

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)

Objection Deadline:

July 16, 2013 at 4:00 p.m.

(prevailing Central Time)

Hearing Date (if necessary):

July 23, 2013 at 10:00 a.m.

(prevailing Central Time)

Hearing Location:

Courtroom 7 North

**NOTICE AND APPLICATION OF THE DEBTORS FOR AUTHORITY TO
EMPLOY AND RETAIN GORDON & GORDON, P.S.C. AS SPECIAL
COUNSEL FOR THE DEBTORS EFFECTIVE AUGUST 1, 2013**

PLEASE TAKE NOTICE THAT this application is scheduled for hearing on July 23, 2013, at 10:00 a.m. (prevailing Central Time), in Bankruptcy Courtroom Seventh Floor North, in the Thomas F. Eagleton U.S. Courthouse, 111 South Tenth Street, St. Louis, Missouri, 63102.

WARNING: ANY RESPONSE OR OBJECTION TO THIS APPLICATION MUST BE FILED WITH THE COURT BY 4:00 P.M. (PREVAILING CENTRAL TIME) ON JULY 16, 2013. A COPY MUST BE PROMPTLY SERVED UPON THE UNDERSIGNED. FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THE COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE.

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.

**APPLICATION OF THE DEBTORS FOR AUTHORITY TO
EMPLOY AND RETAIN GORDON & GORDON, P.S.C. AS SPECIAL
COUNSEL FOR THE DEBTORS EFFECTIVE AUGUST 1, 2013**

Patriot Coal Corporation (“**Patriot**”) and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) respectfully represent:

Relief Requested

1. By this application (the “**Application**”), the Debtors request the entry of an order (the “**Proposed Order**”) authorizing the Debtors, pursuant to section 327(e) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 2014 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the Eastern District of Missouri (the “**Local Bankruptcy Rules**”), to retain and employ Gordon & Gordon, P.S.C. (“**Gordon & Gordon**”), effective August 1, 2013 (the “**Effective Date**”) as special counsel that will be required during these chapter 11 cases. The Debtors request that the Court approve the employment of Gordon & Gordon under the terms and conditions set forth in this Application, as more fully described in the Declaration of M. Kirby Gordon, II, sole Shareholder of Gordon & Gordon, attached hereto (the “**Declaration**”).

Background and Jurisdiction

2. On July 9, 2012 (the “**Petition Date**”), each Debtor commenced with the United States Bankruptcy Court for the Southern District of New York (the “**SDNY Bankruptcy Court**”) a voluntary case under chapter 11 of the Bankruptcy Code. On

December 19, 2012, the SDNY Bankruptcy Court entered an order transferring the Debtors' chapter 11 cases to this Court (the "**Transfer Order**") [ECF No. 1789].² The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the SDNY Bankruptcy Court's Joint Administration Order entered on July 10, 2012 [ECF No. 30].

3. Additional information about the Debtors' businesses and the events leading up to the Petition Date can be found in the Declaration of Mark N. Schroeder pursuant to Local Bankruptcy Rule 1007-2 of the SDNY Bankruptcy Court, filed on July 9, 2012 [ECF No. 4], which is incorporated herein by reference.

4. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and may be determined by the Bankruptcy Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Qualifications of Gordon & Gordon

5. Gordon & Gordon is a Kentucky law firm with one (1) attorney in an office in Owensboro, Kentucky. Gordon & Gordon has extensive expertise and experience in land law, coal law, and land and coal transactions and related litigation matters.

6. Gordon & Gordon is well qualified to represent the Debtors as special counsel in these chapter 11 cases. Gordon & Gordon has for over 33 years served as

² Pursuant to the Transfer Order, all orders previously entered in these chapter 11 cases remain in full force and effect in accordance with their terms notwithstanding the transfer of venue.

outside land and litigation counsel to the Debtors with respect to certain land and coal transactions, and related litigation filed by Debtors against third parties and filed by third parties against the Debtors. Since the Petition Date, Gordon & Gordon has, with the Court's approval, provided essential legal services to the Debtors as an ordinary course professional with respect to certain land and coal transactions and related litigation. In this role, Gordon & Gordon has been instrumental in serving the Debtors' land and coal transactions and related litigation needs. Gordon & Gordon has worked closely with the Debtors' management and, given both past and current representations, Gordon & Gordon is well-acquainted with, and has developed relevant experience and historical knowledge regarding, the Debtors' land and coal transactions and related litigation matters. Gordon & Gordon will continue to provide effective, efficient, and critical services to the Debtors in these chapter 11 cases.

