

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)

Re: ECF No. 4576

**STIPULATED ORDER AUTHORIZING THE DEBTORS AND THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS TO CONDUCT
DISCOVERY OF ARCH COAL, INC. PURSUANT TO RULE 2004**

This Stipulated Order Authorizing the Debtors and the Official Committee of Unsecured Creditors to Conduct Discovery of Arch Coal, Inc. Pursuant to Rule 2004 (this “**Order**”) is made as of September 19, 2013 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 “**Movants**”), and Arch Coal, Inc. (“**Arch**” and, together with the Movants, the “**Parties**”), through their respective duly authorized counsel of record. The Parties hereby agree that the Motion of the Debtors and the Official Committee of Unsecured Creditors for Leave to Conduct Discovery of Arch Coal, Inc. Pursuant to Rule 2004 filed on September 3, 2013 [ECF No. 4576] (the “**Motion**”)² shall be resolved as follows:

1. The Movants are granted leave to propound discovery upon Arch pursuant to Federal Rule of Bankruptcy Procedure 2004 (“**Rule 2004**”), in the form of a subpoena duces

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

² Capitalized terms not defined herein have the meanings ascribed to them in the Rule 2004 Motion, including the draft subpoena attached thereto as Appendix A.

tecum substantially in the form of Appendix A attached to the Motion (the “**Subpoena**”). The Movants shall serve the Subpoena by email to counsel for Arch, which has been authorized to accept such service.

2. Arch shall respond to the Subpoena. Subject to negotiations on the scope of the Subpoena and any Arch objections to the Subpoena, Arch shall respond to the Subpoena in accordance with the requirements of Rule 2004 and Rule 45(d)(1) of the Federal Rules of Civil Procedure (“**FRCP**”).³ Arch will produce documents on a rolling basis and will use reasonable efforts to complete the production within 90 days after the scope of discovery has been agreed upon or otherwise determined. An objection to one aspect of discovery will not stay the time for producing discovery that is not subject to any objection. Under no circumstances shall Arch be obligated to commence the production of documents until seven business days after a protective order governing Arch’s production has been entered by the Court. If Arch withholds subpoenaed information under a claim that such information is privileged or subject to protection as trial-preparation material, Arch will prepare a privilege log, in accordance with FRCP 45(d)(2) and applicable local rules.

3. This Order is without prejudice to Arch’s right to object to the scope of the Subpoena based on FRCP 45(c)(2)(B) and, if such objection cannot be resolved following the requisite meet and confer, to move to quash or modify the Subpoena pursuant to FRCP 45(c)(3).

4. This Order is without prejudice to the Movants’ rights to move to compel production by Arch pursuant to Rule 2004 and FRCP 45 if such dispute cannot be resolved.

³ FRCP is applicable pursuant to Rule 9016 of the Federal Rules of Bankruptcy Procedure.

5. Prior to the filing of a motion related to a dispute concerning the Subpoena, or the subsequent document production, the Parties agree to meet and confer in an effort to resolve the dispute without Court intervention. If the Parties cannot resolve the dispute within five calendar days of the initial meet and confer, then (i) any Party may file a motion and such motion shall be scheduled for a hearing and (ii) the Party may request that the Court hear such dispute on an expedited basis.

6. This Order is without prejudice to the Movants' rights to seek other and/or further discovery pursuant to Rule 2004 in connection with these chapter 11 cases.

7. Documents or information produced by Arch in any proceedings in this Court relating to these chapter 11 cases, including, but not limited to, any request or motion made pursuant to Rule 2004, litigation, mediation, dispute, contested matter or adversary proceeding (collectively, the "**Proceedings**") and documents and information relating to Arch and its affiliates produced by third parties in the Proceedings (collectively, "**Arch Material**"), may be disclosed to Committee member the United Mine Workers of America (the "**UMWA**") for use in furtherance of its fiduciary duties as a Committee member only as follows: to (a) Frederick Perillo, outside counsel for the UMWA, and his law firm, and any successor outside counsel for the UMWA in this case and his or her law firm, which successor outside counsel and successor outside counsel's law firm shall not have had any previous involvement in the litigation against Arch captioned Lowe v. Peabody Holding Co. LLC, No. 12-cv-06925 (the "**West Virginia Action**"); (b) the UMWA's outside financial advisors in this case; and (c) Grant Crandall, general counsel of the UMWA (collectively, the "**UMWA Recipients**").

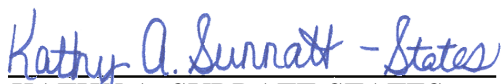
8. The UMWA Recipients shall not share or use Arch Material with (i) any members, employees or board members of the UMWA, (ii) any person or entity, including, without limitation, any UMWA counsel and advisors, participating in the West Virginia Action, and (iii) any other person or entity who is not entitled to receive Arch Material pursuant to the terms of this Order; and the UMWA shall not use Arch Material outside the Proceedings, including, without limitation, in connection with the West Virginia Action; *provided, however*, that this paragraph shall not apply to Arch Material that (1) is lawfully known to the UMWA at the time of disclosure, without obligation of confidentiality, (2) is independently developed by the UMWA without reference to or use of the Arch Material, (3) becomes known to the UMWA on a non-confidential basis from another source, unless (A) the UMWA knows or reasonably believes that such other source was subject to a confidentiality restriction at that time or (B) that source acquired such Arch Materials through discovery in the Proceedings, (4) is or becomes part of the public domain through no wrongful act of the UMWA or the UMWA Recipients, or (5) is disclosed publicly pursuant to any judicial request or order, subpoena of any kind, or formal regulatory request.

9. As a condition to receipt of Arch Material, the UMWA Recipients shall not (a) work on, participate in, or otherwise be involved in the West Virginia Action, including without limitation counseling or advising the UMWA, or (b) be party to or involved with discussions or other communications about the West Virginia Action with or among persons with any involvement in the West Virginia Action on behalf of the UMWA.

10. Proper, timely, adequate, and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the

Local Rules, and no other or further notice of the Motion or the entry of this Order shall be required.

11. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: September 20, 2013
St. Louis, Missouri
jjh

Dated: September 19, 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

Dated: September 19, 2013

By: 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

Dated: September 19, 2013

By: Sean A. O'Neal
Thomas J. Moloney
Sean A. O'Neal
Avram E. Luft
CLEARY GOTTLIEB STEEN & HAMILTON
One Liberty Plaza
New York, New York 10006

Counsel for Arch