

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:

October 30, 2013 at 4:00 p.m.

(prevailing Central Time)

Hearing Date:

November 6, 2013 at 10:00 a.m.

(prevailing Central Time)

Hearing Location:

Courtroom 7 North

DEBTORS' MOTION FOR ENTRY OF ORDER (i) APPROVING DISCLOSURE STATEMENT; (ii) APPROVING SOLICITATION AND NOTICE MATERIALS; (iii) APPROVING FORMS OF BALLOTS; (iv) ESTABLISHING SOLICITATION AND VOTING PROCEDURES; (v) ESTABLISHING PROCEDURES FOR ALLOWING AND ESTIMATING CERTAIN CLAIMS FOR VOTING PURPOSES; (vi) SCHEDULING A CONFIRMATION HEARING AND (vii) ESTABLISHING NOTICE AND OBJECTION PROCEDURES

PLEASE TAKE NOTICE that this motion is scheduled for hearing on November 6, 2013, at 10:00 a.m. (prevailing Central Time), in Bankruptcy Courtroom Seventh Floor North, in the Thomas F. Eagleton U.S. Courthouse, 111 South Tenth Street, St. Louis, Missouri 63102.

WARNING: ANY RESPONSE OR OBJECTION TO THIS MOTION MUST BE FILED WITH THE COURT BY 4:00 P.M. (PREVAILING CENTRAL TIME) ON OCTOBER 30, 2013. A COPY MUST BE PROMPTLY SERVED UPON THE UNDERSIGNED. FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THE COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE.

¹ The Debtors are the entities listed on Schedule 1 attached hereto. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

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

Relief Requested

1. By this motion (the “**Motion**”) and pursuant to sections 105, 502, 1125, 1126 and 1128 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 3017, 3018 and 3020 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors seek entry of an order (the “**Approval Order**”) ² (i) approving the disclosure statement (as the same may be updated, supplemented, amended and/or otherwise modified from time to time, the “**Disclosure Statement**”) ³ filed October 9, 2013 and relating to the Debtors’ proposed joint plan of reorganization (as the same may be updated, supplemented, amended and/or otherwise modified, the “**Plan**”); ⁴ (ii) approving solicitation materials and other notices; (iii) approving the forms of ballots; (iv) establishing procedures for distributing Solicitation Packages (as defined below), voting on the Plan and tabulating votes; (v) establishing procedures for allowing and estimating certain claims for voting purposes; (vi) scheduling a hearing regarding confirmation of the Plan and (vii) establishing notice and objection procedures.

Background, Jurisdiction and Venue

2. On July 9, 2012 (the “**Petition Date**”), each Debtor other than Brody Mining, LLC and Patriot Ventures LLC (collectively, the “**Initial Debtors**”) commenced with the United States Bankruptcy Court for the Southern District of New York (the “**SDNY Bankruptcy**”

² A copy of the proposed Approval Order will be provided to the Core Parties (as defined below). A copy of the proposed Approval Order will be made available at www.patriotcaseinfo.com/orders.php.

³ Unless otherwise defined herein, each capitalized term used herein shall have the meaning ascribed to it in the Disclosure Statement.

⁴ The Plan and Disclosure Statement are available on this Court’s docket and free of charge on the Debtors’ case information website (located at www.patriotcaseinfo.com).

Court”) a voluntary case under chapter 11 of the Bankruptcy Code. On December 19, 2012, the SDNY Bankruptcy Court entered an order transferring the Initial Debtors’ chapter 11 cases to this Court (the “**Transfer Order**”) [ECF No. 1789]. Subsequently, Brody Mining, LLC and Patriot Ventures LLC (together, the “**New Debtors**”) each commenced its chapter 11 case by filing a petition for voluntary relief with this Court on September 23, 2013. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Initial Debtors’ cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the Joint Administration Order entered on July 10, 2012 [ECF No. 30], and the New Debtors’ cases are being jointly administered with the Initial Debtors’ cases pursuant to Bankruptcy Rule 1015(b) and the Order Directing Joint Administration of Chapter 11 Cases entered by this Court on September 27, 2013 in each of the New Debtors’ chapter 11 cases.

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

Argument

I. The Disclosure Statement Contains Adequate Information and Should Be Approved

4. Pursuant to section 1125(b) of the Bankruptcy Code, a plan proponent must provide holders of impaired claims and interests entitled to vote with “adequate information” regarding the proposed plan of reorganization. In that regard, section 1125(a)(1) of the Bankruptcy Code provides:

“[A]dequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records . . . that would enable . . . a hypothetical investor of the relevant class to make an informed judgment about the plan

11 U.S.C. § 1125(a)(1). Thus, a debtor’s disclosure statement must, as a whole, provide information that is adequate to permit an “informed judgment” by impaired creditors entitled to vote on the proposed plan. *See Cadle Company II, Inc. v. PC Liquidation Corp. (In re PC Liquidation Corp.)*, 383 B.R. 856, 864–66 (E.D.N.Y. 2008); *In re Source Enterprises, Inc.*, 2007 WL 7144778, at *2 (Bankr. S.D.N.Y. July 31, 2007); *In re Adelpia Communications Corp.*, 352 B.R. 592, 596–97 (Bankr. S.D.N.Y. 2006); *Abel v. Shugrue, Jr. (In re Ionosphere Clubs, Inc.)*, 179 B.R. 24, 29 (S.D.N.Y. 1995); *see also In re Dakota Rail, Inc.*, 104 B.R. 138, 142 (Bankr. D. Minn. 1989); *In re Copy Crafters Quickprint Inc.*, 92 B.R. 973, 979 (Bankr. N.D.N.Y. 1988) (adequacy of a disclosure statement “is to be determined on a case-specific basis under a flexible standard that can promote the policy of chapter 11 towards fair settlement through a negotiation process between informed interested parties”). A disclosure statement “must clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution.” *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991).

5. In examining the adequacy of the information contained in a disclosure statement, the bankruptcy court has broad discretion. *See In re Babayoff*, 445 B.R. 64, 78 (Bankr. E.D.N.Y. 2011); *In re PC Liquidation Corp.*, 383 B.R. at 865; *see also In re Oxford Homes*, 204 B.R. 264, 269 (Bankr. D. Me. 1997) (noting that Congress intentionally drew vague contours of what constitutes adequate information so that bankruptcy courts can exercise discretion to tailor them to each case’s particular circumstances); *Dakota Rail*, 104 B.R. at 143 (a bankruptcy court has

“wide discretion to determine . . . whether a disclosure statement contains adequate information without burdensome, unnecessary and cumbersome detail”). This grant of discretion was intended to facilitate effective reorganizations of debtors in a broad range of businesses and in the various circumstances that accompany chapter 11 cases. *See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 408–09 (1977). As Congress observed, “[i]n reorganization cases, there is frequently great uncertainty. Therefore, the need for flexibility is greatest.” *Id.* at 409.

