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

In re: **PATRIOT COAL CORPORATION, *et al.*,** **Debtors.**[1]	**Chapter 11** **Case No. 12-51502-659** **(Jointly Administered)** **Hearing Date:** **April 23, 2013 at 10:00 a.m.** **(prevailing Central Time)** **Hearing Location:** **Courtroom 7 North** **Re: ECF No. 3423**

DEBTORS' OBJECTION TO THE MOTION OF AURELIUS CAPITAL MANAGEMENT, LP AND KNIGHTHEAD CAPITAL MANAGEMENT, LLC FOR ENTRY OF AN ORDER, PURSUANT TO 11 U.S.C. §§ 105(a) AND 1104(a) DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE

Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, "**Patriot**" or the "**Debtors**") respectfully submit this objection to the Motion of Aurelius Capital Management, LP, and Knighthead Capital Management, LLC, (collectively, the "**Noteholders**")[2] for Entry of an Order, Pursuant to 11 U.S.C. §§ 105(a) and 1104(a) Directing the Appointment of a Chapter 11 Trustee [ECF No. 3423] (the "**Trustee Motion**").

[1] The Debtors are the entities listed on Schedule 1 attached hereto. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

[2] As set forth in the Debtors' Motion, *inter alia*, to compel the Noteholders and their counsel to comply with Bankruptcy Rule 2019, filed contemporaneously herewith, the Noteholders have inexplicably failed to provide the disclosures required by Federal Rule of Bankruptcy Procedure 2019, and should not be heard on the Trustee Motion or any other relief they might seek from the Bankruptcy Court unless and until they comply.

PRELIMINARY STATEMENT

1. The appointment of a chapter 11 trustee to administer the Non-Obligor Debtors'[3] chapter 11 cases would be so destructive to those estates that it is difficult to believe that the two Noteholders actually desire the unprecedented relief that they request. For very good reason, the Debtors believe that this request will be opposed by every other party in the case to weigh in on the issue, including the Official Committee of Unsecured Creditors (the "**Creditors' Committee**") and the United Mine Workers of America (the "**UMWA**"). As an initial matter, the appointment of a trustee would constitute an event of default under the Debtors' post-petition loan agreements, triggering the lenders' rights to refuse further funding of the Debtors' operations, accelerate the Debtors' obligations to repay the loans in full under the agreements and exercise remedies against virtually all of the Debtors and their assets. Ironically, the Noteholders point to a potential financial covenant default down the road as a reason *for* appointing a trustee, without acknowledging that the relief they request would ensure and greatly accelerate the crisis they allegedly want to avoid. Furthermore, a separation of the Debtors' interdependent subsidiaries according to which legal entities have direct obligations to the UMWA and which do not, including the separate emergences from chapter 11 that the Noteholders purportedly desire, would be utterly impracticable and severely damaging to the Debtors' business operations, resulting in value degradation for *all* of the Debtors' stakeholders.

2. The Trustee Motion relies solely on rhetoric, and is completely devoid of any factual or legal support for the Noteholders' baseless allegations. Indeed, though extraordinary relief is requested, no evidence of any kind is offered in support of it. The motion is premised on

[3] The terms "Obligor Debtors" and "Non-Obligor Debtors" are used herein with the conceptual meaning ascribed to them in the Trustee Motion, but the Debtors do not hereby concede or adopt the Noteholders' analysis of which Debtors are signatories to the collective bargaining and retiree healthcare agreements referred to in the Trustee Motion. There are, in fact, only 10 Obligor Debtors, not the 13 alleged by the Noteholders.

a single alleged infirmity in the Debtors' Third 1113 Proposal, submitted to the UMWA on February 19, 2013, and the Fourth 1114 Proposal, submitted to the UMWA on February 27, 2013, (together, the "**Prior Proposal**") and described in the Memorandum of Law in Support of the Debtors' Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 [ECF. No. 3219] (the "**1113/1114 Motion**"). The Noteholders argue that the Prior Proposal, by providing that the VEBA[4] would be funded by an unsecured claim against "the Debtors' estate," implies that the VEBA would have claims assertable against each and every Debtor on the same joint and several basis as the Noteholders' claims. This unsupported assertion is both wrong and no longer relevant.

3. Since the filing of the 1113/1114 Motion, negotiations with the UMWA, as well as discussions with the Creditors' Committee, culminated in the Debtors making a revised proposal to the UMWA on April 10, 2013 (the "**Current Proposal**").[5] The Current Proposal was made publicly available and received by the Noteholders on April 11, 2013. The Debtors have simplified their proposal to eliminate the UMWA's claims altogether. In lieu of any claims, the Current Proposal provides that the VEBA would be funded with, *inter alia*, a fixed percentage (35%) of future equity of Reorganized Patriot, a construct that has been used successfully in a number of prior reorganizations.[6]

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[4] The "**VEBA**" is a Voluntary Employee Beneficiary Association trust that will be established to provide meaningful health benefits to the Debtors' unionized retirees. *See* 1113/1114 Motion, at 5-6, 51-56. Under the Current Proposal, the VEBA will be funded by a $15 million cash payment, a direct 35% equity stake in the reorganized Patriot ("**Reorganized Patriot**"), a profit-sharing contribution, royalty contributions and recovery from litigation against third parties.

[5] Available at http://www.patriotcaseinfo.com/docs.php.

[6] *See e.g.*, *In re Gen. Motors Corp.*, Case No. 09-50026 (REG) (Bankr. S.D.N.Y. July 5, 2009) (union VEBA partially funded through 17.5% equity stake in reorganized company); *In re Old Carco LLC*, Case No. 09-50002 (AJG) (Bankr. S.D.N.Y. April 23, 2010) (pre-bankruptcy union VEBA given 55% equity stake in reorganized company); *In re AMR Corp., Case No. 11-15463* (SHL) (Bankr. S.D.N.Y. Dec. 19, 2012) (pilots' union received a 13.5% of the equity of the reorganized entity issued to holders of allowed prepetition general unsecured claims).