7. The Debtors submit that the employment of Gordon & Gordon is necessary, appropriate and in the best interests of the Debtors, their estates and their creditors under sections 327(e) and 1107 of the Bankruptcy Code and should therefore be approved.

Scope of Services

8. By this Application, the Debtors seek to employ and compensate Gordon & Gordon on an hourly basis to act as the Debtors' special counsel in these chapter 11 cases. In particular, the Debtors anticipate that Gordon & Gordon will render, among others, the following professional services:

- a. prepare, on behalf of the Debtors in support of Debtors' coal and land development activities in Kentucky, all necessary and appropriate surface and coal deeds, leases and subleases, purchase and lease options, lease assignments, land purchase contracts, coal conveyor beltline and

power transmission line easements and right-of-way agreements, and land use agreements, together with any complaints, petitions, motions, proposed orders, other pleadings, notices and other documents in connection with certain land related litigation and administrative proceeding in Kentucky (the “**Retained Matters**”);

- b. advise and assist the Debtors in connection with or concerning the Retained Matters including without limitation the performance of title examinations and lien searches and the submission to Debtors of title opinion certification letters and reports; and
- c. perform all other necessary or appropriate legal services in connection with or concerning the Retained Matters, including, without limitation, representation of the Debtors in land related litigation and administrative proceedings in Kentucky.

The Debtors require knowledgeable land transactional and land litigation counsel to provide these essential professional services.

9. Gordon & Gordon is authorized to advise the Debtors on the Retained Matters under the Order Authorizing the Debtors to Employ Ordinary Course Professionals, *Nunc Pro Tunc* to the Petition Date, entered by the SDNY Bankruptcy Court on August 2, 2012 (the “**OCP Order**”) [ECF No. 263]. Under the OCP Order, monthly fees for ordinary course professionals are capped at \$50,000 (the “**Monthly Cap**”), with any excess amounts requiring approval pursuant to the procedures set forth in the OCP Order. Furthermore, if payments to an ordinary course professional will exceed \$500,000 over the course of these chapter 11 cases (the “**Aggregate Cap**”), that professional must file a separate retention application under section 327 of the Bankruptcy Code.

10. Gordon & Gordon’s fees have never exceeded the Monthly Cap. However, the Debtors and Gordon & Gordon anticipate that Gordon & Gordon’s aggregate fees in these chapter 11 cases will exceed the Aggregate Cap during August 2013, roughly thirteen

(13) months after the Petition Date. Accordingly, the Debtors seek to retain Gordon & Gordon as special counsel under section 327(e) of the Bankruptcy Code.

11. Gordon & Gordon has stated its desire and willingness to continue to act in these cases and provide the necessary services as special counsel for the Debtors. As noted above, Gordon & Gordon has substantial expertise with respect to the Retained Matters. Accordingly, the Debtors believe that Gordon & Gordon is both well qualified and uniquely able to represent the Debtors' interests as special counsel.

Compensation

12. As set forth in the Declaration, Gordon & Gordon intends to (a) charge for its legal services in connection with the Retained Matters on an hourly basis at rates that reflect a substantial negotiated discount from the rates that Gordon & Gordon customarily charges for work of this type and (b) seek reimbursement of actual, necessary and documented out-of-pocket expenses. The Debtors believe that these rates are reasonable. The applicable rates for timekeepers on the matters for the Debtors (which rates reflect the above discount) are \$150 to \$180 per hour for professionals and \$70 to \$85 per hour for paraprofessionals. Gordon & Gordon's hourly billing rates may change from time to time in accordance with Gordon & Gordon's established billing practices and procedures. Gordon & Gordon will maintain detailed, contemporaneous records of time spent, as well as any actual, necessary and documented expenses incurred, in connection with the rendering of the legal services described above by category and nature of the services rendered.