6. Accordingly, the determination of whether a disclosure statement contains adequate information is to be made on a case-by-case basis, focusing on the unique facts and circumstances of each case. *See Kirk v. Texaco, Inc.*, 82 B.R. 678, 682 (S.D.N.Y. 1988) (“The legislative history could hardly be more clear in granting broad discretion to bankruptcy judges under § 1125(a). . . .”); *In re PC Liquidation Corp.*, 383 B.R. at 865; *In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001); *see also In re Worldcom, Inc.*, 2003 U.S. Dist. LEXIS 11160, at *30 (S.D.N.Y. June 30, 2003) (“The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court.” (citing *In re Ionosphere Clubs*, 179 B.R. at 29)).

7. In that regard, courts generally examine whether disclosure statements contain information such as:

- (a) the circumstances that gave rise to the filing of the bankruptcy petition;
- (b) the available assets and their value;
- (c) the anticipated future of the debtor;
- (d) the sources of the information provided in the disclosure statement;
- (e) the condition and performance of the debtor while in chapter 11;
- (f) the claims against the estate;

- (g) a liquidation analysis setting forth the estimated return that creditors would receive under chapter 7;
- (h) the accounting and valuation methods used to produce the financial information in the disclosure statement;
- (i) the future management of the debtor, including the amount of compensation to be paid to any insiders, directors and/or officers of the debtor;
- (j) a summary of the plan of reorganization;
- (k) financial information that would be relevant to creditors' determinations of whether to accept or reject the plan;
- (l) the risks being taken by the creditors and interest holders;
- (m) the tax consequences of the plan; and
- (n) the relationship of the debtor with its affiliates.

See, e.g., In re Scioto Valley Mortgage Co., 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988) (using a similar list); *Oxford*, 104 B.R. at 269 (using a similar list); *Ferretti*, 128 B.R. at 18–19 (also using a similar list). Such lists are not meant to be exhaustive, nor must a debtor include all of the information approved as sufficient in any prior case. Rather, courts are instructed to decide what information is appropriate in each case. *See Phoenix Petroleum*, 278 B.R. at 393 (using a similar list, but cautioning that “no one list of categories will apply in every case”); *Dakota Rail*, 104 B.R. at 142 (using a similar list of information described as “nonexclusive and nonexhaustive”).

8. The Debtors respectfully submit that the Disclosure Statement (including any updates, supplements, amendments and/or other modifications contemplated thereby or by the Plan) addresses each of the salient types of information identified above and will provide holders of impaired claims entitled to vote to accept or reject the Plan with adequate information to allow each such holder to make an informed judgment about the Plan.

9. Accordingly, the Debtors submit that the Disclosure Statement contains adequate information within the meaning of section 1125 of the Bankruptcy Code and, therefore, should be approved.

II. Solicitation and Notice Materials

A. Solicitation Packages

10. Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders of claims and equity interests entitled to vote for the purpose of soliciting their votes and providing adequate notice of the hearing on confirmation of a plan of reorganization.

Specifically, Bankruptcy Rule 3017(d) provides, in relevant part, that:

Upon approval of a disclosure statement—except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders—the debtor in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,

- (1) the plan or a court-approved summary of the plan;
- (2) the disclosure statement approved by the court;
- (3) notice of the time within which acceptances and rejections of the plan may be filed; and
- (4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.

In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan.

Fed. R. Bankr. P. 3017(d).

11. The Debtors propose that the solicitation packages distributed in these chapter 11 cases (the “**Solicitation Packages**”) include:

- (a) a cover letter describing the contents of the Solicitation Package, the contents of the enclosed CD-ROM and instructions for obtaining printed copies of any materials provided on the CD-ROM at no charge;
- (b) a CD-ROM⁵ containing the following:
 - (i) the Disclosure Statement (with the Plan annexed thereto and other exhibits); and
 - (ii) the Approval Order (without exhibits);
- (c) the Confirmation Hearing Notice (as defined below);
- (d) a Ballot (as defined below) or Beneficial Ballot (as defined below), as appropriate, together with a pre-addressed postage-paid envelope;
- (e) a letter from the Official Committee of Unsecured Creditors appointed in the Debtors’ chapter 11 cases (the “**Creditors’ Committee**”) regarding acceptance of the Plan, to the extent such letter is provided to the Debtors by the Creditors’ Committee sufficiently in advance of production of the Solicitation Packages to allow inclusion; and
- (f) such other materials as the Court may direct.

12. The Debtors expect that they will be able to complete the distribution of Solicitation Packages no later than the date (the “**Solicitation Date**”) that is seven (7) calendar days after entry of the Approval Order.

⁵ The Disclosure Statement and Plan, including exhibits, are hundreds of pages in length. To avoid the substantial costs that would be associated with printing and mailing such a voluminous set of documents, the Debtors propose to serve the Disclosure Statement and Plan (including exhibits) via CD-ROM instead of in printed format to all parties. This procedure has been approved in other large chapter 11 cases, including in this district. *See, e.g., In re ContinentalAFA Dispensing Co.*, Case No. 08-45921-659 (Bankr. E.D. Mo. Aug. 17, 2009); *In re Pinnacle Airlines Corp.*, Case No. 12-11343 (REG) (Bankr. S.D.N.Y. Mar. 7, 2013); *In re Sbarro, Inc.*, Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. Oct. 11, 2011); *In re Chemtura Corp.*, Case No. 09-11233 (REG) (Bankr. S.D.N.Y. Aug. 5, 2010); *In re Lyondell Chem. Co.*, Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Mar. 11, 2010); *In re Frontier Airlines Holdings, Inc.*, Case No. 08-11298 (RDD) (Bankr. S.D.N.Y. July 22, 2009).