4. Notwithstanding the Current Proposal, the Noteholders have refused to withdraw the Trustee Motion. Presumably they will argue, as they have in their 1113/1114 Objection, that 35% of the equity of Reorganized Patriot might be too generous an offer to the UMWA and represents value that should instead be given to the Noteholders,[7] or that the Obligor Debtors might, in the future, need to rely on funding from their affiliates to make potential profit sharing payments and royalty contributions that are calculated by reference to the success of Reorganized Patriot as a whole.[8] If those are their arguments, the Noteholders will have their day in court (subject to their compliance with Bankruptcy Rule 2019), and the appointment of a trustee is unnecessary to protect the Noteholders' interests.[9] The Noteholders requested, and were granted, this Court's permission to participate in the 1113/1114 Hearing. Any objection the Noteholders have to the Proposals can and should be voiced in connection with that hearing.

5. It is well established in this Circuit and others that the appointment of a chapter 11 trustee is an extraordinary and exceedingly rare remedy, and the Noteholders have fallen far short of meeting their burden. In fact, the Noteholders were unable to point to a single case—ever, anywhere—where a trustee was appointed for reasons similar to those they assert. To the extent that conflicts among the stakeholders of the various Debtors do exist, "the means established to resolve them should be the least destructive available. And neither the interests of a debtor's creditor body, nor the integrity of the bankruptcy system, can tolerate the use of [trustee] motions like these as a tactic to assist creditor groups wishing to augment their personal

[7] *See, e.g.*, Noteholders' Objection to Motion to Reject Collective-Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113 and 1114 [ECF No. 3608] (the "**1113/1114 Objection**"), ¶¶ 9-10.

[8] *See, id.* at ¶¶ 11-12.

[9] *See* Order Regarding the Debtors' Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 of the Bankruptcy Code [ECF No. 3543].

recoveries." *In re Adelphia Commc'n Corp.*, 336 B.R. 610, 620 (Bankr. S.D.N.Y. 2006), aff'd 342 B.R. 122 (S.D.N.Y. 2006). This aggressive litigation tactic by two bondholders threatens all creditors, including the approximately 21,000 employees, retirees and dependents whose livelihoods and well-being depend on Patriot reorganizing successfully.

6. The Debtors' management team has been faithfully executing their fiduciary duties to all stakeholders throughout these cases, working tirelessly to maximize the value of these estates for the benefit of all stakeholders. Tellingly, no other stakeholder—even those who have clashed with the Debtors on other issues—have expressed support for the Trustee Motion. The appointment of a trustee is entirely unwarranted, and the Trustee Motion should be denied.

ARGUMENT

I. The Trustee Motion Is Inadequate as a Matter of Law

A. The Noteholders Have Not Met, and Cannot Meet, Their Statutory Burden

7. It is black letter law that appointment of a chapter 11 trustee under either section 1104(a)(1) or (a)(2) of title 11 of the United States Code (the "**Bankruptcy Code**") is an "extraordinary remedy." *See In re Keeley and Grabanski Land P'ship*, 455 B.R. 153, 162 (B.A.P. 8th Cir. 2011); *In re Veblen West Dairy LLP*, 434 B.R. 550, 553 (Bankr. D. S.D. 2010), *In re Ag Serv. Ctrs., L.C.*, 239 B.R. 545, 550 (Bankr. W.D. Mo. 1999) ("As previously noted, [appointment of a trustee] is an extraordinary measure, so it must not be undertaken lightly"); *see also In re Celeritas Technologies, LLC,* 446 B.R. 514, 518 (Bankr. D. Kan. 2011); *Adams v. Marwil (In re Bayou Group, LLC)*, 5643 F.3d 541, 546 (2d Cir. 2009). It is equally well established that "there is a strong presumption in favor of allowing a chapter 11 debtor-in-possession to remain in possession." *Keeley*, 455 B.R. at 162 (citing *Veblen*, 434 B.R. at 553 (citing *In re Bayou Group, LLC*, 564 F.3d at 546)); *see also Ag Serv. Ctrs.*, 239 B.R. at 550.

This is because, among other reasons, "[t]he presumption in chapter 11 cases is that 'current management' is generally best suited to orchestrate the process of rehabilitation for the benefit of creditors and other interests of the estate." *Ag Serv. Ctrs.*, 239 B.R. at 550 (quoting *Petit v. New England Mtg. Servs. Inc. (In re Petit)*, 182 B.R. 64, 68-69 (D. Me. 1995); *see also In re Marvel Entm't Grp.*, 140 F.3d, 463, 471 (3d Cir. 1998) ("The basis for the strong presumption against appointing an outside trustee is that there is often no need for one.").

8. For this reason, courts are unanimous that "the standard for § 1104 appointment is very high." *Adelphia*, 336 B.R. at 655; *accord Keeley*, 434 B.R. at 162. As the party seeking appointment of a trustee, the Noteholders bear the burden of showing by a preponderance of the evidence why the Debtors' current management should be replaced by a trustee. *Keeley*, 434 B.R. at 162-63. The Trustee Motion does not contain any evidence at all to support the request for the appointment of a trustee, and there can be no serious dispute the Noteholders have not met and cannot meet their burden.

9. The Noteholders have moved under both sections 1104(a)(1) and 1104(a)(2) and have not satisfied the standards for appointment of a trustee under either. Section 1104(a)(1) provides that the court shall appoint a trustee upon "cause, including, fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management."[10] Courts have identified a number of indicia of "cause" for the purposes of section 1104(a)(1), all of which, to the extent applicable, weigh against appointing a trustee in these cases. Such factors include:

a. the materiality of any misconduct;

[10] 11 U.S.C. 1104(a)(1). As observed by Judge Robert Gerber in the *Adelphia* chapter 11 case in the United States Bankruptcy Court for the Southern District of New York, "[w]hile the words following 'including' do not, by definition, represent the only bases for a finding of cause, words are nevertheless known by the company they keep." 336 B.R. at 656.

b. the debtor-in-possession's evenhandedness or lack thereof in dealings with insiders and affiliated entities in relation to other creditors;

c. the existence of pre-petition voidable preferences or fraudulent conveyances (to management or other insiders);

d. whether any conflicts of interest on the part of the debtor-in-possession are interfering with its ability to fulfill its fiduciary duties; and

e. whether there has been self-dealing or squandering of estate assets.

Veblen, 434 B.R. at 553 (collecting cases). *None* of these indicia is present in these cases.

10. Similarly, courts have developed factors for considering the appointment of a trustee pursuant to section 1104(a)(2),[11] including:

a. the trustworthiness of the debtor;

b. the debtor's past and present performance and prospects for the debtor's reorganization;

c. confidence, or lack thereof, of the business community and creditors in present management; and

d. the benefits derived by appointment of a trustee, balanced against the costs of appointment.

