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*Attorneys for Creditors Patricia Willits, William G. Parrott, Jr.,  
and Donald Petrie, Trustee for the PPW Royalty Trust*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
In re	:	Chapter 11
PATROIT COAL CORPORATION, <i>et al.</i> ,	:	Case No. 12-12900 (SCC)
Debtors.	:	Jointly Administrated
-----X	:	

**MOTION FOR RELIEF FROM AUTOMATIC STAY**

Patricia Willits, William G. Parrott, Jr., and Don Petrie, Trustee for the PPW Royalty Trust (collectively, "Movants"), by and through its undersigned counsel, and upon the declaration of Robert G. Harken (the "Harken Declaration") dated August 10, 2012 (annexed hereto as **Exhibit A**), hereby move this Court, pursuant to 11 U.S.C. § 362(d), for relief from the automatic stay in order to permit continued prosecution of a certain appeal against the following debtors, each of which is an affiliated company of the lead debtor, Patriot Coal Corporation: Heritage Coal Company, LLC (f/k/a Peabody Coal Company, LLC); Beaver Dam Coal Company, LLC; Central States Coal Reserves of Kentucky, LLC; Grand Eagle Mining, LLC;

and Ohio County Coal Company, LLC (collectively, the “Five Patriot Debtors”), who are five of eighteen respondents in the appeal pending before the Missouri Court of Appeals, Eastern District (the “Missouri Appeals Court”), Case Number ED 98674 (the “Appeal”).

### **INTRODUCTION**

1. On July 9, 2012 (the “Petition Date”), the captioned debtors, including the Five Patriot Debtors, filed their voluntary petitions for relief under Chapter 11, of Title 11, United States Code (the “Bankruptcy Code”).<sup>1</sup> As of the Petition Date, the Five Patriot Debtors were respondents in the Appeal, which commenced on April 4, 2012 when Movants (appellants in the appeal) filed their notice of appeal. Movants filed their opening appellants’ brief on May 31, 2012, and the State of Missouri and the Armstrong Defendants (defined below) have filed their responding briefs. The Peabody Defendants (defined below) and the Five Patriot Debtors have not as yet filed a responsive brief, and at present, no date is set for such brief.

### **JURISDICTION**

2. This Court has jurisdiction over the instant motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (G) and (O).

3. The statutory predicates for the Motion are sections 363(e), 362(d), and 1112(b) of the Bankruptcy Code and Rules 6006(b) and 9014 of the Federal Rule of Bankruptcy Procedure (the “Bankruptcy Rules”), and has been filed in accordance with Local Rule 4001-1.

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<sup>1</sup> A complete list of the approximately 100 debtors is set forth in the Declaration of Mark N. Schroeder, pursuant to Bankruptcy Rule 1007-2 (Case No. 12-12900, Dkt. No. 4). All debtors in the jointly administrated case shall hereinafter be referred to, collectively, as the “Debtors”.

### SUMMARY OF ARGUMENT

4. As demonstrated below, Movants have satisfied all of the pertinent “*Sonnax*”<sup>2</sup> factors and, accordingly, limited modification of the automatic stay is appropriate for the purpose of permitting completion of briefing, and issuance of a decision by the Missouri Appeals Court, and if necessary, any further review or appeal of the decision rendered by the Missouri Supreme Court. This will facilitate the reorganization process by having the appropriate specialized court determine whether Movants possess a claim. Granting the limited relief sought herein will avoid a partial resolution of the issues involved in the Appeal. The only connection between the issues on appeal and the bankruptcy case is that the Appeal will determine whether Movants possess a claim; otherwise, there is no connection between the reorganization goals of the Debtors and the Appeal. Briefing has already commenced with Movants, the Armstrong Defendants (as defined below), and the State of Missouri having already filed their briefs. The only thing the Five Patriot Debtors need do is allow their longstanding counsel to participate in the Appeal, including filing a responsive brief. This will require minimal effort for two reasons: first, the issues have been fully litigated in the trial court, and second, the same firm representing the Five Patriot Debtors also represents the Peabody Defendants (as defined below). Thus, the harm to the Debtors is *de minimus*, but the harm of not granting limited stay relief to Movants will be substantial for the reason that the Appeal will not grant complete relief, and Movants would be required to re-litigate the issues in this Court. Thus, the limited relief sought herein should be granted.

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<sup>2</sup> *In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1286 (2nd Cir. 1990).

## **BACKGROUND**

### **A. The Parties Involved in the Pending Appeal**

5. The Five Patriot Debtors are, or were at one time, affiliated with other respondents in the appeal who have not filed Chapter 11, including, Peabody Energy Corporation, Peabody Development Company, LLC, Peabody Holding Company, LLC, Cyprus Creek Land Resources, LLC, and Cyprus Creek Land Company, LLC (collectively, the “Peabody Defendants”). The Five Patriot Debtors and the Peabody Defendants have been and continue to be represented by the same counsel, Sandberg, Phoenix & von Gontard, P.C., and have collectively and consistently argued common defenses to Movants’ claims in the state court. The Five Patriot Debtors and the Peabody Defendants have not yet filed their respondents’ brief in the appeal. Rather, the Five Patriot Debtors filed a notice of automatic stay with the Missouri Appeals Court. A copy of such notice is annexed to the Harken Declaration as **Exhibit 1**. In response, on August 6, 2012, the Missouri Appeals Court issued an order, copy annexed to the Harken Declaration as **Exhibit 2**, staying the Appeal as to the Five Patriot Debtors, and directing the remaining parties to, by August 27, brief the issue of whether the entire Appeal should be stayed.<sup>3</sup>

6. The other respondents in the Appeal are the State of Missouri, and the group of respondents known as the “Armstrong Defendants,” consisting of Western Diamond, LLC, Western Land Company, LLC, Ceralvo Holdings, LLC, Ceralvo Resources, LLC, Armstrong Coal Reserves, Inc., Armstrong Coal Company, Inc., and Armstrong Land Company, LLC.

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<sup>3</sup> Exhibits 1 and 2 only list four Patriot Debtors. It appears, however, that Debtor Heritage Coal Company, LLC was formerly known as Peabody Coal Company, LLC. The name change took place in 2008, as reflected in Exhibit 3 to the Harken Declaration.

**B. The Issues on Appeal and Involved in the Underlying Litigation**

(i) The Royalty Agreements

7. The multi-year history of litigation between Movants and the various respondents stems from royalty payment obligations under two royalty agreements which were entered into on November 17, 1954 (the “Royalty Agreements”), between W.G. Parrott and certain of his relatives (the “Parrotts”) and The Alston Coal Company (“Alston”), under which Alston agreed to pay the Parrotts royalties for coal mined and sold by Alston, its successors and assigns, from “any of the lands” in the designated boundaries (the “Boundaries”) described in the Royalty Agreements. When Alston entered into the Royalty Agreements, Alston (i) owned, as a tenant in common with Beaver Dam Coal Company, LLC (“Beaver Dam”), one of the Five Patriot Debtors, some, but not all, of the lands or coal lying in the Boundaries, and (ii) held a leasehold interest as a lessee through three different leases<sup>4</sup> in some, but not all, of the lands within the Boundaries. The Royalty Agreements did not limit Alston’s royalty obligation to coal mined only under the particular lands which Alston, at that time, owned as a tenant in common with Beaver Dam or leased under the three leases.

