

# Exhibit A

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# Davis Polk

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March 12, 2013

Re: *In re Patriot Coal Corporation, et al.*, Case No. 12- 51502 (Jointly Administered)

Paula Batt Wilson, Esq.  
Jones Day  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190

Steven N. Cousins, Esq.  
Armstrong Teasdale LLP  
7700 Forsyth Boulevard, Suite 1800  
St. Louis, Missouri 63105

Dear Ms. Wilson and Mr. Cousins:

We write on behalf of both Patriot and the Committee in connection with our ongoing meet-and-confer sessions regarding Patriot and the Committee's joint discovery requests upon Peabody in the above-captioned matter (the "Requests"). In the wake of our last meet-and-confer on Wednesday, March 6, 2013, we felt it important to clarify in writing our position and areas of ongoing dispute and areas where we seem to have reached agreement.

## Date Range of Discovery

During Wednesday's telephone conference, you informed us that Peabody will agree to search for and produce email responsive to the Requests over the period from January 1, 2005 to October 31, 2007. We appreciate Peabody's willingness to begin the responsive date range on January 1, 2005. However, we cannot accept Peabody's refusal to produce documents post-dating October 31, 2007.

As you know, the spin-off was a complex transaction executed in a number of steps. While Patriot began its existence as a legally distinct entity at the end of October 31, 2007, numerous ties bound Patriot and Peabody long after the closing date. To pick a few key examples: Patriot supplied Peabody coal under certain coal supply agreements; Peabody, in turn, used one of these agreements to temporarily increase Patriot's cash flow. Peabody also agreed to assume the healthcare liabilities associated with certain retirees of various Patriot subsidiaries. And, following the spin-off, Peabody made certain tax elections that accelerated tax liabilities of Patriot's. Post-spin-off emails, among others documents, are relevant to evaluating the structuring and execution of the spin-off and must be produced.

We ask Peabody to reconsider our request to search for and produce email through May 1, 2008, which deadline already reflects our effort to narrow discovery to the period that is most likely to be probative. If we cannot reach agreement on this point, we reserve the right to seek appropriate relief from the Court.

### Patriot Employee Documents

Patriot and the Committee require email and electronic documents created by Patriot employees prior to the spin-off. As you are aware, Peabody instructed its employees slated to join Patriot to segregate emails and documents they wanted to retain and that they considered to be relevant to their responsibilities at Patriot into specific folders prior to the spin-off. As of the effective date of the spin-off, only the documents so separated – and, in the case of non-email documents, only those approved by Peabody – were transferred to Patriot. For all practical purposes, Peabody is the sole party in possession of emails from this period. Accordingly, we require that Peabody search for and produce email from nine former Peabody employees who joined Patriot.

As you requested, we have asked Patriot employees whether hardcopy files and electronic files stored on personal drives were transferred to Peabody. Our understanding is that Patriot employees segregated hardcopy documents they wanted to retain and that they considered to be related to Patriot, and that only such files were transferred to Patriot. Patriot employees were also required to certify that they had not taken any documents relating “in whole or in part” to Peabody on their personal drives. Please confirm that Peabody will search for and produce responsive emails, hardcopy documents, and electronic documents stored on personal drives for the nine Patriot custodians identified during our call of March 6, 2013.

### Electronic Documents from Centralized Files

Peabody must conduct a diligent search for electronic files responsive to Patriot and the Committee’s requests. In a good-faith attempt to focus immediate discovery on the topics of first importance, we provided you with a list of five broad subjects of discovery and offered examples of the kind of documents we expect would be responsive to these requests. We expected that Peabody would search for responsive documents in, among other locations, centralized hardcopy and electronic files such as shared file servers. Separately, we also agreed to limit our current request for Peabody email to fourteen Peabody employees.