Keeley, 455 B.R. at 164-65. Tellingly, the Noteholders do not discuss these factors on any meaningful level, and for good reason: as with section 1104(a)(1), these factors are either inapplicable to the case at bar or militate against appointment of a trustee.

B. An Alleged Interdebtor Conflict, Even if Present, Is Insufficient to Warrant the Appointment of a Trustee

11. The Noteholders have not alleged any fraud, dishonesty, misconduct, improper dealings or the like. Rather, the Noteholders rely exclusively on the purported interdebtor and intercreditor conflict presented by their perception of the possibility of using value from the Non-

[11] 11 U.S.C. 1104(a)(2) provides, in relevant part, for the appointment of a trustee "if such appointment is in the interests of creditors . . . and other interests of the estate".

Obligor Debtors to fund the VEBA. Even assuming, *arguendo*, that the Noteholders' concern is valid (and it is not), interdebtor issues and conflicts are a routine part of multi-debtor cases and, without more, fall far short of satisfying the standards of either section 1104(a)(1) or 1104(a)(2). In fact, the Noteholders have not presented a single case that suggests that the existence of differing interests among jointly administered debtors satisfies either of these statutory requirements. Nor can they, as interdebtor and intercreditor conflicts are commonplace in large, multi-debtor chapter 11 cases, and courts have repeatedly held that the mere existence of such conflicts does not itself overcome the very strong presumption in favor of the debtor-in-possession continuing to administer the estates.[12] Indeed, courts have affirmatively stated that debtors-in-possession can and do faithfully fulfill their role of fiduciary in multi-debtor cases.[13] The only ground urged on this Court—the alleged interdebtor conflict—has been considered by numerous courts and rejected as insufficient to warrant the appointment of a trustee.

12. For example, Judge Gerber denied the request for the appointment of a trustee in a large, multi-debtor case on account of alleged interdebtor disputes in *Adelphia*. Acknowledging the existence of conflicts of interest between the debtor constituencies, Judge Gerber held that the appointment of a trustee would not be in the best interests of any of the debtors. Rejecting the moving noteholders' appeal to section 1104(a)(1), Judge Gerber held that "[i]nterdebtor disputes do not by themselves evidence (much less establish) fraud or mismanagement, or

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[12] As discussed below, the only large, multi-debtor case cited by the Noteholders in which a chapter 11 trustee was appointed, *Marvel*, was marked by egregious self-dealing, not merely by questions as to the business judgment of the debtor-in-possession in its stewardship of the estates.

[13] *See, e.g.*, *Adelphia*, 336 B.R. at 619 ("the existence of interdebtor disputes, even material ones, is not by itself cause for the appointment of a trustee."), *Marvel*, 140 F.3d at 473 ("We expressly hold that there is no per se rule by which mere conflicts or acrimony between debtor and creditor mandate the appointment of a trustee.") (adopting the reasoning of *Cajun Elec. Power Coop., Inc. v. Centr. La Elec. Coop., Inc. (In Matter of Cajun Elec. Power Coop.)*, 74 F.3d 599, 600 (5th Cir. 1996), *cert. denied*, *In re Cajun Elec. Power Coop., Inc.*, 519 U.S. 808 (1996) (disavowing *per se* rule in the context of interdebtor acrimony among utility members of a power cooperative).

misconduct of the type that constitutes cause under section 1104(a)(1)." *Adelphia*, 336 B.R. at 657. In considering whether the court should exercise its discretionary power to appoint a trustee under section 1104(a)(2), Judge Gerber explained that the Court should "engage[] in a fact-driven analysis, principally balancing the advantages and disadvantages of taking such a step, and mindful of the many cases, noted above, that have held that appointment of a trustee is an extraordinary remedy, and should be the exception, rather than the rule." *Adelphia*, 336 B.R. at 658.

13. As part of this analysis, Judge Gerber considered a number of factors that militated against the appointment of a trustee, including, among others, (i) the fact that the debtors were trustworthy, (ii) the debtors had shown satisfactory performance and their rehabilitation (if not disrupted by the motions to appoint a trustee) was strongly likely, (iii) those "lacking axes to grind" (such as the Creditors' Committee appointed in those cases) had voiced no dissatisfaction or lack of confidence with the debtors' management, (iv) the appointment of a trustee would constitute an event of default under the debtors' postpetition credit facility and (v) the "grave uncertainty" as to the length of time it would take to educate the trustee on the debtors' operation issues, particularly if the debtors were "to be run, in whole or in part, independently." *Adelphia*, 336 B.R. at 658-60.

14. Judge Gerber further observed that:

> [The Adelphia cases] are operationally complex, factually complex, and legally complex, and matters in these cases that involve several debtors or silos are exceedingly common. The Balkanization of the decision making in this case would be highly damaging to all of the debtors, and their creditors, and the Arahova Debtors [the disputed debtors] and their creditors would be no exception. The need for fiduciaries for individual estates to confer with each other, and often to act jointly, vis-a-vis individual estates on their watch, would be extraordinarily difficult. It would add a layer of delay, potential confusion, and error to corporate decision making that would be a daily element of these chapter 11 cases.

Adelphia, 336 B.R. at 640.

15. Similarly, in another large and complex chapter 11 case, *WorldCom*, Judge Arthur Gonzalez of the United States Bankruptcy Court for the Southern District of New York considered a motion of the creditors of one of the subsidiary debtors (the "**MCI Debtors**") to appoint a chapter 11 trustee where the moving creditors disagreed with the debtors' conclusions regarding substantive consolidation and intercompany claims. Case No. 02-13533 (AJG), 2003 Bankr. LEXIS 2192 (Bankr. S.D.N.Y. 2003). Judge Gonzalez held that "this disagreement is not the basis for the appointment of a trustee where it appears the Debtors have appropriately discharged their fiduciary duty in evaluating and analyzing these issues and have reached an informed conclusion." *WorldCom*, 2003 Bankr. LEXIS 2192, at *25–26. Judge Gonzalez further considered that (i) the appointment of a chapter 11 trustee was unnecessary to ensure that the Movants would continue to receive accurate information from the debtors and the debtors' disclosure had been sufficient, (ii) the debtors had worked diligently with the creditor constituencies and were trustworthy, (iii) the debtors had made progress with respect to their business plan and expanding customer bases, (iv) the appointment of a trustee would constitute an event of default under the debtors' postpetition credit facility and (v) the appointment of a trustee would reduce, not enhance, creditor and customer confidence in the debtors and their businesses. *WorldCom*, 2003 Bankr. LEXIS 2192 at *32, 37. Judge Gonzalez further commented that:

> The appointment of a trustee would be very costly to the Debtors and their estates, with no apparent benefit. Given the size and complexity of the Debtors and their operations, the delay and expense that would be caused by the trustee's (and new professionals') need to learn about the Debtors' assets, liabilities, businesses, and chapter 11 cases would be substantial and would likely seriously and adversely affect the prospects of rehabilitation.