B. Notices of Non-Voting Status

13. Claims in Class 1A (Other Priority Claims against Patriot Coal), Class 1B (Other Secured Claims against Patriot Coal), Classes 2A-101A (Other Priority Claims against the Subsidiary Debtors) and Classes 2B-101B (Other Secured Claims against the Subsidiary Debtors) are designated under the Plan as unimpaired (the “**Unimpaired Claims**”) and, therefore, are conclusively presumed to accept the Plan. *See* 11 U.S.C. § 1126(f). Class 1G (Section 510(b) Claims against Patriot Coal), Class 1H (Interests in Patriot Coal), Classes 2F-101F (Section 510(b) Claims against the Subsidiary Debtors) and Classes 2G-101G (Interests in Subsidiary Debtors) will not receive any distribution under the Plan and, therefore, are deemed to reject the Plan (collectively, the “**Fully Impaired Claims and Interests**”). *See* 11 U.S.C. § 1126(g); *see also In re Zenith Elec. Corp.*, 241 B.R. 92, 99 (Bankr. D. Del. 1999) (a class that would receive nothing under the debtor’s proposed plan did not have the right to vote, as it was conclusively presumed to have rejected the plan pursuant to section 1126(g) of the Bankruptcy Code).

i. Unimpaired Class Non-Voting Notice

14. Bankruptcy Rule 3017(d) provides, in relevant part, as follows:

If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailed to any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained upon request and at the plan proponent’s expense, shall be mailed to members of the unimpaired class together with the notice of the time fixed for filing objections to and the hearing on confirmation.

Fed. R. Bankr. P. 3017(d).

15. Accordingly, the Debtors propose to send to holders of Unimpaired Claims a notice of non-voting status, substantially in the form annexed to the Approval Order as **Exhibit**

C-1 (the “**Unimpaired Class Non-Voting Notice**”), which informs such holders that their claims will be unimpaired and how to obtain a copy of the Plan and Disclosure Statement at no charge.

ii. Impaired Class Non-Voting Notice

16. As noted above, Class 1G (Section 510(b) Claims against Patriot Coal), Class 1H (Interests in Patriot Coal), Classes 2F-101F (Section 510(b) Claims against the Subsidiary Debtors) and Classes 2G-101G (Interests in Subsidiary Debtors) will not receive any distribution under the Plan and, therefore, are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. Accordingly, the Debtors propose to mail to known holders of claims and interests in Class 1G, Class 1H and Classes 2F-101F a notice of non-voting status, substantially in the form annexed to the Approval Order as **Exhibit C-2 (“Impaired Class Non-Voting Notice”** and, together with the Unimpaired Class Non-Voting Notice, the “**Non-Voting Notices**”). The Impaired Class Non-Voting Notice explains to such holders that their claim will be impaired and provides instructions for obtaining a copy of the Plan and Disclosure Statement at no charge.

17. For Class 1H (Interests in Patriot Coal), the Debtors propose to send Impaired Class Non-Voting Notices to those holders of Patriot Coal’s prepetition common stock (the “**Prepetition Stock**”) that are reflected in the records maintained by the transfer agent(s) and/or The Depository Trust Company (the “**DTC**”) as of the close of business on the Voting Record Date (as defined below). Accordingly, the Debtors request that the Court order the Debtors’ transfer agent(s) and/or the DTC to provide the Solicitation Agent with a Voting Record Date list of the names and addresses of the registered holders of Prepetition Stock in an electronic file, as soon as practicably possible, but in any event, no later than one business day following entry of

the Approval Order. The Debtors recognize that the records maintained by the DTC reflect the brokers, dealers, commercial banks, trust companies and other nominees (collectively, the “**Non-Voting Nominees**”) through which beneficial owners hold the Prepetition Stock, so the Debtors request that the Court:

- (i) authorize the Debtors to provide the Non-Voting Nominees or their mailing agent(s) with sufficient copies of the Impaired Class Non-Voting Notice to forward to the beneficial owners of the Prepetition Stock and
- (ii) order the Non-Voting Nominees or their mailing agent(s) to forward copies of the Impaired Class Non-Voting Notice to the beneficial owners of the Prepetition Stock within five (5) business days after receipt by such Non-Voting Nominees or their mailing agent(s) of copies of the Impaired Class Non-Voting Notice.

18. To the extent that the Non-Voting Nominees or their mailing agent(s) incur reasonable, customary and documented out-of-pocket expenses in connection with distribution of the Impaired Class Non-Voting Notice, the Debtors request authority to reimburse such entities for such reasonable, customary and documented out-of-pocket expenses without further order of this Court.

19. The Debtors request a determination by the Court that they are not required to distribute Solicitation Packages, Ballots, copies of the Disclosure Statement or Plan or any other notices (except for the Confirmation Hearing Notice) to holders of Fully Impaired Claims and Interests in Class 1G (Section 510(b) Claims against Patriot Coal), Class 1H (Interests in Patriot Coal), Classes 2F-101F (Section 510(b) Claims against the Subsidiary Debtors) and Classes 2G-101G (Interests in Subsidiary Debtors). The Debtors submit that the distribution to such holders of just the Impaired Class Non-Voting Notice would satisfy the requirements of the Bankruptcy Code and Bankruptcy Rules. Similar relief has been granted in other chapter 11 cases, including other chapter 11 cases in this circuit. *See, e.g., In re Pinnacle Airlines Corp.*, Case No. 12-11343

(REG) (Bankr. S.D.N.Y. Mar. 7, 2013); *In re Lyondell Chem. Co.*, Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Mar. 11, 2010); *In re Frontier Airlines Holdings, Inc.*, Case No. 08-11298 (RDD) (Bankr. S.D.N.Y. July 22, 2009); *In re Interstate Bakeries Corp.*, Case No. 04-45814 (JWV) (Bankr. W.D. Mo. Oct. 30, 2008); *In re Falcon Products, Inc.*, Case No. 05-41108 (BSS) (Bankr. E.D. Mo. Aug. 29, 2005) (non-voting classes received confirmation hearing notice only).

III. Approving Forms of Ballots

20. Bankruptcy Rule 3017(d) requires the Debtors to mail a form of ballot to “creditors and equity security holders entitled to vote on the plan.” Fed. R. Bankr. P. 3017(d). The classes of creditors entitled to vote under the Plan are Class 1C (Senior Notes Parent Claims), Class 1D (Convertible Notes Claims), Class 1E (General Unsecured Claims against Patriot Coal), Class 1F (Convenience Class Claims against Patriot Coal), Classes 2C-100C (Senior Notes Guarantee Claims), Classes 2D-101D (General Unsecured Claims against the Subsidiary Debtors), and Classes 2E-101E (Convenience Class Claims against the Subsidiary Debtors) (collectively, the “**Voting Classes**”). The Debtors propose to distribute to Voting Class creditors entitled to vote one or more ballots (the “**Ballots**”) substantially in the forms annexed to the Approval Order as **Exhibits A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-9 or A-10**, as appropriate.

