

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

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In re: : Chapter 11  
: Case No. 12-51502-659  
: (Jointly Administered)  
PATRIOT COAL CORPORATION, *et al.*, :  
: Objection Deadline:  
Debtors. : September 5, 2013 at  
: 4:00 p.m. (prevailing Central  
: Time)  
: :  
: Hearing Date:  
: September 13, 2013 at  
: 10:00 a.m. (prevailing  
: Central Time)  
: :  
----- x Hearing Location:  
Courtroom 7 North

**OBJECTION OF PEABODY ENERGY CORPORATION TO JOINT MOTION OF THE  
DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
TO COMPEL PRODUCTION OF DOCUMENTS**

“Overwhelmingly cooperative” was how the Committee’s counsel characterized the eight-month-long relationship among Peabody and the Debtors and the Creditors’ Committee (“**Movants**”<sup>1</sup>) when speaking at a hearing before this Court on August 20, 2013.

“Overwhelmingly cooperative” means that Peabody has made great efforts to move the discovery process forward and to eliminate any reason Movants could possibly find to complain about Peabody’s response to their Rule 2004 discovery request. And, until now, not a single complaint has reached this Court about Peabody’s discovery record. Leaving aside the critical electronic discovery work in August 2013 (which is discussed below), Peabody notes that, over the last eight months, it has done the following:

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<sup>1</sup> “**Movants**” here are, collectively, debtors and debtors-in-possession in these proceedings (together, “**Patriot**”) and the Committee of Unsecured Creditors of Patriot Coal Corporation (the “**Committee**”). The United Mine Workers of America (“**UMWA**”) is a member of the Committee.

- **Agreed** to produce documents responsive to the broad “Five Topics” (Exhibit 1), which Movants drafted as an alternative to their initial draft subpoena with its 67 requests, and which topics Peabody accepted without alteration.
- **Agreed** to add Movants’ nine additional custodians on top of the original 14, for a total of 23 custodians, and to add six months to the discovery timeframe, for a total of nearly 3½ years.
- **Worked with Movants** to resolve difficult issues of confidentiality and UMWA access so as to submit to this Court agreed versions of the Rule 2004 Order and the confidentiality order, both of which were entered June 7, 2013.
- **Enabled** Movants to juggle the spacing of back-up tapes by repeatedly providing sets of alternative dates for missing tapes, rather than just “yes-no” answers.
- **Rushed** 15 sets of back-up tapes from St. Louis to Austin to arrive on July 4, 2013, just three days after Movants selected their final dates.
- **Completed** full restoration in just under one month, on August 3, 2013.
- **Agreed** to start the review of electronic documents with the 43 paragraphs of electronic search terms, with three attached schedules, that had been conceived by Movants’ linguistics consultants. (Exhibits 2 and 3.)
- **Made** the first of what is now nine rolling document productions of its own documents on June 14, 2013, before the deadline set in the Rule 2004 Order.
- **Delivered** confidentiality designations to enable ten timely productions by third parties, eliminating Movants’ need to quarantine documents for 30 days.
- **Answered “yes”** to multiple questions from Movants, with responses confirming the expansive scope of Peabody’s production. (*See, e.g.,* Exhibits 4, 5 and 7.)

This unblemished record of cooperation is now being turned against Peabody by the only means Movants could find: complaining that Peabody is not responding to the Rule 2004 discovery requests fast enough. As this Court knows, it was Peabody that wanted formal briefing on this scheduling issue, not Movants, for at least three reasons.

First, the motion confirms there had been no actual discovery dispute of any kind. From all of the dozens of emails and telephone conferences to which Movants point, not a single dispute had emerged that either side felt necessary to raise with the Court.

Second, there is no looming deadline that could justify forcing Peabody to review an estimated 4 million additional pages of electronic documents by October 1, 2013 – just 2½ weeks after the hearing on this motion. The Court must discount Movants’ panic argument for at least four reasons: (a) the deadline for Debtors to file a complaint against Peabody does not arrive until July 9, 2014; (b) even if the deadline were earlier, Movants are not starting from scratch; their “investigation” is being conducted in substantial part by Patriot General Counsel (and former Peabody in-house counsel) Joseph Bean, aided by Patriot’s longtime counsel Davis Polk, the very law firm that helped create the spin-off, and both are intimately familiar with the facts surrounding the spin-off; and (c) Debtors have just told this Court that they cannot focus on anything but their reorganization until at least the end of the year,<sup>2</sup> unmasking their bid for an October 1, 2013 deadline as a ploy. Finally, (d) Movants’ true focus here is not a deadline for receiving Peabody’s last piece of paper; their focus always has been getting restored emails.<sup>3</sup>

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<sup>2</sup> Decl. of John Lushefski, Case 13-04204, Doc. 6 ¶ 20 (filed 09/03/2013) (timely completion will continue to require full attention of senior management, legal and finance departments, and outside legal and financial advisors).

<sup>3</sup> It was almost humorous to read Movants referring to Rule 2004 as a “quick fishing expedition.” (Mot. ¶ 18 n.2.) Movants want it both ways: they demand that Peabody pay for a broad discovery harvest and then they seek to saddle Peabody with unreasonable deadlines to sift the wheat from the chaff. Movants got the first; they cannot demand the second too. If Movants are serious, they should narrow their extremely broad “Five Topics,” pare down their list of 23 custodians, and withdraw their demand for documents from the six-month period after the spin date. That would make this process faster, more focused, and less expensive.

Third, the motion relies on a classic red herring in the form of the alleged “eight months” of waiting around. The actual facts demand a closer look, one that Movants have sought to avoid. Specifically, it appears that Movants intended to wave the “eight months” flag and persuade the Court to jam Peabody without briefing and without a hearing, at least until Peabody made a point-blank request for Movants to disclose exactly what relief they were seeking from the Court, accompanied by a specific and unambiguous offer to confer. (Email Wilson to Russano and O’Neill 08/15/2013 11:07 AM (Exhibit 6.)<sup>4</sup> Movants’ only response was to tell Peabody that it should plan to appear in court on August 20, 2013, just a few days hence. The evident objective, now made public, was to saddle Peabody with an untenable October 1, 2013 discovery deadline.

This is just wrong. Peabody has fully participated in what Movants themselves call a cooperative process. Movants protest that Peabody “disclaimed any obligation to update [them] on the status or mechanics of its review or production.” (Mot. ¶ 15.) In point of fact, nothing in Rule 2004, Rule 45, or this Court’s Order entitles Movants to micro-manage Peabody’s discovery process.<sup>5</sup> At the end of the day, Peabody is a third party to this proceeding, and Peabody, not Movants, is responsible for Peabody’s compliance with a Rule 45 subpoena.

What Movants have not shared with the Court are Peabody’s responses to Movants’ more important questions that addressed the scope of Peabody’s production. From August 2013:

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<sup>4</sup> It is notable that Movants provide only a carefully-worded declaration (and from an associate, not Movants’ principal negotiators) that selectively characterizes what Peabody’s counsel has said or written on behalf of Peabody, without putting actual writings before the Court. Peabody objects in particular to the selective characterization of its 08/15/2013 email (Dove Decl. ¶ 23) and has attached it for the Court’s review at Exhibit 6. Similarly, Movants characterize Peabody as “responding to the subpoena subject to the parties’ agreements” without referring to what Peabody itself has said. (Mot. ¶ 10.) Peabody has clarified this issue several times (*see, e.g.*, Emails Wilson to Russano and O’Neill 08/01/2013 4:45 PM (Exhibit 4); 08/12/2013 12:15 PM (Exhibit 5).

<sup>5</sup> Email McVoy to Tobak 07/19/2019 6:47 PM (Exhibit 7) (referring to 07/11/2013 teleconference and providing responses to questions).

*“Peabody already responded “yes” to your request for assurances that Peabody is producing responsive, non-privileged documents within the agreed time frame relating to (a) Eastern assets that were considered for sale or distribution outside the Spin-Off; and (b) documents responsive to the Five Topics involving Peabody's subsidiaries that were eventually included within Patriot, even if the documents pre-date the creation of Patriot.”<sup>6</sup>*

*“Peabody today responds “yes” to your request for assurances that Peabody is producing responsive, non-privileged documents within the agreed time frame relating to (a) coal supply agreements between Patriot or any of its subsidiaries and Peabody or a current/former Peabody customer; and (b) projections for Peabody (or assets or operations of Peabody) that reflect the projected impact of the Spin-off, a Potential Eastern Spin-off, or contracts/dealings with Patriot following the Spin-off.”<sup>7</sup>*

*“We've told you that Peabody objected as it would to any such overbroad definitions in any subpoena. We've also told you that Peabody has not restricted its production on that basis; specifically, Peabody has not withheld a single document on the basis that it would be responsive under your definitions and not responsive under our objections to those definitions.”<sup>8</sup>*

*“[A]s we told you on July 11, 2013, Peabody believes that 36 of the 37 requests in the subpoena reasonably fall within the Five Topics (and you agreed to pull the other one).”<sup>9</sup>*

*“If there is something specific in one or more of Peabody's objections to your definitions that causes you concern, please identify it for us so that we can revisit our objections with an eye toward addressing your concern.”<sup>10</sup>*

And, when Movants insisted upon involving the Court in a teleconference on August 16th:

*“Please tell us exactly what you want the Court to do. If we can address your concerns immediately, we will. If we need a meet-and-confer session, we'll do that. (Friday does not work for us, as we are otherwise unavailable that day, but certainly we can find a time to talk next week.) After that, if you believe you have a basis to seek relief from the Court, you can file a proper motion, to which we will respond in due course, and thereafter appear in person with both of you to present the matter to the Court in St. Louis.”<sup>11</sup>*

Movants' only response? – See you in court in five days.<sup>12</sup>

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<sup>6</sup> Email Wilson to Russano and O'Neill 08/01/2013 12:15 PM ([Exhibit 4](#)).

<sup>7</sup> Email Wilson to Russano and O'Neill 08/01/2013 12:15 PM ([Exhibit 4](#)).

<sup>8</sup> Email Wilson to Russano and O'Neill 08/12/2013 12:15 PM ([Exhibit 5](#)).

<sup>9</sup> Email Wilson to Russano and O'Neill 08/12/2013 12:15 PM ([Exhibit 5](#)).

<sup>10</sup> Email Wilson to Russano and O'Neill 08/12/2013 12:15 PM ([Exhibit 5](#)).

<sup>11</sup> Email Wilson to Russano and O'Neill 08/15/2013 11:07 AM ([Exhibit 6](#)).

<sup>12</sup> Email O'Neill to Wilson and Cousins (08/16/2013 1:00 PM) ([Exhibit 8](#)) (this 08/16/2013 email followed Peabody's 08/15/2013 email ([Exhibit 6](#)), which does not appear in Movants' email string).

Peabody respectfully submits that Movants' current scheduling motion confirms that no dispute has emerged from the cooperative process of the last eight months. Movants have provided no legal support for the draconian discovery deadline they seek to impose on Peabody,<sup>13</sup> and there is no reason for the Court to impose such a deadline. Instead, Peabody asks the Court to step in to oversee the progress of the remaining Rule 2004 discovery, focusing on the electronic material. For that, the following foundation is key:

- On July 1, 2013, Movants made their final selection of 15 sets of back-up tapes for restoration. On August 3, 2013, the experts completed restoration. The total universe was 1,090,382 electronic documents (not pages) from all sources.
- Separately, on July 25, 2013, Peabody agreed to start with Movants' search terms once the tapes had been restored. By August 5, 2013, Peabody had used Movants' search terms to complete an initial search of these 1,090,382 electronic documents. Applying the search terms only brought the number down from 1,090,382 to 630,000 electronic documents.
- Recognizing that further negotiations were futile, Peabody undertook an exhaustive and expensive (in attorney time) computer-assisted review process using Relativity Assisted Review®, under the guidance of Peabody's electronic discovery consultant, Xact Data Discovery. That process uses human beings (lawyers familiar with the subject matter) to review successive rounds of documents to "teach" the software how to recognize and bring forward for review the documents that are most likely to be responsive, instead of obviously irrelevant documents caught in a net of overbroad search terms.

At this point in the analysis, Peabody estimates that the universe of electronic documents has been reduced from the original 1,090,382 documents to the 630,000 documents tagged by

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<sup>13</sup> None of the four cases that Movants cite (Mot. ¶ 21) provides any guidance to the Court, much less any support for a rigid discovery cut-off in a matter of this complexity. In *In re Burton Douglas Morriss*, Case No. 12-40164-69 (Bankr. E.D. Mo. March 6, 2012) (Dock. No. 69), the Court set a date for examination of the individual debtor and his production of documents. The case of *In re President Casinos, Inc.*, Case No. 02-53005-659 (Bankr. E.D. Mo. Dec. 14, 2005; Feb. 10, 2006) [Dkt. No. 1105; Dkt. No. 1139], involved an examination limited to matters involving certain applications for licenses to operate a casino. *In re NewPage Corp.*, Case No. 11-12804 (Bankr. D. Del. Apr. 25, 2012) [Dkt. No. 1477] involved a consent order for examination of an Indenture Trustee. And the court in *In re Robert E. Derecktor, Inc.*, Case No. 12-22393 (Bankr. S.D.N.Y. Feb 15, 2013) [Dkt. No. 92] granted a motion for Rule 2004 examination of the Debtors but without setting any discovery deadline. Movants also rely upon the orders entered with respect to the Rule 2004 subpoenas issued to Morgan Stanley and Duff & Phelps, which Movants cite as evidence that "[t]arget deadlines apply in other discovery ongoing in this very investigation." (Mot. ¶10.) Movants fail to mention that both were consent orders, entered after Peabody withdrew its objections, and that the orders required only reasonable efforts to complete production by the target dates (which are already past). As mentioned earlier, Peabody is facilitating that review by its pre-production designations.

Movants' search terms as potentially responsive, which result has been refined by the Relatively Assisted Review process down to about 416,145 electronic documents (or about 4,302,732 pages) for attorney review.<sup>14</sup> **The inescapable conclusion is that Movants' extremely broad "Five Topics," along with their nearly 3½ year time frame, are generating enormous numbers of documents to review.**

In the discussion below, Peabody summarizes the background and process of e-discovery, tape restoration, and the analytical review. At the end of this discussion, given its manifest cooperation to date and the information provided herein, Peabody will request that the Court (i) deny the motion for an October 1, 2013 production deadline and (ii) schedule an in-person conference in St. Louis on October 11, 2013 (four weeks after the hearing on this motion) to hear a report on Peabody's further progress, including with respect to the pace of production and the additional ongoing rolling productions that will have occurred by then.

**I. RULE 2004 ORDER: NO DISPUTE – PEABODY IS IN FULL COMPLIANCE**

As an initial matter, there is no dispute that Peabody is complying fully with this Court's Rule 2004 Order and every agreement mentioned in that Order. Movants do not say otherwise.

In brief, Movants floated to Peabody an initial draft subpoena with 67 requests on January 11, 2013. Peabody resisted it, as Movants no doubt expected, and attempted to limit the discovery to a more reasonable scope. Movants returned with the "Five Topics" on January 31, 2013, and three months of negotiation followed (not on the "Five Topics," but on related issues). This Court settled the general parameters of custodian-based discovery, including the restoration of back-up tapes, at a hearing on April 23, 2013.<sup>15</sup> The detailed agreed order emerging from that

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<sup>14</sup> The estimated volume of additional hard copy documents to be reviewed (100,000 pages) may change depending upon the culling of boxes recently identified and the identification of additional hard copy, if any.

<sup>15</sup> Movants' statement that "14 weeks of negotiations [ ] failed to produce an agreement on the terms of discovery" (Mot. ¶ 2) does not square with what they told the Court in April. "The parties' extensive meet-and-confer process

hearing was heavily negotiated and entered on June 7, 2013. Peabody started producing documents earlier than required, on June 14, 2013, and to date has made nine rolling productions of hard copy, electronic documents, and email.<sup>16</sup> Also since June, Peabody has honored its commitment to make prompt rolling confidentiality designations for documents being produced under subpoena by third Duff & Phelps and Morgan Stanley, enabling Movants to review those documents immediately upon production.<sup>17</sup> In addition to its own nine productions to date, Peabody has reviewed another ten rolling productions for these financial institutions, for a total of 19 document productions since June 14, 2013.