WorldCom, 2003 Bankr. LEXIS 2192, at *38.

16. The relevant considerations from *Adelphia* and *WorldCom* (both of which involved fraud and criminal conduct and *still* did not justify a trustee) are equally applicable here (where no such facts have been or ever will be alleged) and strongly weigh against the appointment of a chapter 11 trustee.

C. The Relief Sought by the Noteholders Would Be Unprecedented and Unwarranted

a. No Trustee Has Ever Been Appointed in a Comparable Case Absent Fraud, Bad Faith or Extreme Acrimony

17. The only case comparable in size and complexity to these cases that was cited by the Noteholders is *In re Marvel Entertainment Group, Inc.*, 140 F.3d 463 (3d Cir. 1998), the facts of which bear no resemblance to these cases. In *Marvel*, the controlling shareholder of the debtor-in-possession was also a very substantial creditor who allegedly used his dual positions to propose settlements that favored his own interests as a creditor at the expense of the other creditors, in particular one other major creditor and the group of lenders who had supported that creditor earlier in the case.[14] *Id.* at 467-68. The *Marvel* court found that appointment of a trustee was warranted because, based on the extreme acrimony between these two major creditors, "there [was] no reasonable likelihood of any cooperation between the parties," *id.* at 473, as evidenced by "(1) the debtor-in-possession's institution of several adversary actions, (2) the unconsummated settlements, (3) the U.S. Trustee's opinion 'that the parties seem to be unable to reach a consensus' and (4) [the District Court's] observations that 'the Debtors and the Lenders have flung accusations at each other, and have failed to demonstrate any ability to resolve matters cooperatively.'" *Id.*

[14] The *Marvel* case was so unique and unprecedented that its story is memorialized in a popular book, *Comic Wars: Marvel's Battle for Survival*. *See* Daniel Raviv, COMIC WARS: MARVEL'S BATTLE FOR SURVIVAL (2002).

18. Although *Marvel* provides no support for the contention that a trustee should be appointed in this case, it is still instructive on the law. The *Marvel* court wisely noted the limitations of its own ruling and how extraordinary the relief granted was. *See, e.g.*, *Marvel*, 140 F.3d at 471 ("It is settled that appointment of a trustee should be the exception, rather than the rule.") (quoting *In re Sharon Steel Corp.*, 871 F.2d 1217, 1225 (3d Cir. 1989)). The case made clear that "all cooperatives operate amid certain inherent conflicts of interest" and rejected any *per se* rule that these inherent conflicts necessitate a trustee. *Id.* at 473 (adopting the reasoning of *Cajun Elec.*, 74 F.3d at 600); *accord Adelphia*, 336 B.R. at 619. Of course, the existence of some interdebtor conflicts is the *only* basis pressed by the Noteholders as grounds for appointment of a trustee, yet they have failed to plead the existence of any exacerbating circumstances that justify a trustee.

19. None of the other cases cited by the Noteholders in the Trustee Motion are analogous to the case at hand. In the cases relied on by the Noteholders, the applicable debtors failed to disclose material or required information,[15] were found to be abusing the bankruptcy process,[16] or engaged in self-dealing and gross mismanagement.[17] These cases do not support

[15] *See, e.g.*, *In re Celeritas Techs., LLC*, 446 B.R. 514, 518 (Bankr. D. Kan. 2011) (failure to disclose material information regarding improved finances); *In re V. Savino Oil & Heating Co., Inc.*, 99 B.R. 518 (Bankr. E.D.N.Y. 1989) (concealed material information from the court and creditors); *In re Nartron Corp.*, 330 B.R. 573, 593 (Bankr. W.D. Mich. 2005) (failure to fulfill chapter 11 disclosure obligations); *In re Oklahoma Ref. Co.*, 838 F.2d 1133 (10th Cir. 1988) (failed to file timely and complete monthly reports).

[16] *See, e.g.*, *Celeritas*, 446 B.R. at 518 (debtors were improperly attempting to use bankruptcy to keep their assets and evade their creditors); *In re Lowenschuss*, 171 F.3d 673, 685 (9th Cir. 1995) (debtor improperly evaded divorce decree by transferring assets out of the divorce jurisdiction and filing chapter 11); *In re Herbert E. Russell*, 60 B.R. 42, 47 (Bankr. W.D. Ark. 1985) (debtor fraudulently transferred assets to avoid creditor claims on the eve of bankruptcy).

[17] *See, e.g.*, *Savino Oil*, 99 B.R. 518 (management found to have violated its fiduciary duties to the debtor and failed to seek court approval for transactions outside the ordinary course of business in violation of section 363(b)); *In re Main Line Motors, Inc.*, 9 B.R. 782, 784 (Bankr. E.D. Pa. 1981) (gross mismanagement found where debtor transferred assets to non-debtor, unrelated companies owned by the president and sole shareholder of the debtor in transactions that fell "far short of any reasonable standard of business management"); *In re William H. Vaughan & Co.*, 40 B.R. 524 (Bankr. E.D. Pa. 1984) (debtor failed to commence avoidance proceedings to recover (….continued)

the Noteholders' argument that a trustee should be appointed here. Instead, they illustrate how egregious the Noteholders' request is.

b. <u>The Appointment of a Trustee Is Unwarranted</u>

20. The Noteholders have not even alleged—no less offered any proof of—the kind of fraud or self-dealing found in the cases cited in the Trustee Motion, and their allegation that the Debtors' management is intentionally harming the interests of the Non-Obligor Debtors is simply preposterous.[18] The Debtors' management has worked tirelessly to achieve the cost-savings and revenue increases necessary for a successful emergence from chapter 11.[19]