13. From and after the Effective Date, Gordon & Gordon intends to apply to the Court for payment of compensation and reimbursement of expenses in accordance with the procedures set forth in the applicable provisions of section 330 of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, the applicable fee and expense guidelines established by the United States Trustee (the “**United States Trustee Guidelines**”) (collectively, the “**Fee Guidelines**”), the Order to Establish Procedures for Interim Monthly Compensation and Reimbursement of Expenses of Professionals entered on August 2, 2012 [ECF No. 262] (the “**Interim Compensation Order**”) and any other applicable orders of this Court. Gordon & Gordon has agreed not to share with any person or firm the compensation to be paid for professional services rendered in connection with the chapter 11 cases, other than as permitted pursuant to section 504 of the Bankruptcy Code.

14. The Debtors understand that, in connection with the reimbursement of reasonable and necessary expenses, it is Gordon & Gordon’s policy to charge its clients for certain expenses incurred in connection with providing certain client services, including travel, lodging, photocopying, postage, vendor charges, delivery service and other expenses incurred in providing professional services. Gordon & Gordon intends to seek reimbursement for expenses incurred in connection with the representation of the Debtors in accordance with Gordon & Gordon’s policy, subject to modification as may be required by the Fee Guidelines, the Interim Compensation Order and any other applicable orders of this Court. Gordon & Gordon understands that interim and final fee awards are subject to approval by this Court. The Debtors believe that the aforementioned fees and expense

reimbursement policy are fair and reasonable in light of (a) industry practice, (b) market rates charged for comparable services both in and out of the chapter 11 context and (c) Gordon & Gordon's experience with respect to these services.

Gordon & Gordon's Connections

15. To the best of the Debtors' knowledge, information and belief, other than in connection with these chapter 11 cases and in prior representations of the Debtors, Gordon & Gordon does not represent or hold any interest adverse to the Debtors or to the estates with respect to the Retained Matters on which Gordon & Gordon is to be employed, except for *de minimis* amounts owed by the Debtors for prepetition services rendered by Gordon & Gordon totaling approximately \$18,964; Gordon & Gordon does not have any connection with, and has not represented in the past, the United States Trustee for the Eastern District of Missouri, or any person employed by the Office of the United States Trustee for the Eastern District of Missouri; and is not connected with the Honorable Kathy A. Surratt-States approving this Application. Gordon & Gordon does not have any connection with the Debtors' creditors, any other party in interest, or its respective attorneys and accountants, except as set forth below:

- a. From time to time, Gordon & Gordon has referred matters to some of the Debtors' professionals to be retained in these chapter 11 cases. Likewise, certain of the Debtors' professionals have referred matters to Gordon & Gordon; and
- b. From time to time, Gordon & Gordon likely has represented, and likely will continue to represent, certain creditors of the Debtors and other parties actually or potentially adverse to the Debtors in matters unrelated to the Debtors or these cases. Gordon & Gordon has undertaken a detailed search to determine whether it represents or has represented any significant creditors, equity security holders, insiders or other parties in interest in such unrelated matters, and all

such known representations within the last three (3) years are described in Schedule 1, attached to the Declaration. Due to the breadth of Gordon & Gordon's client base, the firm is not subject to undue influence of any single client.

16. Gordon & Gordon performed the following actions to determine whether Gordon & Gordon or any of its attorneys has any connections with, has in the past represented, or is currently representing potential parties in interest in these cases:

- a. A list of interested parties (the "**Interested Parties**") was created by the Debtors and provided to Gordon & Gordon;
- b. Gordon & Gordon compared each of the Interested Parties to the names that Gordon & Gordon maintains in its master client database created from its conflict clearance and billing records. Gordon & Gordon's client database includes: (i) the name of each current or former client; (ii) the names of any entities materially related to, or materially adverse to, such current or former client; (iii) the name of the Gordon & Gordon's attorney responsible for such current or former clients; (iv) the status of the matter as either "active" or "inactive"; and (v) the dates on which the matter was opened and/or closed and the date the last time entry was entered; and
- c. Any matches between the Interested Parties and the entities in Gordon & Gordon's client database were identified, reviewed by an attorney and compiled for purposes of the Declaration. To the extent that Gordon & Gordon currently represents, or has represented within the last three (3) years, any of the Interested Parties, the identities of such entities are set forth in Schedule 1, attached to the Declaration. In determining whether a client is presently represented by Gordon & Gordon, Gordon & Gordon attorneys relied on the existence of an "active" notation on the report to reflect current representation. With respect to matters showing as "inactive", Gordon & Gordon relied on the "close date" to determine whether the representation occurred within the past three (3) years and/or the date the last time entry was entered. If an "inactive" matter opened prior to June 27, 2010 showed no "close date" and no time entered within the past three years, Gordon & Gordon assumed for purposes of this disclosure that the matter was inactive during the past three years and did not include the client on Schedule 1 attached to the Declaration. If an "inactive" matter opened on or after June 27,

2010, but showed no “close date,” the client is included on Schedule 1, attached to the Declaration.