8. In 1968, another of the Five Patriot Debtors, Heritage Coal Company, LLC, f/k/a Peabody Coal Company, LLC (“Peabody”), acquired Alston and assumed Alston’s obligations to the Parrotts under the Royalty Agreements. Through a series of assignments, Movants acquired the Parrotts’ rights under the Royalty Agreements, including the right to be paid royalties. Between November 17, 1954, and June 1, 1990, Peabody acquired substantial lands and coal within the Boundaries not previously owned or leased by Alston as of November 17, 1954 (the “After-acquired Properties”). Peabody owned some of the After-acquired Properties in fee

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<sup>4</sup> One of the leases was commonly referred to as the “Beaver Dam Lease” in which Beaver Dam leased lands it owned in the Boundaries to Alston.

simple and other After-acquired Properties as a tenant in common with Beaver Dam. At various times between November 17, 1954, and June 1, 1990, Peabody mined coal from the Boundaries, including from the After-acquired Properties, and paid substantial royalties to Movants (or their predecessors) on such coal, regardless whether such coal was mined from the lands owned or leased by Alston as of November 17, 1954, or from the After-acquired Properties.

(ii) The Kentucky Litigation

9. In 1990, Movants filed a lawsuit against Peabody in the United States District Court for the Western District of Kentucky asserting various claims against Peabody for royalty underpayments under the Royalty Agreements (the “Kentucky Litigation”). Peabody counterclaimed alleging that the Royalty Agreements were partially invalid to the extent they obligated Peabody to pay royalties on coal mined from the After-acquired Properties. On July 3, 1991, the Kentucky District Court dismissed Peabody’s counterclaim, and ruled that Peabody and its successors and assignors were obligated to pay royalties on coal mined from the After-acquired Properties. On September 1, 1999, the United States Court of Appeals for the Sixth Circuit affirmed. *See Willits v. Peabody Coal Co.*, 188 F.3d 510, 1999 WL 701916, at \*19-20 (6th Cir. Sept. 1, 1999).

(iii) The 2008 Litigation

10. For several years after conclusion of the Kentucky Litigation, the Peabody Defendants continued to mine substantial amounts of coal from the Boundaries and paid substantial royalties to Movants on such coal. Beginning in 2006, however, the Peabody Defendants sold some of their surface and mineral rights in the Boundaries to the Armstrong Defendants for \$151 million. In April 2008, the Armstrong Defendants began mining and selling

coal from the Boundaries, but failed to pay Movants royalties pursuant to the Royalty Agreements.

11. In May 2008, Movants filed a lawsuit in the Circuit Court for the City of St. Louis, Missouri (the “Missouri Court”) against the Peabody Defendants (which at that time included the Five Patriot Debtors) and the Armstrong Defendants, seeking damages for breach of the Royalty Agreements as well as declaratory relief based upon the Peabody Defendants’ and the Armstrong Defendants’ failure to pay royalties on coal that certain Armstrong Defendants mined and sold from the Boundaries. On March 29, 2010, the Missouri Court entered an order granting summary judgment in favor of the Peabody and Armstrong Defendants and, contrary to the final judgment in the Kentucky Litigation, ruled that the Royalty Agreements were partially invalid because, in essence: (a) the Armstrong and Peabody Defendants’ royalty obligations were limited to the Alston interests in existence as of November 17, 1954; (b) since Alston only held lessee and tenant-in-common interests, it lacked the capacity to obligate subsequent fee simple landowners “of all the lands”; and (c) Movants’ royalty interests under the Royalty Agreements depended on the continuing existence of the Beaver Dam Lease and the tenancies in common held by Alston as of November 17, 1954.

12. Movants appealed the Missouri Court’s judgment and argued to the Missouri Appeals Court, in summary, that the Missouri Court’s decision directly contradicted the holdings of the Kentucky District Court and the Sixth Circuit. On December 28, 2010, the Missouri Appeals Court affirmed the judgment of the Missouri Court. *See Willits v. Peabody Coal Co.*, 332 S.W.3d 260, 265 (Mo. Ct. App. 2010).

(iv) The Present Litigation and Appeal

13. On August 8, 2011, Movants filed suit against the respondents in the Circuit Court of the County of St. Louis (the “Trial Court”), and in their first amended petition, filed on January 20, 2012, Movants sought a declaratory judgment against the State of Missouri, which would provide that the prior judgment entered by the Missouri Court on March 29, 2010, and the opinion rendered by the Missouri Appeals Court (collectively, the “Missouri Judgments”) violated various provisions of the Missouri Constitution and the United States Constitution, and that, therefore, such judgments should be vacated. Movants also joined the Five Patriot Debtors, the Peabody Defendants, and the Armstrong Defendants as defendants in Movants’ first amended petition because, pursuant to R.S.Mo. § 527.110, such parties all have an interest in the action before the Trial Court as the prevailing parties in the Missouri Judgments that will be affected by the declaratory relief sought against the State of Missouri.

14. Movants allege, in essence, that the State of Missouri, acting through its judicial branch, violated Article IV, § 1 of the United States Constitution because the Missouri Judgments did not adhere to the final judgments by the Kentucky District Court and the Sixth Circuit in the Kentucky Litigation. In particular, the judgments in the Kentucky Litigation conclusively determined that the Royalty Agreements were valid and enforceable agreements, and that Movants’ royalty rights are not limited to the interests in property held by Alston in 1954, but instead extend to the land and the Boundaries which were acquired by the Peabody Defendants (including the Five Patriot Debtors) after November 17, 1954.

15. Movants also allege that the Missouri Judgments constitute a “judicial taking” of Movants’ property rights in violation of the Fifth Amendment of the United States Constitution, and in violation of Article I, § 28 of the Missouri Constitution.



16. In the Trial Court, the respondents filed a motion, pursuant to Mo.R.Civ.P. 55.27(a)(6), to dismiss, based solely on the grounds that the Movants' constitutional claims against the State of Missouri are barred under the doctrine of *res judicata* as a result of the Missouri Judgments. On February 29, 2012, the Trial Court entered a final judgment granting the respondents' motion to dismiss for failure to state a claim upon which relief can be granted. The Trial Court, however, did not rule on the respondents' argument that Movants' amended petition is barred under the doctrine of *res judicata*. Instead, the Trial Court ruled, *sua sponte*, that the Movants' claims against the State of Missouri were barred under Missouri's doctrine of judicial immunity because the Missouri Court and the Missouri Appeals Court were exercising their judicial authority when entering the Missouri Judgments, and also indicated that the Plaintiffs' judicial takings claim under the United States Constitution does not state a cognizable claim for relief. The Appeal is from the final judgment issued by the Trial Court on February 29, 2012, wherein Movants argue, in part, that Missouri law on *res judicata* and judicial immunity does not bar Movants' constitutional claims.