21. The Noteholders also allege that an excessive amount of time has elapsed in these proceedings, and thus a trustee should be appointed to speed-up certain of the Debtors' cases.[20] However, their argument fails in several respects. First, the length of time that has transpired is on par with typical restructurings of this size and complexity, and if anything, evidences the Debtors' commitment to acting prudently.[21]

(continued….)
preferential transfers to the debtor's president); *In re Humphrey's Pest Control Franchises, Inc.*, 40 B.R. 174, 176-177 (Bankr. E.D. Pa. 1984) (debtors failed to keep adequate books and records in connection with substantial transfers between debtors that represented a serious and unjustified depletion of one debtor); *In re Concord Coal Corp.*, 11 B.R. 552 (Bankr. S.D. W. Va. 1981) (appearance of self-dealing by debtor's president, whose other companies and family-owned companies stood to benefit from certain transactions); *In re Bellevue Place Assoc.*, 171 B.R. 615, 623 (Bankr. N.D. Ill. 1994) (debtor prohibited from participating in the reorganization process by pre-petition contract, resulting in the estate being under the total control of one secured creditor); *In re Sharon Steel Corp.*, 86. B.R. at 463(appointing trustee where there was conclusive evidence of self-dealing); *In re Intercat, Inc.*, 247 B.R. 911, 922-23 (Bankr. S.D. Ga. 2000) (debtor management grossly mismanaged the estate and engaged in self-dealing); *In re Burival*, 2009 WL 511134 *3 (Bankr. D. Neb. Feb. 26, 2009) (appointing trustee where debtor grossly mismanaged the estate).

[18] Trustee Motion ¶¶ 33-39.

[19] See Decl. of Bennett Hatfield, Exhibit A to the Debtors' Motion for Authority to Implement Compensation Plans [ECF No. 2819], ¶¶ 8-11, 25.

[20] *See, e.g.*, Trustee Motion ¶ 4.

[21] Specifically, there were 129 days between Debtors' July 9, 2012 petition date and the date on which their initial proposal was delivered to the UMWA. This is a shorter timeframe than that in other large-scale bankruptcies involving complex section 1113 negotiations. *See e.g.*, *In re Dana Corp.*, No. 06-10354 (BRL) (Bankr. S.D.N.Y.)
(….continued)

22. Moreover, the timing of these cases, does not remotely justify a trustee. In July 2012, the Debtors and their advisors developed a finalized, long-term forecast for the company's operations in connection with efforts to secure DIP financing (the "**July DIP Plan**"). The July DIP Plan updated the Debtors' prior pricing forecast based on the condition of coal markets and anticipated production schedule as of the summer of 2012. However, as a result of the severe downturn in the coal markets in the second half of 2012, Patriot and its advisors developed a more updated business plan in October 2012 (the "**Five-Year Business Plan**") that, among other things, reflected weaker price expectations for both thermal and metallurgical coal.[22] Consistent with the Debtors' obligations pursuant to sections 1113 and 1114, the Five-Year Business Plan reflected the most recent market developments and trends.

23. The Debtors' first proposal to the UMWA was promptly delivered in the month following the finalization of the updated Five-Year Business Plan. Over the course of the following four months, the Debtors negotiated diligently and in good faith with the UMWA, delivering four proposals, producing nearly 43,000 pages in response to the UMWA's requests, and, as of March 14, 2013, participating in twelve negotiation sessions, which amounted to nearly forty-five hours of formal negotiations.[23] The Debtors accomplished this while at the

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(continued….)

(279 days elapsed between the petition date and the date of initial section 1113 proposal); *In re Horsehead Indus., Inc.*, No. 02-14024 (SMB) (Bankr. S.D.N.Y.) (283-331 days elapsed between the petition date and the date of each initial section 1113 proposal); *In re Falcon Products, Inc.*, No. 05-41108 (BSS) (Bankr. E.D. Mo.) (177 days elapsed between the petition date and the date of initial section 1113 proposal); *In re Tower Automotive, Inc.*, No. 05-10578 (ALG) (Bankr. S.D.N.Y.) (257-266 days elapsed between the petition date and the date of each initial section 1113 proposal); *In re Horizon Natural Res. Co.*, No. 02-14261 (JMS) (Bankr. E.D. Ky.) (266-288 days elapsed between the petition date and the delivery dates of portions of the initial 1113 proposal).

[22] *See* Decl. of Paul F. Huffard in Support of the Debtors' Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 ("**Huffard Decl.**") [ECF No. 3224] ¶¶ 31-35.

[23] *See* Decl. of Gregory B. Robertson [ECF No. 3220] ¶¶ 191-92.

same time addressing the myriad issues unrelated to sections 1113 and 1114 that have occupied countless hours of the Debtors' management and advisors. It is quite clear from this that the Debtors have not "dallied," as the Noteholders have suggested.

24. Rather, it is the actions of the Noteholders—not the Debtors' management—that present the greatest risk of harm to the Debtors' estates. The Noteholders seemingly seek to derail the 1113/1114 process by interjecting a brand new trustee, which would inevitably delay the Debtors' efforts to achieve absolutely critical cost savings. Moreover, the Noteholders disingenuously suggest that the appointment of a trustee—and the resulting retention of an entirely new set of professionals and counsel—would be cost effective.[24] This is absurd. Rather, it would add significant soft and hard costs. The appointment of a trustee unfamiliar with the Debtors' businesses or these chapter 11 cases would result in grave delay and uncertainty. That is, assuming that the immediate DIP default did not send the Debtors into immediate chaotic liquidation.

25. As Judge Gerber noted in Adelphia:

> The paradigmatic example of outrageous conduct in this case is that of the Arahova Bondholders, in taking efforts to bring this whole case down, by filing a motion to appoint a chapter 11 trustee for Arahova—when that would result in a default under the DIP financing facility . . . Motions that would bring on intolerable consequences for an estate should not be used as a tactic to augment a particular constituency's recovery.

In re Adelphia Communications Corp., 441 B.R. 6, 20 (Bankr. S.D.N.Y. 2010).

[24] Trustee Motion ¶ 46.