During our March 6<sup>th</sup> conference, you indicated – for the first time – that Peabody believes it need only search centralized repositories for responsive electronic documents to the extent one of the fourteen agreed Peabody email custodians is identified in the electronic document as an “author.” Such a search is certain to omit responsive documents. Plainly relevant documents stored in readily accessible, centralized files, such as board minutes or presentations concerning the spin-off, might not be produced simply because the “author” field of a responsive document does not contain one of the fourteen email custodians. If, for example, a critical document were “authored” by an administrative assistant on behalf of another employee, or if the software fails to record a specific “author” of a document, your approach would exclude it from your review at the outset. Patriot and the Committee cannot agree to such a deficient search. We therefore ask you to confirm that Peabody will not limit its search for responsive non-email electronic documents by custodian, but instead, will search for and produce all responsive documents located in relevant centralized files and servers. We anticipate discussion of search terms to be agreed among Peabody, Patriot, and the Committee that will address your concerns about the burden of reviewing documents.<sup>1</sup>

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<sup>1</sup> Curiously, you have asked Patriot to identify locations on Peabody’s current file system likely to contain responsive documents. We will attempt to do so as a courtesy, but Peabody must not restrict its search to the locations that Patriot employees believe contained responsive documents at the time of the spin-off. It is

### Restoration of Backup Tapes

We are particularly troubled by Peabody's position with respect to restoration of email from its backup tapes. You have repeatedly told us that Peabody email dating to periods before July 2007 likely exists only on backup tapes. Yet Peabody has refused to commit to any restoration of email from backup tapes, and has failed to provide us with a written quote from a vendor for the cost of restoring data from backup tapes to a reasonably accessible format.

From our past discussions, we understand that Peabody's email policies in place during the relevant time period caused all email older than one year to be deleted automatically from the "inbox" folder and user-designated folders; email in the "sent mail" folder was automatically deleted after 60 days. You have also explained that this policy was terminated when Peabody converted its email system to Microsoft Outlook in July 2008; for this reason, you expect that – at most – Peabody's live email system for each custodian contains inbound email dating back to July 2007 and outbound email dating back only to May 2008. You have also informed us that Peabody created daily backups of its email system (each of which consisted of two tapes), and that such daily backup tapes exist for the relevant time period.

In our initial conversations, you told us that Peabody refused to restore email from backup tapes because such a restoration would cost in excess of \$1.4 million. Our subsequent conversations revealed that this estimate does not accurately reflect the real-world cost of what Peabody will be required to do. Among other reasons, it appears that your estimate assumes Peabody will restore each and every daily backup. Weeks ago, we asked you for a written quote from a vendor in order to understand your cost of restoring data from one daily backup; you returned with the "published price" for services from a certain vendor, not a written quote of the price that vendor would charge Peabody. Moreover, your quote for backup tape restoration admittedly includes the costs of processing data for review. Any form of electronic discovery requires processing and review costs; thus, we do not believe that such costs should be considered an expense associated with restoring data from backup tapes.

Our conference of March 6, 2013 left Peabody's position opaque. You initially told us that Peabody categorically refuses to restore backup tapes, then suggested that Peabody would restore one day's backup, and later invited us to propose a schedule of periodic restore points. Peabody's refusal to restore any backup tapes is untenable, and Peabody has failed to set forth a reasonable proposal for the restoration. Nonetheless, in the interest of moving this forward, we are willing to agree, as part of a mutual compromise, that Peabody need only restore backup tapes in thirty-day intervals (12 per year), subject to the caveat that if there emerges a period of heightened interest we may require additional restoration. Although we do not accept your calculation of the costs associated with restoring data from backup tapes, we believe restoring one set of backup tapes for each thirty-day interval is neither unduly costly nor burdensome even under Peabody's estimate, particularly considering the stakes in this matter, Peabody's resources and ability to control its costs by selecting a competitive vendor, and the lack of availability of these emails from any other source.

Peabody Hardcopy Documents

Over one month ago, you informed us that Peabody had already collected certain hardcopy documents; you later informed us that your review of these documents for production was underway. We understand that upon entry of a confidentiality order, Peabody stands ready to begin production of these documents. Please confirm that this is the case, and that Peabody's review of hardcopy documents will include documents collected from all of the agreed custodians.

Please also indicate the date on which you expect to begin production of your documents.

While Patriot and the Committee intend to continue to work with Peabody towards a consensual resolution, our current impasse suggests Court intervention will be required on some or all of the above issues. We look forward to discussing these and other outstanding issues at our next conference, including establishing a mutually agreeable briefing schedule.

Very truly yours,



Michael J. Russano



P. Bradley O'Neill

Via Electronic Mail