#### **BASIS FOR RELIEF SOUGHT**

17. Bankruptcy Code § 362(d)(1) permits relief from the automatic stay "for cause." The burden is on the moving party to make an initial showing of cause for relief from the stay. *In re Taub*, 438 B.R. 39, 44 (S.D.N.Y. 2010). The United States Court of Appeals for the Second Circuit has observed that neither the statute nor the legislative history defines the term "for cause", and in deciding whether cause exists to lift the automatic stay to allow litigation to proceed in another forum, the following factors may be considered:

- (1) whether relief would result in a partial or complete resolution of the issues;
- (2) the lack of any connection with or interference with the bankruptcy case;

- (3) whether the other proceeding involves the debtor as a fiduciary;
- (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;
- (5) whether the debtor's insurer has assumed full responsibility for defending it;
- (6) whether the action primary involves third parties;
- (7) whether litigation in another forum would prejudice the interests of other creditors;
- (8) whether the judgment claim arising from the other action is subject to equitable subordination;
- (9) whether the movant's success in the other proceeding would result in a judicial lien avoidable by the debtor;
- (10) the interests of judicial economy and the expeditious and economical resolution of litigation;
- (11) whether the parties are ready for trial in the other proceeding; and
- (12) the impact of the stay on the parties and the balance of harms.

*In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1286 (2nd Cir. 1990). *See also In re Taub*, 438 B.R. at 44-45.

18. Only those factors relevant to a particular case need be considered, and the court need not give equal weight to each factor. *In re Keene Corp.*, 171 B.R. 180, 183 (S.D.N.Y. 1994). Consideration of the relevant *Sonnax* factors makes clear that Movants' request for limited modification the automatic stay should be granted.

**A. Factor 1: Whether relief would result in a partial or complete resolution of the issues**

19. Absent modification of the stay, only a partial resolution of the issues on appeal will be possible because the decision of the Missouri Appeals Court will not bind the Five Patriot Debtors. Moreover, if the stay is not lifted, and Movants are forced to seek relief before this

Court, any ruling may be inconsistent with the Missouri Appeals Court's opinion. *See In re Metz*, 165 B.R. 769, 771 (E.D.N.Y. 1994) (finding it prudent to modify the stay in an appeal in order to avoid inconsistent rulings). The only way to achieve complete and consistent resolution of all issues on appeal is to modify the automatic stay.

**B. Factors 2 & 7: Lack of Any Connection or Interference with the Bankruptcy Case & Whether Litigation in Another Forum Would Prejudice the Interests of Other Creditors**

20. Granting Movants' relief from the automatic stay will allow the Missouri Appeals Court to proceed with the particular circumstances surrounding the Appeal against all of the named respondents, including the Five Patriot Debtors, and will not interfere with the bankruptcy cases. Other than their asserted status as general, unsecured creditors, Movants are not major parties in the bankruptcy cases. The schedules attached to the Declaration of Mark N. Schroeder, filed with the Bankruptcy Court on behalf of Patriot Coal Company, do not even reference the Movants. (*See* Case No. 12-12900, Dkt. No. 4, Decl. of Patriot Coal Corp.).

21. The matters before the Missouri Appeals Court are not related to the core bankruptcy reorganization issues to be addressed in the Chapter 11 case. Rather, the Movants' appeal will merely determine whether Movants have an unsecured claim against these estates, which claim would then be treated under and in accordance with the Debtors' plan of reorganization. Expediently determining Movants' claim benefits all parties in that it will assist the parties in fixing the size of the class of the general unsecured claims. *See In re Project Orange Assocs., LLC*, 432 B.R. 89, 108 (Bankr. S.D.N.Y. 2010) (“[G]iven the state court’s familiarity with the issues..., it is likely in a better position to give a quick ruling in the matter.”).

22. Moreover, relief from the automatic stay should be granted in order to avoid interference with the bankruptcy case. Absent relief, this Court will be required to entangle itself

into issues requiring interpretation of multiple state and federal laws unrelated to the Bankruptcy Code, including both Missouri common law regarding judicial immunity and the Missouri Constitution. *See In re Anton*, 145 B.R. 767, 770 (E.D.N.Y. 1992) (relief from automatic stay warranted because multiplicity of suits involving unnecessary time and expense on the part of movants should be avoided).<sup>5</sup> Thus, Factor 2 is satisfied, and supports granting the relief sought.

**C. Factor 4: Whether a Specialized Tribunal with the Necessary Expertise has been Established to Hear the Cause of Action**

23. The Missouri Appeals Court is the appropriate and specialized forum to hear and determine the issues between Movants and the Five Patriot Debtors because it is familiar with the factual and legal history and issues in the Movant's appeal, and is the appropriate court to deal with the issues of Missouri law. *See In re Project Orange Assocs.*, 432 B.R. at 109 ("state court most efficient and appropriate place...considering [the state court judge's] involvement in the various actions.").

24. Moreover, this Motion addresses an appeal before an appellate court. Bankruptcy courts are not intended to serve as an appellate court for state proceedings. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). *See also In re Metz*, 165 B.R. at 72 ("The state appellate court is the more appropriate forum to hear [m]ovant's grievance with the New York trial Court's rulings.") (citation omitted); *In re Keane*, 171 B.R. at 185 (only way to challenge state court judgment is through appellate process). Thus, Factor 4 is satisfied, and supports granting the relief sought.

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<sup>5</sup> Movants seek relief from the automatic stay solely to permit completion of briefing, and to permit the Missouri Appeals Court, and, if necessary, the Missouri Supreme Court, to decide the matter. Any subsequent effort to seek redress in the Federal courts, or enforcement proceedings, if any, would require further relief from this Court.

**D. Factor 6: Whether the Action Primarily Involves Third Parties**

25. As noted above, the State of Missouri is the primary respondent in the appeal, especially as the final judgment of the Trial Court did not address the *res judicata* issue raised by the other respondents. The Armstrong and Peabody Defendants compose the majority of the remaining respondents. Indeed, the Five Patriot Debtors represent only five of the eighteen total respondents in the Appeal. Thus, Factor 6 is satisfied, and supports granting the relief sought.