21. The Ballots are based upon Official Form No. 14 but have been modified based on circumstances particular to these chapter 11 cases; for instance, each Ballot advises creditors in bold and capitalized print that creditors who (a) vote to accept or reject the Plan and (b) do not elect to opt out of the release provisions contained in Section 11.8 of the Plan shall be deemed to have unconditionally, irrevocably and forever released and discharged the Released Parties (as defined in the Plan) from, *inter alia*, any and all Causes of Action (as defined in the Plan) except

as otherwise specifically provided in the Plan. Also, Official Form No. 14 has been modified to advise creditors that if no votes to accept or reject the Plan are received for a particular class that is entitled to vote on the Plan, such class shall be deemed to have voted to accept the Plan.

22. The Ballots for Classes 2C-100C (Senior Notes Guarantee Claims) reflect that voters must vote all of their Senior Notes Guarantee Claims consistently to either accept or reject the Plan.

IV. Establishing Procedures for Distributing Solicitation and Notice Materials, Voting on the Plan and Tabulating Votes, Including Allowing and Estimating Certain Claims for Voting Purposes

A. Distributing Solicitation Packages

23. For holders of claims in the Voting Classes, other than holders of securities issued pursuant to (a) that certain Indenture dated as of May 5, 2010 by and among Patriot Coal and Wilmington Trust Company, in its capacity as indenture trustee (the “**Senior Notes**”) and (b) that certain Indenture dated as of May 28, 2008, between Patriot Coal and U.S. Bank National Association, in its capacity as indenture trustee (the “**Convertible Notes**”), the Debtors propose to distribute or cause to be distributed Solicitation Packages to: (i) all persons and entities identified in the Debtors’ schedules of liabilities filed pursuant to section 521 of the Bankruptcy Code and Bankruptcy Rule 1007 (as modified before the Voting Record Date, the “**Schedules**”) as holding liquidated, noncontingent and undisputed claims⁶ in the Voting Classes in an amount greater than zero dollars, excluding scheduled claims that have been paid in full, superseded by filed proofs of claim or disallowed or expunged before the Solicitation Date, (ii) all persons and

⁶ Bankruptcy Rule 3003(c)(2) provides in relevant part that “any creditor . . . whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated . . . who fails to [timely file a proof of claim] shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.” Fed. R. Bankr. P. 3003(c)(2). Therefore, the Debtors propose that such claimants or interest holders not be mailed Solicitation Packages.

entities that timely filed proofs of claim in the Voting Classes, as reflected on the claims register maintained by GCG, Inc. (the “**Solicitation Agent**”), that allege dollar amounts greater than zero or that are contingent or unliquidated, but, in each case, only to the extent that the claims have not been disallowed or expunged before the Solicitation Date and (iii) transferees and assignees of any creditors described in clauses (i) or (ii) above, but only to the extent that the relevant transfer or assignment is properly noted on the Court’s docket and is effective pursuant to Bankruptcy Rule 3001(e) as of the close of business on the Voting Record Date and whose claims have not been disallowed or expunged before the Solicitation Date. If a claim has been temporarily disallowed for voting purposes pursuant to an order of the Court, the holder of such claim shall not be entitled to receive a Solicitation Package.

24. For holders of Senior Notes or Convertible Notes who are entitled to vote (collectively, the “**Beneficial Holders**”), the Debtors propose to deliver Solicitation Packages, including beneficial ballots (in substantially the form of the Beneficial Ballots annexed to the Approval Order as Exhibits A-1, A-3 and A-7 the “**Beneficial Ballots**”), to the record holders of such securities as of the Voting Record Date, including, without limitation, brokers, banks, dealers, or other agents (including mailing agents) and nominees (collectively, the “**Voting Nominees**”).⁷ To aid this process, the Debtors request that the Court order the indenture trustees for the Senior Notes and Convertible Notes to provide the Solicitation Agent with a Voting Record Date security position listing from the DTC, listing the DTC participant names, addresses

⁷ Solicitation Packages will be sent in paper format or via electronic transmission in accordance with the customary requirements of each Voting Nominee. Each Voting Nominee will then distribute the Solicitation Packages, as appropriate, in accordance with their customary practices and obtain votes to accept or to reject the Plan also in accordance with their customary practices. If it is the Voting Nominee’s customary practice to submit a “voting instruction form” to the Beneficial Holders for the purpose of recording the Beneficial Holder’s vote, the Voting Nominee will be authorized to send the voting information form in lieu of a Beneficial Ballot.

and amounts held as of the Voting Record Date, as soon as practicably possible, but in any event no later than one business day following entry of the Approval Order.

25. Master ballots (in substantially the form of the Master Ballots annexed to the Approval Order as Exhibits A-2, A-4 and A-8, the “**Master Ballots**”) would also be delivered to such Voting Nominees. Each Voting Nominee would be entitled to receive a reasonably sufficient number of Beneficial Ballots and Solicitation Packages to distribute to the Beneficial Holders for whom such Voting Nominee is the record holder.

26. The Debtors propose that Voting Nominees be ordered to do the following within five business days of their receipt of the Solicitation Packages:

- a. forward a Solicitation Package (including a Beneficial Ballot) to each Beneficial Holder and include a return envelope provided by and addressed to the Voting Nominee, so that the Beneficial Holder can return the completed Beneficial Ballot directly to the Voting Nominee. The Voting Nominee should advise the relevant Beneficial Holders to return their Beneficial Ballots to the Voting Nominee in sufficient time for the Voting Nominee to prepare and return the Master Ballot to the Solicitation Agent by the Voting Deadline (as defined below). After Beneficial Ballots are returned, the Voting Nominee will summarize on the appropriate Master Ballot the votes and other Beneficial Ballot information (releases, etc.) of its respective Beneficial Holders as reflected in all properly completed and signed Beneficial Ballots, and then return the Master Ballot to the Solicitation Agent by the Voting Deadline (as defined below); or
- b. distribute “pre-validated” Beneficial Ballots pursuant to the following procedures:
 1. the Voting Nominee shall forward the Solicitation Package or copies thereof (including (i) the Disclosure Statement, (ii) an individual Beneficial Ballot that has been pre-validated, as indicated in paragraph (2) below and (iii) a return envelope provided by and addressed to the Solicitation Agent) to the Beneficial Holder;
 2. to “pre-validate” a ballot, the Voting Nominee should complete and execute the Beneficial Ballot (other than Items 2, 3 and 4) and indicate on the Beneficial Ballot the name and DTC Participant Number of the Voting Nominee, the amount of securities held by

the Voting Nominee for the Beneficial Holder and the account number(s) for the account(s) in which such securities are held by the Voting Nominee; and

3. the Beneficial Holder shall return the pre-validated Ballot to the Solicitation Agent by the Voting Deadline (as defined below).

