

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11

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

Objection Deadline:

September 18, 2013 at 4:00 p.m.
(prevailing Central Time)

Proposed Hearing Date:

September 24, 2013 at 10 a.m.
(prevailing Central Time)

**APPLICATION AND MOTION FOR ENTRY OF STIPULATED ORDER
AUTHORIZING THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
TO RETAIN H5 AS ORDINARY COURSE PROFESSIONALS**

The Official Committee of Unsecured Creditors of Patriot Coal Corporation (the “Committee”), by and through its undersigned counsel, hereby makes this application (the “Application”) for entry of the stipulated order attached hereto as Exhibit A (the “Stipulation”), entered into by the Committee and the Debtors, authorizing the Committee to employ H5 for expert search and data management services. In support of the Application, the Committee relies upon and incorporates by reference the Declaration of Jeffrey Kangas, an Executive Managing Director of H5, attached hereto as Exhibit B (the “Kangas Declaration”). In further support of the Application, the Committee respectfully represents as follows:

¹ The “Debtors” are the entities listed on Schedule 1 attached to this motion. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

BACKGROUND

1. The Committee and the Debtors (together, the “**Fiduciaries**”) are conducting an investigation into, among other things, potential estate claims arising out of the spinoff of Patriot Coal Corporation and other corporate transactions involving the Debtors. As part of this investigation, the Fiduciaries have propounded discovery requests on Peabody Coal Corporation (“**Peabody**”) and others.

2. To assist the Fiduciaries with the development of keywords and search terms that would facilitate a prompt and efficient production of electronic documents by Peabody, the Committee engaged H5 in February 2013, on a limited basis, as expert keyword consultants.

3. Peabody asserts that it is currently reviewing 416,145 electronic documents, totaling in excess of four million pages, for potential production to the Fiduciaries. *See* Obj. at 15 [Dkt. No. 4590]. In light of the magnitude of this production, the Committee has determined to retain H5 to provide expert search and data management services to facilitate a prompt and accurate review – at lower cost than attorney-only review would permit. While the Committee will retain H5, the Fiduciaries have been conducting this investigation jointly and anticipate that H5 will provide services to the Debtors as well, further streamlining the administrative expenses posed by the Fiduciaries’ investigation.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The statutory predicates for the relief requested herein are sections 105(a) and 1103(a) of the Bankruptcy Code, Rule 2014(a) of the Federal Rules of Bankruptcy

Procedure and Rule 2014 of the Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court for the Eastern District of Missouri (the “**Local Rules**”).

RELIEF REQUESTED

Given the additional services to be provided by H5 and the accompanying costs, out of an abundance of caution, the Committee seeks an order (i) authorizing it to employ and retain H5 to provide expert search and data management services and (ii) providing that the retention and compensation of H5 shall be subject to the same terms and limitations as those applicable to “Ordinary Course Professionals” retained by the Debtors under the Order Authorizing the Debtors to Employ Ordinary Course Professionals, *Nunc Pro Tunc* to the Petition Date (the “**OCP Order**”) [Dkt. No. 263].

SERVICES TO BE PROVIDED

6. H5 will render professional services to the Committee as may be necessary and appropriate, including expert search, data management, and hosting services in relation to discovery materials produced to the Committee as part of the Fiduciaries’ investigation of estate claims.

H5’S QUALIFICATIONS

7. The Committee selected H5 to provide it with expert search and data management services because H5 is a leading provider of e-discovery, technology-assisted review and case preparation support. H5’s experience in providing expert search and data management services is widely recognized and H5 regularly provides expert search and data management services to large and complex business entities and law firms. The professionals at H5 possess the knowledge and responsiveness necessary to assist the Committee in the above noted tasks.

8. In addition, as stated above, H5 has been providing consulting services to the Committee since approximately February 2013. As a result of such work, H5 has considerable knowledge concerning the ongoing investigation of Peabody and the Committee's expert search and data management needs.

9. As such, H5 is experienced and well-qualified to provide the Committee and unsecured creditors with the above-noted services and the Committee submits that the employment of H5 is necessary, appropriate and in the best interests of the Committee and unsecured creditors under section 1103 of the Bankruptcy Code and should therefore be approved.