17. The Debtors have been informed that Gordon & Gordon intends to conduct an ongoing review of matters it is handling to ensure that no disqualifying circumstances have arisen, and, if any new facts or relationships that Gordon & Gordon believes should be disclosed to this Court and the parties in interest in these cases are discovered, Gordon & Gordon will file a supplemental disclosure with the Court and serve such supplemental disclosure on the U.S. Trustee. If any new material, relevant facts or relationships are discovered between review periods, Gordon & Gordon will promptly file a supplemental disclosure with the Court and serve such supplemental disclosure on the U.S. Trustee.

18. Based upon the foregoing, to the best of the Debtors’ knowledge, information, and belief, Gordon & Gordon represents no interest or holds any interest adverse to the Debtors or their estates with respect to the Retained Matters on which Gordon & Gordon is to be employed consistent with section 327(e) of the Bankruptcy Code. Accordingly, the Debtors believe that Gordon & Gordon should be engaged as special counsel in these chapter 11 cases.

Basis for Relief Requested

19. Section 327(e) of the Bankruptcy Code provides that a debtor in possession may, with the court’s approval, employ special counsel that does not hold any interest adverse to the debtor or its estate with respect to the matters upon which such special counsel is to be employed. A professional may be retained under section 327(e) if such professional is a creditor of the estate on account of unpaid fees and expenses for services rendered by such professional on a prepetition basis. *See, e.g., In re Mican Homes, Inc.,*

179 B.R. 886, 888 (Bankr. E.D. Mo. 1995) (granting in part a motion to vacate an order denying the debtor's application to retain special counsel to the extent that "the reference to a prepetition claim [on account of prepetition services rendered] is set aside").

20. Gordon & Gordon's services are necessary to the successful functioning of these chapter 11 cases. Based upon both its extensive experience and expertise, and its prior representation of the Debtors, Gordon & Gordon is both well-qualified and uniquely able to represent the Debtors with respect to its critical litigation needs in an efficient, cost-effective, and timely manner. Accordingly, the Debtors submit that the retention of Gordon & Gordon is in the best interests of the Debtors, their estates, and their creditors and should be approved by the Court.

Notice

21. Consistent with the Order Establishing Certain Notice, Case Management and Administrative Procedures [ECF No. 3361] (the "**Case Management Order**"), the Debtors will serve notice of this Application on the Core Parties. All parties who have requested electronic notice of filings in these cases through the Court's ECF system will automatically receive notice of this Application through the ECF system no later than the day after its filing with the Court. A copy of this Application and any order approving it will also be made available on the Debtors' Case Information Website (located at www.patriotcaseinfo.com). A copy of the Proposed Order will be provided to the Core Parties, and will be available at www.patriotcaseinfo.com/orders.php (the "**Patriot Orders Website**"). The Proposed Order may be modified or withdrawn at any time without further notice. If any significant modifications are made to the Proposed Order, an amended

Proposed Order will be made available on the Patriot Orders Website, and no further notice will be provided. In light of the relief requested, the Debtors submit that no further notice is necessary. Pursuant to paragraph 14 of the Case Management Order, if no objections are timely filed and served in accordance therewith, the relief requested herein may be entered without a hearing.

22. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice of this Application is necessary or required.

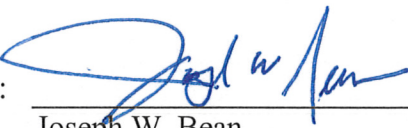
No Previous Request

23. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

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WHEREFORE, the Debtors respectfully request that the Court grant the relief
requested herein and such other and further relief as is just and proper.

