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BY HAND DELIVERY AND ECF

The Honorable Kathy A. Surratt-States
United States Bankruptcy Court
for the Eastern District of Missouri
Thomas F. Eagleton U.S. Courthouse
111 S. 10th Street
St. Louis, Missouri 63102

Re: *In re Patriot Coal Corp., et al.*, Case No. 12-51502-659 (jointly administered)

Dear Judge Surratt-States:

Together with Goldstein & Pressman, P.C., I represent Aurelius Capital Management, LP ("**Aurelius**"), and Knighthead Capital Management, LLC ("**Knighthead**") (collectively, the "**Noteholders**"), solely on behalf of certain funds and accounts they manage or advise, in the above-referenced action. Aurelius and Knighthead manage or advise funds and accounts that, collectively, are the largest creditors of most of the Debtors in this case.[1]

The Noteholders write to object to the Debtors' proposal, embodied in their letters to the Court of March 28, 2013, and April 1, 2013, to deny the Noteholders the right to participate in the hearing on the Debtors' motion under Sections 1113 and 1114 (the "**Termination Motion**"). As we explain below, participation by the Noteholders is essential because the Termination Motion severely prejudices the Noteholders, and no other party—including the Official Committee of Unsecured Creditors ("**UCC**")—is capable of representing the Noteholders' interests. Indeed, the other parties oppose those interests.

[1] Funds and accounts managed by Aurelius and Knighthead are the beneficial owners of a majority of Patriot's 8.25% guaranteed notes, and entities managed or advised by Aurelius alone own a substantial amount of Patriot's 3.25% convertible notes. In fact, with respect to fifteen of the Debtors, holders of the 8.25% guaranteed notes are the only unsecured creditors of those entities, and in the case of seventy-nine of the ninety-nine Debtors, holders of the 8.25% notes constitute a majority of the unsecured claims of those entities.

It is critical to understand that the Termination Motion does not merely seek to abrogate the existing collective-bargaining and retiree-benefit agreements to which a handful of Debtors (the "**Obligor Debtors**") are parties. Instead, the Termination Motion also asks the Court to implement a replacement proposal that would create an entirely new liability that runs against the assets of not only the Obligor Debtors, but also the other eighty-six Debtors, including Patriot itself, that presently owe *no liability to union employees or retirees* (the "**Non-Obligor Debtors**"). In other words, the Debtors seek to impose on the Non-Obligor Debtors a brand new liability—whose face amount they value at $1 billion—while providing the Non-Obligor Debtors with *no value in return*. What is more, the Debtors further propose to siphon profits from the Non-Obligor Debtors to help pay for that liability.[2]

Needless to say, approving the Termination Motion will severely prejudice the Noteholders, which hold large claims against the Non-Obligor Debtors. If the Termination Motion is approved, the Noteholders will have to compete with an additional one-billion dollars' worth of claims, thereby significantly diluting their recoveries. In light of this prejudice, the Noteholders are clearly "interested parties" under Sections 1113 and 1114 and have a statutory right to participate in the proceedings. Indeed, the Noteholders respectfully submit that approving the Termination Motion without allowing them to participate would deny the Noteholders due process and effect an unconstitutional taking of their property.

The Noteholders appreciate the need to place reasonable limits on the upcoming proceeding. But allowing the Noteholders to participate is consistent with that need. The Noteholders seek to have their voice heard only on matters directly affecting their interests, such as the blatant impropriety of imposing a new, massive liability on the Non-Obligor Debtors without providing them any value in return and without any authority under the Bankruptcy Code. The Noteholders will thus address discrete issues, and their presentation of evidence (if any) will not overlap with other parties'. More basically, there is no need for the Court to prejudge the issue now and conclude, prior to the hearing, that the Noteholders should not be allowed to participate. Rather, the Court should allow the Noteholders to submit a brief, participate in discovery, and, depending on the testimony adduced in discovery and at the hearing, allow the Noteholders to participate at the hearing and present argument to the Court.