H5'S DISINTERESTEDNESS

10. Based upon the Kangas Declaration, incorporated herein by reference, to the best of H5's knowledge, except as may be set forth in the Kangas Declaration, H5 neither holds nor represents any interest materially adverse to the interests of the Committee or the Debtors' estates with respect to any matter upon which H5 is to be engaged, and the Committee believes that H5's employment will be in the best interests of the unsecured creditors, which the Committee represents.

11. As set forth in the Kangas Declaration, H5 is a "disinterested person" as defined in section 101(14) of the Bankruptcy Code. To the extent that H5 discovers any new relevant facts or relationships bearing on the matters described herein during the period of its retention, H5 will use reasonable efforts to file promptly a supplement to the Kangas Declaration. The Kangas Declaration follows the form proscribed by the OCP Order.

PROFESSIONAL COMPENSATION

12. Pursuant to the Stipulation, H5 shall be compensated by the Debtors' estates in the same manner as "Ordinary Course Professionals" retained by the Debtors under the OCP Order.

NOTICE

13. The Committee will serve notice of this motion on the Core Parties as set forth in the Order Establishing Certain Notice, Case Management and Administrative Procedures, ECF No. 3361 (the "**Case Management Order**"). Parties who have requested electronic notice of filings through the Court's ECF system will automatically receive notice of the Motion no later the day after its filing. A copy of the Motion and any order approving it will also be made available on the Debtors' Case Information Website (located at www.patriotcaseinfo.com). In light of the nature of the Application, the Committee submits that such notice is sufficient.

NO PRIOR REQUEST

14. No previous application for the relief sought herein has been made to this or any other court.

NO OBJECTION

15. A copy of the Stipulation has been provided to the Office of the United States Trustee, which has no objection.

CONCLUSION

WHEREFORE, the Committee respectfully requests entry of the Stipulation,
together with such other and further relief as is just and proper.

Dated: September 11, 2013

Respectfully submitted,

/s/ P. Bradley O'Neill

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Thomas Moers Mayer (admitted *pro hac vice*)
P. Bradley O'Neill (admitted *pro hac vice*)
Gregory G. Plotko (admitted *pro hac vice*)
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

SCHEDULE 1
(Debtor Entities)

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

Exhibit A

Stipulated Order

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

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

STIPULATED ORDER AUTHORIZING THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS TO RETAIN H5 AS
ORDINARY COURSE PROFESSIONALS

This Stipulated Order Authorizing the Official Committee of Unsecured Creditors to Retain H5 as Ordinary Course Professionals is made by and between the above-captioned debtors and debtors in possession in this action (collectively, the “**Debtors**”), and the Official Committee of Unsecured Creditors of Patriot Coal Corporation (the “**Committee**” and, together with the Debtors, the “**Fiduciaries**”) through their respective duly authorized counsel of record.

RECITALS

1. The Fiduciaries are conducting an investigation into, among other things, potential estate claims arising out of the spinoff of Patriot Coal Corporation and other corporate transactions involving the Debtors. As part of this investigation, the Fiduciaries have propounded discovery requests on Peabody Coal Corporation (“**Peabody**”) and others.
2. To assist the Fiduciaries with the development of keywords and search terms that would facilitate a prompt and efficient production of electronic documents by Peabody, after notifying the Office of the United States Trustee (the “**US Trustee**”), the Committee engaged H5 in February 2013 as expert keyword consultants.

3. Peabody asserts that it is currently reviewing 416,145 electronic documents, totaling in excess of four million pages, for potential production to the Fiduciaries. *See* Obj. at 15 [Dkt. No. 4590]. Given the magnitude of this production, the Committee has determined to retain H5 to provide expert search and data management services to facilitate a prompt and accurate review – at lower cost than attorney-only review would permit. While the Committee will retain H5, the Fiduciaries have been conducting this investigation jointly and anticipate that H5 will provide services to the Debtors as well, further streamlining the administrative expenses posed by the Fiduciaries’ investigation.

4. The US Trustee has reviewed this stipulation and reported that it has no objection.

5. As set forth in the Declaration of Jeffrey Kangas filed contemporaneously herewith, H5 is “disinterested” as that term is defined under section 101(14) of the Bankruptcy Code.

6. The Court has jurisdiction to order the relief provided herein pursuant to 22 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 1408 and 1409.