## II. THE NUB OF DISCOVERY: ELECTRONIC DOCUMENTS AND EMAIL

For all the ink spent on it, the current motion is not about hard copy documents. From the beginning, what Movants have wanted is Peabody's electronic documents and, most

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has reduced, but not eliminated, the number of disputed issues.” (Rule 2004 Motion, Doc. 3494 (filed 04/02/2013) ¶ 19). The Court itself recognized that only three issues remained. (04/23/2013 Tr. at 39.) Peabody also objects to Movant's characterization of the Rule 2004 Order as “directing Peabody to search broadly for responsive documents.” (Mot. ¶ 9.) Custodian-based searches directed by the Court are spelled out in the Order.

<sup>16</sup> Movants' declaration states that “[d]uring the course of discussions in February and March, Peabody's counsel represented that responsive hardcopy documents had already been assembled and would be produced promptly, pending entry of a protective order.” (Dove Decl. ¶ 3.) This might lead a reader to think that Peabody's counsel had represented that a search had been done in response to the initial draft subpoena with its 67 document requests and that all of the hard copy documents responsive to that subpoena had been assembled, had already been reviewed, and were ready to be produced. If such an inference were drawn, it would be incorrect.

At no time did any lawyer for Peabody ever state or suggest that a formal search had been done for hard copy documents responsive to the initial draft subpoena with its 67 requests, because Peabody had rejected that initial draft. Movants never asked this Court for permission to serve that draft and, instead, moved on with the “Five Topics,” which Peabody accepted. Later, in a February 20, 2013 conference, Peabody's counsel said she could not guarantee it, but she hoped to have the first set of documents (certain custodians' documents from among Peabody's informal collection) ready to produce by March 6, 2013, pending entry of a confidentiality order. On March 6, 2013, those documents were indeed ready (Email Wilson to Russano and O'Neill (03/06/2013 5:22 PM) ([Exhibit 9](#))), but Movants delayed sending a draft confidentiality order. (*Id.*, see also Email Wilson to Russano and O'Neill (03/05/2013 12:36 PM) ([Exhibit 10](#))). The proposed order was not sent for over a month, until March 26, 2013. (Email Dove to Wilson and Cousins 03/26/2013 6:21 PM ([Exhibit 11](#))). The final order, complicated by UMWA issues, was entered on June 7, 2013 and production began shortly thereafter. The volume of hard copy has been less than anticipated, in part because many documents assumed to be relevant when they were gathered informally by Peabody employees turned out not to be responsive when reviewed against the “Five Topics.”

<sup>17</sup>In other words, without the 30-day quarantine that otherwise would have applied under the relevant confidentiality orders. See Dkt. No. 4240, Stipulated Confidentiality Protective [Duff & Phelps] (June 28, 2013) ¶ 3 Dkt. No. 4239, Stipulated Confidentiality Protective Order [Morgan Stanley] (June 28, 2013) ¶ 3 (same).

importantly, its old emails. This Court heard it again on August 20, 2013 from Movants' counsel: "But we have received virtually no electronic documents; I mean, a handful. I've received far more emails from Jones Day than I have from Peabody, Your Honor. And given that it's been eight months, we want to know when we are going to start to see that stuff, the electronic discovery. . . ." (08/20/2013 Tr. at 69.)

Given the complicated history of this matter, saying "it's been eight months" in the same breath as "electronic discovery" is confusing, at best. As Movants acknowledge (Mot. ¶ 7) many thorny issues had to be negotiated through the spring, among them the number of back-up tapes to be restored and the extent of the UMWA's access to Rule 2004 discovery, given the UMWA's pending lawsuit against Peabody in West Virginia. As a result, other than hiring a linguistics consultant to devise search terms, Movants themselves focused on other aspects until those thorny issues were resolved.<sup>18</sup> Once it began in earnest, working through e-discovery has been an exacting and tedious process for both sides.

### **III. COLLECTION & SEARCHING OF ELECTRONIC DISCOVERY SOURCES**

#### **1. Restoring the back-up tapes (no dispute for the Court)**

Old emails must be restored from back-up tapes. The number of back-up tapes to be restored was a principal disagreement at the Rule 2004 hearing on April 23, 2013. At that hearing, the Court ordered Peabody to restore back-up tapes from 15 dates of Movants' choice.

Movants state that "[i]n many instances, the source of delay was straightforward: Peabody's failure to respond quickly." (Mot. at 13.) Their carefully-worded declaration improperly places blame on Peabody, instead of explaining the legitimate reasons (on both sides) that caused the process of selecting dates to take a long time.

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<sup>18</sup> See Email Dove to Wilson, *et al.* (05/05/2013 1:13 PM) ("Thanks, Paula. We will be including Brendan, whom I have copied, in any discussion of search terms. (I am certain our immediate priority, of course, is providing the judge the order she requested.)" (Exhibit 12).

Movants delayed sending their first list of dates until a month after the hearing, on May 22, 2013. Peabody then sent people out to search for tapes dating back to January 2005 in boxes and storage areas, but Peabody could not always find them quickly (or, in some cases, at all). When that happened, Peabody told Movants which tapes were missing, and, instead of stopping there, provided alternate dates for which it had found tapes. Movants, for their part, chose to re-juggle their choices (instead of picking the nearest available date) when Peabody could not find certain dates, resulting in a selection of 15 entirely new dates. This required Peabody to send people out again to search for tapes in boxes and storage areas. Sometimes Movants needed more information, which Peabody provided when it could.<sup>19</sup> After all this back-and-forth, it was not until July 1, 2013 that Movants made their final choice of 15 dates.

Once the dates had been finalized on July 1, 2013, Peabody sent the tape sets to a restoration specialist in Austin, Texas. Data extraction began immediately upon their July 4, 2013 arrival, and the corruption of one tape and other problems that arose were in due course resolved.<sup>20</sup> Extraction of all of the custodians' needed data from the full set of tapes was completed by August 3, 2013 and the data was prepared for processing and searching.

The result of restoration: more than 3 million documents, which date-culling and de-duplicating only reduced to 795,174 documents (not pages, which would be a much larger number) – more than three-quarters of a million emails and attachments. As described more fully below, other electronic sources also have been searched, yielding so far a separate selection

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<sup>19</sup> Movants' declaration says that Peabody did not respond to a request for information made on June 19, 2013. (Dove Decl. ¶10.) Movants had asked Peabody to tell them, for example, at what time of day the email system was backed up. Peabody did respond, on June 21, 2013, explaining that "[w]e don't know whether information at this level of detail is available from so many years ago, and the IT people who may know the answers are out this week." (Email McVoy to Tobak 06/21/2013 10:39 AM (Exhibit 7)). Not having the information is not the same as not responding. As it turned out, Movants then simply picked their dates without waiting for the answer, which was fine, because Peabody's current IT people could not find that information from the 2005-2008 timeframe.

<sup>20</sup> Movants' declaration includes the word "corrupted" in quotation marks, as if it were suspicious. (Dove Decl. ¶ 12.) Neither the Court, nor the parties, nor Peabody, are well-served by such innuendo.

of 12,956 additional emails and attachments and 274,850 other electronic documents, for a total of 1,090,382 electronic documents (not pages); more than one million electronic documents to date, as the initial set of documents that was to be searched for responsiveness.

In terms of other electronic sources, another process was going on independently, but at the same time as the tape restoration. Here Movants misinterpret Peabody's remarks at the August 20<sup>th</sup> hearing as indicating that "until August, [Peabody] had not run a single search for electronic documents." (Mot. at ¶ 20.) Movants are incorrect, on two counts.

First, they are mistaken about the record. The transcript shows that counsel was discussing the process of running search terms against restored back-up tapes; he was not discussing searching for electronic documents in the first place.<sup>21</sup>

Second, Movants are substantively mistaken on the timing of Peabody's collection of electronic documents. Independently, but simultaneously with the tape restoration, Peabody identified and collected documents from the company's active electronic share drives, not only those the custodians specifically identified, but also share drives to which any of the 23 custodians had had access, as required by this Court's Rule 2004 order. This collection process required individual interviews of available custodians as well as a high-level review of all of the drives on Peabody's servers. Ultimately, 1,275GB (about a terabyte) of data from approximately 50 active drives were collected, leading to the 274,850 documents above.

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<sup>21</sup> 08/20/2013 Tr. at 75:18-76:05. In the same paragraph of their Motion, Movants state that Peabody "evidently overlooked 80 boxes of archived documents." (Mot. at ¶ 20.) That is incorrect. Peabody had asked its own 14 custodians where they kept their responsive documents, including offsite storage, and followed up accordingly with retrieval from offsite. Peabody had asked Movants repeatedly to ask their own nine custodians where they had kept documents while working at Peabody. Movants inexplicably declined twice even to ask (*see Exhibit 7; Exhibit 4 ¶ 5*), until Debtors' counsel finally responded on August 2, 2013 that those nine custodians reported that documents were sent to Iron Mountain. (Email Russano to Wilson 08/02/2013 12:08 PM (*Exhibit 13*)). So Peabody pulled back 80 more boxes from Iron Mountain, which Peabody employees are currently reviewing to cull unrelated materials, after which counsel will need to review whatever is left.

Finally, even before then, electronic documents from locations specifically identified by custodians, such as hard drives, as well as email from custodians' active mailboxes, had been collected. To the extent the collection came from a specific source and if the amount were not extensive, Peabody began its review without even waiting for search terms to be finalized.

## 2. Negotiating the search terms (no dispute for the Court)

Electronic discovery includes both email and electronic documents, and there are a variety of ways to cull responsive documents from a universe of both responsive and non-responsive documents. One approach is to use search terms, of varying degrees of complexity. These search terms can be created by the producing party unilaterally or can be negotiated by the requesting and producing parties.

Search terms do not, in themselves, identify the particular responsive documents. In general terms, search terms take a universe of electronic documents and reduce it to a smaller universe. Various types of analytical software also can be used to identify potentially responsive electronic documents, and such software can be used in lieu of, or in conjunction with, search terms. The goal of any of these approaches is to identify all or most of the potentially responsive documents, which then must be further reviewed for actual responsiveness, privilege and confidentiality before being produced.<sup>22</sup>

Recognizing that trying to negotiate search terms with opposing counsel is often difficult and time-consuming, Peabody was not itself the driver of the search term negotiations. Rather,

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<sup>22</sup> Movants' suggestion (Mot. ¶ 23) that Peabody should simply produce documents without privilege review on the theory that, once Movants have seen the privileged documents, they can simply be returned to Peabody under a "claw-back" provision, is facially absurd and beyond anything contemplated in the applicable rules. We cannot imagine that Patriot would endorse this position for its future productions in this court or in the *Lowe* case in West Virginia. Further, the two cases Movants cite are inapposite and provide no guidance here. In each case, the producing party had resisted discovery based on the review cost (either by filing a motion for a protective order, or opposing a motion to compel). Here, despite the extremely high cost to Peabody of reviewing and producing documents in this proceeding, Peabody has not sought relief from the agreed Rule 2004 Order on that basis, and for that reason alone Movants' cases are not instructive.

from the outset, it was Movants who insisted on using search terms as a way of being able to assure themselves that every single document generated over a 3½ year period that conceivably could be responsive to the “Five Topics” would be identified, reviewed and ultimately produced. As a result of the involvement of Movants’ linguistics consulting firm, the end result was 43 single-spaced paragraphs of search terms and three interactive schedules. (Exhibit 2.) Put together in full Boolean format, there are 90 complex search terms, creating a 23-page Excel spreadsheet. (Exhibit 3.)

Movants call these terms “sophisticated and highly refined” (Mot. ¶ 14) and suggest that they return “a much higher percentage of responsive documents than search terms developed [without expensive consultants].” (*Id.* ¶ 23.) The goal of these search terms, as negotiations with Movants showed, was to scorch the electronic earth – to bring back every piece of paper that might contain a particular word, no matter how tangential.

After weeks of negotiation produced only limited progress, Peabody realized that Movants had no interest in any meaningful narrowing of the terms. As tape restoration was nearly completed and the data needed to be searched, Peabody, on July 25, 2013, gave up and simply agreed to start with Movants’ search terms when the tapes were restored, knowing the terms were too broad.<sup>23</sup>

#### **B. Electronic discovery: Software analytics and next steps**

Peabody’s vendor began to run the search terms against the electronic documents collected from the share drives on July 26, 2013. On July 29, 2013, Peabody learned the search terms identified 47% of this group of electronic documents as potentially responsive.

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<sup>23</sup> Movants state that Peabody made a “decision to wait until early August to begin running search terms.” (Mot. ¶ 22.) Movants are mistaken. First, it was not Peabody’s decision, but Movants’ insistence on negotiated terms, that caused the delay in running the search terms. And, because negotiations were so unproductive, Peabody went ahead and began reviewing portions of its electronic and email documents in June without waiting for search terms.

The back-up tape restoration was completed on Saturday, August 3, 2013. Honoring its commitment to start with Movants' search terms, Peabody immediately began running the terms through the restored tapes. Applied to the restored mailboxes of the 23 custodians, the search terms identified 61.22% of the contents of those mailboxes as potentially responsive.<sup>24</sup> By any neutral standard, search terms that return over 60% of a document set as potentially responsive are way too broad. In practical terms, this would mean that 23 executives devoted almost two-thirds of their email traffic to responsive issues over 3½ years – at the same time when these executives were critical to the management of all other operations of the world's largest private-sector coal company – a scenario that is obviously not realistic.

As it evaluated the overbroad results that Movants' search terms had created (and separately continued its own document production and confidentiality designations for third-party productions), Peabody faced a decision point once again: whether to spend time attempting to re-negotiate the overbroad search terms with Movants, or to move ahead and try to narrow the results using analytical tools available through its e-discovery software, Relativity.

Recognizing that further negotiation on search terms would be fruitless (and Movants do not suggest otherwise in their brief), Peabody decided to proceed with the latter.

#### **IV. RESULTS OF THE RELATIVTY-ASSISTED REVIEW**

Relativity Assisted Review is an iterative process in which attorneys familiar with the subject matter of the case review a statistically valid sample of documents to determine responsiveness and then the Relativity software applies those decisions to the entire data set. In subsequent rounds, additional samples are presented to the attorneys for further review and

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<sup>24</sup> As this Court will recall, a "mailbox" is actually a very large collection of documents. At any given time, a mailbox will contain one year of email in a custodian's inbox and one year of email saved in any folder in the mailbox, including any sent email saved in those folders, as well as 60 days' worth of emails in the general "sent" slot. Given the length of time that documents remain in the mailbox, fifteen sets of restored back-up tapes would necessarily yield an enormous amount of email, only some of which can be de-duplicated.

categorization is then applied to the data set. In addition, various quality control steps are undertaken by the attorneys involved under the guidance of their electronic discovery consultant to evaluate progress and determine the appropriate stopping point (the point when further review would not lead to any further meaningful refinement of the data).

Under the Relativity Assisted Review analysis to date, and assuming additional work underway does not result in narrowing the universe significantly, Peabody estimates that **416,145 documents or approximately 4,302,732 pages** will need to go through attorney review for responsiveness, privilege and confidentiality before they can be produced.<sup>25</sup> As it completes the Relativity Assisted Review and gets further into final attorney review, Peabody anticipates it may be able to refine the estimate of the amount of data to be reviewed. It will also have better information about the pace of the final attorney review, and the speed and volume by which Peabody's rolling production is proceeding.

## V. CONCLUSION

For these reasons, Peabody respectfully requests that the Court enter an order (1) denying the motion and (2) setting a status conference in St. Louis on October 11, 2013, with regular conferences to follow.

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<sup>25</sup> The estimated page count is 4,302,732 pages under the standard estimates used by Peabody's electronic discovery consultant: 4 pages for email, 10 pages for documents; and 30 pages for spreadsheets. These calculations take into account that the review and production here, consistent with Movants' instructions, is undertaken in what is described as document "families." This means that an email and all its attachments are reviewed and produced, if responsive. Similarly a document, such as PowerPoint® presentation, and all documents embedded in it, such as spreadsheets, are to be reviewed and produced, if responsive.

Dated: September 5, 2013

Respectfully submitted,

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ATTORNEYS FOR PEABODY ENERGY  
CORPORATION

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on September 5, 2013, a copy of the foregoing Objection was served via the Court's ECF electronic filing system, and served by first class mail upon the parties listed on the Core Party/Non-ECF Service List posted on the Garden City Group's website on September 5, 2013, a copy of which is attached hereto as Exhibit A.