Dated: St. Louis, Missouri
July 2, 2013

By: 

Joseph W. Bean
Senior Vice President – Law & Administration
and General Counsel
Patriot Coal Corporation

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

DECLARATION

**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)

DECLARATION OF M. KIRBY GORDON, II

COMMONWEALTH OF KENTUCKY §
 § ss:
COUNTY OF DAVIESS §

I, M. Kirby Gordon, II, hereby declare under penalty of perjury:

1. I am the sole shareholder in the law firm of Gordon & Gordon, P.S.C. (“**Gordon & Gordon**”). I am admitted to practice before the courts of the Commonwealth of Kentucky. I am duly authorized to make this Declaration (the “**Declaration**”) on behalf of Gordon & Gordon.

2. I submit this Declaration, pursuant to sections 327(e) and 329 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2014 and 2016(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 2014 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the Eastern District of Missouri (the “**Local Bankruptcy Rules**”), in support of the *Application of the*

¹ The Debtors are the entities listed on Schedule 1 attached to the Application (as defined herein). The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

Debtors for Authority to Employ and Retain Gordon & Gordon, P.S.C. as Special Counsel for the Debtors effective August 1, 2013 (the “Application”).

3. Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein and, if called as a witness, I would testify thereto.²

Qualifications of Gordon & Gordon

4. Gordon & Gordon is a Kentucky law firm with one attorney in an office located in Owensboro, Kentucky. Gordon & Gordon has extensive expertise and experience in land law, coal law, and land and coal transactions and related litigation matters.

5. Gordon & Gordon is well qualified to represent the Debtors as special land transaction and land litigation counsel in these chapter 11 cases. Gordon & Gordon has, for over 33 years, served as outside land and litigation counsel to the Debtors with respect to certain land and coal transactions and related litigation filed by Debtors against third parties and filed by third parties against the Debtors. Since the Petition Date, Gordon & Gordon has, with the Court’s approval, provided essential legal services to the Debtors as an ordinary course professional, with respect to certain land and coal transactions and related litigation. In this role, Gordon & Gordon has been instrumental in serving the Debtors’ land and coal transactions and related litigation needs. Gordon & Gordon has worked closely with the Debtors’ management and, given both past and current representations, Gordon & Gordon is well-acquainted with, and has developed relevant experience and historical knowledge regarding, the Debtors’ land and coal transactions and related litigation matters. Gordon & Gordon will continue to provide effective, efficient, and critical services to the Debtors in these chapter 11 cases.

² Capitalized terms used but not defined herein shall have the meanings set forth in the Application.

Scope of Services

6. The Debtors seek to employ and compensate Gordon & Gordon on an hourly basis to act as special counsel in these chapter 11 cases. In particular, the Debtors anticipate that Gordon & Gordon will render, among others, the following professional services:

- a. prepare, on behalf of the Debtors in support of Debtors' coal and land development activities in Kentucky, all necessary and appropriate surface and coal deeds, leases and subleases, purchase and lease options, lease assignments, land purchase contracts, coal conveyor beltline and power transmission line easements and right-of-way agreements, and land use agreements, together with any complaints, petitions, motions, proposed orders, other pleadings, notices and other documents in connection with certain land related litigation and administrative proceeding in Kentucky (the "**Retained Matters**");
- b. advise and assist the Debtors in connection with or concerning the Retained Matters including without limitation the performance of title examinations and lien searches and the submission to Debtors of title opinion certification letters and reports; and
- c. perform all other necessary or appropriate legal services in connection with or concerning the Retained Matters, including, without limitation, representation of the Debtors in land related litigation and administrative proceedings in Kentucky.

7. Gordon & Gordon is authorized to advise the Debtors on the Retained Matters under the Order Authorizing the Debtors to Employ Ordinary Course Professionals, *Nunc Pro Tunc* to the Petition Date, entered by the SDNY Bankruptcy Court on August 2, 2012 (the "**OCP Order**") [ECF No. 263]. Under the OCP Order, monthly fees for ordinary course professionals are capped at \$50,000 (the "**Monthly Cap**"), with any excess amounts requiring approval pursuant to the procedures set forth in the OCP Order. Furthermore, if payments to an ordinary course professional will exceed \$500,000 over the course of these chapter 11 cases (the "**Aggregate Cap**"), that professional must file a separate retention application under section 327 of the Bankruptcy Code.

8. The Debtors and Gordon & Gordon anticipate that Gordon & Gordon's aggregate fees in these chapter 11 cases will exceed the Aggregate Cap during August 2013, roughly thirteen (13) months after the Petition Date. Accordingly, the Debtors are seeking to retain Gordon & Gordon as special counsel under section 327(e) of the Bankruptcy Code.