**E. Factor 10: The Interests of Judicial Economy and the Expeditious and Economical Resolution of Litigation**

26. The Appeal is well under way. Movants have already filed their opening brief, and the State of Missouri and the Armstrong Defendants have filed their respondents' brief. Once the Five Patriot Debtors and the Peabody Defendants file their joint brief, the only remaining steps will be the Movants' reply brief, oral argument and the Missouri Appeals Court's decision.<sup>6</sup> Because the Appeal has been progressing for a substantial period of time, the bankruptcy cases are in their early stages, the bankruptcy cases involve a large number of debtors in addition to the Five Patriot Debtors, and a large number of creditors, the interests of both judicial economy and expeditious and economical resolution support lifting the automatic stay. *See In re Metz*, 165 B.R. at 772 (allowing the state appellate court to proceed with the appeal promoted judicial economy and the expeditious and economical resolution of the litigation). Indeed, the Missouri Appeals Court is far more apprised of the factual and legal history and issues involved in the Movants' Appeal than this Court, and entangling this Court in such issues

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<sup>6</sup> Should respondents prevail, Movants would likely seek redress in the Missouri Supreme Court. Such would likewise not be burdensome to the Five Patriot Debtors since the issue would be the same – those already briefed in the Missouri Appeals Court. In addition, Movants may request that the Missouri Appeals Court, Eastern District, recuse itself (the effect being that one of the other two Court of Appeals districts would hear the Appeal). Such a motion would likewise not impose a burden upon the Five Patriot Debtors.

would be expensive, and would divert crucial resources needed to address the numerous other issues in the bankruptcy cases.

27. Further, the Five Patriot Debtors and the Peabody Defendants have been consistently represented by the same counsel, Sandberg, Phoenix & von Gontard, P.C., and have continuously employed a common defense to the Movants' claims throughout the multi-year history of the litigation between the parties. The Five Patriot Debtors can therefore proceed with the appeal at little incremental cost. Thus, Factor 10 is satisfied, and supports granting the relief sought.

**F. Factor 11: Whether the Parties Are Ready for Trial in the Other Proceeding**

28. As noted above, the briefing of the Appeal is substantially completed, and there is no reason for the Missouri Appeals Court not to proceed with Movants' appeal with respect to the Five Patriot Debtors. *See In re Metz*, 165 B.R. at 772 (lifting the stay because the parties were more ready to litigate the issues before the appellate court where a notice of appeal had been filed than the bankruptcy court where the movant's claim had not been filed). Thus, Factor 11 is satisfied, and supports granting the relief sought.

**G. Factor 12: Impact of the Stay on the Parties and the Balance of Harms**

29. The Five Patriot Debtors will suffer no prejudice from the stay modification because their position in the Appeal is currently being represented by the same counsel as the Peabody Defendants, who has represented these parties for years prior to the filing of these bankruptcy cases. If the automatic stay is not lifted, however, then Movants will be required to proceed with their appeal in piecemeal fashion with the Five Patriot Debtors not being bound to any decision by the Missouri Appeals Court, leaving a multiplicity of proceedings on the same issues and the serious risk of inconsistent results. Moreover, this Court would be required to

interpret Missouri law on a number of issues if the stay is not lifted. The Missouri Appeals Court is the appropriate forum to address the issues on appeal as they relate to the Five Patriot Debtors. Thus, Factor 12, as well as all pertinent factors<sup>7</sup>, are satisfied, and support granting the relief sought.

### **NOTICE**

30. Notice of this motion is being served upon those parties required to receive service pursuant to this Court's *Order Establishing Certain Notice, Case Management and Administrative Procedures*, dated July 16, 2012.

31. No previous motion for the relief requested herein has been made to this or any other Court.

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<sup>7</sup> With respect to the other remaining *Sonnax* factors, Factor 3 is not relevant because the proceedings do not involve the debtor as a fiduciary, Factor 5 is not relevant because there is no debtor insurer that could assume full responsibility for defending the Five Patriot Debtors, and Factors 8 and 9 are not relevant because the issues on appeal involve whether Movants have a claim against the Five Patriot Debtors, and will determine the amount of any claim should Movants' succeed in the appeal.

**WHEREFORE**, for the reasons discussed above, Movants' request to modify the automatic stay to permit the Appeal to proceed to decision, and to pursue any possible further proceedings in the Missouri Supreme Court, should be granted, and Movants should be granted such other relief as is just.

**GOLENBOCK EISEMAN ASSOR BELL &  
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By: /s/ Jonathan L. Flaxer  
Jonathan L. Flaxer

-and-

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*Attorneys for Creditors Patricia Willits, William G.  
Parrott, Jr., and Donald Petrie, Trustee for the  
PPW Royalty Trust*



# **EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
In re	:	Chapter 11
PATROIT COAL CORPORATION, <i>et al.</i> ,	:	Case No. 12-12900 (SCC)
	:	Jointly Administrated
Debtors.	:	
-----X	:	

**DECLARATION OF ROBERT G. HARKEN**

**ROBERT G. HARKEN**, pursuant to 28 U.S.C. § 1746, hereby deposes and says under penalty of perjury:

1. I am an associate of the Law Offices of George A. Barton, P.C., which is counsel to Patricia Willits, William G. Parrott, Jr., and Don Petrie, Trustee for the PPW Royalty Trust (collectively, the "Movants") in the appeal pending before the Missouri Court of Appeals, Eastern District (the "Missouri Appeals Court"), Case Number ED 98674 (the "Appeal"). Unless otherwise specifically stated herein, I have personal knowledge of the subject matter set forth in this Declaration.

2. I submit this declaration in support of the Movants' motion (the "Motion")<sup>1</sup> to obtain relief from the automatic stay to, among other things, pursue the Appeal, which includes the following debtors, each of which is an affiliated company of the lead debtor, Patriot Coal Corporation: Heritage Coal Company, LLC (f/k/a Peabody Coal Company, LLC); Beaver Dam Coal Company, LLC; Central States Coal Reserves of Kentucky, LLC; Grand Eagle Mining, LLC; and Ohio County Coal Company, LLC (collectively, the "Five Patriot Debtors").

<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

**A. The Parties Involved in the Pending Appeal**

3. The Five Patriot Debtors are, or were at one time, affiliated with other respondents in the appeal who have not filed for relief under Chapter 11, including: Peabody Energy Corporation, Peabody Development Company, LLC, Peabody Holding Company, LLC, Cyprus Creek Land Resources, LLC, and Cyprus Creek Land Company, LLC (collectively, the “Peabody Defendants”). The Five Patriot Debtors and the Peabody Defendants have been and continue to be represented by the same counsel, Sandberg, Phoenix & von Gontard, P.C., and have collectively and consistently argued common defenses to Movants’ claims in the state court. The Five Patriot Debtors and the Peabody Defendants have not yet filed their respondents’ brief in the appeal. Rather, the Five Patriot Debtors filed a notice of automatic stay with the Missouri Appeals Court. A copy of such notice is annexed hereto as **Exhibit 1**.

