

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11
Case No. 12-51502-659
(Jointly Administered)

Hearing Date:
September 13, 2013 at 10 a.m.
(prevailing Central Time)

Hearing Location:
Courtroom 7 North

Re: Dkt. Nos. 4561, 4562, 4563,
4590

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

In response to Peabody's objection (the "**Objection**") [Dkt. No. 4590] and in further support of the Fiduciaries' joint motion to compel (the "**Motion**") [Dkt. No. 4561], the Fiduciaries respectfully represent as follows:

REPLY

1. Peabody's response focuses on a wealth of quibbles and minutiae concerning the record of its "compliance" with the Fiduciaries' Rule 2004 discovery requests. This fog of detail – some accurate, some not – cannot, however, obscure several basic points.

¹ The Debtors are the entities listed on Schedule 1 attached to the Motion. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

2. First, Rule 2004 investigations are a central element of chapter 11, allowing the prompt assessment of assets of the estate, including causes of action. Excessive delay of such investigations injures all stakeholders, who are deprived of appropriate information about, among other things, the assets available to satisfy their claims.

3. Second, in this case, it has been eight months since the Fiduciaries began the Rule 2004 process by delivering a form of document request to Peabody. In virtually all cases, that is more than sufficient time to make substantial progress toward completing production of requested documents. Here, production has barely begun. As a result, despite a considerable investment of estate assets, the Fiduciaries are not close to completing their investigation. In fact, they have yet to receive what they expect to be the most relevant materials from Peabody. Such extreme delays, if allowed to continue, threaten to undermine the usefulness of and principles underlying Rule 2004 discovery altogether.

4. Third, the record here demonstrates that an unsupervised discovery process, without clear time limitations, has not resulted in a timely production. It has instead allowed multiplication of preliminary issues, all laboriously resolved over lengthy periods of time, at significant cost to the estates and without substantially advancing the investigation. A clear deadline for production will focus Peabody's efforts on completion of production rather than on collateral matters, and preserve estate resources.

5. Fourth, nowhere in fifteen densely packed pages does Peabody even argue that it cannot complete its production by October 1, 2013. In fact, it admits that it had begun running searches and reviewing electronic materials by the end of July, giving it

more than sixty days to complete production. Moreover, instead of explaining how it has fulfilled the Court's direction to accelerate the production so as to complete before January, Peabody attempts to avoid the imposition of a deadline altogether, suggesting only that the Court hold a further status conference in October. That approach, however, promises only more focus on preliminary matters, more irrelevant recriminations about collateral issues, and more delays in production. Eight months of experience demonstrates that it will be far more constructive to direct that production be completed by a date certain.

Dated: September 11, 2013

Respectfully Submitted,

DAVIS POLK & WARDWELL LLP

By: /s/ Michael J. Russano
Marshall S. Huebner
Elliot Moskowitz
Michael J. Russano

450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 607-7983

*Counsel to the Debtors
and Debtors in Possession*

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By: /s/ P. Bradley O'Neill
Thomas Moers Mayer
P. Bradley O'Neill

1177 Avenue of the Americas
New York, New York 10036
Telephone (212) 715-9100
Facsimile: (212) 715-8000

*Counsel for the Official Committee of
Unsecured Creditors*