27. The Debtors propose that all Voting Nominees be required to keep the original Beneficial Ballots (or alternate means of recording Beneficial Holders' votes, such as voting information forms) received from Beneficial Holders for a period of at least one year after the Voting Deadline (as defined below).

28. The Debtors seek authority to reimburse each Voting Nominee for its reasonable, customary and documented out-of-pocket expenses associated with (i) distribution of the Solicitation Packages to its Beneficial Holders, (ii) tabulation of the Beneficial Ballots (where applicable) and (iii) completion of its Master Ballot (where applicable).

B. Distributing Other Notice Materials

29. The Debtors believe that it would be wasteful to distribute Solicitation Packages, Ballots, Non-Voting Notices, copies of the Disclosure Statement or Plan or any other materials or notices (including any updates, supplements, amendments or modifications thereto) to addresses to which an undeliverable Notice of Disclosure Statement Approval Hearing [ECF No. 4621] (the "**Disclosure Statement Hearing Notice**") was distributed. Therefore, the Debtors seek to be excused, without any further order of the Court, from distributing Solicitation Packages, Non-Voting Notices or any other similar materials to those entities listed at such addresses unless the Debtors are provided with accurate addresses for such entities before the date on which the Debtors begin distributing the relevant materials.

30. The Debtors further anticipate that some of the Solicitation Packages, Ballots, Non-Voting Notices, copies of the Disclosure Statement or Plan or any other similar materials or notices may be returned by the United States Postal Service as undeliverable.

31. The Debtors also request a determination by the Court that they need not re-mail Solicitation Packages, Ballots, Non-Voting Notices, copies of the Disclosure Statement or Plan or any other similar materials or notices that were returned as undeliverable by the United States Postal Service unless the Debtors are provided with accurate addresses for such entities at least seven (7) calendar days prior to the Voting Deadline.

32. The Debtors propose that they should be required to send, by first class mail, (a) a Solicitation Package without a ballot to the Core Parties; and (b) the Confirmation Hearing Notice (but no Solicitation Packages, Ballots, Non-Voting Notices, copies of the Disclosure Statement or Plan or any other similar materials or notices) to (i) parties to executory contracts and unexpired leases that have not been assumed or rejected as of the Voting Record Date, who are not included in the Debtors' Schedules (other than Schedule G) and who have not timely filed a proof of claim, (ii) holders of claims against the Debtors that have not been classified in the Plan pursuant to section 1123(a)(1) of the Bankruptcy Code and (iii) all other parties included in the Debtors' creditor matrix that do not fall within any of the categories described in paragraphs 23 through 31 above.

33. The Debtors submit that they have shown good cause for implementing the proposed notice procedures set forth herein and that such notice procedures would satisfy the requirements of Bankruptcy Rule 3017(d) and all other applicable requirements.

C. Establishing a Voting Record Date

34. Bankruptcy Rule 3017(d) provides that, for purposes of soliciting votes to confirm a plan of reorganization, “creditors and equity security holders shall include holders of stock, bonds, debentures, notes and other securities of record on the date the Approval Order is entered or another date fixed by the court, for cause, after notice and a hearing.” Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes. The record holders of a debtor’s public securities generally require advance notice to enable those responsible for assembling ownership lists of that debtor’s public securities to compile a list of holders as of a date certain.

35. Accordingly, the Debtors request that the Court exercise its authority under Bankruptcy Rules 3017(d) and 3018(a) to establish **October 30, 2013 at 5:00 p.m. (prevailing Central Time)** as the record date (the “**Voting Record Date**”) for purposes of determining which creditors are entitled to vote on the Plan and which non-voting creditors and interest holders are entitled to receive certain informational materials.⁸ *See, e.g., In re Pinnacle Airlines Corp.*, Case No. 12-11343 (REG) (Bankr. S.D.N.Y. Mar. 7, 2013); *In re Frontier Airlines Holdings, Inc.*, Case No. 08-11298 (Bankr. S.D.N.Y. July 22, 2009); *In re Interstate Bakeries Corp.*, Case No. 04-45814 (JWV) (Bankr. W.D. Mo. Oct. 30, 2008); *In re Adelphia Communications Corp.*, Case No. 02-41729 (Bankr. S.D.N.Y. Nov. 23, 2005); *In re Falcon Products, Inc.*, Case No. 05-41108 (BSS) (Bankr. E.D. Mo. Aug. 29, 2005).

D. Establishing a Voting Deadline

36. Bankruptcy Rule 3017(c) provides that, in connection with or before approval of a disclosure statement, a court shall fix a time within which the holders of claims or equity security

⁸ The establishment of a Voting Record Date is for voting purposes *only* and has no effect on who is entitled to receive distributions under the Plan.

interests may accept or reject the relevant plan of reorganization. The Debtors anticipate completing the solicitation period within approximately seven (7) calendar days after entry of the Approval Order. Based on such schedule, the Debtors propose that in order to be counted as a vote to accept or reject the Plan, any Ballot, Master Ballot or pre-validated Beneficial Ballot must be properly executed and completed and delivered to the Solicitation Agent so as to be actually received by the Solicitation Agent no later than **4:00 p.m. (prevailing Central Time) on December 9, 2013** (the “**Voting Deadline**”), which date is approximately 26 days after the Solicitation Date.

37. Although the Debtors submit that such solicitation period is a sufficient period within which creditors can make an informed decision to accept or reject the Plan, they also request authority to, after consultation with the Creditors’ Committee, extend the Voting Deadline, if necessary, without further order of the Court, to a date that is no later than five business days before the Confirmation Hearing by publishing an announcement of such extension electronically on the Debtors’ case information website (located at *www.patriotcaseinfo.com*) and filing such announcement on the Court’s docket.