4. On August 16, 2012, the Missouri Appeals Court issued an order staying the Appeal as to the Five Patriot Debtors, and directing the remaining parties to, by August 27, 2012, brief the issue of whether the entire Appeal should be stayed. A copy of such order is annexed hereto as **Exhibit 2**.<sup>2</sup>

5. The other respondents in the Appeal are the State of Missouri, and the group of respondents known as the “Armstrong Defendants,” consisting of Western Diamond, LLC, Western Land Company, LLC, Ceralvo Holdings, LLC, Ceralvo Resources, LLC, Armstrong Coal Reserves, Inc., Armstrong Coal Company, Inc., and Armstrong Land Company, LLC.

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<sup>2</sup> The notice and appeal only list four of the Five Patriot Debtors. It appears, however, that in 2008, Peabody Coal Company, a party to the Appeal, changed its name to Heritage Coal Company, a debtor in the above-captioned bankruptcy case. Attached hereto as **Exhibit 3** is the “Amendment of a Foreign Liability Company” reflecting this name change.

**B. The Issues on Appeal and Involved in the Underlying Litigation**

(i) The Royalty Agreements

6. The multi-year history of litigation between Movants and the various respondents stems from royalty payment obligations under two royalty agreements which were entered into on November 17, 1954 (the "Royalty Agreements"), between W.G. Parrott and certain of his relatives (the "Parrotts") and The Alston Coal Company ("Alston"), under which Alston agreed to pay the Parrotts royalties for coal mined and sold by Alston, its successors and assigns, from "any of the lands" in the designated boundaries (the "Boundaries") described in the Royalty Agreements. When Alston entered into the Royalty Agreements, Alston (i) owned, as a tenant in common with Beaver Dam Coal Company, LLC ("Beaver Dam"), one of the Five Patriot Debtors, some, but not all, of the lands or coal lying in the Boundaries, and (ii) held a leasehold interest as a lessee through three different leases<sup>3</sup> in some, but not all, of the lands within the Boundaries. The Royalty Agreements did not limit Alston's royalty obligation to coal mined only under the particular lands which Alston, at that time, owned as a tenant in common with Beaver Dam or leased under the three leases.

7. In 1968, another of the Five Patriot Debtors, Heritage Coal Company, LLC, f/k/a Peabody Coal Company, LLC ("Peabody"), acquired Alston and assumed Alston's obligations to the Parrotts under the Royalty Agreements. Through a series of assignments, Movants acquired the Parrotts' rights under the Royalty Agreements, including the right to be paid royalties. Between November 17, 1954, and June 1, 1990, Peabody acquired substantial lands and coal within the Boundaries not previously owned or leased by Alston as of November 17, 1954 (the "After-acquired Properties"). Peabody owned some of the After-acquired Properties in fee

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<sup>3</sup> One of the leases was commonly referred to as the "Beaver Dam Lease" in which Beaver Dam leased lands it owned in the Boundaries to Alston.

simple and other After-acquired Properties as a tenant in common with Beaver Dam. At various times between November 17, 1954, and June 1, 1990, Peabody mined coal from the Boundaries, including from the After-acquired Properties, and paid substantial royalties to Movants (or their predecessors) on such coal, regardless whether such coal was mined from the lands owned or leased by Alston as of November 17, 1954, or from the After-acquired Properties.

(ii) The Kentucky Litigation

8. In 1990, Movants filed a lawsuit against Peabody in the United States District Court for the Western District of Kentucky asserting various claims against Peabody for royalty underpayments under the Royalty Agreements (the "Kentucky Litigation"). Peabody counterclaimed alleging that the Royalty Agreements were partially invalid to the extent they obligated Peabody to pay royalties on coal mined from the After-acquired Properties. On July 3, 1991, the Kentucky District Court dismissed Peabody's counterclaim, and ruled that Peabody and its successors and assignors were obligated to pay royalties on coal mined from the After-acquired Properties. On September 1, 1999, the United States Court of Appeals for the Sixth Circuit affirmed.

(iii) The 2008 Litigation

9. For several years after conclusion of the Kentucky Litigation, the Peabody Defendants continued to mine substantial amounts of coal from the Boundaries and paid substantial royalties to Movants on such coal. Beginning in 2006, however, the Peabody Defendants sold some of their surface and mineral rights in the Boundaries to the Armstrong Defendants for \$151 million. In April 2008, the Armstrong Defendants began mining and selling coal from the Boundaries, but failed to pay Movants royalties pursuant to the Royalty Agreements.

10. In May 2008, Movants filed a lawsuit in the Circuit Court for the City of St. Louis, Missouri (the "Missouri Court") against the Peabody Defendants (which at that time included the Five Patriot Debtors) and the Armstrong Defendants, seeking damages for breach of the Royalty Agreements as well as declaratory relief based upon the Peabody Defendants' and the Armstrong Defendants' failure to pay royalties on coal that certain Armstrong Defendants mined and sold from the Boundaries. On March 29, 2010, the Missouri Court entered an order granting summary judgment in favor of the Peabody and Armstrong Defendants and, contrary to the final judgment in the Kentucky Litigation, ruled that the Royalty Agreements were partially invalid because, in essence: (a) the Armstrong and Peabody Defendants' royalty obligations were limited to the Alston interests in existence as of November 17, 1954; (b) since Alston only held lessee and tenant-in-common interests, it lacked the capacity to obligate subsequent fee simple landowners "of all the lands"; and (c) Movants' royalty interests under the Royalty Agreements depended on the continuing existence of the Beaver Dam Lease and the tenancies in common held by Alston as of November 17, 1954.

11. Movants appealed the Missouri Court's judgment and argued to the Missouri Appeals Court, in summary, that the Missouri Court's decision directly contradicted the holdings of the Kentucky District Court and the Sixth Circuit. On December 28, 2010, the Missouri Appeals Court affirmed the judgment of the Missouri Court.

(iv) The Present Litigation and Appeal

12. On August 8, 2011, the Movants filed suit against the respondents in the Circuit Court of the County of St. Louis (the "Trial Court"). In the first amended petition, filed on January 20, 2012, Movants sought a declaratory judgment against the State of Missouri, which would provide that the prior judgment entered by the Missouri Court on March 29, 2010, and the

opinion rendered by the Missouri Court of Appeals (collectively, the “Missouri Judgments”) violated various provisions of the Missouri Constitution and the United States Constitution, and that, therefore, such judgments should be vacated. The Five Patriot Debtors, the Peabody Defendants, and the Armstrong Defendants were joined as defendants in Movants’ first amended petition because, pursuant to R.S.Mo. § 527.110, such parties all have an interest in the action before the Trial Court as the prevailing parties in the Missouri Judgments that will be affected by the declaratory relief sought against the State of Missouri.