Dated: September 5, 2013

Respectfully submitted,

/s/ Steven N. Cousins

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**Core Party/Non-ECF Service List (Per the Case Management Order)**  
Patriot Coal Corporation et. al

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MSL	U.S. Trustee	OFFICE OF THE UNITED STATES TRUSTEE	ATTN LEONORA S. LONG, ESQ.	TRIAL ATTORNEY	111 S 10TH ST, STE 8.353	ST LOUIS	MO	63102	US	
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\* MSL = Master Service List  
NOA = Notice of Appearance  
\*\* Subject to continuous update and review

***For Discussion Purposes Only***

**In re Patriot Coal Corporation et al.**  
**Priority Subjects of Discovery from Peabody**

1. **Reorganization of Peabody assets and entities.** We expect that responsive documents and communications would include, but are not limited to, documents and communications concerning:
  - “Big East” and any other reorganization of Peabody’s Eastern Operations;
  - Any transfers of coal reserves to or from operating companies;
  - Dissolution of entities, or conversion of entities to another corporate form.
  
2. **Patriot’s solvency.** We expect that responsive documents and communications would include, but are not limited to, documents and communications concerning:
  - All documents and communications concerning the Duff & Phelps solvency opinion; any other Duff & Phelps opinions including valuation or fairness opinions; Morgan Stanley fairness or valuation opinions; the Ernst & Young tax opinion; or other opinions issued in connection with the Spin-Off;
  - Any models, projections, plans, and forecasts for Patriot or the Eastern Operations, and for Peabody;
  - Valuations, assessments, or appraisals of the assets of Patriot and the Eastern Operations;
  - Projections and forecasts concerning the price, supply, and demand of Illinois Basin or Appalachian coal;
  - Estimates or projections of the liabilities of Patriot and the Eastern Operations;
  - The financial condition of the Eastern Operations, including financial statements, interim and final financial reports, balance sheets, sales reports, or any other financial report;
  - Any due diligence conducted in connection with the Spin-Off or the Sale Case.
  
3. **Legacy liabilities.** We expect that responsive documents and communications would include, but are not limited to, documents and communications concerning:
  - Asset retirement obligations related to Patriot or the Eastern Operations;
  - Employee benefits provided to current or former employees of Patriot or a Patriot entity, such as benefits under the 2007 NBCWA, predecessor agreements, “me-too” agreements, the Coal Act, the Black Lung Act, worker’s compensation, and any other applicable plans, collective bargaining agreements, or statutes.
  - Peabody’s consideration of and decision to assume certain Legacy Liabilities in the Spin-Off;
  - Any analysis or assessment of the amount of these liabilities;
  - Any post-Spin-Off disputes regarding responsibility for any legacy liabilities.

***For Discussion Purposes Only***

4. **Consideration of the Spin-Off.** We expect that responsive documents and communications would include, but are not limited to, documents and communications concerning:
- Any board or committee minutes, notes, presentations, briefings, reports, or other materials considering the Spin-Off or any other potential spin-off of Eastern Operations;
  - Consideration of assets and liabilities to be included in Patriot, notably including documents and communications relating to assets that were considered for inclusion in Patriot but that were ultimately not included;
  - The Coal Supply Agreements between Patriot and Peabody, notably the AEP and TVA contracts;
  - Any coal leases between Peabody and Patriot;
  - Preparation of the Form 10, roadshows, marketing of the spinoff to Peabody stockholders or potential investors in Patriot, and communications with the SEC or with Peabody's lenders regarding the Spin-Off;
  - Professionals retained in connection with the Spin-Off;
  - Tax implications of the Spin-Off, including transfers of tax assets and liabilities, or tax elections related to the Spin-Off or assets of Patriot;
  - The Bank of America credit facility, solicitation of offers to provide a credit facility to Patriot, negotiation of the terms of the facility, and the anticipated uses of the facility.
5. **The "Sale Case."** We expect that responsive documents and communications would include, but are not limited to, documents and communications concerning:
- Any board or committee minutes, notes, presentations, briefings, reports, or other materials considering (i) a sale of any Eastern Operations, including, notably, a potential sale to Magnum, or (ii) a purchase of any assets to be combined with the Eastern Operations;
  - Development of the Offering Memorandum;
  - Projections, forecasts, plans, or analyses prepared for the "Sale Case."

*In Re PATRIOT COAL CORPORATION, et al., Case No. 12-51502-659*

Search Terms 7/25/2013

1. (relocat\* OR allocat\* OR shift\* OR swap\* OR switch\* OR carv\* OR transfer\* OR split\* OR divest\* OR guarantee\* OR roll\* OR carr\* OR dump\* OR strip\* OR hid\*) w/100 (Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)
2. ((relocat\* OR allocat\* OR shift\* OR swap\* OR switch\* OR carv\* OR transfer\* OR split\* OR divest\* OR guarantee\* OR roll\* OR carr\* OR dump\* OR strip\* OR hid\*) w/100 (asset\* OR liabilit\* OR debt\* OR pension\* OR retir\* OR medical OR black lung OR obligation\* OR balance\* OR reserve\* OR mine\* OR operat\* OR plant\* OR facilit\* OR leas\* OR royalt\* OR equity)) AND [Schedule B terms]
3. (investigat\* OR audit\*) w/100 [Schedule B terms]
4. (model\* OR forecast\* OR plan\* OR project\* OR analyz\* OR analys\* OR estimat\*) w/100 (Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)
5. ((model\* OR forecast\* OR plan\* OR project\* OR analyz\* OR analys\* OR estimat\*) w/100 (medical OR black lung OR balance\* OR operat\* OR reserve\* OR plant\* OR facilit\* OR leas\* OR royalt\* OR equity OR profit\* OR loss\* OR PL OR P L OR pnl OR revenue\* OR allocat\* OR asset\* OR cost\* OR liabilit\* OR obligation\* OR financ\* OR viab\* OR pension\* OR retir\* OR debt\*)) AND [Schedule B terms]
6. ((model\* OR forecast\* OR plan\* OR projection\* OR analyz\* OR analys\* OR estimat\*) w/100 mine\*) w/100 [Schedule A terms]
7. (coal w/25 (revenue\* OR suppl\* OR demand\* OR curve\* OR model\* OR forecast\* OR project\* OR market OR profit\* OR loss\* OR PL OR P L OR pnl)) AND [Schedule B terms]
- 7A. (coal w/25 (sale\* OR price\*)) w/100 [Schedule A terms]
8. ((credit (rating\* OR facility OR agreement\*)) OR (revolv\* w/5 credit) OR (financ\* w/5 equity) OR ((standby OR back up) fund\*)) AND [Schedule B terms]
9. (insolven\* OR bankrup\*) AND [Schedule B terms]
- 9A. solven\* OR fraud\*
10. (financial (health OR condition OR position OR strength)) AND [Schedule B terms]
- 10A. (EBITDA OR earnings before) AND [Schedule A terms]

11. (valu\* OR assess\* OR apprais\* OR estimat\* OR worth OR price\* OR pricing OR cost\* OR fair market\* OR FMV) w/100 (retir\* OR Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)
12. ((valu\* OR assess\* OR apprais\* OR estimat\* OR worth OR price\* OR pricing OR cost\* OR fair market\* OR FMV) w/100 (asset\* OR liabilit\* OR debt\* OR pension\* OR medical OR black lung OR obligation\* OR balance\* OR operation\* OR reserve\* OR plant\* OR facilit\* OR leas\* OR royalt\* OR equity OR mine\* OR mining)) AND [Schedule A terms]
13. (sale case OR SaleCo OR Reverse Morris OR parallel path\* OR pitch\* OR prospectus\* OR roadshow\* OR teaser\*) w/100 (asset\* OR liabilit\* OR debt\* OR pension\* OR retir\* OR obligation\* OR balance\* OR operation\* OR reserve\* OR mine\* OR operat\* OR plant\* OR facilit\* OR leas\* OR equipment OR royalt\* OR equity OR Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)
14. market w/100 (Elk Creek OR Putnam OR (Bond w/25 (County OR reserve\* OR coal)) OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)
15. offer\* memo\* AND [Schedule B terms]
16. Magnum OR Arch OR ArcLight
17. (Cerberus OR ((Natural Resource Partners OR NRP) AND Quintana) OR TIACME OR WL Ross OR W L Ross OR W.L. Ross) AND DATE:1/1/07-11/01/07
18. (reallocat\* OR allocat\* OR shift\* OR swap\* OR switch\* OR carv\* OR transfer\* OR split\* OR divest\* OR guarantee\* OR roll\* OR carr\* OR dump\* OR strip\*) w/100 (opinion\* OR ruling\* OR impact\* OR implicat\* OR ramification\* OR downside\* OR down side\* OR upside\* OR up side\*)
19. Duff OR duffandphelps\* OR ((DP OR D P OR D&P) w/100 (audit\* OR incom\* OR pro forma OR proforma OR balanc\* OR legac\* OR liabilit\* OR obligation\* OR debt\* OR coal OR forecast\* OR pric\*)) AND [Schedule B terms]
20. spin\* OR spun OR step plan\* OR ( newco AND [Schedule B terms])
- 20A. restructure\* AND [Schedule B terms, but Schedule B to be modified so date is 1/1/05 through 12/31/06]
21. (reorganiz\* OR disol\* OR reform\*) AND [Schedule B terms]
22. (sustain\* OR maintain\*) w/100 (stand alone OR independent compan\* OR independent entit\* OR independent corp\*)
23. Patriot OR Gemini OR (Indian w/5 project)

- 23A. PCC AND [DATE: 1/1/07 through 5/1/08]
24. (minimiz\* OR reduc\* OR mitigat\* OR lessen\* OR eliminat\* OR shrink\* OR shift\* OR transfer\*) w/100 (debt\* OR liabilit\* OR obligation\* OR exposure OR black lung OR pension\* OR retir\* OR medical OR Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)
25. ((minimiz\* OR reduc\* OR mitigat\* OR lessen\* OR eliminat\* OR shrink\* OR shift\* OR transfer\*) w/100 (loss\* OR asset\* OR cost\* OR profit\* OR PL OR P L OR revenue\* OR balance\* OR operation\* OR reserve\* OR mine\* OR operat\* OR plant\* OR facilit\* OR leas\* OR royalt\* OR equity)) AND [Schedule B terms]
26. (liabilit\* OR obligat\* OR promis\*) w/100 (assum\* OR retain\* OR regulat\* OR environment\* OR retir\* OR healthcare OR health care OR RHC OR (worker\* w/5 comp\*) OR benefit\* OR black lung OR reclam\* OR reclaim\* OR ARO OR rid\* OR dump\* OR viab\* OR mortalit\* OR actuar\* OR legac\* OR indemn\* OR insur\* OR pension\*) AND [Schedule B terms]
27. ((black lung OR BL) w/100 (excise\* OR tax\* OR refund\*)) OR BLET AND DATE 1/1/2007 through 5/1/2008
28. ((compensat\* OR comp OR incentiv\* OR pay package\* OR benefit\* OR retirement\* OR healthcare OR health OR indemnf\* OR insurance\* OR stock\* OR option OR options) w/100 (executive\* OR senior (manage\* OR mgmt) OR sr (manage\* OR mgmt) OR [Schedule C terms])) AND [Schedule B terms]
29. (tax\* w/100 (opinion\* OR ruling\* OR impact\* OR implicat\* OR ramification\* OR outcome\* OR effect OR effects OR treatment\* OR downside\* OR down side\* OR upside\* OR up side\*)) AND [Schedule B terms]
30. Ernst OR (EY w/1 com) OR ((E Y OR E.Y. OR EY OR E&Y) AND tax\*) AND [Schedule B terms]
31. (Am\* Electric OR AEP OR Tenn\* Valley OR TVA) w/100 (subsid\* OR renegotiat\* OR reproc\* OR below market OR underwater OR under water OR sweetheart OR sweet heart)
32. ((Am\* Electric OR AEP OR Tenn\* Valley OR TVA) w/100 (supply OR agreement OR contract OR negotiat\*)) AND [Schedule B terms]
33. coal suppl\* w/100 (subsid\* OR renegotiat\* OR reproc\* OR below market OR underwater OR under water OR sweetheart OR sweet heart)
34. (coal suppl\* w/100 (agreement OR contract OR negotiat\*)) AND [Schedule B terms]
35. (Armstrong AND (tax\* OR accelerat\* OR settl\*)) AND NOT Teasdale
36. (Consol OR CNX) AND Federal

- 37. (NBCWA OR National Bituminous OR Coal Act OR UMW\* OR United Mine) AND [Schedule B terms, modified so that DATE: 9/1/06 through 12/31/07]
- 37A. (incentive\* w/5 (plan\* OR program\* OR package)\* OR AIP OR AICP OR LTI\* OR LTEI\* OR ELTI\* OR top hat OR restricted stock\* OR RSU or RSUs OR (vest\* w/5 (time\* OR period\* or schedule\*)) w/100 ((retir\* (benefit\*, employee\*) OR liability\* OR obligat\* OR promis\*))
- 38. Monsanto OR Solutia
- 39. Squaw AND Alcoa
- 40. Attachment A AND [DATE: 4/1/07 through 5/1/08]
- 41. (schedule\* OR list\* OR attachment\* OR exhibit\*) AND (retir\* OR defer\* OR vest\*) AND [DATE 1/1/07 through 5/1/08]

**SCHEDULE A (Disjunctive)**

- Affinity
- Appalachia
- Beaver Dam
- Black Stallion
- Black Walnut
- Bluegrass
- Central States
- Charles
- Cleaton
- Coal Prop\*
- Coal Reserve Holding OR CRH\*
- Colony
- Cook
- Dixon
- Dodge Hill
- EAC OR EACC
- Eagle
- E Assoc\* OR E. Assoc\* OR East\* Assoc\*
- E Coal OR E. Coal OR East\* Coal
- E Roy\* OR E. Roy\* OR East\* Roy\*
- Fort
- HCR
- Highland
- Hillside
- Indian Hill
- Jarrell\*
- KE OR KEV
- Kanawha
- Knox
- Logan
- Martinka
- Midwest Coal OR MCR
- Mountain View OR Mt\* View
- N Page OR North\* Page
- Oh\* County OR Oh\* Cnty\*
- Patriot
- Peabody Coal OR PCC
- Pine Ridge
- Pond Creek
- Rivers Edge
- Sentry
- Snowberry

- Sterling
- Squaw
- Tecumseh
- Union County OR Union Cnty\*
- Winifrede
- Yankeetown
- Arid Op\*
- Cyprus OR Cypress
- Dominion OR DTA
- Emerald
- Gold Fields w/100 (Patriot OR Gemini OR Big East)
- James River OR JRC
- Newtown
- Peabody Term\*
- Point Pleasant OR Pt\* Pleasant
- Bond
- Dyson
- Elk Creek
- Lumaghi
- Paragon
- Putnam
- Thoroughbred OR Tbred OR T-Bred
- Troy
- Big Mountain OR Big Mt\*
- Federal
- Harris
- Rocklick
- Wells
- East\*
- Gemini
- Patriot
- Appalachia OR NAPP OR N App\* OR N. App\* OR North\* App OR CAPP OR C App\*  
OR C. App\* OR Central App\*
- Illinois OR ILLB OR ILB OR IL Basin
- Ohio OR OH
- Kentucky OR KY
- W Virginia OR W. Virginia OR West\* Virginia OR WV\* OR W VA OR W. VA OR  
West\* VA
- Newco
- spin\*
- Saleco
- restructur\*
- Pitt\* seam

**SCHEDULE B (Disjunctive)**

- Any Schedule A term

OR

- TO/FROM/CC/BCC: (Bean OR Whiting OR Ebetino OR Haider OR Jones OR Williams OR Schroeder OR Brines OR Engelhardt OR Hagedorn OR Navarre OR Phillips OR Sevem)

OR

- DATE:1/1/07-12/31/07

**SCHEDULE C (Disjunctive)**

- (J OR J. OR Joe OR Jos\*) w/2 Bean
- (C OR C. OR Chuck OR Char\*) w/2 Ebetino
- (I OR I. OR Irl OR Earl) w/2 Engelhardt
- (J OR J. OR Jackie OR Jacq\*) w/2 Jones
- (M OR M. OR Mark) w/2 Schroeder
- (R OR R. OR Rick OR Rich\*) w/2 Whiting