E. Establishing Procedures for Tabulating Votes

38. Section 1126(c) of the Bankruptcy Code provides:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c). Further, Bankruptcy Rule 3018(a) provides that “the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.” Fed. R. Bankr. P. 3018(a).

i. Ballot Tabulation

39. The Debtors propose that they be bound by the tabulation procedures described in Local Rule 3018-B, with the following additional procedures. To the extent of any conflict between the procedures described in Local Rule 3018-B and the additional procedures, the Debtors propose that the additional procedures govern. The Debtors propose, solely for purposes of voting to accept or reject the Plan and not for purposes of allowance or distribution on account of a claim and without prejudice to the rights of the Debtors in any other context, that each holder of a Voting Class claim be entitled to vote the amount of such claim as set forth in the Schedules (as may be amended from time to time) unless such holder has timely filed a proof of claim, in which event such holder would instead be entitled to vote the amount of such claim as set forth in such proof of claim. The foregoing general procedure will be subject to the following:

- (a) if a claim is deemed “allowed” pursuant to an agreement with the Debtors or an order of the Court, the Debtors propose that such claim be allowed for voting purposes in the “allowed” amount set forth in such agreement or in the Court’s order;
- (b) if a claim for which a proof of claim has been timely filed is wholly contingent or unliquidated or filed for unknown or undetermined amounts (other than in respect of any DIP Facility Claim), or if a claim is based on a pending litigation not subject to a judgment against any of the Debtors, and (i) no objection to it has been filed by the Voting Deadline and (ii) no order pursuant to Bankruptcy Rule 3018(a) temporarily allowing it for voting purposes in an amount greater than \$1.00 has been entered by the Court, in each case before the Voting Deadline, the Debtors propose that such claim be temporarily allowed for voting purposes only, and not for purposes of allowance or

distribution, at \$1.00, and the Ballot mailed to the holder of such claim shall be marked as voting at \$1.00;

- (c) if the Debtors have filed an objection to a claim by the Voting Deadline, the Debtors propose that such claim be disallowed for voting purposes only and not for purposes of allowance or distribution, except to the extent and in the manner as may be set forth in such objection;
- (d) if a claim has been “disallowed” by agreement of the claim holder or order of the Court at any time before the Voting Deadline, the Debtors propose that such claim also be disallowed for voting purposes;
- (e) if a claim has been estimated or otherwise allowed for voting purposes by order of the Court, the Debtors propose that such claim be temporarily allowed in the amount so estimated or allowed by the Court for voting purposes only;
- (f) if a claim is listed in the Schedules as contingent, unliquidated or disputed, or undetermined in amount or for \$0.00, and a proof of claim was not (i) filed by the applicable bar date for the filing of proofs of claim established by the Court or (ii) deemed timely filed by an order of the Court before the Voting Deadline, then, unless the Debtors have consented in writing or the holder of such claim obtains an order pursuant to Bankruptcy Rule 3018(a) temporarily allowing such claim for voting purposes, the Debtors propose that such claim be disallowed for voting purposes and for purposes of allowance and distribution pursuant to Bankruptcy Rule 3003(c);
- (g) claims filed for \$0.00 are not entitled to vote;
- (h) if a claim is partially liquidated and partially unliquidated and (i) no objection to it has been filed by the Voting Deadline and (ii) no order pursuant to Bankruptcy Rule 3018(a) temporarily allowing it for voting purposes in an amount greater than \$1.00 has been entered by the Court, in each case before the Voting Deadline, the Debtors propose that such claim be allowed for voting purposes only in the liquidated amount;
- (i) if (a) the obligation underlying a claim against one of the Debtors is the subject of a guarantee of another Debtor and (b) such claim is an Unimpaired Claim, the Debtors propose that any claim filed in respect of such guarantee be disallowed for voting purposes;
- (j) if a proof of claim has been amended by a later-filed proof of claim, the later-filed amending claim will be entitled to vote to the extent consistent with the tabulation rules set forth in this paragraph 39, and the earlier filed claim will not be entitled to vote;

- (k) if no votes to accept or reject the Plan are received for a particular class that is entitled to vote on the Plan, such class shall be deemed to have voted to accept the Plan;
- (l) for purposes of the numerosity requirement of section 1126(c) of the Bankruptcy Code, separate Claims held by a single creditor in a particular class shall be aggregated as if such creditor held one claim against the Debtors in such class, and the votes related to such claims shall be treated as a single vote to accept or reject the Plan; and
- (m) notwithstanding anything to the contrary contained herein, the Debtors propose that any creditor who has filed or purchased duplicate Voting Class claims (whether against the same or multiple Debtors), be provided with only one Solicitation Package and one ballot and be permitted to vote only a single claim, regardless of whether the Debtors have objected to such duplicate claims.

40. If any creditor seeks to challenge the allowance or disallowance of its claim for voting purposes, the Debtors request that the Court direct such creditor to serve on the Debtors and the Creditors' Committee and file with the Court a motion for an order pursuant to Bankruptcy Rule 3018(a) temporarily allowing such claim for purposes of voting to accept or reject the Plan on or before the fourteenth calendar day after the later of (i) the Solicitation Date and (ii) the date of service of an objection, if any, to such claim. The Debtors further propose, in accordance with Bankruptcy Rule 3018(a), that as to any creditor filing such a motion, such creditor's Ballot not be counted unless temporarily allowed by the Court for voting purposes, after notice and a hearing.

41. The Debtors request that (i) whenever a creditor casts more than one Ballot voting the same claim(s) before the Voting Deadline, the last dated Ballot received before the Voting Deadline be deemed to reflect the voter's intent and thus to supersede any prior Ballots, (ii) a creditor with multiple Voting Class claims within a particular Voting Class must vote all such claims within such Voting Class either to accept or reject the Plan and may not split its votes and (iii) a creditor with Voting Class claims in multiple Voting Classes based on the same underlying

obligation (e.g., a primary claim and a guarantee claim) may not split its votes with respect to such claims, and thus (x) no Ballot that partially rejects and partially accepts the Plan, (y) no Ballot filed by a creditor with multiple Voting Class claims within a particular Voting Class that votes inconsistently with respect to such claims and (z) no Ballot filed by a creditor with multiple Voting Class claims based on the same underlying obligation that votes inconsistently with respect to such Voting Class claims, in each case, will be counted.