13. Movants allege, in essence, that the State of Missouri, acting through its judicial branch, violated Article IV, § 1 of the United States Constitution because the Missouri Judgments did not adhere to the final judgments by the Kentucky District Court and the Sixth Circuit in the Kentucky Litigation. In particular, the judgments in the Kentucky Litigation conclusively determined that the Royalty Agreements were valid and enforceable agreements, and that Movants’ royalty rights are not limited to the interests in property held by Alston in 1954, but instead extend to the land and the Boundaries which were acquired by the Peabody Defendants (including the Five Patriot Debtors) after November 17, 1954.

14. Movants also allege that the Missouri Judgments constitute a “judicial taking” of Movants’ property rights in violation of the Fifth Amendment of the United States Constitution, and in violation of Article I, § 28 of the Missouri Constitution.

15. In the Trial Court, the respondents filed a motion, pursuant to Mo.R.Civ.P. 55.27(a)(6), to dismiss, based solely on the grounds that the Movants’ constitutional claims against the State of Missouri are barred under the doctrine of *res judicata* as a result of the Missouri Judgments. On February 29, 2012, the Trial Court entered a final judgment granting the respondents’ motion to dismiss for failure to state a claim upon which relief can be granted.

The Trial Court, however, did not rule on the respondents' argument that Movants' amended petition is barred under the doctrine of *res judicata*. Instead, the Trial Court ruled, *sua sponte*, that the Movants' claims against the State of Missouri were barred under Missouri's doctrine of judicial immunity because the Missouri Court and the Missouri Appeals Court were exercising their judicial authority when entering the Missouri Judgments, and also indicated that the Plaintiffs' judicial takings claim under the United States Constitution does not state a cognizable claim for relief. On February 29, 2012, the Movants filed an appeal of the final judgment issued by the Trial Court. In the Appeal, Movants argue, in part, that Missouri law on *res judicata* and judicial immunity does not bar Movants' constitutional claims.

I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: Kansas City, Missouri  
August 13, 2012

/s/ Robert G. Harken  
Robert G. Harken



# **EXHIBIT 1**

**IN THE MISSOURI COURT OF APPEALS  
EASTERN DISTRICT**

<i>PATRICIA WILLITS, et al.,</i>	)	
	)	
Appellants/Plaintiffs,	)	
	)	
v.	)	
	)	No. ED 98674
<i>PEABODY COAL COMPANY, LLC, et al.,</i>	)	
	)	
Defendants/Respondents.	)	
	)	
	)	

**NOTICE OF AUTOMATIC STAY**

PLEASE TAKE NOTICE that on July 9, 2012, each of Patriot Coal Corp. and the affiliated companies listed below filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Southern District of New York in the following cases:

- Affinity Mining Company, Case No. 12-12902
- Apogee Coal Company, LLC, Case No. 12-12903
- Appalachia Mine Services, LLC, Case No. 12-12904
- Beaver Dam Coal Company, LLC, Case No. 12-12905
- Big Eagle LLC, Case No. 12-12906
- Big Eagle Rail, LLC, Case No. 12-12907
- Black Stallion Coal Company, LLC, Case No. 12-12908
- Black Walnut Coal Company, Case No. 12-12909
- Bluegrass Mine Services, LLC, Case No. 12-12910
- Brook Trout Coal, LLC, Case No. 12-12911
- Catenary Coal Company, LLC, Case No. 12-12913
- Central States Coal Reserves of Kentucky, LLC, Case No. 12-12914
- Charles Coal Company, LLC, Case No. 12-12916
- Cleaton Coal Company, Case No. 12-12917
- Coal Clean LLC, Case No. 12-12918
- Coal Properties, LLC, Case No. 12-12919
- Coal Reserve Holding Limited Liability Company No. 2, Case No. 12-12920
- Colony Bay Coal Company, Case No. 12-12921
- Cook Mountain Coal Company, LLC, Case No. 12-12922
- Corydon Resources LLC, Case No. 12-12923

Coventry Mining Services, LLC, Case No. 12-12924  
Coyote Coal Company LLC, Case No. 12-12925  
Cub Branch Coal Company LLC, Case No. 12-12926  
Dakota LLC, Case No. 12-12927  
Day LLC, Case No. 12-12928  
Dixon Mining Company, LLC, Case No. 12-12929  
Dodge Hill Holding JV, LLC, Case No. 12-12930  
Dodge Hill Mining Company, LLC, Case No. 12-12931  
Dodge Hill of Kentucky, LLC, Case No. 12-12932  
EACC Camps, Inc., Case No. 12-12933  
Eastern Associated Coal, LLC, Case No. 12-12934  
Eastern Coal Company, LLC, Case No. 12-12935  
Eastern Royalty, LLC, Case No. 12-12936  
Emerald Processing, L.L.C., Case No. 12-12937  
Gateway Eagle Coal Company, LLC, Case No. 12-12938  
Grand Eagle Mining, LLC, Case No. 12-12939  
Heritage Coal Company LLC, Case No. 12-12940  
Highland Mining Company, LLC, Case No. 12-12941  
Hillside Mining Company, Case No. 12-12942  
Hobet Mining, LLC, Case No. 12-12943  
Indian Hill Company LLC, Case No. 12-12944  
Infinity Coal Sales, LLC, Case No. 12-12945  
Interior Holdings, LLC, Case No. 12-12946  
IO Coal LLC, Case No. 12-12947  
Jarrell's Branch Coal Company, Case No. 12-12948  
Jupiter Holdings LLC, Case No. 12-12949  
Kanawha Eagle Coal, LLC, Case No. 12-12950  
Kanawha River Ventures I, LLC, Case No. 12-12951  
Kanawha River Ventures II, LLC, Case No. 12-12952  
Kanawha River Ventures III, LLC, Case No. 12-12953  
KE Ventures, LLC, Case No. 12-12954  
Little Creek LLC, Case No. 12-12955  
Logan Fork Coal Company, Case No. 12-12956  
Magnum Coal Company LLC, Case No. 12-12957  
Magnum Coal Sales LLC, Case No. 12-12958  
Martinka Coal Company, LLC, Case No. 12-12959  
Midland Trail Energy LLC, Case No. 12-12960  
Midwest Coal Resources II, LLC, Case No. 12-12961  
Mountain View Coal Company, LLC, Case No. 12-12962  
New Trout Coal Holdings II, LLC, Case No. 12-12963  
Newtown Energy, Inc., Case No. 12-12964  
North Page Coal Corp., Case No. 12-12965  
Ohio County Coal Company, LLC, Case No. 12-12966  
Panther LLC, Case No. 12-12967  
Patriot Beaver Dam Holdings, LLC, Case No. 12-12898