AGREED ORDER

IT IS THEREFORE AGREED, AND UPON BANKRUPTCY COURT APPROVAL
HEREOF, IT SHALL BE ORDERED AS FOLLOWS:

Pursuant to sections 105(a) and 1103(a) of the Bankruptcy Code, (i) the Committee is hereby authorized to retain H5 to provide expert search and data management services and (ii) the retention and compensation of H5 shall be subject to the same terms and limitations as those applicable to “Ordinary Course Professionals” retained by the Debtors under the Order

Authorizing the Debtors to Employ Ordinary Course Professionals, *Nunc Pro Tunc* to the
Petition Date [Dkt. No. 263].

Dated: _____, 2013
St. Louis, Missouri

THE HONORABLE KATHY SURRETT-STATES
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated: September 11, 2013

By: /s/ Michael J. Russano
Marshall S. Huebner
Elliot Moskowitz
Michael J. Russano
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017

Counsel for Debtors

By: /s/ P. Bradley O'Neill
Thomas Moers Mayer
P. Bradley O'Neill
KRAMER LEVIN NAFTALIS &
FRANKEL LLP
1177 Avenue of the Americas
New York, New York 10036

Counsel for Committee

Exhibit B

Kangas Declaration

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

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 12-51502-659

(Jointly Administered)

**DECLARATION AND DISCLOSURE STATEMENT OF JEFFREY KANGAS,
ON BEHALF OF H5**

Jeffrey Kangas declares and says:

1. I am an Executive Managing Director of H5, located at 595 Market Street, San Francisco, California 94105 (the “**Firm**”).
2. Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in the above referenced proceedings (collectively, the “**Debtors**”) have requested that the Firm provide services to the Debtors, and the Firm has consented to provide those services.
3. The Firm may have performed services in the past and may perform services in the future, in matters unrelated to these chapter 11 cases, for persons that are claimants or other parties in interest in the Debtors’ chapter 11 cases. The Firm does not perform services for any such person in connection with these chapter 11 cases.

4. Neither I nor any partner or associate of the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates with respect to the matters on which the Firm is to be employed.

5. Neither I nor any partner or associate of the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any person other than partners and associates of the Firm.

6. The Debtors owe the Firm \$0 for prepetition services.

7. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Firm should discover any facts bearing on the matter described herein, the Firm will supplement the information contained in this Declaration.

8. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration was executed on September 9, 2013.



Jeffrey Kangas

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

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 12-51502-659

(Jointly Administered)

RETENTION QUESTIONNAIRE

TO BE COMPLETED BY PROFESSIONALS EMPLOYED BY PATRIOT COAL CORPORATION, *et al.* (the “**Debtors**”)

DO NOT FILE THIS QUESTIONNAIRE WITH THE COURT.
RETURN IT FOR FILING BY THE DEBTORS TO:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attn: Marshall S. Huebner and Brian M. Resnick

All questions **must** be answered. Please use “none,” “not applicable,” or “N/A,” as appropriate. If more space is needed, please complete on a separate page and attach.

1. Name and address of firm:

H5 _____

595 Market Street _____

San Francisco, CA 94105 _____

Date of retention: February 25, 2013 _____

2. Brief description of services to be provided:

Keyword consultation services _____

3. Arrangements for compensation (hourly, contingent, etc.)
hourly _____
(a) Range of hourly rates (if applicable): \$385 _____
(b) Estimated average monthly compensation based on prepetition retention (if firm was employed prepetition):
\$0 _____
4. Prepetition claims against any of the Debtors held by the firm:
Amount of claim: \$ none _____
Date claim arose: _____
Source of claim: _____
5. Prepetition claims against any of the Debtors held individually by any of the firm's attorneys:
Name: none _____
Status: _____
Amount of claim: \$ _____
Date claim arose: _____
Source of claim: _____
6. Stock of any of the Debtors currently held by the firm:
Kind of shares: none _____
No. of shares: _____
7. Stock of any of the Debtors currently held individually by any of the firm's attorneys:
Name: none _____
Status: _____
Kind of shares: _____
No. of shares: _____

8. Disclose the nature and provide a brief description of any interest adverse to the Debtors or to their estates for the matters on which the firm is to be employed.

none _____

9. Name of individual completing this form.

Jeffrey Kangas _____