42. The Debtors further propose that, without further order of the Court, except as otherwise set forth herein, the following Ballots not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected: (i) any Ballot that is properly completed and executed and timely returned to the Solicitation Agent, but does not indicate an acceptance or rejection of the Plan or that indicates both an acceptance and rejection of the Plan; (ii) any Ballot actually received by the Solicitation Agent after the Voting Deadline, unless the Debtors shall have granted in writing (including by email or other informal means) an extension of the Voting Deadline for such Ballot; (iii) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant; (iv) any Ballot cast by a person or entity that does not hold a Voting Class claim; (v) any Ballot cast for a claim scheduled as unliquidated, contingent or disputed for which no proof of claim was timely filed; (vi) any unsigned or non-originally signed Ballot; (vii) any Ballot sent directly to any of the Debtors, their agents (other than the Solicitation Agent), any indenture trustee (unless specifically instructed to do so) or the Debtors' financial or legal advisors or to any other party other than the Solicitation Agent; (viii) any Ballot cast for a claim that has been disallowed (for voting purposes or otherwise) and (ix) any Ballot transmitted to the Solicitation Agent by facsimile or other electronic means.

43. The Debtors further propose, without further order of the Court, that any holder of a Claim entitled to vote that has delivered a valid Ballot may withdraw such Ballot solely in accordance with Bankruptcy Rule 3018(a).

44. Subject to any contrary order of the Bankruptcy Court, the Debtors reserve the right to reject any and all Ballots the acceptance of which, in the opinion of the Debtors, would not be in accordance with the provisions of the Bankruptcy Code or the Bankruptcy Rules.

45. Subject to any contrary order of the Court, the Debtors, in their sole discretion, reserve the right to waive any defect in any Ballot or Master Ballot at any time, whether before or after the Voting Deadline, and without notice.

46. None of the Debtors, the Solicitation Agent or any other person or entity will be under any duty to provide notification of defects or irregularities in delivered Ballots, nor will any of them incur any liability for failure to provide such notification. Rather, the Solicitation Agent may disregard, with no further notice, defective Ballots described in paragraph 42 above.

47. The Debtors believe that the foregoing procedures will provide for a fair and equitable voting process.

ii. Master Ballot Tabulation

48. To tabulate Master Ballots and Beneficial Ballots cast by Voting Nominees and Beneficial Holders, for purposes of voting, the Debtors propose that the amount that shall be used to tabulate acceptance or rejection of the Plan will be the principal amount held as of the Voting Record Date (the “**Record Amount**”). In addition, the Solicitation Agent may adjust any principal amount voted to reflect the corresponding claim amount, including prepetition interest.

49. The following additional rules shall apply to the tabulation of Master Ballots and Beneficial Ballots cast by Voting Nominees and Beneficial Holders:

- a. Votes cast by Beneficial Holders through a Voting Nominee will be applied against the positions held by such entities in the applicable securities as of the Voting Record Date, as evidenced by the record and depository listings. Votes submitted by a Voting Nominee, whether pursuant to a Master Ballot or pre-validated Beneficial Ballots, will not be counted in excess of the Record Amount of such securities held by such Voting Nominee.
- b. To the extent that conflicting votes or “overvotes” are submitted by a Voting Nominee, whether pursuant to a Master Ballot or pre-validated Beneficial Ballots, the Solicitation Agent will make a reasonable attempt to reconcile discrepancies with the Voting Nominees.
- c. To the extent that overvotes on a Master Ballot or pre-validated Beneficial Ballots are not reconcilable before the preparation of the vote certification, the Solicitation Agent will apply the votes to accept and reject the Plan in the same proportion as the votes to accept and reject the Plan submitted on the Master Ballot or pre-validated Beneficial Ballots that contained the overvote, but only to the extent of the Voting Nominee’s position in the applicable security.
- d. A single Voting Nominee may complete and deliver to the Solicitation Agent multiple Master Ballots. Votes reflected on multiple Master Ballots will be counted, except to the extent they are duplicative of other Master Ballots. If two or more Master Ballots are inconsistent, the latest dated Master Ballot received before the Voting Deadline will, to the extent of such inconsistency, supersede and revoke any prior Master Ballot.

iii. Preservation of Ballots

50. The Debtors propose that they should be required to bring electronic images of the original ballots returned to the Solicitation Agent to the Confirmation Hearing in CD-ROM or similar format and make such electronic copies available to any party at the hearing. The Debtors submit that, because of the voluminous number of ballots that the Solicitation Agent expects to receive, it would be extremely burdensome to bring the original ballots to the Confirmation Hearing, as otherwise would be required under Local Rule 3018-C.

51. Similar procedures have been approved in other large chapter 11 cases, including chapter 11 cases in this circuit. The Debtors submit that these procedures would provide for a fair and equitable voting process. *See, e.g., In re Pinnacle Airlines Corp.*, Case No. 12-11343

(REG) (Bankr. S.D.N.Y. Mar. 7, 2013); *In re Frontier Airlines Holdings, Inc.*, Case No. 08-11298 (RDD) (Bankr. S.D.N.Y. July 22, 2009); *In re Interstate Bakeries Corp.*, Case No. 04-45814 (JWV) (Bankr. W.D. Mo. Oct. 30, 2008); *In re Delta Air Lines, Inc.*, Case No. 05-17923 (ASH) (Bankr. S.D.N.Y. Feb. 7, 2007); *In re Falcon Products, Inc.*, Case No. 05-41108 (BSS) (Bankr. E.D. Mo. Aug. 29, 2005); *In re Global Crossing*, Case No. 02-40188 (REG) (Bankr. S.D.N.Y. Oct. 21, 2002).

iv. Summary of Ballots

52. Local Rule 3018-A provides:

At least 72 hours prior to the confirmation hearing in a Chapter 11 case, the plan proponent shall file a written summary of the ballots cast and shall serve a copy of the summary on all entities on the . . . Master Service List. . . .

53. Pursuant to Local Rule 3018-A, the Debtors propose to file and serve a summary of ballots 72 hours prior to the Confirmation Hearing.

V. Setting the Confirmation Hearing

54. Bankruptcy Rule 3017(c) provides:

On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.

Fed. R. Bankr. P. 3017(c).

55. In accordance with Bankruptcy Rule 3017(c) and in view of the Debtors' proposed solicitation schedule outlined herein, the Debtors request that a hearing on confirmation of the Plan (the "**Confirmation Hearing**") be set for **9:00 a.m. (prevailing Central Time) on December 17, 2013**, subject to the Court's calendar. The Confirmation Hearing may be continued from time to time by the Court or the Debtors without further notice other than adjournments announced in open court or through a filing on the Court's docket. The

proposed timing for the Confirmation Hearing is in compliance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of Bankruptcy Procedure (the “**Local Rules**”) and will enable the Debtors to pursue confirmation of the Plan in a timely fashion.