The Debtors, whose Termination Motion is precisely what creates the need for the Noteholders to participate, nonetheless assert that the Noteholders should be barred from participating in every respect—even from submitting a brief. That extraordinary position rests on two arguments, both of which fail. The first is that the UCC adequately represents the interests of unsecured creditors like the Noteholders. In this case, though, the UCC suffers from an inherent and profound conflict of interest. Its two major constituencies have diametrically opposed interests: The United Mine Workers of America (the "**UMWA**"), as an unsecured creditor of the Obligor Debtors, would gladly gain access to the substantial assets of the Non-Obligor Debtors, while the Noteholders fervently oppose that result. It is thus structurally impossible for the UCC to take a position favoring one side without harming the interests of the other. In contrast, the Noteholders, alone, are able to advance their viewpoints untainted by

[2] We discuss these issues in greater detail in our pending motion to appoint a Chapter 11 trustee to control the estates of the Non-Obligor Debtors. *See* Dkt. 3423 at 5-10.

conflicts of interest. The Court would clearly benefit from hearing this viewpoint before plan confirmation—a viewpoint that, again, none of the other parties can provide.

The Debtors' second argument is that the Noteholders cannot participate because they are not "interested parties." But as explained above, they clearly are under any reasonable interpretation of that term. The Debtors resort to out-of-circuit authority, see *In re UAL Corp.*, 408 F.3d 847 (7th Cir. 2005), but that case provides them no support. Even assuming *arguendo* the decision is persuasive,[3] it is clearly inapposite for at least two reasons. First, in *UAL*, the debtors sought only to modify, under Section 1113, their existing bilateral contracts with unions. *See In re UAL Corporation, et al.*, No. 02-48181 at Dkt. 1764-1 (Bankr. N. D. Ill. March 17, 2003) (UAL's Motion To Reject Collective Bargaining Agreements Pursuant To Section 1113(c)). The *UAL* debtors did *not* seek to impose direct *new* obligations on third parties to those contracts, as the Debtors have done here with respect to the Non-Obligor Debtors.

The *UAL* court made clear that this distinction is key. Indeed, the court explained that the rationale for its holding was that "[t]here is no reason to include in the § 1113 proceeding any person or entity whose consent would be unnecessary to a voluntary change in the agreement." 408 F.3d at 851. But the Non-Obligor Debtors' consent would clearly be needed to effect the changes proposed by the Debtors here.[4]

Moreover, in voicing a concern that "including any person with a financial stake in the employer's performance of the collective bargaining agreement * * * would make § 1113 proceedings unmanageable," it is clear that the Seventh Circuit's focus was on the needless costs of participation by "every employee *individually*"—parties whose interests *were already being spoken for* by their own duly-appointed representatives, *i.e.*, their union. *UAL*, 408 F.3d at 851 (emphasis in original). Opinions citing *UAL* have similarly understood the decision's limited application to that context. *See, e.g.*, *In re AMR Corp.*, 477 B.R. 384, 452 (Bankr. S.D.N.Y. 2012) ("By granting separate groups within a union the right to pursue their own objections to a Section 1113 application, a court would open up a Section 1113 proceeding to all the inconsistent views of members of the same union on these whole host of issues."). But here, if the Debtors have their way, *no one* will speak for the interests of the Noteholders, even though the Noteholders are together the largest creditors of the majority of Debtors in these cases, and the Debtors' Termination Motion will severely prejudice their rights.

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[3] No court within the Eighth Circuit has ever adopted *UAL*'s reasoning, and this Court should not be the first. The *UAL* court held that the term "interested parties" in Section 1113(d) has a very different and much more limited meaning than the term "party in interest" has in Section 1109(b). *Id.* at 851. There is no reason to invest such substantially similar language with such radically different meanings.

[4] As we explain in our pending motion to appoint a Chapter 11 trustee, the Non-Obligor Debtors could not actually give that consent without breaching their fiduciary duties to their own creditors, my clients foremost amongst them. *See* Dkt. 3423 at 14-21.

Simply put, since it is impossible to imagine that the Debtors will forego their efforts to burden the Non-Obligor Debtors with the costs of union benefits—benefits for which the Non-Obligor Debtors presently have *no* responsibility—the creditors of those Non-Obligor Debtors are obviously "interested parties" in the upcoming proceedings and must be permitted to participate in them. Accordingly, consistent with my clients' statutory right, we wish to be heard to oppose the current proposals to shift the burden of the retiree plans to the Non-Obligor Debtors, which already owe obligations to my clients but not to the UMWA or the retirees.

Sincerely,

/s/ Lawrence S. Robbins

Lawrence S. Robbins