Term#	Original Term	XDD Term	Term Date Cull	Schedule B Date Cull	TO/FROM/CC/BCC
001	(reallocate* OR allocate* OR shift* OR swap* OR switch* OR carv* OR transfer* OR split* OR divest* OR guarantee* OR roll* OR carr* OR dump* OR strip* OR hid*) w/100 (Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)	(reallocate* OR allocate* OR shift* OR swap* OR switch* OR carv* OR transfer* OR split* OR divest* OR guarantee* OR roll* OR carr* OR dump* OR strip* OR hid*) w/100 (Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)	None	None	No
002.1	((reallocate* OR allocate* OR shift* OR swap* OR switch* OR carv* OR transfer* OR split* OR divest* OR guarantee* OR roll* OR carr* OR dump* OR strip* OR hid*) w/100 (asset* OR liability* OR debt* OR pension* OR retir* OR medical OR black lung OR obligation* OR balance* OR reserve* OR mine* OR operat* OR plant* OR facilit* OR leas* OR royalt* OR equity)) AND (Affinity OR Appalachia OR Beaver Dam OR Black Stallion OR Black Walnut OR Bluegrass OR Central States OR Charles OR Cleaton OR Coal Prop* OR (Coal Reserve Holding OR CRH*) OR Colony OR Cook OR Dixon OR Dodge Hill OR (EAC OR EACC) OR Eagle OR (E Assoc* OR E. Assoc* OR East* Assoc*) OR (E Coal OR E. Coal OR East* Coal) OR (E Roy* OR E. Roy* OR East* Roy*) OR Fort OR HCR OR Highland OR Hillside OR Indian Hill OR Jarrell* OR (KE OR KEV) OR Kanawha OR Knox OR Logan OR Martinka OR (Midwest Coal OR MCR) OR (Mountain View OR Mt* View) OR (N Page OR North* Page) OR (Oh* County OR Oh* Cnty*) OR Patriot OR (Peabody Coal OR PCC) OR Pine Ridge OR Pond Creek OR Rivers Edge OR Sentry OR Snowberry OR Sterling OR Squaw OR Tecumseh OR (Union County OR Union Cnty*))	((reallocate* OR allocate* OR shift* OR swap* OR switch* OR carv* OR transfer* OR split* OR divest* OR guarantee* OR roll* OR carr* OR dump* OR strip* OR hid*) w/100 (asset* OR liability* OR debt* OR pension* OR retir* OR medical OR black lung OR obligation* OR balance* OR reserve* OR mine* OR operat* OR plant* OR facilit* OR leas* OR royalt* OR equity)) AND (Affinity OR Appalachia OR Beaver Dam OR Black Stallion OR Black Walnut OR Bluegrass OR Central States OR Charles OR Cleaton OR Coal Prop* OR (Coal Reserve Holding OR CRH*) OR Colony OR Cook OR Dixon OR Dodge Hill OR (EAC OR EACC) OR Eagle OR (E Assoc* OR E. Assoc* OR East* Assoc*) OR (E Coal OR E. Coal OR East* Coal) OR (E Roy* OR E. Roy* OR East* Roy*) OR Fort OR HCR OR Highland OR Hillside OR Indian Hill OR Jarrell* OR (KE OR KEV) OR Kanawha OR Knox OR Logan OR Martinka OR (Midwest Coal OR MCR) OR (Mountain View OR Mt* View) OR (N Page OR North* Page) OR (Oh* County OR Oh* Cnty*) OR Patriot OR (Peabody Coal OR PCC) OR Pine Ridge OR Pond Creek OR Rivers Edge OR Sentry OR Snowberry OR Sterling OR Squaw OR Tecumseh OR (Union County OR Union Cnty*))	None	None	No

EXHIBIT  
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<p>((relocat* OR allocat* OR shift* OR swap* OR switch* OR carv* OR transfer* OR split* OR divest* OR guarantee* OR roll* OR carr* OR dump* OR strip* OR hid*) w/100 (asset* OR liabilit* OR debt* OR pension* OR retir* OR medical OR black lung OR obligation* OR balance* OR reserve* OR mine* OR operat* OR plant* OR facilit* OR leas* OR royalt* OR equity)) AND</p>	<p>((relocat* OR allocat* OR shift* OR swap* OR switch* OR carv* OR transfer* OR split* OR divest* OR guarantee* OR roll* OR carr* OR dump* OR strip* OR hid*) w/100 (asset* OR liabilit* OR debt* OR pension* OR retir* OR medical OR black lung OR obligation* OR balance* OR reserve* OR mine* OR operat* OR plant* OR facilit* OR leas* OR royalt* OR equity))</p>	None	None	Yes
<p>002.2 [Schedule B terms] ((relocat* OR allocat* OR shift* OR swap* OR switch* OR carv* OR transfer* OR split* OR divest* OR guarantee* OR roll* OR carr* OR dump* OR strip* OR hid*) w/100 (asset* OR liabilit* OR debt* OR pension* OR retir* OR medical OR black lung OR obligation* OR balance* OR reserve* OR mine* OR operat* OR plant* OR facilit* OR leas* OR royalt* OR equity)) AND</p>	<p>((relocat* OR allocat* OR shift* OR swap* OR switch* OR carv* OR transfer* OR split* OR divest* OR guarantee* OR roll* OR carr* OR dump* OR strip* OR hid*) w/100 (asset* OR liabilit* OR debt* OR pension* OR retir* OR medical OR black lung OR obligation* OR balance* OR reserve* OR mine* OR operat* OR plant* OR facilit* OR leas* OR royalt* OR equity))</p>	None	1/1/2007-12/31/2007	No
<p>002.3 [Schedule B terms]</p>		None	1/1/2007-12/31/2007	No

	(investigat* OR audit*) W/100 (Affinity OR Appalachia OR Beaver Dam OR Black Stallion OR Black Walnut OR Bluegrass OR Central States OR Charles OR Cleaton OR Coal Prop* OR (Coal Reserve Holding OR CRH*) OR Colony OR Cook OR Dixon OR Dodge Hill OR (EAC OR EACC) OR Eagle OR (E Assoc* OR E. Assoc* OR East* Assoc*) OR (E Coal OR E. Coal OR East* Coal) OR (E Roy* OR E. Roy* OR East* Roy*) OR Fort OR HCR OR Highland OR Hillside OR Indian Hill OR Jarrell* OR (KE OR KEV) OR Kanawha OR Knox OR Logan OR Martinka OR (Midwest Coal OR MCR) OR (Mountain View OR Mt* View) OR (N Page OR North* Page) OR (Oh* County OR Oh* Cnty*) OR Patriot OR (Peabody Coal OR PCC) OR Pine Ridge OR Pond Creek OR Rivers Edge OR Sentry OR Snowberry OR Sterling OR Squaw OR Tecumseh OR (Union County OR Union Cnty*) OR Winifrede OR Yankeetown OR Arid Op* OR (Cyprus OR Cypress) OR (Dominion OR DTA) OR Emerald OR (Gold Fields w/100 (Patriot OR Gemini OR Big East)) OR (James River OR JRC) OR Newtown OR Peabody Term* OR (Point Pleasant OR Pt* Pleasant) OR Bond OR Dyson OR Elk Creek OR Lumaghi OR Paragon OR Putnam OR (Thoroughbred OR Tbred OR T-				
003.1	(investigat* OR audit*) w/100 [Schedule B terms]		None	None	No
003.2	(investigat* OR audit*) w/100 [Schedule B terms]	(investigat* OR audit*)	None	None	Yes
003.3	(investigat* OR audit*) w/100 [Schedule B terms]	(investigat* OR audit*)	None	1/1/2007-12/31/2007	No
004	(model* OR forecast* OR plan* OR project* OR analyz* OR analys* OR estimat*) w/100 (Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)	(model* OR forecast* OR plan* OR project* OR analyz* OR analys* OR estimat*) w/100 (Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)	None	None	No

<p>((model* OR forecast* OR plan* OR project* OR project* OR analyz* OR analys* OR estimat*) w/100 (medical OR black lung OR balance* OR operat* OR reserve* OR plant* OR facilit* OR leas* OR royalt* OR equity OR profit* OR loss* OR PL OR P L OR pnl OR revenue* OR allocat* OR asset* OR cost* OR liabilit* OR obligation* OR financ* OR viab* OR pension* OR retir* OR debt*)) AND [Schedule B terms]</p>	<p>((model* OR forecast* OR plan* OR project* OR analyz* OR analys* OR estimat*) w/100 (medical OR black lung OR balance* OR operat* OR reserve* OR plant* OR facilit* OR leas* OR royalt* OR equity OR profit* OR loss* OR PL OR P L OR pnl OR revenue* OR allocat* OR asset* OR cost* OR liabilit* OR obligation* OR financ* OR viab* OR pension* OR retir* OR debt*)) AND (Affinity OR Appalachia OR Beaver Dam OR Black Stallion OR Black Walnut OR Bluegrass OR Central States OR Charles OR Cleaton OR Coal Prop* OR (Coal Reserve Holding OR CRH*) OR Colony OR Cook OR Dixon OR Dodge Hill OR (EAC OR EACC) OR Eagle OR (E Assoc* OR E. Assoc* OR East* Assoc*) OR (E Coal OR E. Coal OR East* Coal) OR (E Roy* OR E. Roy* OR East* Roy*) OR Fort OR HCR OR Highland OR Hillside OR Indian Hill OR Jarrell* OR (KE OR KEV) OR Kanawha OR Knox OR Logan OR Martinka OR (Midwest Coal OR MCR) OR (Mountain View OR Mt* View) OR (N Page OR North* Page) OR (Oh* County OR Oh* Cnty*) OR Patriot OR (Peabody Coal OR PCC) OR Pine Ridge OR Pond Creek OR Rivers Edge OR Sentry OR Snowberry OR Sterling OR Squaw OR Tecumseh OR (Union County OR Union Cnty*) OR Winifrede OR</p>	None	None	No
<p>((model* OR forecast* OR plan* OR project* OR analyz* OR analys* OR estimat*) w/100 (medical OR black lung OR balance* OR operat* OR reserve* OR plant* OR facilit* OR leas* OR royalt* OR equity OR profit* OR loss* OR PL OR P L OR pnl OR revenue* OR allocat* OR asset* OR cost* OR liabilit* OR obligation* OR financ* OR viab* OR pension* OR retir* OR debt*)) AND [Schedule B terms]</p>	<p>((model* OR forecast* OR plan* OR project* OR analyz* OR analys* OR estimat*) w/100 (medical OR black lung OR balance* OR operat* OR reserve* OR plant* OR facilit* OR leas* OR royalt* OR equity OR profit* OR loss* OR PL OR P L OR pnl OR revenue* OR allocat* OR asset* OR cost* OR liabilit* OR obligation* OR financ* OR viab* OR pension* OR retir* OR debt*))</p>	None	None	Yes

((model\* OR forecast\* OR plan\*  
OR project\* OR analyz\* OR  
analys\* OR estimat\*) w/100  
(medical OR black lung OR  
balance\* OR operat\* OR  
reserve\* OR plant\* OR facilit\* OR ((model\* OR forecast\* OR plan\* OR project\*  
leas\* OR royalt\* OR equity OR OR analyz\* OR analys\* OR estimat\*) w/100  
profit\* OR loss\* OR PL OR P L OR (medical OR black lung OR balance\* OR operat\*  
pnl OR revenue\* OR allocat\* OR OR reserve\* OR plant\* OR facilit\* OR leas\* OR  
asset\* OR cost\* OR liabilit\* OR royalt\* OR equity OR profit\* OR loss\* OR PL OR  
obligation\* OR financ\* OR viab\* P L OR pnl OR revenue\* OR allocat\* OR asset\*  
OR pension\* OR retir\* OR OR cost\* OR liabilit\* OR obligation\* OR financ\*  
005.3 debt\*)) AND [Schedule B terms] OR viab\* OR pension\* OR retir\* OR debt\*)) None 1/1/2007-12/31/2007 No

<p>((model* OR forecast* OR plan* OR projection* OR analyz* OR analys* OR estimat*) w/100 mine*) W/100 (Affinity OR Appalachia OR Beaver Dam OR Black Stallion OR Black Walnut OR Bluegrass OR Central States OR Charles OR Cleaton OR Coal Prop* OR (Coal Reserve Holding OR CRH*) OR Colony OR Cook OR Dixon OR Dodge Hill OR (EAC OR EACC) OR Eagle OR (E Assoc* OR E. Assoc* OR East* Assoc*) OR (E Coal OR E. Coal OR East* Coal) OR (E Roy* OR E. Roy* OR East* Roy*) OR Fort OR HCR OR Highland OR Hillside OR Indian Hill OR Jarrell* OR (KE OR KEV) OR Kanawha OR Knox OR Logan OR Martinka OR (Midwest Coal OR MCR) OR (Mountain View OR Mt* View) OR (N Page OR North* Page) OR (Oh* County OR Oh* Cnty*) OR Patriot OR (Peabody Coal OR PCC) OR Pine Ridge OR Pond Creek OR Rivers Edge OR Sentry OR Snowberry OR Sterling OR Squaw OR Tecumseh OR (Union County OR Union Cnty*) OR Winifrede OR Yankeetown OR Arid Op* OR (Cyprus OR Cypress) OR (Dominion OR DTA) OR Emerald OR (James River OR JRC) OR Newtown OR Peabody Term* OR (Point Pleasant OR Pt* Pleasant) OR Bond OR Dyson OR Elk Creek OR Lumaghi OR Paragon OR Putnam OR (Thoroughbred OR Tbred OR T-Bred) OR Troy</p>		None	None	No
<p>((model* OR forecast* OR plan* OR projection* OR analyz* OR analys* OR estimat*) w/100 mine*) w/100 [Schedule A terms]</p>	<p>((model* OR forecast* OR plan* OR projection* OR analyz* OR analys* OR estimat*) w/100 mine*) W/100 Gold Fields) w/100 (Patriot OR Gemini OR Big East)</p>	None	None	No



007A.2 w/100 [Schedule A terms]	Fields) w/100 (Patriot OR Gemini OR Big East) ((credit pre/1 (rating* OR facility OR agreement*)) OR (revolv* w/5 credit) OR (financ* w/5 equity) OR ((standby OR back up pre/1 fund*)) AND (Affinity OR Appalachia OR Beaver Dam OR Black Stallion OR Black Walnut OR Bluegrass OR Central States OR Charles OR Cleaton OR Coal Prop* OR (Coal Reserve Holding OR CRH*) OR Colony OR Cook OR Dixon OR Dodge Hill OR (EAC OR EACC) OR Eagle OR (E Assoc* OR E. Assoc* OR East* Assoc*) OR (E Coal OR E. Coal OR East* Coal) OR (E Roy* OR E. Roy* OR East* Roy*) OR Fort OR HCR OR Highland OR Hillside OR Indian Hill OR Jarrell* OR (KE OR KEV) OR Kanawha OR Knox OR Logan OR Martinka OR (Midwest Coal OR MCR) OR (Mountain View OR Mt* View) OR (N Page OR North* Page) OR (Oh* County OR Oh* Cnty*) OR Patriot OR (Peabody Coal OR PCC) OR Pine Ridge OR Pond Creek OR Rivers Edge OR Sentry OR Snowberry OR Sterling OR Squaw OR Tecumseh OR (Union County OR Union Cnty*) OR Winifrede OR Yankeetown OR Arid Op* OR ((credit (rating* OR facility OR agreement*)) OR (revolv* w/5 credit) OR (financ* w/5 equity) OR ((standby OR back up) fund*))	None	None	No
008.1 AND [Schedule B terms]	Pleasant OR Pt* Pleasant) OR Bond OR Dyson ((credit (rating* OR facility OR agreement*)) OR (revolv* w/5 credit) OR (financ* w/5 equity) OR ((standby OR back up) fund*))	None	None	No
008.2 AND [Schedule B terms]	((credit pre/1 (rating* OR facility OR agreement*)) OR (revolv* w/5 credit) OR (financ* w/5 equity) OR ((standby OR back up) pre/1 fund*)) ((credit (rating* OR facility OR agreement*)) OR (revolv* w/5 credit) OR (financ* w/5 equity) OR ((standby OR back up) fund*))	None	None	Yes
008.3 AND [Schedule B terms]	pre/1 fund*))	None	1/1/2007-12/31/2007	No
009.1 [Schedule B terms]	Appalachia OR Beaver Dam OR Black Stallion	None	None	No
009.2 [Schedule B terms]	(insolven* OR bankrupt*)	None	None	Yes