9. Gordon & Gordon has stated its desire and willingness to continue to act in these cases and provide the necessary services as special counsel for the Debtors. As noted above, Gordon & Gordon has substantial expertise with respect to the Retained Matters.

Compensation

10. Gordon & Gordon intends to (a) charge for its legal services in connection with the Retained Matters on an hourly basis at rates that reflect a substantial negotiated discount from the rates that Gordon & Gordon customarily charges for work of this type and (b) seek reimbursement of actual, necessary and documented out-of-pocket expenses. The applicable rates for timekeepers on the matters for the Debtors (which rates reflect the above discounts) are \$150 to \$180 per hour for professionals and \$70 to \$85 per hour for paraprofessionals. Gordon & Gordon's hourly billing rates may change from time to time in accordance with Gordon & Gordon's established billing practices and procedures. Gordon & Gordon will maintain detailed, contemporaneous records of time spent, as well as any actual and necessary expenses incurred, in connection with the rendering of the legal services described above by category and nature of the services rendered.

11. From and after the Effective Date, Gordon & Gordon intends to apply to the Court for payment of compensation and reimbursement of expenses in accordance with the procedures set forth in the applicable provisions of section 330 of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, the applicable fee and expense guidelines

established by the United States Trustee (the “**United States Trustee Guidelines**”) (collectively, the “**Fee Guidelines**”), the Order to Establish Procedures for Interim Monthly Compensation and Reimbursement of Expenses of Professionals entered on August 2, 2012 [ECF No. 262] (the “**Interim Compensation Order**”) and any other applicable orders of this Court. Gordon & Gordon has agreed not to share with any person or firm the compensation to be paid for professional services rendered in connection with the chapter 11 cases, other than as permitted pursuant to section 504 of the Bankruptcy Code.

12. In connection with the reimbursement of reasonable and necessary expenses, it is Gordon & Gordon’s policy to charge its clients for certain expenses incurred in connection with providing certain client services, including travel, lodging, photocopying, postage, vendor charges, delivery service and other expenses incurred in providing professional services. Gordon & Gordon intends to seek reimbursement for expenses incurred in connection with the representation of the Debtors in accordance with Gordon & Gordon’s policy, subject to modification as may be required by the Fee Guidelines, the Interim Compensation Order and any other applicable orders of this Court. Gordon & Gordon understands that interim and final fee awards are subject to approval by this Court.

Gordon & Gordon’s Connections

13. To the best of my knowledge and information after due inquiry, other than in connection with these chapter 11 cases and in prior representations of the Debtors, Gordon & Gordon does not represent or hold any interest adverse to the Debtors or to the estates with respect to the Retained Matters on which Gordon & Gordon is to be employed, except for *de minimis* amounts owed by the Debtors for prepetition services rendered by Gordon & Gordon totaling approximately \$18,964; Gordon & Gordon does not have any connection with, and has

not represented in the past, the United States Trustee for the Eastern District of Missouri, or any person employed by the Office of the United States Trustee for the Eastern District of Missouri; and is not connected with the Honorable Kathy A. Surratt-States approving this Application. Gordon & Gordon does not have any connection with the Debtors' creditors, any other party in interest, or its respective attorneys and accountants, except as set forth below:

a. From time to time, Gordon & Gordon has referred matters to some of the Debtors' professionals to be retained in these chapter 11 cases. Likewise, certain of the Debtors' professionals have referred matters to Gordon & Gordon; and

b. From time to time, Gordon & Gordon likely has represented, and likely will continue to represent, certain creditors of the Debtors and other parties actually or potentially adverse to the Debtors in matters unrelated to the Debtors or these cases. Gordon & Gordon has undertaken a detailed search to determine whether it represents or has represented any significant creditors, equity security holders, insiders or other parties in interest in such unrelated matters, and all such known representations within the last three (3) years are described in Schedule 1, attached to the Declaration. Due to the breadth of Gordon & Gordon's client base, the firm is not subject to undue influence of any single client.