Patriot Coal Company, L.P., Case No. 12-12968  
Patriot Coal Corporation, Case No. 12-12900  
Patriot Coal Sales LLC, Case No. 12-12969  
Patriot Coal Services LLC, Case No. 12-12970  
Patriot Leasing Company LLC, Case No. 12-12971  
Patriot Midwest Holdings, LLC, Case No. 12-12972  
Patriot Reserve Holdings, LLC, Case No. 12-12973  
Patriot Trading LLC, Case No. 12-12974  
PCX Enterprises, Inc., Case No. 12-12899  
Pine Ridge Coal Company, LLC, Case No. 12-12975  
Pond Creek Land Resources, LLC, Case No. 12-12976  
Pond Fork Processing LLC, Case No. 12-12977  
Remington Holdings LLC, Case No. 12-12978  
Remington II LLC, Case No. 12-12979  
Remington LLC, Case No. 12-12980  
Rivers Edge Mining, Inc., Case No. 12-12981  
Robin Land Company, LLC, Case No. 12-12982  
Sentry Mining, LLC, Case No. 12-12983  
Snowberry Land Company, Case No. 12-12984  
Speed Mining LLC, Case No. 12-12985  
Sterling Smokeless Coal Company, LLC, Case No. 12-12986  
TC Sales Company, LLC, Case No. 12-12987  
The Presidents Energy Company LLC, Case No. 12-12988  
Thunderhill Coal LLC, Case No. 12-12989  
Trout Coal Holdings, LLC, Case No. 12-12990  
Union County Coal Co., LLC, Case No. 12-12991  
Viper LLC, Case No. 12-12992  
Weatherby Processing LLC, Case No. 12-12993  
Wildcat Energy, LLC, Case No. 12-12994  
Wildcat, LLC, Case No. 12-12995  
Will Scarlet Properties LLC Case No. 12-12996  
Winchester LLC, Case No. 12-12997  
Winifrede Dock Limited Liability Company, Case No. 12-12998  
Yankeetown Dock, LLC, Case No. 12-12999

PLEASE TAKE FURTHER NOTICE that the cases are being jointly  
administered under Case No. 12-12900.

PLEASE TAKE FURTHER NOTICE that the filing of the voluntary petitions  
created an automatic stay that enjoins and restrains certain acts and proceedings against  
any of these debtors or their property as provided in 11 U.S.C. § 362, unless relief from

the automatic stay is first granted by the United States Bankruptcy Court for the Southern District of New York. Prohibited acts include, without limitation, the commencement or continuation of any judicial proceeding against any of the debtors that was or could have been commenced before the filing of the petition, any attempt to enforce a judgment against any of the debtors or their property, any act to obtain possession of or exercise control over property of the debtors' estates or any act to create, perfect or enforce any lien against property of the debtors' estates. See 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001 for exceptions and procedures to follow in seeking relief from the automatic stay.

By: /s/ John S. Sandberg  
John S. Sandberg, #22664  
Timothy C. Sansone, #47876  
Sandberg, Phoenix & von Gontard, P.C.  
600 Washington Avenue – 15<sup>th</sup> Floor  
St. Louis, MO 63101-1313  
(314) 231-3332  
(314) 241-7604 (facsimile)  
jsandberg@sandbergphoenix.com  
tsansone@sandbergphoenix.com  
*Attorneys for Defendants/Respondents*  
*Beaver Dam Coal Co., LLC,*  
*Central States Coal Reserves of Kentucky, LLC,*  
*Grand Eagle Mining, LLC,*  
*Ohio County Coal Co., LLC*

**Certificate of Service**

I hereby certify that on the 11<sup>th</sup> day of July, 2012, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

George A. Barton  
Robert G. Harken  
Law Offices of George A. Barton, P.C.  
4435 Main Street, Suite 920  
Kansas City, MO 64111

Jeffrey J. Lowe  
CAREY DANIS & LOWE  
8235 Forsyth Blvd., Ste. 1100  
St. Louis, MO 63105  
*Counsel for Appellants*

Jeremiah Morgan  
Deputy Solicitor General  
Office of the Attorney General  
Supreme Court Building  
207 High Street  
Jefferson City, MO 65102  
*Counsel for Respondent State of Missouri*

Mason L. Miller  
Miller Wells PLLC  
300 East Main St., Ste. 360  
Lexington, KY 40507

Glenn E. Davis  
800 Market St., Ste. 2300  
St. Louis, MO 63101  
Glenn.Davis@heplerbroom.com  
*Counsel for Respondents Armstrong Coal Company, Inc.  
and Western Diamond, LLC*

/s/ John S. Sandberg

# **EXHIBIT 2**



# In the Missouri Court of Appeals Eastern District

PATRICIA WILLITS, et. al,	)	No. ED98674
	)	
Plaintiffs/Appellants,	)	
	)	
vs.	)	
	)	
PEABODY COAL COMPANY, LLC,	)	
et. al,	)	
	)	
Defendants/Respondents.	)	

### ORDER

Respondents Beaver Dam Coal Co., Central States Coal Reserves of Kentucky, Grand Eagle Mining, and Ohio County Coal Co. have filed a suggestion of bankruptcy indicating they have filed Chapter 11 bankruptcy and this filing operates as an automatic stay of the appeal as to them under 11 U.S.C. section 362(a)(1). Pursuant to 11 U.S.C. sect. 362, the appeal as to the Respondents Beaver Dam Coal Co., Central States Coal Reserves of Kentucky, Grand Eagle Mining, and Ohio County Coal Co. is stayed. In its discretion, this Court may stay the entire appeal.

Appellants and the remaining Respondents are directed to file a response to the suggestion of bankruptcy by August 27, 2012 and address whether the entire appeal should be stayed pending resolution of the bankruptcy of Beaver Dam Coal Co., Central States Coal Reserves of Kentucky, Grand Eagle Mining, and Ohio County Coal Co. In addition, Appellants filed an electronic copy of the legal file and their Appellant's Brief in the Missouri Supreme Court. This Court's local rule requires the Appellants to file a paper copy of the legal file and four copies of the Appellants' Brief. Local Rule 333(c) & (d). Appellants are directed to file these paper copies on or before August 27, 2012.

SO ORDERED.

DATED: 8/16/12

\_\_\_\_\_  
Gary W. Gaertner, Jr., Chief Judge

cc: Jeremiah Morgan  
George Barton  
John Sandberg  
Glenn Davis



# **EXHIBIT 3**

File Number:  
FL0710761  
Date Filed: 01/08/2008  
Robin Carnahan  
Secretary of State



**State of Missouri**  
Robin Carnahan, Secretary of State

Corporations Division  
P.O. Box 778 / 600 W. Main Street, Rm 322  
Jefferson City, MO 65102

**Amendment of a  
Foreign Limited Liability Company**  
*(Submit with filing fee of \$25.00)*

- The name of the foreign limited liability company is Peabody Coal Company, LLC
- The foreign limited liability company was formed under the laws of Delaware on the date of July 11, 2005  
*(month/day/year)* *(State of jurisdiction)*
- The foreign limited liability company's certificate of registration is hereby amended as follows:  
**"The name of the limited liability company shall be Heritage Coal Company LLC"**
- The effective date of this document is the date it is filed by the Secretary of State of Missouri, unless a future date is indicated as follows: \_\_\_\_\_  
*(month/day/year)*
- The amendment shall include a certificate of existence or document of similar import duly authenticated by the secretary of state or other official having custody of the records in the state or country under whose laws it is registered. Such document should be dated within sixty calendar days from the filing for acceptance.