009.3 [Schedule B terms]	(insolven* OR bankrup*)	None	1/1/2007-12/31/2007	No
009A solven* OR fraud*	solven* OR fraud*	None	None	No
010.1 OR position OR strength)) AND	position OR strength)) AND (Affinity OR	None	None	No
010.2 OR position OR strength)) AND	position OR strength))	None	None	Yes
010.3 OR position OR strength)) AND	position OR strength))	None	1/1/2007-12/31/2007	No
010A AND [Schedule A terms]	Appalachia OR Beaver Dam OR Black Stallion	None	None	No
(valu* OR assess* OR apprais*				
OR estimat* OR worth OR price*				
OR pricing OR cost* OR fair	(valu* OR assess* OR apprais* OR estimat* OR			
market* OR FMV) w/100 (retir*	worth OR price* OR pricing OR cost* OR fair			
OR Elk Creek OR Putnam OR	market* OR FMV) w/100 (retir* OR Elk Creek			
Bond OR Troy OR Lumaghi OR	OR Putnam OR Bond OR Troy OR Lumaghi OR			
Thoroughbred OR Tbred OR T-	Thoroughbred OR Tbred OR T-Bred OR Dyson			
011 Bred OR Dyson OR Paragon)	OR Paragon)	None	None	No

((valu\* OR assess\* OR apprais\* OR estimat\* OR worth OR price\* OR pricing OR cost\* OR fair market\* OR FMV) w/100 (asset\* OR liabilit\* OR debt\* OR pension\* OR medical OR black lung OR obligation\* OR balance\* OR operation\* OR reserve\* OR plant\* OR facilit\* OR leas\* OR royalt\* OR equity OR mine\* OR mining)) AND (Affinity OR Appalachia OR Beaver Dam OR Black Stallion OR Black Walnut OR Bluegrass OR Central States OR Charles OR Cleaton OR Coal Prop\* OR (Coal Reserve Holding OR CRH\*) OR Colony OR Cook OR Dixon OR Dodge Hill OR (EAC OR EACC) OR Eagle OR (E Assoc\* OR E. Assoc\* OR East\* Assoc\*) OR (E Coal OR E. Coal OR East\* Coal) OR (E Roy\* OR E. Roy\* OR East\* Roy\*) OR Fort OR HCR OR Highland OR Hillside OR Indian Hill OR Jarrell\* OR (KE OR KEV) OR Kanawha OR Knox OR Logan OR Martinka OR (Midwest Coal OR MCR) OR (Mountain View OR Mt\* View) OR (N Page OR North\* Page) OR (Oh\* County OR Oh\* Cnty\*) OR Patriot OR (Peabody Coal OR PCC) OR Pine Ridge OR Pond Creek OR Rivers Edge OR Sentry OR Snowberry OR Sterling OR Squaw OR Tecumseh OR (Union County OR Union Cnty\*) OR Winifrede OR Yankeetown OR Arid Op\* OR (Cyprus OR Cypress) OR (Dominion OR DTA) OR Emerald OR None

012 mining)) AND [Schedule A terms] None No

<p>(sale case OR SaleCo OR Reverse Morris OR parallel path* OR pitch* OR prospectus* OR roadshow* OR teaser*) w/100 (asset* OR liabilit* OR debt* OR pension* OR retir* OR obligation* OR balance* OR operation* OR reserve* OR mine* OR operat* OR plant* OR facilit* OR leas* OR equipment OR royalt* OR equity OR Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T- 013 Bred OR Dyson OR Paragon) market w/100 (Elk Creek OR Putnam OR (Bond w/25 (County OR reserve* OR coal)) OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson 014 OR Paragon)</p>	<p>(sale case OR SaleCo OR Reverse Morris OR parallel path* OR pitch* OR prospectus* OR roadshow* OR teaser*) w/100 (asset* OR liabilit* OR debt* OR pension* OR retir* OR obligation* OR balance* OR operation* OR reserve* OR mine* OR operat* OR plant* OR facilit* OR leas* OR equipment OR royalt* OR equity OR Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)  market w/100 (Elk Creek OR Putnam OR (Bond w/25 (County OR reserve* OR coal)) OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T- Bred OR Dyson OR Paragon)</p>	<p>None</p>	<p>None</p>	<p>No</p>
		<p>None</p>	<p>None</p>	<p>No</p>

	offer* memo* AND (Affinity OR Appalachia OR Beaver Dam OR Black Stallion OR Black Walnut OR Bluegrass OR Central States OR Charles OR Cleaton OR Coal Prop* OR (Coal Reserve Holding OR CRH*) OR Colony OR Cook OR Dixon OR Dodge Hill OR (EAC OR EACC) OR Eagle OR (E Assoc* OR E. Assoc* OR East* Assoc*) OR (E Coal OR E. Coal OR East* Coal) OR (E Roy* OR E. Roy* OR East* Roy*) OR Fort OR HCR OR Highland OR Hillside OR Indian Hill OR Jarrell* OR (KE OR KEV) OR Kanawha OR Knox OR Logan OR Martinka OR (Midwest Coal OR MCR) OR (Mountain View OR Mt* View) OR (N Page OR North* Page) OR (Oh* County OR Oh* Cnty*) OR Patriot OR (Peabody Coal OR PCC) OR Pine Ridge OR Pond Creek OR Rivers Edge OR Sentry OR Snowberry OR Sterling OR Squaw OR Tecumseh OR (Union County OR Union Cnty*) OR Winifrede OR Yankeetown OR Arid Op* OR (Cyprus OR Cypress) OR (Dominion OR DTA) OR Emerald OR (Gold Fields w/100 (Patriot OR Gemini OR Big East)) OR (James River OR JRC) OR Newtown OR Peabody Term* OR (Point Pleasant OR Pt* Pleasant) OR Bond OR Dyson OR Elk Creek OR Lumaghi OR Paragon OR				
015.1 terms]	offer* memo* AND [Schedule B Putnam OR (Thoroughbred OR Tbred OR T-Bred) OR Troy OR (Big Mountain OR Big Mt*)	None	None	No	
015.2 terms]	offer* memo* AND [Schedule B offer* memo*	None	None	Yes	
015.3 terms]	offer* memo* AND [Schedule B offer* memo*	None	1/1/2007-12/31/2007	No	
016	Magnum OR Arch OR ArLight Magnum OR Arch OR ArLight	None	None	No	
017	(Cerberus OR ((Natural Resource Partners OR NRP) AND Quintana) OR TIACME OR WL Ross OR W L Ross OR W.L. Ross) AND DATE:1/1/07-11/01/07	(Cerberus OR ((Natural Resource Partners OR NRP) AND Quintana) OR TIACME OR WL Ross OR W L Ross OR W.L. Ross)	1/1/2007-11/01/2007	None	No

(reallcat* OR allocat* OR shift* OR swap* OR switch* OR carv* OR transfer* OR split* OR divest* (reallcat* OR allocat* OR shift* OR swap* OR OR guarantee* OR roll* OR carr* switch* OR carv* OR transfer* OR split* OR OR dump* OR strip*) w/100 divest* OR guarantee* OR roll* OR carr* OR (opinion* OR ruling* OR impact* dump* OR strip*) w/100 (opinion* OR ruling* OR implicat* OR ramification* OR impact* OR implicat* OR ramification* OR OR downside* OR down side* OR downside* OR down side* OR upside* OR up 018 upside* OR up side*) side*)	None	None	No
019.1 OR D P OR D&P) w/100 (audit* D&P) w/100 (audit* OR incom* OR pro forma	None	None	No
019.2 OR D P OR D&P) w/100 (audit* D&P) w/100 (audit* OR incom* OR pro forma	None	None	Yes
019.3 OR D P OR D&P) w/100 (audit* D&P) w/100 (audit* OR incom* OR pro forma	None	1/1/2007-12/31/2007	No
020.1 (newco AND [Schedule B terms]) spin* OR spun OR step plan*	None	None	No
020.2 (newco AND [Schedule B terms]) Dam OR Black Stallion OR Black Walnut OR	None	None	No
020.3 (newco AND [Schedule B terms]) newco	None	None	Yes
020.4 (newco AND [Schedule B terms]) newco	None	1/1/2007-12/31/2007	No
020A.1 terms, but Schedule B to be Beaver Dam OR Black Stallion OR Black Walnut	None	None	No
020A.2 terms, but Schedule B to be restructure*	None	None	Yes
020A.3 terms, but Schedule B to be restructure*	None	1/1/2005-12/31/2006	No

	(reorganiz* OR disol* OR reform*) AND (Affinity OR Appalachia OR Beaver Dam OR Black Stallion OR Black Walnut OR Bluegrass OR Central States OR Charles OR Cleaton OR Coal Prop* OR (Coal Reserve Holding OR CRH*) OR Colony OR Cook OR Dixon OR Dodge Hill OR (EAC OR EACC) OR Eagle OR (E Assoc* OR E. Assoc* OR East* Assoc*) OR (E Coal OR E. Coal OR East* Coal) OR (E Roy* OR E. Roy* OR East* Roy*) OR Fort OR HCR OR Highland OR Hillside OR Indian Hill OR Jarrell* OR (KE OR KEV) OR Kanawha OR Knox OR Logan OR Martinka OR (Midwest Coal OR MCR) OR (Mountain View OR Mt* View) OR (N Page OR North* Page) OR (Oh* County OR Oh* Cnty*) OR Patriot OR (Peabody Coal OR PCC) OR Pine Ridge OR Pond Creek OR Rivers Edge OR Sentry OR Snowberry OR Sterling OR Squaw OR Tecumseh OR (Union County OR Union Cnty*) OR Winifrede OR Yankeetown OR Arid Op* OR (Cyprus OR Cypress) OR (Dominion OR DTA) OR Emerald OR (Gold Fields w/100 (Patriot OR Gemini OR Big East)) OR (James River OR JRC) OR Newtown OR Peabody Term* OR (Point Pleasant OR Pt* Pleasant) OR Bond OR Dyson OR Elk Creek OR Lumaghi OR Paragon OR Putnam OR			
021.1	(reorganiz* OR disol* OR reform*) AND [Schedule B terms] (Thoroughbred OR Tbred OR T-Bred) OR Troy	None	None	No
021.2	(reorganiz* OR disol* OR reform*) AND [Schedule B terms] (reorganiz* OR disol* OR reform*)	None	None	Yes
021.3	(reorganiz* OR disol* OR reform*) AND [Schedule B terms] (reorganiz* OR disol* OR reform*) (sustain* OR maintain*) w/100 (stand alone OR independent compan* OR independent entit* OR independent corp*)	None	1/1/2007-12/31/2007	No
022	(stand alone OR independent compan* OR independent entit* OR independent corp*) Patriot OR Gemini OR (Indian w/5 project)	None	None	No
023A	w/5 project) 5/1/08]	Patriot OR Gemini OR (Indian w/5 project) PCC	None 1/1/2007-5/1/2008	No None

<p>(minimiz* OR reduc* OR mitigat* OR lessen* OR eliminat* OR shrink* OR shift* OR transfer*) w/100 (debt* OR liabilit* OR obligation* OR exposure OR black lung OR pension* OR retir* OR medical OR Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T- 024 Bred OR Dyson OR Paragon)</p>	<p>(minimiz* OR reduc* OR mitigat* OR lessen* OR eliminat* OR shrink* OR shift* OR transfer*) w/100 (debt* OR liabilit* OR obligation* OR exposure OR black lung OR pension* OR retir* OR medical OR Elk Creek OR Putnam OR Bond OR Troy OR Lumaghi OR Thoroughbred OR Tbred OR T-Bred OR Dyson OR Paragon)</p>	None	None	No
<p>((minimiz* OR reduc* OR mitigat* OR lessen* OR eliminat* OR shrink* OR shift* OR transfer*) w/100 (loss* OR asset* OR cost* OR profit* OR PL OR P L OR revenue* OR balance* OR operation* OR reserve* OR mine* OR mine* OR operat* OR plant* OR facilit* OR leas* OR royalt* OR 025.1 equity)) AND [Schedule B terms]</p>	<p>((minimiz* OR reduc* OR mitigat* OR lessen* OR eliminat* OR shrink* OR shift* OR transfer*) w/100 (loss* OR asset* OR cost* OR profit* OR PL OR P L OR revenue* OR balance* OR operation* OR reserve* OR mine* OR operat* OR plant* OR facilit* OR leas* OR royalt* OR equity)) AND (Affinity OR Appalachia OR Beaver Dam OR Black Stallion OR Black Walnut OR Bluegrass OR Central States OR Charles OR Cleaton OR Coal Prop* OR (Coal Reserve Holding OR CRH*) OR Colony OR Cook OR Dixon OR Dodge Hill OR (EAC OR EACC) OR Eagle OR (E Assoc* OR E. Assoc* OR East* Assoc*) OR (E Coal OR E. Coal OR East* Coal) OR (E Roy* OR E. Roy* OR East* Roy*) OR Fort OR HCR OR Highland OR Hillside OR Indian Hill OR Jarrell* OR (KE OR KEV) OR Kanawha OR Knox OR Logan OR Martinka OR (Midwest Coal OR MCR) OR (Mountain View OR Mt* View) OR (N Page OR North* Page) OR (Oh* County OR Oh* Cnty*) OR Patriot OR (Peabody Coal OR PCC) OR Pine Ridge OR Pond Creek OR Rivers Edge OR Sentry OR Snowberry OR Sterling OR Squaw OR Tecumseh OR (Union County OR Union Cnty*) OR Winifrede OR Yankeetown OR Arid Op* OR (Cyprus OR Cypress) OR (Dominion</p>	None	None	No

<p>((minimiz* OR reduc* OR mitigat* OR lessen* OR eliminat* OR shrink* OR shift* OR transfer*) w/100 (loss* OR asset* OR cost* OR profit* OR PL OR P L OR revenue* OR balance* OR operation* OR reserve* OR mine* OR operat* OR plant* OR facilit* OR leas* OR royalt* OR 025.2 equity)) AND [Schedule B terms]</p>	<p>((minimiz* OR reduc* OR mitigat* OR lessen* OR eliminat* OR shrink* OR shift* OR transfer*) w/100 (loss* OR asset* OR cost* OR profit* OR PL OR P L OR revenue* OR balance* OR operation* OR reserve* OR mine* OR operat* OR plant* OR facilit* OR leas* OR royalt* OR equity))</p>	None	None	Yes
<p>((minimiz* OR reduc* OR mitigat* OR lessen* OR eliminat* OR shrink* OR shift* OR transfer*) w/100 (loss* OR asset* OR cost* OR profit* OR PL OR P L OR revenue* OR balance* OR operation* OR reserve* OR mine* OR operat* OR plant* OR facilit* OR leas* OR royalt* OR 025.3 equity)) AND [Schedule B terms]</p>	<p>((minimiz* OR reduc* OR mitigat* OR lessen* OR eliminat* OR shrink* OR shift* OR transfer*) w/100 (loss* OR asset* OR cost* OR profit* OR PL OR P L OR revenue* OR balance* OR operation* OR reserve* OR mine* OR operat* OR plant* OR facilit* OR leas* OR royalt* OR equity))</p>	None	1/1/2007-12/31/2007	No
026.1 w/100 (assum* OR retain* OR	(assum* OR retain* OR regulat* OR	None	None	No
026.2 w/100 (assum* OR retain* OR	(assum* OR retain* OR regulat* OR	None	None	Yes
026.3 w/100 (assum* OR retain* OR	(assum* OR retain* OR regulat* OR	None	1/1/2007-12/31/2007	No
<p>((black lung OR BL) w/100 (excise* OR tax* OR refund*)) OR BLET AND DATE 1/1/2007 027 through 5/1/2008</p>	<p>((black lung OR BL) w/100 (excise* OR tax* OR refund*)) OR BLET</p>	1/1/2007-5/1/2008	None	No