II. The Appointment of a Trustee Would Destroy Value for the Creditors of All of the Debtors

A. Appointment of a Trustee Would Constitute a Default under the Debtors' Post-Petition Credit Agreement, and Would Threaten the Debtors' Access to Adequate Capital

26. The DIP Credit Agreements[25] expressly provide that the appointment of a trustee in any of the Debtors' chapter 11 cases constitutes an "Event of Default".[26] Such an Event of Default, would trigger the lenders' right to refuse further funding and to exercise remedies against virtually all of the Debtors.[27] In short, the Debtors' access to their critical financing would be in serious jeopardy, and they could face a crisis that would force them into immediate chapter 7 liquidation.[28]

27. It is ironic that the Noteholders support their request for a trustee by noting that the Debtors have disclosed that there is a substantial likelihood that in the third quarter of this

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[25] Meaning, collectively, the First Out DIP Credit Agreement and the Second Out DIP Credit Agreement, as those terms are defined in the Final Order (I) Authorizing Debtors (A) to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e), and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Pre-Petition Secured Lenders Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 [ECF No. 275].

[26] In pertinent part, section 9.01 of the First Out DIP Credit Agreement, provides "Any of the following shall constitute an Event of Default . . . (n) . . . (ii) a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, an examiner with enlarged power relating to the operation of the business (powers beyond those set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code) under 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases of the Debtors and the order appointing such trustee or examiner shall not be reversed or vacated within 30 days after the entry thereof." In addition, the definition of an "Event of Default" under section 8.01 of the Second Out DIP Credit Agreement incorporates section 9.01(n)(ii) of the First Out DIP Credit Agreement.

[27] All but one of the Debtors (a Non-Obligor Debtor) are jointly and severally liable for the obligations under the DIP Credit Agreements.

[28] The possibility of a default under post-petition financing agreements has been found relevant in analogous cases. *See, e.g., Adelphia*, 336 B.R. at 639 ("Appointment of a trustee will constitute an event of default under the $1.3 billion DIP Facility . . . . Such an event would materially impair all of the Adelphia Debtors' ability to operate their businesses on a day-to-day basis."); *WorldCom*, 2003 Bankr. LEXIS 2192, at *38 ('[The appointment of a trustee] would constitute an event of default under the Debtors' postpetition creditor facility [and, as a result] creditors and suppliers would be reluctant to provide the Debtors with trade credit, critical goods, and services, rendering the Debtors unable to properly serve their customers and without any ability to finance working capital requirements.")

year they may not be able to comply with a financial covenant in the DIP Credit Agreements and that a liquidation may result from the Debtors' failure to have access to their DIP financing facilities.[29] Yet the Noteholders fail to advise the Court that granting their motion would immediately cause this harm, and with far greater speed and certainty, than possible future noncompliance with a financial covenant.

28. It cannot seriously be argued that a potential future default is best dealt with by causing an immediate event of default. Moreover, the Noteholders are experienced distressed debt investors and are well aware that breaches of financial covenants, while not ideal, are not uncommon, and borrowers often reach an agreement with their lenders on amendments or waivers in order to avoid the occurrence of an event of default. By contrast, appointments of a trustee are *exceedingly* rare and would be so destructive to the Patriot enterprise, that it is irresponsible and reckless of the Noteholders to presume that the Debtors' lenders would continue unhindered access to financing following the appointment of a trustee.

B. Separation of the Obligor Debtors Would Be Destructive and Operationally Impracticable

29. The Noteholders argue that a "trustee would have taken the Non-Obligor Debtors out of bankruptcy months ago".[30] This unsupported claim is specious. The proposed separation of the Debtors would be disastrous for the creditors of all of the Debtors and would have accelerated nothing. In fact, both before and after the commencement of these chapter 11 cases, the Debtors and their advisors gave extensive consideration to plans that would divide the enterprise, and have concluded that such plans would be too inefficient, time consuming, costly and risky to be beneficial to the Debtors' stakeholders—including the creditors of the Non-

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[29] Trustee Motion ¶ 28.

[30] Trustee Motion ¶ 51.

Obligor Debtors. Specifically, because of potential joint and several liability shared among the Debtors, if the Non-Obligor Debtors were to attempt to emerge from chapter 11 independent of the Obligor Debtors, they could need assets sufficient to satisfy (a) all obligations under the DIP Credit Agreements, (b) a claim by the UMWA with respect to the 1974 Pension Plan and Trust, and (c) liabilities under the Coal Industry Retiree Health Benefits Act of 1992, in addition to other claims against their estates. These liabilities could amount to approximately $1 billion in claims against the Non-Obligor Debtors. The Noteholders have not offered any indication as to how the Non-Obligor Debtors alone could satisfy these potential liabilities.

30. Although each Debtor is a distinct legal entity, the Patriot companies rely on each other to operate, and benefit from numerous efficiencies and economies of scale achieved by being part of the Patriot family. In some instances, operations within Patriot's individual mining complexes are not contained within the legal entities and cross between Obligor and Non-Obligor Debtors. In fact, certain non-union operations are either completely dependent on union operations or would experience substantial disruptions from any attempt to separate the Non-Obligor Debtors. Mining coal is a complex undertaking from both an engineering standpoint and a business standpoint, and the enterprise cannot blithely be pulled apart along the legalistic lines of formal, corporate ownership without regard to the operational and logistical interdependency of the facilities and equipment on and in the ground.[31]

[31] By way of example, the Wells coal mining complex involves eight legal entities that are a mixture of Obligor Debtors and Non-Obligor Debtors. The miners at the Wells complex are a mix of both union and non-union miners, while the workers in the preparation plant, which is located next to the mine, are unionized. The integration of the mine and the plant is necessary for both businesses to be profitable; coal must be prepped to be marketable, and it is not cost-effective or practicable to ship the coal anywhere else to be prepped because of both the cost of transporting the coal and limitations to the processing capacity of the nearest non-union preparation plants. This one example illustrates the impracticalities of separating the enterprise as the Noteholders suggest.

31. There are also many positive effects to the enterprise being run as a cohesive business. The entire Patriot enterprise benefits materially from economies of scale in sales, accounting, legal and many other corporate and administrative functions such as operational oversight, safety, training and resource management. The Obligor Debtors and Non-Obligor Debtors also make use of a single cash management system, and any split of the two groups would require expensive and disruptive changes thereto. In addition, the Obligor Debtors and Non-Obligor Debtors alike benefit from blanket purchase agreements for necessities such as fuel, roof bolts and all the many other items needed to run and maintain a coal mining complex. For example, the Obligor Debtors and Non-Obligor Debtors both benefit from the same export contracts and transloading agreements, many of which contain minimum use thresholds. By selling a greater volume of coal, Patriot is able to agree to higher minimum use thresholds, securing better terms for its agreements (benefiting all entities) and reducing the risk that any of the Debtors will have to pay what amounts to a penalty for coal not shipped. Further, certain individual coal supply agreements must be fulfilled by blending coal between union and non-union operations. These contracts could not be fulfilled without coal from Patriot's union operations.