14. Gordon & Gordon performed the following actions to determine whether Gordon & Gordon or its attorney has any connections with, has in the past represented, or is currently representing potential parties in interest in these cases:

a. A list of interested parties (the "**Interested Parties**") was created by the Debtors and provided to Gordon & Gordon;

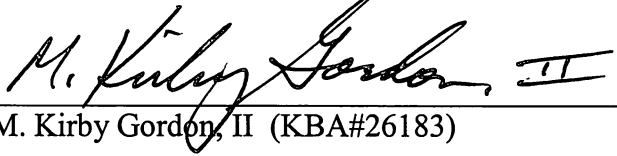
b. Gordon & Gordon compared each of the Interested Parties to the names that Gordon & Gordon maintains in its master client database created from its conflict clearance and billing records. Gordon & Gordon's client database includes: (i) the name of each current or former client; (ii) the names of any entities materially related to, or materially adverse to, such current or former client; (iii) the name of the Gordon & Gordon attorney responsible for such current or former clients; (iv) the status of the matter as either "active" or "inactive"; and (v) the dates on which the matter was opened and/or closed and the date the last time entry was entered; and

c. Any matches between the Interested Parties and the entities in Gordon & Gordon's client database were identified, reviewed by an attorney and compiled for purposes of the Declaration. To the extent that Gordon & Gordon currently represents, or has represented within the last three (3) years, any of the Interested Parties, the identities of such entities are set forth in *Schedule 1*, attached hereto. In determining whether a client is presently represented by Gordon & Gordon, the Gordon & Gordon attorney relied on the existence of an "active" notation on the report to reflect current representation. With respect to matters showing as "inactive", Gordon & Gordon relied on the "close date" to determine whether the representation occurred within the past three (3) years and/or the date the last time entry was entered. If an "inactive" matter opened prior to June 27, 2010, showed no "close date" and no time entered within the past three years, Gordon & Gordon assumed for purposes of this disclosure that the matter was inactive during the past three years and did not include the client on Schedule 1 attached to the Declaration. If an "inactive" matter opened on or after June 27, 2010, but showed no "close date," the client is included on Schedule 1, attached hereto.

15. Gordon & Gordon intends to conduct an ongoing review of matters it is handling to ensure that no disqualifying circumstances have arisen, and, if any new facts or relationships that Gordon & Gordon believes should be disclosed to this Court and the parties in interest in these cases are discovered, Gordon & Gordon will file a supplemental disclosure with the Court and serve such supplemental disclosure on the U.S. Trustee. If any new material, relevant facts or relationships are discovered between review periods, Gordon & Gordon will promptly file a supplemental disclosure with the Court and serve such supplemental disclosure on the U.S. Trustee.

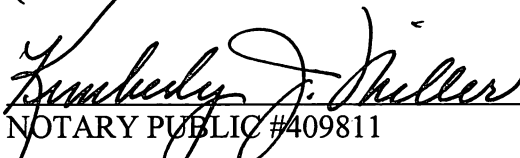
16. Based upon the foregoing and information available to me at this time, to the best of my knowledge, information, and belief, Gordon & Gordon represents no interest or holds any interest adverse to the Debtors or their estates with respect to the Retained Matters on which Gordon & Gordon is to be employed consistent with section 327(e) of the Bankruptcy Code.

Pursuant to 28 U.S.C. section 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.


M. Kirby Gordon, II (KBA#26183)

COMMONWEALTH OF KENTUCKY §
§ ss:
COUNTY OF DAVIESS §

Sworn to and subscribed before me this 2nd day of July, 2013.


NOTARY PUBLIC #409811
Printed Name: Kimberly J. Miller
My Commission Expires: 12/07/2013

SCHEDULE 1: DISCLOSURE OF REPRESENTATION

Set forth below are the Interested Parties (other than the Debtors and the Debtors' affiliated entities) whom Gordon & Gordon currently represents or has represented within the past three (3) years in matters unrelated to these cases (collectively, the "**Matched Entities**"). There are other entities affiliated or associated with the Matched Entities whom Gordon & Gordon currently represents or has represented within the past three (3) years in matters unrelated to the Debtors and these chapter 11 cases. Gordon & Gordon has only provided information for the specific Matched Entities identified by the Debtors as Interested Parties in these chapter 11 cases. Several Interested Parties fall into multiple categories; however, each Interested Party has been listed only once.

1. Peabody Energy Corporation
2. Midwest Coal Reserves of Kentucky, LLC