<p>((compensat* OR comp OR incentiv* OR pay package* OR benefit* OR retirement* OR healthcare OR health OR indemnif* OR insurance* OR stock* OR option OR options) w/100 (executive* OR senior (manage* OR mgmt) OR sr (manage* OR mgmt) OR [Schedule C terms])) AND</p>	<p>((compensat* OR comp OR incentiv* OR pay package* OR benefit* OR retirement* OR healthcare OR health OR indemnif* OR insurance* OR stock* OR option OR options) w/100 (executive* OR senior pre/1 (manage* OR mgmt)) OR (sr pre/1 (manage* OR mgmt)) OR (((J OR J. OR Joe OR Jos*) w/2 Bean) OR ((C OR C. OR Chuck OR Char*) w/2 Ebetino) OR ((I OR I. OR Irl OR Earl) w/2 Engelhardt) OR ((J OR J. OR Jackie OR Jacq*) w/2 Jones) OR ((M OR M. OR Mark) w/2 Schroeder) OR ((R OR R. OR Rick OR Rich*) w/2 Whiting)))) AND (Affinity OR Appalachia OR Beaver Dam OR Black Stallion OR Black Walnut OR Bluegrass OR Central States OR Charles OR Cleaton OR Coal Prop* OR (Coal Reserve Holding OR CRH*) OR Colony OR Cook OR Dixon OR Dodge Hill OR (EAC OR EACC) OR Eagle OR (E Assoc* OR E. Assoc* OR East* Assoc*) OR (E Coal OR E. Coal OR East* Coal) OR (E Roy* OR E. Roy* OR East* Roy*) OR Fort OR HCR OR Highland OR Hillside OR Indian Hill OR Jarrell* OR (KE OR KEV) OR Kanawha OR Knox OR Logan OR Martinka OR (Midwest Coal OR MCR) OR (Mountain View OR Mt* View) OR (N Page OR North* Page) OR (Oh* County OR Oh* Cnty*) OR Patriot OR (Peabody Coal OR</p>	<p>None</p>	<p>None</p>	<p>No</p>	
<p>028.1 [Schedule B terms]</p>	<p>((compensat* OR comp OR incentiv* OR pay package* OR benefit* OR retirement* OR healthcare OR health OR indemnif* OR insurance* OR stock* OR option OR options) w/100 (executive* OR senior (manage* OR mgmt) OR sr (manage* OR mgmt) OR [Schedule C terms])) AND</p>	<p>((compensat* OR comp OR incentiv* OR pay package* OR benefit* OR retirement* OR healthcare OR health OR indemnif* OR insurance* OR stock* OR option OR options) w/100 (executive* OR senior pre/1 (manage* OR mgmt)) OR (sr pre/1 (manage* OR mgmt)) OR (((J OR J. OR Joe OR Jos*) w/2 Bean) OR ((C OR C. OR Chuck OR Char*) w/2 Ebetino) OR ((I OR I. OR Irl OR Earl) w/2 Engelhardt) OR ((J OR J. OR Jackie OR Jacq*) w/2 Jones) OR ((M OR M. OR Mark) w/2 Schroeder) OR ((R OR R. OR Rick OR Rich*) w/2 Whiting))))</p>	<p>None</p>	<p>None</p>	<p>Yes</p>
<p>028.2 [Schedule B terms]</p>					

<p>((compensat* OR comp OR incentiv* OR pay package* OR benefit* OR retirement* OR healthcare OR health OR Indemnif* OR insurance* OR stock* OR option OR options) w/100 (executive* OR senior (manage* OR mgmt) OR sr (manage* OR mgmt) OR [Schedule C terms])) AND</p>	<p>((compensat* OR comp OR incentiv* OR pay package* OR benefit* OR retirement* OR healthcare OR health OR indemnif* OR insurance* OR stock* OR option OR options) w/100 (executive* OR (senior pre/1 (manage* OR mgmt)) OR (sr pre/1 (manage* OR mgmt)) OR (((J OR J. OR Joe OR Jos*) w/2 Bean) OR ((C OR C. OR Chuck OR Char*) w/2 Ebetino) OR ((I OR I. OR Irl OR Earl) w/2 Engelhardt) OR ((J OR J. OR Jackie OR Jacq*) w/2 Jones) OR ((M OR M. OR Mark) w/2 Schroeder) OR ((R OR R. OR Rick OR Rich*) w/2 Whiting))))</p>	<p>None</p>	<p>1/1/2007-12/31/2007</p>	<p>No</p>
<p>028.3 [Schedule B terms]</p>	<p>(tax* w/100 (opinion* OR ruling* OR impact* OR implicat* OR ramification* OR outcome* OR effect OR effects OR treatment* OR downside* OR down side* OR upside* OR up side*)) AND (Affinity OR Appalachia OR Beaver Dam OR Black Stallion OR Black Walnut OR Bluegrass OR Central States OR Charles OR Cleaton OR Coal Prop* OR (Coal Reserve Holding OR CRH*) OR Colony OR Cook OR Dixon OR Dodge Hill OR (EAC OR EACC) OR Eagle OR (E Assoc* OR E. Assoc* OR East* Assoc*) OR (E Coal OR E. Coal OR East* Coal) OR (E Roy* OR E. Roy* OR East* Roy*) OR Fort OR HCR OR Highland OR Hillside OR Indian Hill OR Jarrell* OR (KE OR KEV) OR Kanawha OR Knox OR Logan OR Martinka OR (Midwest Coal OR MCR) OR (Mountain View OR Mt* View) OR (N Page OR North* Page) OR (Oh* County OR Oh* Cnty*) OR Patriot OR (Peabody Coal OR PCC) OR Pine Ridge OR Pond Creek OR Rivers Edge OR Sentry OR Snowberry</p>			
<p>(tax* w/100 (opinion* OR ruling* OR impact* OR implicat* OR ramification* OR outcome* OR effect OR effects OR treatment* OR downside* OR down side* OR upside* OR up side*)) AND</p>	<p>OR Sterling OR Squaw OR Tecumseh OR (Union County OR Union Cnty*) OR Winifrede OR Yankeetown OR Arid Op* OR (Cyprus OR Cypress) OR (Dominion OR DTA) OR Emerald OR (Gold Fields w/100 (Patriot OR Gemini OR Big East)) OR (James River OR JRC) OR Newtown OR Peabody Term* OR (Point Pleasant OR Pt*</p>	<p>None</p>	<p>None</p>	<p>No</p>
<p>029.1 [Schedule B terms]</p>				

<p>(tax* w/100 (opinion* OR ruling* OR impact* OR implicat* OR ramification* OR outcome* OR effect OR effects OR treatment* OR downside* OR down side* OR upside* OR up side*)) AND</p>	<p>(tax* w/100 (opinion* OR ruling* OR impact* OR implicat* OR ramification* OR outcome* OR effect OR effects OR treatment* OR downside* OR down side* OR upside* OR up side*))</p>	<p>None</p>	<p>None</p>	<p>Yes</p>
<p>029.2 [Schedule B terms] (tax* w/100 (opinion* OR ruling* OR impact* OR implicat* OR ramification* OR outcome* OR effect OR effects OR treatment* OR downside* OR down side* OR upside* OR up side*)) AND</p>	<p>(tax* w/100 (opinion* OR ruling* OR impact* OR implicat* OR ramification* OR outcome* OR effect OR effects OR treatment* OR downside* OR down side* OR upside* OR up side*))</p>	<p>None</p>	<p>1/1/2007-12/31/2007</p>	<p>No</p>
<p>029.3 [Schedule B terms]</p>	<p>(tax* w/100 (opinion* OR ruling* OR impact* OR implicat* OR ramification* OR outcome* OR effect OR effects OR treatment* OR downside* OR down side* OR upside* OR up side*))</p>	<p>None</p>	<p>1/1/2007-12/31/2007</p>	<p>No</p>

	(Ernst OR (EY w/1 com) OR ((E Y OR E.Y. OR EY OR E&Y) AND tax*)) AND (Affinity OR Appalachia OR Beaver Dam OR Black Stallion OR Black Walnut OR Bluegrass OR Central States OR Charles OR Cleaton OR Coal Prop* OR (Coal Reserve Holding OR CRH*) OR Colony OR Cook OR Dixon OR Dodge Hill OR (EAC OR EACC) OR Eagle OR (E Assoc* OR E. Assoc* OR East* Assoc*) OR (E Coal OR E. Coal OR East* Coal) OR (E Roy* OR E. Roy* OR East* Roy*) OR Fort OR HCR OR Highland OR Hillside OR Indian Hill OR Jarrell* OR (KE OR KEV) OR Kanawha OR Knox OR Logan OR Martinka OR (Midwest Coal OR MCR) OR (Mountain View OR Mt* View) OR (N Page OR North* Page) OR (Oh* County OR Oh* Cnty*) OR Patriot OR (Peabody Coal OR PCC) OR Pine Ridge OR Pond Creek OR Rivers Edge OR Sentry OR Snowberry OR Sterling OR Squaw OR Tecumseh OR (Union County OR Union Cnty*) OR Winifrede OR Yankeetown OR Arid Op* OR (Cyprus OR Cypress) OR (Dominion OR DTA) OR Emerald OR (Gold Fields w/100 (Patriot OR Gemini OR Big East)) OR (James River OR JRC) OR Newtown OR Peabody Term* OR (Point Pleasant OR Pt* Pleasant) OR Bond OR Dyson OR Elk Creek OR Lumaghi OR Paragon OR Putnam OR (Thoroughbred OR Tbred OR T-			
030.1	Ernst OR (EY w/1 com) OR ((E Y OR E.Y. OR EY OR E&Y) AND tax*)) AND [Schedule B terms]	None	None	No
030.2	Ernst OR (EY w/1 com) OR ((E Y OR E.Y. OR EY OR E&Y) AND tax*)) AND [Schedule B terms]	None	None	Yes
030.3	Ernst OR (EY w/1 com) OR ((E Y OR E.Y. OR EY OR E&Y) AND tax*)) AND [Schedule B terms]	None	1/1/2007-12/31/2007	No
031	(Am* Electric OR AEP OR Tenn* Valley OR TVA) w/100 (subsid* OR renegotiat* OR repric* OR below market OR underwater OR under water OR sweetheart OR sweet heart)	None	None	No

	((Am* Electric OR AEP OR Tenn* Valley OR TVA) w/100 (supply OR agreement OR contract OR negotiat*)) AND (Affinity OR Appalachia OR Beaver Dam OR Black Stallion OR Black Walnut OR Bluegrass OR Central States OR Charles OR Cleaton OR Coal Prop* OR (Coal Reserve Holding OR CRH*) OR Colony OR Cook OR Dixon OR Dodge Hill OR (EAC OR EACC) OR Eagle OR (E Assoc* OR E. Assoc* OR East* Assoc*) OR (E Coal OR E. Coal OR East* Coal) OR (E Roy* OR E. Roy* OR East* Roy*) OR Fort OR HCR OR Highland OR Hillside OR Indian Hill OR Jarrell* OR (KE OR KEV) OR Kanawha OR Knox OR Logan OR Martinka OR (Midwest Coal OR MCR) OR (Mountain View OR Mt* View) OR (N Page OR North* Page) OR (Oh* County OR Oh* Cnty*) OR Patriot OR (Peabody Coal OR PCC) OR Pine Ridge OR Pond Creek OR Rivers Edge OR Sentry OR Snowberry OR Sterling OR Squaw OR Tecumseh OR (Union County OR Union Cnty*) OR Winifrede OR Yankeetown OR Arid Op* OR (Cyprus OR Cypress) OR (Dominion OR DTA) OR Emerald OR (Gold Fields w/100 (Patriot OR Gemini OR Big East)) OR (James River OR JRC) OR Newtown OR Peabody Term* OR (Point Pleasant OR Pt* Pleasant) OR Bond OR Dyson OR Elk Creek OR Lumaghi OR Paragon OR				
032.1 terms]	((Am* Electric OR AEP OR Tenn* Valley OR TVA) w/100 (supply OR agreement OR contract OR negotiat*)) AND [Schedule B		None	None	No
032.2 terms]	((Am* Electric OR AEP OR Tenn* Valley OR TVA) w/100 (supply OR agreement OR contract OR negotiat*)) AND [Schedule B	((Am* Electric OR AEP OR Tenn* Valley OR TVA) w/100 (supply OR agreement OR contract OR negotiat*))	None	None	Yes
032.3 terms]	((Am* Electric OR AEP OR Tenn* Valley OR TVA) w/100 (supply OR agreement OR contract OR negotiat*)) AND [Schedule B	((Am* Electric OR AEP OR Tenn* Valley OR TVA) w/100 (supply OR agreement OR contract OR negotiat*))	None	1/1/2007-12/31/2007	No

<p>coal suppl* w/100 (subsid* OR renegotiat* OR reprec* OR below market OR underwater OR under water OR sweetheart OR sweet heart)</p>	<p>coal suppl* w/100 (subsid* OR renegotiat* OR reprec* OR below market OR underwater OR under water OR sweetheart OR sweet heart) (coal suppl* w/100 (agreement OR contract OR negotiat*)) AND (Affinity OR Appalachia OR Beaver Dam OR Black Stallion OR Black Walnut OR Bluegrass OR Central States OR Charles OR Cleaton OR Coal Prop* OR (Coal Reserve Holding OR CRH*) OR Colony OR Cook OR Dixon OR Dodge Hill OR (EAC OR EACC) OR Eagle OR (E Assoc* OR E. Assoc* OR East* Assoc*) OR (E Coal OR E. Coal OR East* Coal) OR (E Roy* OR E. Roy* OR East* Roy*) OR Fort OR HCR OR Highland OR Hillside OR Indian Hill OR Jarrell* OR (KE OR KEV) OR Kanawha OR Knox OR Logan OR Martinka OR (Midwest Coal OR MCR) OR (Mountain View OR Mt* View) OR (N Page OR North* Page) OR (Oh* County OR Oh* Cnty*) OR Patriot OR (Peabody Coal OR PCC) OR Pine Ridge OR Pond Creek OR Rivers Edge OR Sentry OR Snowberry OR Sterling OR Squaw OR Tecumseh OR (Union County OR Union Cnty*) OR Winifrede OR Yankeetown OR Arid Op* OR (Cyprus OR Cypress) OR (Dominion OR DTA) OR Emerald OR (Gold Fields w/100 (Patriot OR Gemini OR Big East)) OR (James River OR JRC) OR Newtown OR Peabody Term* OR (Point Pleasant OR Pt* Pleasant) OR Bond OR Dyson</p>	<p>None</p>	<p>None</p>	<p>No</p>
<p>034.1 [Schedule B terms]</p>	<p>OR contract OR negotiat*)) AND (coal suppl* w/100 (agreement OR contract OR negotiat*)) AND Putnam OR (Thoroughbred OR Tbred OR T-</p>	<p>None</p>	<p>None</p>	<p>No</p>
<p>034.2 [Schedule B terms]</p>	<p>(coal suppl* w/100 (agreement OR contract OR negotiat*)) AND</p>	<p>None</p>	<p>None</p>	<p>Yes</p>
<p>034.3 [Schedule B terms]</p>	<p>(coal suppl* w/100 (agreement OR contract OR negotiat*)) AND</p>	<p>None</p>	<p>1/1/2007-12/31/2007</p>	<p>No</p>

(Armstrong AND (tax* OR accelerat* OR settl*)) AND NOT	(Armstrong AND (tax* OR accelerat* OR settl*))			
035 Teasdale	AND NOT Teasdale	None	None	No
036 (Consol OR CNX) AND Federal	(Consol OR CNX) AND Federal	None	None	No
037.1 OR Coal Act OR UMW* OR	OR UMW* OR United Mine) AND (Affinity OR	None	None	No
037.2 OR Coal Act OR UMW* OR	OR UMW* OR United Mine)	None	None	Yes
037.3 OR Coal Act OR UMW* OR	OR UMW* OR United Mine)	None	9/1/2006-12/31/2007	No
037A program* OR package)* OR AIP	package*)) OR AIP OR AICP OR LTI* OR LTEI*	None	None	No
038 Monsanto OR Solutia	Monsanto OR Solutia	None	None	No
039 Squaw AND Alcoa	Squaw AND Alcoa	None	None	No
040 4/1/07 through 5/1/08]	Attachment A	4/1/2007-5/1/2008	None	No
041 attachment* OR exhibit*) AND	exhibit*) AND (retir* OR defer* OR vest*)	1/1/2007-5/1/2008	None	No



**Subject:** Peabody  
**From:** Paula B Wilson  
**Extension:** 8 7518

08/01/2013 04:45 PM

Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
Telephone: (216) 586-7548  
Facsimile: (216) 579-0212

**To:** Russano, Michael J., O'Neill, P. Bradley

---

Dear Michael and Brad:

This email responds to the lengthy letter you sent on July 24th while I was away.