In Affirmation thereof, the facts stated above are true and correct:  
(The undersigned understands that false statements made in this filing are subject to the penalties provided under Section 575.040, RSMo)

	Interior Holdings, LLC, Member	By: Robert L. Mead	01/02/08
<i>Authorized Signature</i>	<i>Printed Name</i>	<i>Title</i>	<i>Date</i>

Name and address to return filed document:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, and Zip Code: \_\_\_\_\_

State of Missouri  
Amend/Restate - LLC/LP/LLP/LLLP 2 Page(s)

T0800801125  
LLC- 14 (01/05)

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "HERITAGE COAL COMPANY LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FOURTH DAY OF JANUARY, A.D. 2008.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



0654720 8300

080013838

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6287528

DATE: 01-04-08

# State of Missouri



Robin Carnahan  
Secretary of State

## CERTIFICATE OF AMENDMENT

I, Robin Carnahan, Secretary of State of the State of Missouri, of do hereby certify that

*HERITAGE COAL COMPANY LLC*  
*FL0710761*

Formerly

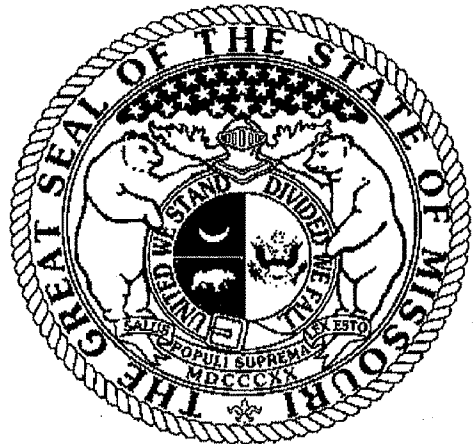
*PEABODY COAL COMPANY LLC*

an entity organized under the laws of the State of Delaware, has delivered to me and that I have filed its Certificate of Amendment of its Articles of Organization; that said entity has in all respects complied with the requirements of law governing the Amendment of Articles of Organization and the said Articles are amended in accordance therewith.

IN TESTIMONY WHEREOF, I hereunto  
set my hand and cause to be affixed the  
GREAT SEAL of the State of Missouri.  
Done at the City of Jefferson, this  
8th day of January, 2008.

*Robin Carnahan*

Secretary of State



Jonathan L. Flaxer, Esq.  
GOLENBOCK EISEMAN ASSOR BELL & PESKOE LLP  
437 Madison Avenue  
New York, New York 10022  
(212) 907-7300

**Hearing Date and Time:**  
**September 11, 2012 at 1:30 p.m.**

**Objection Deadline:**  
**September 7, 2012 at 5:00 p.m.**

-and-

Robert G. Harken, Esq.  
LAW OFFICES OF GEORGE A. BARTON, P.C.  
4435 Main Street, Suite 920  
One Main Plaza  
Kansas City, Missouri 64111  
(816) 300-6250

*Attorneys for Creditors Patricia Willits, William G. Parrott, Jr.,  
and Donald Petrie, Trustee for the PPW Royalty Trust*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
In re	:	Chapter 11
	:	
PATROIT COAL CORPORATION, <i>et al.</i> ,	:	Case No. 12-12900 (SCC)
	:	
Debtors.	:	Jointly Administrated
	:	
-----X	:	

**NOTICE OF MOTION FOR RELIEF FROM AUTOMATIC STAY**

**PLEASE TAKE NOTICE** that a hearing (the “**Hearing**”) shall be held before the Honorable Shelley C. Chapman, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), Courtroom 610, One Bowling Green, New York, New York 10004, on **September 11, 2012 at 1:30 p.m.**, or as soon thereafter as counsel may be heard, to consider the Motion of Patricia Willits, William G. Parrott, Jr., and Don Petrie, Trustee for the PPW Royalty Trust (collectively, “**Movants**”) for Relief from the Automatic Stay, dated August 13, 2012 (the “**Motion**”).

**PLEASE TAKE FURTHER NOTICE** that any reply or opposition to the relief requested in the Motion must be (a) filed in conformity with the Order Establishing Certain Notice, Case Management and Administrative Procedures entered on July 16, 2012 [ECF No. 84] (the “**Case Management Order**”), (b) filed no later than **5:00 p.m. on September 7, 2012** with the Bankruptcy Court (along with one copy marked “Chambers Copy” delivered directly to Judge Chapman’s chambers), and (c) served on the following parties: (i) Golenbock Eiseman Assor Bell & Peskoe LLP, 437 Madison Avenue, New York, New York 10022 (Attn: Jonathan L. Flaxer), (ii) Law Offices of George A. Barton, P.C., 4435 Main Street, Suite 920, One Main Plaza, Kansas City, Missouri 64111 (Attn: Robert G. Harken); (iii) the Office of the United States Trustee, 33 Whitehall Street, Suite 2100, New York, New York 10004 (Attn: Elisabetta G. Gasparini & Paul K. Schwartzberg,), (iv) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 (Attn: Marshall S. Huebner and Elliot Moskowitz) , (v) Curti, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, New York 10178 (Attn: Steven J. Reisman and Michael A. Cohen), (vi) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036 (Attn: Adam C. Rogorff and Gregory G. Plotko), (vii) Patriot Coal Corporation, c/o GCG, Inc., P.O. Box 9898, Dublin, OH 43017-5798, (viii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Marcia Goldstein and Joseph Smolinsky), and (ix) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Margot B. Schonholtz and Ana Alfonso), so as to be received no later than **September 7, 2012 at 5:00 p.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that, the Hearing may be adjourned from time to time without further notice to any party in interest other than the announcement of the adjourned date(s) in open court on the date of the Hearing or at any adjourned date thereof.

Dated: New York, New York  
August 13, 2012

Respectfully submitted,  
GOLENBOCK EISEMAN ASSOR BELL  
& PESKOE LLP  
437 Madison Avenue  
New York, New York 10022  
(212) 907-7300

By /s/ Jonathan L. Flaxer  
Jonathan L. Flaxer, Esq.

*Attorney for Creditors Patricia Willits, William G.  
Parrott, Jr., and Donald Petrie, Trustee for the PPW  
Royalty Trust*