32. Moreover, the Debtors are linked to one another by applicable coal mining regulations. Federal and state mining laws condition the renewal of existing coal mining permits and the issuance of new permits on whether the surface coal mining operations owned or controlled by the permit applicant are in compliance with applicable legal requirements.[32] The permitting authority will consider not only the compliance history of the permit applicant itself,

[32] Section 510(c) of the federal Surface Mining Control and Reclamation Act ("**SMCRA**") provides that when "any surface coal mining operation owned or controlled by the applicant" is in violation of SMCRA, the permit shall not be issued. 30 U.S.C. § 1260(c); *see also* W. Va. Code § 22-3-18(c).

but also that of certain affiliates of the applicant. To the extent the Debtors are deemed to be under common ownership or control, an unabated violation by one might be used to deny a permit to another. In this way, the Debtors collectively rely on the continued compliance of the individual Debtors. If the Trustee's Motion is granted, it will disrupt the ability of the Debtors to coordinate their respective compliance and reclamation obligations and increase the likelihood that the Obligor Debtors or Non-Obligor Debtors could be denied future permits on account of the others' non-compliance.

III. The Trustee Motion Is No Longer Relevant in Light of the Current Proposal

A. The Current Proposal Cured the Alleged Deficiency in the Prior Proposal

33. As noted above, the Noteholders filed the Trustee Motion based on the Prior Proposal that the Debtors made to the UMWA. The Prior Proposal provided, among other things, that the VEBA would be funded by an "unsecured claim against the Debtors' estate," the value of which "may be substantial, potentially generating hundreds of millions of dollars in cash for the VEBA to the extent the claim is monetized."[33] The Noteholders—**mistakenly**—read this language to suggest that the Debtors proposed to "fund the VEBA with a $1 billion face value claim that runs against the assets of not only the Obligor Debtors, but also the Non-Obligor Debtors."[34] As support for this misguided contention, they cite to the use by the Debtors' advisors of the trading prices of Patriot's notes, both the 3.25% Notes that have claims only at the parent entity and the 8.25% Notes that have joint and several claims against each Patriot entity, as an indication of the "hundreds of millions of dollars" that may be generated by monetizing the VEBA's claims. However, the Noteholders either missed, or intentionally

[33] Huffard Decl. ¶ 67.

[34] Trustee Motion ¶ 36.

ignored, Mr. Huffard's clear statement that the "actual recoveries will depend on a large number of factors, including, but not limited to, . . . negotiations of an actual Plan of Reorganization among the various creditor groups of the Company resolving complex issues regarding the size, nature and effective priority of various claims, among other things."[35]

34. In any event, subsequent to the filing of the 1113/1114 Motion (and the Trustee Motion), the Debtors engaged in further negotiations with various creditors and with the UMWA, which resulted in the submission to the UMWA of the Current Proposal. The Current Proposal provides that the VEBA will be funded with a fixed percentage (35%) of the future equity of Reorganized Patriot, rather than unsecured claims against the estate of any particular Debtor.

35. The Noteholders also objected to the future contributions to the VEBA that are based on a sharing of the profits and revenues of the Patriot enterprise. This is literally frivolous. Employees of just about every large company are in some way or another compensated based on the success of the corporate enterprise as a whole rather than the success of the specific legal entity at which such employees are employed—either through profit sharing, cash bonuses and stock options or other forms of equity-based compensation. In fact, company-wide EBITDA metrics have long been a part of Patriot's annual incentive plan for many employees. Moreover, the enterprise-wide profits and revenues are merely the metric by which the cash payments are determined; *the obligations to contribute these amounts fall solely on the Obligor Debtors, and are not obligations of the Non-Obligor Debtors.*

B. Even Assuming, *Arguendo*, that the Current Proposal Provides Value to the VEBA from the Non-Obligor Debtors, that Would Be Entirely

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[35] Huffard Decl. ¶ 69.

Appropriate and Consistent with the Debtors' Fiduciary Duties

36. On April 11, 2013, the Debtors publicly filed and served the Current Proposal. On April 12, 2013, the Noteholders filed an objection to the 1113/1114 Motion. In their objection, they argue that the 35% equity stake is too generous to the UMWA.[36] The Debtors do not believe such arguments should succeed, but to the extent that the Noteholders press their 1113/1114 Objection, they will be heard at the 1113/1114 Hearing and this Court will determine whether (i) the UMWA is receiving more value than it would if it was awarded claims against the Obligor Debtors and (ii) even if it is, whether that is not permissible under the applicable sections of the Bankruptcy Code.[37] It would be wholly inappropriate for a trustee to be appointed, given the legal and factual determinations that this Court will be called upon to make in a trial commencing a mere six days after the hearing on the Trustee Motion.

37. Furthermore, the Noteholders allege that it is impermissible for the Debtors to take into account the interests of the Obligor Debtors when making decisions involving the Non-Obligor Debtors' property. While likely not relevant, that allegation is also not supported by the facts or the law. As discussed in detail in section II.B. above, the Non-Obligor Debtors would benefit substantially from a timely, successful (and ideally consensual) outcome of the 1113/1114 Motion, through the continued existence of Patriot and the ability to propose a confirmable joint chapter 11 plan for all of the Debtors. Failure to resolve the 1113/1114

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[36] *See, supra*, n. 7.

[37] Even if the Noteholders could show that the UMWA would not be entitled to 35% of the equity of Reorganized Patriot based on a plan of reorganization that strictly respects the separateness of the Debtors and all intercompany balances, the UMWA would likely be entitled to at least as much consideration as is being contributed to the VEBA under the Current Proposal in the event that the Debtors were to be substantively consolidated and/or the intercompany balances recharacterized as equity or otherwise disallowed, issues that are not yet (and may never be) before this Court.

Motion, on the other hand, will increase the risk of liquidation, which even the Noteholders admit is the worst possible outcome.