- (1) We have an agreement that Peabody would produce documents in response to the Five Topics and not the subpoena, and the Rule 2004 order states that Peabody's production is subject to our agreements. Michael specifically asked me to confirm that "you guys will be responding to the Five Topics and not the subpoena, right?" in the corridor during a break in the deposition of Rick Whiting in St. Louis on Monday, April 22, 2013. I confirmed it then, and I confirm it now. Peabody is not producing documents in response to the subpoena. Peabody is producing documents in response to the Five Topics, and Peabody began producing them even before it served its objections.
- (2) No one ever agreed to accept the subpoena without objections. The opposite is true, which is why the Rule 2004 Order -- to which you both agreed -- explicitly provides for Peabody's objections.
- (3) Peabody already responded "yes" to your request for assurances that Peabody is producing responsive, non-privileged documents within the agreed time frame relating to (a) Eastern assets that were considered for sale or distribution outside the Spin-Off; and (b) documents responsive to the Five Topics involving Peabody's subsidiaries that were eventually included within Patriot, even if the documents pre-date the creation of Patriot.
- (4) Peabody today responds "yes" to your request for assurances that Peabody is producing responsive, non-privileged documents within the agreed time frame relating to (a) coal supply agreements between Patriot or any of its subsidiaries and Peabody or a current/former Peabody customer; and (b) projections for Peabody (or assets or operations of Peabody) that reflect the projected impact of the Spin-off, a Potential Eastern Spin-off, or contracts/dealings with Patriot following the Spin-off.
- (5) As to your Patriot custodians, Peabody will make a reasonable search for their hard copy documents as contemplated by the Rule 2004 Order.  
As part of that search, we have suggested twice that you ask your Patriot custodians where they kept their documents before they left Peabody, and you have refused twice.

Regards -- Paula

**EXHIBIT**

**4**



**Paula Batt Wilson**

North Point • 901 Lakeside Avenue • Cleveland, Ohio 44114  
DIRECT 216-586-7548 • FAX 216-579-0212  
EMAIL PBWILSON@JONESDAY.COM

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**Subject:** Patriot  
**From:** Paula B Wilson  
Extension: 6-7548

08/12/2013 12:15 PM

Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1100  
Telephone: (216) 586-7548  
Facsimile: (216) 579-0212

**To:** Russano, Michael J., O'Neill, P. Bradley  
**Cc:** scousins  
**Bcc:** Paula B Wilson

History: This message has been forwarded.

**Dear Michael and Brad:**

Steve and I have carefully reviewed your letter of August 7th and we think there is a simple miscommunication here that we can resolve without involving the Court.

We've told you that Peabody objected as it would to any such overbroad definitions in any subpoena. We've also told you that Peabody has not restricted its production on that basis; specifically, Peabody has not withheld a single document on the basis that it would be responsive under your definitions and not responsive under our objections to those definitions. And, as we told you on July 11, 2013, Peabody believes that 36 of the 37 requests in the subpoena reasonably fall within the Five Topics (and you agreed to pull the other one). Peabody has honored every Agreement and every provision of the Court's Rule 2004 order.

As such, we believe there is no good faith basis for further Court involvement. If there is something specific in one or more of Peabody's objections to your definitions that causes you concern, please identify it for us so that we can revisit our objections with an eye toward addressing your concern.

On the other hand, if you believe an irreconcilable material dispute exists (with which we strongly disagree), then you should file a proper motion, which we will oppose in due course and in connection with which we will request a hearing in person in St. Louis.

We believe that such an outcome will waste the Court's time and benefit no one. We urge you to withdraw your request for a conference and let the discovery process move forward.

Regards -- Paula



Paula Batt Wilson

North Point • 901 Lakeside Avenue • Cleveland, Ohio 44114  
DIRECT 216-586-7548 • FAX 216-579-0212  
EMAIL PBWILSON@JONESDAY.COM

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**EXHIBIT**  
**5**

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**Subject:** Patriot  
**From:** Paula B Wilson  
Extension: 6-7-18

08/15/2013 11:07 AM

Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
Telephone: (216) 586-7548  
Facsimile: (216) 579-0212

**To:** Russano, Michael J., O'Neill, P. Bradley  
**Cc:** scousins

---

Dear Michael and Brad:

Michael, we did as you asked -- we recommended to the *Lowe* lawyers that they agree to Patriot's request for a two-week extension. We know that you will extend the same courtesy to us in the future.

As to your joint request that we agree to a Court conference on Friday, we decline. There's no dispute that Peabody is honoring every Agreement and every Court order. You both know that the confidentiality order was entered on June 7th, that Peabody started rolling productions promptly, and even agreed to start the electronic search with the 43 paragraphs of search terms and three schedules of connectors that were developed by your consulting firm.

With no dispute between us, you evidently want to use a telephone conference to ask the Court to impose new obligations on Peabody -- beyond what is contemplated by the rules and the Court's orders, and even beyond what Peabody is doing voluntarily -- with no meet-and-confer, no motion, no briefing, no hearing, and no backgrounding for the Court. This is neither fair nor appropriate, especially in such a complex and difficult matter.

We propose to handle this according to the Court's normal procedures. Please tell us exactly what you want the Court to do. If we can address your concerns immediately, we will. If we need a meet-and-confer session, we'll do that. (Friday does not work for us, as we are otherwise unavailable that day, but certainly we can find a time to talk next week.) After that, if you believe you have a basis to seek relief from the Court, you can file a proper motion, to which we will respond in due course, and thereafter appear in person with both of you to present the matter to the Court in St. Louis.

Regards -- Paula



Paula Batt Wilson

North Point • 901 Lakeside Avenue • Cleveland, Ohio 44114  
DIRECT 216-586-7548 • FAX 216-579-0212  
EMAIL PBWILSON@JONESDAY.COM

**EXHIBIT**

**6**

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=====



**Subject:** RE: Debtors' response to Peabody's objections 

**From:** Katie M McVoy  
Extension: 6 7311

07/19/2013 06:47 PM

**To:** Tobak, Marc J.

**Cc:** "Dove, Andrew (ADove@kramerlevin.com)", "Gehring, Andrew S.", "O'Neill, P. Bradley (BOneill@kramerlevin.com)", "Russano, Michael J.", "Paula B Wilson (pbwilson@jonesday.com)"

History: This message has been forwarded.

**Hello Marc:** This email responds to your email to Paula Batt Wilson and me of Tuesday, July 16th. The subject of your email was our telephone meet-and-confer at noon on the previous Thursday, July 11th. Paula is on vacation starting today and through next week, but she did not want to delay this response. We think this covers the waterfront, but should you need to discuss further, we'll be happy to set up a call when Paula is back in the office. Your text is in black, ours in green.

Following our call regarding Peabody's objections to Patriot's and the Committee's Rule 2004 subpoena, the questions below remain outstanding. The open status of these questions should not in any way slow your review of the documents you have collected.

- Has the collection of hardcopy documents been limited in any way by physical location (e.g., excluding documents located outside of a custodian's office, outside of Peabody's main office, in an offsite archive, etc.)? You have represented that you do not believe it was, but please confirm with the individual(s) responsible for performing the collection.

**Paula's statement to you stands. We did not limit our search by physical location but looked for hard copy documents in every location that Peabody custodians identified as places they kept their files. As for Patriot custodians (the people who left Peabody to join Patriot five-plus years ago), we suggested in a telephone call months ago that you ask them where they kept their hard copy documents, but, at that time, the counsel for the Committee refused.**

- What was your intention with respect to the limitation of the definitions of "Eastern Operations" and "Potential Eastern Spinoff," and is that limitation going to affect your production? You have limited those terms to refer to "assets that were actually distributed, or considered for distribution, as part of Patriot in the Spin-Off." Yet they were specifically intended to encompass Eastern assets that were considered for sale or distribution outside of the Spin-Off, an idea embodied in the Five Topics. Please confirm that documents concerning such possible distributions will be produced.

**As Paula explained in our telephone meet-and-confer, Peabody served its objections because the Debtors and Committee served their subpoena, notwithstanding our agreement -- incorporated in the Court's Rule 2004 Order -- that Peabody would not produce documents in response to the subpoena's 37 document requests, but would produce documents in response to the "Five Topics" that the Debtors and the Committee drafted. The terms in the "Five Topics" were never defined. As it now stands, Peabody is not bound by the definitions in the subpoena, but neither is Peabody limiting its response to the "Five Topics" on the basis of its objections to the definitions of "Eastern Operations" or "Potential Eastern Spinoff." Nor has Peabody withheld anything (other than privileged documents) on the basis of those objections. Rather, Peabody is going forward based on a fair reading of the "Five Topics." Further to your question, yes, Peabody is producing documents (within the relevant time frame) concerning Eastern assets that were considered for sale or distribution outside the Spin-off, because those documents are called**

**EXHIBIT**

**7**

**for under Peabody's fair reading of the "Five Topics."**

- What effect will your objection that Request No. 12 seeks documents prior to the formation of Patriot have on your production? As noted on our call, the definition of "Patriot" includes its subsidiaries, many of which existed prior to Patriot itself. Accordingly, there may be documents responsive to this request that pre-date Patriot's incorporation. Additionally, please confirm your representation that you will not construe "former Peabody customers" to limit responsive documents to those post-dating the Spin-Off.

**Peabody's objection to Request No. 12 has no effect on its production, because Peabody is not producing documents in response to Request No. 12. To your question, I do not recall the representation you described, but in any event, the term "customer" doesn't appear in the "Five Topics" and doesn't need to be construed in order to respond. I can confirm that documents responsive to the "Five Topics" involving Peabody subsidiaries that were eventually included within Patriot are not being withheld on the basis of Peabody's objections to the subpoena (other than for privilege), even if the documents pre-date the creation of Patriot.**

Moreover, we offer the following responses to the questions you posed to us.

- Upon consideration, we take no issue with your objections to Request No. 8.
- With respect to your objection to Request No. 17's request for the production of financial projections and forecasts for Peabody that do not involve assets that were distributed, or considered for distribution, in connection with the Spin-Off or Potential Eastern Spin-Off, we refer you to the second of the Five Topics, to which you have agreed without objection. That topic includes "[a]ny models, projections, plans, and forecasts for Patriot or the Eastern Operations, *and for Peabody* ."

**That's not quite accurate, Marc. Topic 2 is "Patriot's solvency." The examples you enumerate -- including "models, projections, plans, and forecasts" -- must have some relationship to Patriot's solvency, or otherwise be responsive to another of the Five Topics. If someone were to suggest that every financial projection or forecast for Australia or some other unrelated part of Peabody's worldwide operations over three and half years, is somehow related to Patriot's solvency -- that would not be a fair reading. Now, a fair reading of Topic 2 does include documents within the relevant time frame that concern assets included in, or considered for inclusion in, the Spin-Off, in any potential spin-off, or that are assets otherwise germane to Patriot's solvency, or are otherwise responsive to any one of the other four topics.**

Additionally, we have the following questions concerning the progress of the review generally, independent of the objections to the subpoena.

- Have you loaded email from Peabody's live system into your review tool and begun reviewing it? If not, why not, and when do you expect to begin that process?

**With respect, Marc, Peabody is under no obligation to provide updates about the mechanics of its document review, or to produce responsive documents or email in any particular order, and Peabody declines to undertake such burdens voluntarily. Peabody is aware of its responsibilities under the Court's Rule 2004 order and is complying with them in full. Now, as a courtesy to you personally, I will say that I am reliably informed that email will appear in the next production scheduled for next week.**

- Do you have an estimate as to when you will begin reviewing emails obtained from backup tapes? We understand that you delivered the tapes to your vendor on July 4 and seek an estimate as to when the

restoration process will be completed.

**Yes, Peabody did make an extraordinarily fast delivery of tapes to its vendor on July 4th after receiving your date list on July 1st. Beyond that, Peabody will not undertake any obligation to provide updates on its review of email from back-up tapes, in part because the consistent hostility of counsel for the Committee makes any good faith discussion impossible. Suffice it to say that Peabody is aware of its obligations under the Court's Rule 2004 order and is complying with them.**

Finally, we have noticed that, in your production of hardcopy documents, there is no data by which we can determine the custodian from whom the documents were collected. Please provide a list of such custodians by Bates range for all past productions and any productions going forward.

**Once again, Peabody has no obligation to provide this information, the Debtors and the Committee never asked for it, and Peabody is not agreeing to this additional step going forward. Nonetheless, to the extent Peabody already has information that tracks specific documents already produced to specific custodians, Peabody is willing to provide that information as a courtesy to you.**



**Katie McVoy**

NorthPoint • 901 Lakeside Ave. • Cleveland, Ohio 44114-1190  
DIRECT 216-586-7311 • FAX 216-579-0212  
kmmcvoy@JONESDAY.COM

Please consider the environment before printing this email.

From: "Tobak, Marc J." <marc.tobak@davispolk.com>  
m:  
To: "Paula B Wilson (pbwilson@jonesday.com)" <pbwilson@jonesday.com>, "Katie M McVoy <kmmcvoy@jonesday.com> (kmmcvoy@jonesday.com)" <kmmcvoy@jonesday.com>  
Cc: "O'Neill, P. Bradley (BOneill@kramerlevin.com)" <BOneill@kramerlevin.com>, "Dove, Andrew (ADove@kramerlevin.com)" <ADove@kramerlevin.com>, "Russano, Michael J." <michael.russano@davispolk.com>, "Gehring, Andrew S." <andrew.gehring@davispolk.com>  
Date: 07/16/2013 10:58 AM  
e:  
Subject: RE: Debtors' response to Peabody's objections  
bje  
ct:

Paula and Katie,

Following our call regarding Peabody's objections to Patriot's and the Committee's Rule 2004 subpoena, the questions below remain outstanding. The open status of these questions should not in any way slow your review of the documents you have collected.

- Has the collection of hardcopy documents been limited in any way by physical location (e.g., excluding documents located outside of a custodian's office, outside of Peabody's main office, in an offsite archive, etc.)? You have represented that you do not believe it was, but please confirm with the individual(s) responsible for performing the collection.
- What was your intention with respect to the limitation of the definitions of "Eastern Operations" and "Potential Eastern Spinoff," and is that limitation going to affect your production? You have limited those terms to refer to "assets that were actually distributed, or considered for distribution, as part of Patriot in the Spin-Off." Yet they were specifically intended to encompass Eastern assets that were considered for sale or distribution outside of the Spin-Off, an idea embodied in the Five Topics. Please confirm that documents concerning such possible distributions will be produced.
- What effect will your objection that Request No. 12 seeks documents prior to the formation of Patriot have on your production? As noted on our call, the definition of "Patriot" includes its subsidiaries, many of which existed prior to Patriot itself. Accordingly, there may be documents responsive to this request that pre-date Patriot's incorporation. Additionally, please confirm your representation that you will not construe "former Peabody customers" to limit responsive documents to those post-dating the Spin-Off.

Moreover, we offer the following responses to the questions you posed to us.

- Upon consideration, we take no issue with your objections to Request No. 8.
- With respect to your objection to Request No. 17's request for the production of financial projections and forecasts for Peabody that do not involve assets that were distributed, or considered for distribution, in connection with the Spin-Off or Potential Eastern Spin-Off, we refer you to the second of the Five Topics, to which you have agreed without objection. That topic includes "[a]ny models, projections, plans, and forecasts for Patriot or the Eastern Operations, and for Peabody ."

Additionally, we have the following questions concerning the progress of the review generally, independent of the objections to the subpoena.

- Have you loaded email from Peabody's live system into your review tool and begun reviewing it? If not, why not, and when do you expect to begin that process?
- Do you have an estimate as to when you will begin reviewing emails obtained from backup tapes? We understand that you delivered the tapes to your vendor on July 4 and seek an estimate as to when the restoration process will be completed.

Finally, we have noticed that, in your production of hardcopy documents, there is no data by which we can determine the custodian from whom the documents were collected. Please provide a list of such custodians by Bates range for all past productions and any productions going forward.

Best Regards,

Marc

Marc J. Tobak  
Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017  
212 450 3073 tel  
212 701 6073 fax

[marc.tobak@davispolk.com](mailto:marc.tobak@davispolk.com)

**Davis Polk**

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**From:** Russano, Michael J.  
**Sent:** Tuesday, July 09, 2013 10:22 AM  
**To:** Paula B Wilson (pbwilson@jonesday.com)  
**Cc:** O'Neill, P. Bradley (BOneill@kramerlevin.com); Tobak, Marc J.; Gehring, Andrew S.; Dove, Andrew (ADove@kramerlevin.com)  
**Subject:** RE: Debtors' response to Peabody's objections

Paula –

Could we please try to set up a call for tomorrow to walk through the objections. We have an informal internal list of things we want to ask, but rather than spend time reducing that to some kind of formal response, I think it would be most efficient to just have a call. The crux of our questions is to confirm that nothing in your responses and objections is intended to narrow the scope of what we previously agreed to with the five topics.