38. The Noteholders' claim that the Non-Obligor Debtors would receive nothing in return for contributing some value towards a successful resolution of the 1113/1114 Motion is far from reality.[38] Again, while this is likely irrelevant, the enterprise as a whole benefits from efficiencies, economies of scale, synergies between its constituent entities and from a web of existing internal and external and formal and informal relationships. These benefits would be diminished or destroyed by the Noteholders' proposal to rip the Debtors apart to try to pull some Debtors out of chapter 11 while leaving others behind to reorganize separately or liquidate. The overall success of the Patriot enterprise is, without question, in the best interests of all creditors.

39. Thus, by taking actions to facilitate the survival of the Patriot enterprise, the boards of directors or members, as applicable, of the Non-Obligor Debtors *are* exercising their fiduciary duties to *all* of the Debtors' stakeholders. *See*, *e.g.*, *In re Gen. Growth Prop., Inc.*, 409 B.R. 43, 63 (Bankr. S.D.N.Y. 2009) (holding in the context of denying a motion to dismiss some cases in a multi-debtor bankruptcy as filed in bad faith that a wholly-owned subsidiary board's judgment "can be based in good faith on consideration of the interests of the group as well as the interests of the individual debtor"); *accord In re U.I.P. Engineered Prods. Corp.*, 831 F.2d 54, 56 (4th Cir. 1987) (finding that "it was clearly sound business practice for [the debtor] to seek Chapter 11 protection for its [solvent] wholly-owned subsidiaries when those subsidiaries were crucial to its own reorganization plan"); *In re Mirant Corp.*, Case No. 03-46590, 2005 Bankr. LEXIS 1686, at *23 (Bankr. N.D. Tex. Jan. 26, 2005) ("Where, as here, the need for rehabilitation of the corporate family enterprise is obvious, it is clearly a valid use of chapter 11

[38] *See, e.g.*, Trustee Motion ¶ 22.

to address that need.") Indeed, it is routine in chapter 11 cases for unions to receive equity of the ultimate parent and future payments calculated off of the success of the entire corporate family,[39] and the Noteholders would be the first creditors in U.S. history to have the temerity to make the specious claim that this entirely typical approach supports the appointment of a trustee.

CONCLUSION

40. For the foregoing reasons, the Debtors respectfully request that the Trustee Motion be denied in full.

[39] *See, supra*, n.6.

Dated: April 16, 2013
New York, New York

Respectfully submitted,

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-and-

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SCHEDULE 1
(Debtor Entities)

1. Affinity Mining Company
2. Apogee Coal Company, LLC
3. Appalachia Mine Services, LLC
4. Beaver Dam Coal Company, LLC
5. Big Eagle, LLC
6. Big Eagle Rail, LLC
7. Black Stallion Coal Company, LLC
8. Black Walnut Coal Company
9. Bluegrass Mine Services, LLC
10. Brook Trout Coal, LLC
11. Catenary Coal Company, LLC
12. Central States Coal Reserves of Kentucky, LLC
13. Charles Coal Company, LLC
14. Cleaton Coal Company
15. Coal Clean LLC
16. Coal Properties, LLC
17. Coal Reserve Holding Limited Liability Company No. 2
18. Colony Bay Coal Company
19. Cook Mountain Coal Company, LLC
20. Corydon Resources LLC
21. Coventry Mining Services, LLC
22. Coyote Coal Company LLC
23. Cub Branch Coal Company LLC
24. Dakota LLC
25. Day LLC
26. Dixon Mining Company, LLC
27. Dodge Hill Holding JV, LLC
28. Dodge Hill Mining Company, LLC
29. Dodge Hill of Kentucky, LLC
30. EACC Camps, Inc.
31. Eastern Associated Coal, LLC
32. Eastern Coal Company, LLC
33. Eastern Royalty, LLC
34. Emerald Processing, L.L.C.
35. Gateway Eagle Coal Company, LLC
36. Grand Eagle Mining, LLC
37. Heritage Coal Company LLC
38. Highland Mining Company, LLC
39. Hillside Mining Company
40. Hobet Mining, LLC
41. Indian Hill Company LLC
42. Infinity Coal Sales, LLC
43. Interior Holdings, LLC
44. IO Coal LLC
45. Jarrell's Branch Coal Company
46. Jupiter Holdings LLC
47. Kanawha Eagle Coal, LLC
48. Kanawha River Ventures I, LLC
49. Kanawha River Ventures II, LLC
50. Kanawha River Ventures III, LLC
51. KE Ventures, LLC
52. Little Creek LLC
53. Logan Fork Coal Company
54. Magnum Coal Company LLC
55. Magnum Coal Sales LLC
56. Martinka Coal Company, LLC
57. Midland Trail Energy LLC
58. Midwest Coal Resources II, LLC
59. Mountain View Coal Company, LLC
60. New Trout Coal Holdings II, LLC
61. Newtown Energy, Inc.
62. North Page Coal Corp.
63. Ohio County Coal Company, LLC
64. Panther LLC
65. Patriot Beaver Dam Holdings, LLC
66. Patriot Coal Company, L.P.
67. Patriot Coal Corporation
68. Patriot Coal Sales LLC
69. Patriot Coal Services LLC
70. Patriot Leasing Company LLC
71. Patriot Midwest Holdings, LLC
72. Patriot Reserve Holdings, LLC
73. Patriot Trading LLC
74. PCX Enterprises, Inc.
75. Pine Ridge Coal Company, LLC
76. Pond Creek Land Resources, LLC
77. Pond Fork Processing LLC
78. Remington Holdings LLC
79. Remington II LLC
80. Remington LLC
81. Rivers Edge Mining, Inc.
82. Robin Land Company, LLC
83. Sentry Mining, LLC
84. Snowberry Land Company
85. Speed Mining LLC
86. Sterling Smokeless Coal Company, LLC
87. TC Sales Company, LLC
88. The Presidents Energy Company LLC
89. Thunderhill Coal LLC
90. Trout Coal Holdings, LLC
91. Union County Coal Co., LLC
92. Viper LLC
93. Weatherby Processing LLC
94. Wildcat Energy LLC
95. Wildcat, LLC
96. Will Scarlet Properties LLC
97. Winchester LLC
98. Winifrede Dock Limited Liability Company
99. Yankeetown Dock, LLC