Thanks very much.

Michael

Michael J. Russano  
Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017  
212 450 4019 tel  
212 701 5019 fax  
[michael.russano@davispolk.com](mailto:michael.russano@davispolk.com)

**Davis Polk**

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**From:** Paula B Wilson [<mailto:pbwilson@jonesday.com>]  
**Sent:** Tuesday, July 02, 2013 7:36 PM  
**To:** Tobak, Marc J.  
**Subject:** Debtors' response to Peabody's objections

Hello Marc --

I received your email of Monday evening, July 1, at 9:10 PM. This being Tuesday before July 4th, you won't be surprised to hear it's not a good time to discuss the objections we served on June 20th. We are willing to confer next week, but please send us your comments in writing first, so that we can study them with our client and perhaps resolve some of them ahead of time.

A few minutes ago I received confirmation that the third set in our rolling production of documents has gone out via UPS overnight service. Other than privilege, nothing has been withheld from this or our earlier productions on the basis of our objections.

I'll look forward to receiving your comments and to talking with you next week. Best wishes to you and your family for a safe and happy Independence Day weekend.

Regards -- Paula

Paula Batt Wilson



North Point • 901 Lakeside Avenue • Cleveland, Ohio 44114  
DIRECT 216-586-7548 • FAX 216-579-0212  
EMAIL [PBWILSON@JONESDAY.COM](mailto:PBWILSON@JONESDAY.COM)

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**Subject:**  
Patriot: 8/20 hearing  
**From:**  
O'Neill, P. Bradley  
08/16/2013 01:00 PM  
**To:**  
Paula B Wilson, scousins@armstrongteasdale.com  
**Cc:**  
"Russano, Michael J."  
**Hide Details**  
**From:** "O'Neill, P. Bradley" <BOneill@KRAMERLEVIN.com>  
**To:** Paula B Wilson <pbwilson@JonesDay.com>, "scousins@armstrongteasdale.com"  
<scousins@armstrongteasdale.com>,  
**Cc:** "Russano, Michael J." <michael.russano@davispolk.com>  
**History:** This message has been forwarded.

Paula and Steve:

Since you were not available by telephone today (even after nine days' notice), we plan to appear at Tuesday's omnibus hearing to provide the Court with an update on the Peabody 2004 process. One or both of you should probably plan to attend.

Brad

**P. Bradley O'Neill** | Partner  
T: 212-715-7583 F: 212-715-8000 E: BOneill@KRAMERLEVIN.com  
Kramer Levin Naftalis & Frankel LLP | 1177 Avenue of the Americas | New York, New York 10036  
<http://www.kramerlevin.com>

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**From:** O'Neill, P. Bradley  
**Sent:** Wednesday, August 14, 2013 5:11 PM  
**To:** Paula B Wilson; Russano, Michael J.  
**Cc:** scousins@armstrongteasdale.com  
**Subject:** RE: Patriot

**EXHIBIT**  
**8**

Paula and Steve:

As you know this Rule 2004 process began in early January when Debtors and the Committee (together, the "Fiduciaries") provided Peabody with a form of Rule 2004 document request. Today, more than seven months later, Peabody's production is nowhere near complete. The Fiduciaries have received images of certain hard copy documents (which we assume correspond to the documents Peabody claimed to have collected in the Spring), but relatively little in the way of electronic discovery, whether from Peabody's live system or its archived data. Peabody has, moreover, affirmatively disclaimed any obligation to provide the Fiduciaries with updates concerning the status of its review of electronic files or the mechanics of its document review. As a result, the Fiduciaries are unable to

estimate what the size and timing of the remaining production will be. These facts are important not only to organize the investigation, but also to understand the time within which it will be completed, and manage administrative expenses.

We believe a conference with the Court will help to clarify the status and schedule of Peabody's remaining Rule 2004 production and, hopefully, assure its timely progress. Based on our lengthy dealings with you on these subjects, we believe that such a conference is the most efficient next step for all parties.

Accordingly, unless you are not available, we will plan to proceed with a telephonic conference on Friday morning, August 16 at 10 AM. The dial in information will follow once you have confirmed your availability.

Brad

**From:** Paula B Wilson [<mailto:pbwilson@JonesDay.com>]  
**Sent:** Monday, August 12, 2013 12:15 PM  
**To:** Russano, Michael J.; O'Neill, P. Bradley  
**Cc:** [scousins@armstrongteasdale.com](mailto:scousins@armstrongteasdale.com)  
**Subject:** Patriot

Dear Michael and Brad:

Steve and I have carefully reviewed your letter of August 7th and we think there is a simple miscommunication here that we can resolve without involving the Court.

We've told you that Peabody objected as it would to any such overbroad definitions in any subpoena. We've also told you that Peabody has not restricted its production on that basis; specifically, Peabody has not withheld a single document on the basis that it would be responsive under your definitions and not responsive under our objections to those definitions. And, as we told you on July 11, 2013, Peabody believes that 36 of the 37 requests in the subpoena reasonably fall within the Five Topics (and you agreed to pull the other one). Peabody has honored every Agreement and every provision of the Court's Rule 2004 order.

As such, we believe there is no good faith basis for further Court involvement. If there is something specific in one or more of Peabody's objections to your definitions that causes you concern, please identify it for us so that we can revisit our objections with an eye toward addressing your concern.

On the other hand, if you believe an irreconcilable material dispute exists (with which we strongly disagree), then you should file a proper motion, which we will oppose in due course and in connection with which we will request a hearing in person in St. Louis.

We believe that such an outcome will waste the Court's time and benefit no one. We urge you to withdraw your request for a conference and let the discovery process move forward.

Regards -- Paula

Paula Batt Wilson

**P. Bradley O'Neill** | Partner  
T: 212-715-7583 F: 212-715-8000 E: [BOneill@KRAMERLEVIN.com](mailto:BOneill@KRAMERLEVIN.com)  
Kramer Levin Naftalis & Frankel LLP | 1177 Avenue of the Americas | New York, New York 10036

<http://www.kramerlevin.com>

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EMAIL [PBWILSON@JONESDAY.COM](mailto:PBWILSON@JONESDAY.COM)

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**Subject: Peabody - Patriot - Confidentiality Order**

**From: Paula B Wilson**  
Extension: 6 7548

03/06/2013 05:22 PM

Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
Telephone: (216) 586-7548  
Facsimile: (216) 579-0212

**To: Russano, Michael J., O'Neill, P. Bradley**

**Cc: scousins, Katie M McVoy**

**Bcc: P. Nikhil Rao, James M McWeeney II, Daniel R Birnbaum, Carl E. Black, Robert Faxon, John M. Newman**

Hello Michael and Brad:

As I mentioned on this afternoon's call, we have the first set of Peabody documents ready to produce. If you would, please "reply to all" when you send your form of stipulated confidentiality order. Thank you.

Regards -- Paula Wilson



**Paula Batt Wilson**

North Point • 901 Lakeside Avenue • Cleveland, Ohio 44114  
**DIRECT 216-586-7548 • FAX 216-579-0212**  
**EMAIL PWILSON@JONESDAY.COM**

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**EXHIBIT**

**9**



**Subject: Peabody - Patriot - Confidentiality Order**

**From: Paula B Wilson**  
Extension: 6-7518

03/05/2013 12:36 PM

Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
Telephone: (216) 586-7548  
Facsimile: (216) 579-0212

**To: Russano, Michael J., O'Neill, P. Bradley**

**Cc: scousins**

**Bcc: John M. Newman, Robert Faxon, Carl E. Black, Katie M McVoy, P. Nikhil Rao, Irene Fiorentinos, Paula B Wilson**

Hello Michael and Brad:

Brad, when we first spoke on February 20, 2013, you were going to send your proposed stipulated confidentiality order. I would appreciate it if you would send it along, preferably in Word format to facilitate any discussion that might be necessary.

Regards -- Paula Wilson



**Paula Batt Wilson**

North Point • 901 Lakeside Avenue • Cleveland, Ohio 44114  
**DIRECT 216-586-7548 • FAX 216-579-0212**  
**EMAIL PBWILSON@JONESDAY.COM**

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Subject:  
Proposed confidentiality stipulation  
From:  
Dove, Andrew  
03/26/2013 06:21 PM  
To:  
pbwilson@JonesDay.com, scousins@armstrongteasdale.com  
Cc:  
"O'Neill, P. Bradley", "michael.russano@davispolk.com", "marc.tobak@davispolk.com",  
"andrew.gehring@davispolk.com", "Blank, Stephen"

Hide Details

From: "Dove, Andrew" <ADove@KRAMERLEVIN.com> Sort List...  
To: "pbwilson@JonesDay.com" <pbwilson@JonesDay.com>,  
"scousins@armstrongteasdale.com" <scousins@armstrongteasdale.com>,  
Cc: "O'Neill, P. Bradley" <BOneill@KRAMERLEVIN.com>,  
"michael.russano@davispolk.com" <michael.russano@davispolk.com>,  
"marc.tobak@davispolk.com" <marc.tobak@davispolk.com>,  
"andrew.gehring@davispolk.com" <andrew.gehring@davispolk.com>, "Blank, Stephen"  
<SBlank@KRAMERLEVIN.com>

History: This message has been forwarded.

1 Attachment



KL2-#2787424-v3-Stipulated\_Protective\_Order.DOCX

Paula, Steve,

Attached is a proposed confi, which reflects input from the Debtors.

We look forward to hearing from you.

Best,

Andy

Andrew Dove

Associate  
Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, New York 10036  
Tel: 212-715-9483  
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Email: ADove@KRAMERLEVIN.com  
<http://www.kramerlevin.com>

**EXHIBIT**  
**11**

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**Subject:**  
**RE: Proposed time for call Mondat 05-06-2013**  
**From:**  
Dove, Andrew  
05/05/2013 01:13 PM  
**To:**  
Paula B Wilson, Michael J. Russano, scousins@armstrongteasdale.com  
**Cc:**  
"O'Neill, P. Bradley", "Tobak, Marc J.", "Gehring, Andrew S.", "Schulman, Brendan"  
**Hide Details**  
**From:** "Dove, Andrew" <ADove@KRAMERLEVIN.com>  
**To:** Paula B Wilson <pbwilson@JonesDay.com>, "Michael J. Russano"  
<michael.russano@davispolk.com>, "scousins@armstrongteasdale.com"  
<scousins@armstrongteasdale.com>,  
**Cc:** "O'Neill, P. Bradley" <BOneill@KRAMERLEVIN.com>, "Tobak, Marc J."  
<marc.tobak@davispolk.com>, "Gehring, Andrew S." <andrew.gehring@davispolk.com>,  
"Schulman, Brendan" <BSchulman@KRAMERLEVIN.com>

Thanks, Paula. We will be including Brendan, whom I have copied, in any discussion of search terms. (I am certain our immediate priority, of course, is providing the judge the order she requested.)

Kind regards,  
Andy

**Andrew Dove** | Associate  
T: 212-715-9483 F: 212-715-8000 E: ADove@KRAMERLEVIN.com  
Kramer Levin Naftalis & Frankel LLP | 1177 Avenue of the Americas | New York, New York 10036  
<http://www.kramerlevin.com>

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**From:** Paula B Wilson [<mailto:pbwilson@JonesDay.com>]  
**Sent:** Sunday, May 05, 2013 12:50 PM  
**To:** Michael J. Russano; scousins@armstrongteasdale.com  
**Cc:** O'Neill, P. Bradley; Tobak, Marc J.; Dove, Andrew; Gehring, Andrew S.  
**Subject:** Proposed time for call Mondat 05-06-2013

**EXHIBIT**  
**12**

Hello all: Please accept my apologies for contacting you all on the weekend, especially on a Sunday. My husband and I are on the road back from a funeral in Massachusetts and will be back in Ohio tonight. I cannot make a call at 10:00 AM but can talk at 1:00, 2:00 or 3:00 PM Eastern, also on Monday. Our notes on the proposed Rule 2004 order are out for comment and I won't be able to discuss that on Monday, but I will be able to talk about the confidentiality order, which I will circulate in the morning for your review before the call. Our team also has been working with your proposed search terms and, although I can't guarantee it right now, I hope to be in a position to discuss those on Monday as well.

No need to respond today regarding time on Monday. I will be back in touch in the morning to circulate papers and will take responsibility for finding a time that works for all.

Regards -- Paula Wilson

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**From:** "Russano, Michael J." [michael.russano@davispolk.com]  
**Sent:** 05/02/2013 07:59 PM GMT  
**To:** Paula Wilson; "scousins@armstrongteasdale.com" <scousins@armstrongteasdale.com>  
**Cc:** "O'Neill, P. Bradley (BOneill@kramerlevin.com)" <BOneill@kramerlevin.com>; "Tobak, Marc J." <marc.tobak@davispolk.com>; "Dove, Andrew (ADove@kramerlevin.com)" <ADove@kramerlevin.com>; "Gehring, Andrew S." <andrew.gehring@davispolk.com>  
**Subject:** Call

Can we pencil in a time on Monday to speak so we can finalize the form of order for the Court? Does 10am work for everyone?

**Michael J. Russano**

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017

212 450 4019 tel  
212 701 5019 fax  
michael.russano@davispolk.com

## Davis Polk

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Subject:  
Re: Peabody  
From:  
Russano, Michael J.  
08/02/2013 12:08 PM  
To:  
'pbwilson@jonesday.com', 'BOneill@kramerlevin.com'  
Cc:  
"Tobak, Marc J.", "Gehring, Andrew S."  
Hide Details  
From: "Russano, Michael J." <michael.russano@davispolk.com>  
To: "'pbwilson@jonesday.com'" <pbwilson@jonesday.com>, "'BOneill@kramerlevin.com'" <BOneill@kramerlevin.com>,  
Cc: "Tobak, Marc J." <marc.tobak@davispolk.com>, "Gehring, Andrew S." <andrew.gehring@davispolk.com>  
History: This message has been forwarded.

Paula --

I have asked my client and unsurprisingly was told that the documents were kept in their offices and in offsite locations like Iron Mountain and that once they left Peabody took possession of everything and are the only ones who would know the current whereabouts of the documents.

**From:** Paula B Wilson [mailto:pbwilson@jonesday.com]  
**Sent:** Thursday, August 01, 2013 04:45 PM  
**To:** Russano, Michael J.; O'Neill, P. Bradley <BOneill@KRAMERLEVIN.com>  
**Subject:** Peabody

Dear Michael and Brad:

This email responds to the lengthy letter you sent on July 24th while I was away.

(1) We have an agreement that Peabody would produce documents in response to the Five Topics and not the subpoena, and the Rule 2004 order states that Peabody's production is subject to our agreements. Michael specifically asked me to confirm that "you guys will be responding to the Five Topics and not the subpoena, right?" in the corridor during a break in the deposition of Rick Whiting in St. Louis on Monday, April 22, 2013. I confirmed it then, and I confirm it now. Peabody is not producing documents in response to the subpoena. Peabody is producing documents in response to the Five Topics, and Peabody began producing them even before it served its objections.

(2) No one ever agreed to accept the subpoena without objections. The opposite is true, which is why the Rule 2004 Order -- to which you both agreed -- explicitly provides for Peabody's objections.

(3) Peabody already responded "yes" to your request for assurances that Peabody is producing responsive, non-privileged documents within the agreed time frame relating to (a) Eastern assets that were considered for sale or distribution outside the Spin-Off; and (b) documents responsive to the Five Topics involving Peabody's subsidiaries that were eventually included within Patriot, even if the documents pre-date the creation of Patriot.

(4) Peabody today responds "yes" to your request for assurances that Peabody is producing responsive, non-privileged documents within the agreed time frame relating to (a) coal supply agreements between Patriot or any of its subsidiaries and Peabody or a current/former Peabody customer; and (b) projections

**EXHIBIT**

**13**

for Peabody (or assets or operations of Peabody) that reflect the projected impact of the Spin-off, a Potential Eastern Spin-off, or contracts/dealings with Patriot following the Spin-off.

(5) As to your Patriot custodians, Peabody will make a reasonable search for their hard copy documents as contemplated by the Rule 2004 Order.

As part of that search, we have suggested twice that you ask your Patriot custodians where they kept their documents before they left Peabody, and you have refused twice.

Regards -- Paula



**Paula Batt Wilson**

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**EMAIL PBWILSON@JONESDAY.COM**

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