VI. Establishing Notice and Objection Procedures

A. Notice of the Confirmation Hearing

56. Bankruptcy Rules 2002(b) and (d) require not less than 28 days’ notice to all creditors and equity security holders of the time fixed for filing objections and the hearing to consider confirmation of a chapter 11 plan. In accordance with Bankruptcy Rules 2002 and 3017(d), the Debtors propose to provide to all creditors and equity security holders a copy of a notice substantially in the form annexed to the Approval Order as **Exhibit B** (the “**Confirmation Hearing Notice**”) setting forth (i) the date of approval of the Disclosure Statement, (ii) the Voting Record Date, (iii) the Voting Deadline, (iv) the time fixed for filing objections to confirmation of the Plan and (v) the time, date and place of the Confirmation Hearing.⁹

57. Bankruptcy Rule 2002(l) permits the Court to “order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.” Fed. R. Bankr. P. 2002(l). In addition to mailing the Confirmation Hearing Notice, the Debtors propose to publish the Confirmation Hearing Notice (or a notice substantially similar thereto) not less than 28 days before the Confirmation Hearing in each of *The Wall Street Journal*, *National Edition*, *St. Louis Post-Dispatch*, a St. Louis, Missouri newspaper, *Charleston Gazette* and *Charleston Daily Mail*, each a Charleston, West Virginia newspaper, *Gleaner*, a Henderson County, Kentucky newspaper, *Evansville Courier and Press*, a Union County, Kentucky newspaper, *The Dominion Post*, a Morgantown, West Virginia newspaper, *The Register Herald*,

⁹ As to the holders of Voting Class claims, the Confirmation Hearing Notice shall be transmitted as part of each such holder’s Solicitation Package.

a Beckley, West Virginia newspaper, *Times West Virginian*, a Fairmont, West Virginia newspaper and *The Southern Illinoisan*, a Carbondale, Illinois newspaper. Additionally, the Debtors will publish the Confirmation Hearing Notice electronically on the Debtors' case information website (located at www.patriotcaseinfo.com) and file the same on the Court's docket. The Debtors believe that publication of the Confirmation Hearing Notice will provide sufficient notice of the approval of the Disclosure Statement, the Voting Record Date, the Voting Deadline, the time fixed for filing objections to confirmation of the Plan and the time, date and place of the Confirmation Hearing to persons who do not otherwise receive notice by mail as provided for in the Approval Order.

58. In light of these facts, the Debtors submit that the foregoing procedures will provide parties in interest adequate notice of the Confirmation Hearing and, accordingly, request that the Court approve such notice as adequate and sufficient.

B. Procedures for the Filing of Objections to Confirmation of the Plan

59. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served "within a time fixed by the court." Fed. R. Bankr. P. 3020(b)(1). The Confirmation Hearing Notice provides, and the Debtors request that the Court direct that, objections to confirmation of the Plan or proposed modifications to the Plan, if any, must (i) be in writing, (ii) conform to the Bankruptcy Rules and the Local Rules, (iii) state the name and address of the objecting party and the amount and nature of such party's claim or interest, (iv) state with particularity the basis and nature of any objection to the Plan and (v) be filed, together with proof of service, with the Court electronically in accordance with the *Order Establishing Certain Notice, Case Management and Administrative Procedures* entered on March 22, 2013 [ECF No. 3361] (the "**Case Management Order**") and served on the parties

listed in the Confirmation Hearing Notice, in each case **so as to be actually received on or before 4:00 p.m. (prevailing Central Time) on December 10, 2013.**

60. The proposed timing for the filing and service of objections and proposed modifications will afford the Court, the Debtors and other parties in interest sufficient time to consider any objections and/or proposed modifications to the Plan before the Confirmation Hearing.

Notice

61. Consistent with the procedures described in the Case Management Order, the Debtors will serve notice of this Motion on the Core Parties (as defined in the Case Management Order). In addition, all parties who have requested electronic notice of filings in these Cases through the Court's ECF system will automatically receive notice of this Motion no later than the day after its filing with the Court. Moreover, a copy of this Motion and any Order approving it will be made available on the Debtors' case information website (located at www.patriotcaseinfo.com). In addition, the Debtors have served the Disclosure Statement Hearing Notice on (i) the Core Parties (as defined in the Case Management Order), (ii) all persons and entities listed on the matrix of creditors maintained by the Debtors and filed under seal with the Bankruptcy Court and/or identified in the Schedules as holding liquidated, noncontingent and undisputed claims, in an amount greater than zero dollars, excluding scheduled claims that have been disallowed, paid in full or superseded by filed proofs of claim, (iii) all persons and entities that timely filed proofs of claim reflected in the claims register maintained by the Solicitation Agent, to the extent such claims have not been disallowed or expunged before the date of such service, (iv) all of the registered holders of the Debtors' equity securities as of September 25, 2013, (v) all persons and entities that have appeared on the ECF

docket in these cases as of the date hereof, (vi) the Internal Revenue Service, (vii) the United States Attorney's Office for the Eastern District of Missouri and (viii) the Securities and Exchange Commission. The Debtors have also submitted the Disclosure Statement Hearing Notice for publication on the DTC Legal Notice System (also known as LENS).

62. In light of these facts, the Debtors submit that the proposed timing for the filing and service of notice will afford the Court, the Debtors and other parties in interest sufficient notice of the Disclosure Statement and, accordingly, request that the Court approve such notice as adequate and sufficient.

No Previous Request

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

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

Dated: New York, New York
October 16, 2013

Respectfully submitted,

DAVIS POLK & WARDWELL LLP
/s/ Brian M. Resnick

Marshall S. Huebner
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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)

SUMMARY OF EXHIBITS

The following exhibits (the “**Exhibits**”) referenced in the *Debtors’ Motion (the “Motion”)*¹ for Entry of Order (i) Approving Disclosure Statement; (ii) Approving Solicitation and Notice Materials; (iii) Approving Forms of Ballots; (iv) Establishing Solicitation and Voting Procedures; (v) Establishing Procedures for Allowing and Estimating Certain Claims for Voting Purposes; (vi) Scheduling a Confirmation Hearing and (vii) Establishing Notice and Objection Procedures will be provided to the Core Parties (as defined in the Case Management Order).

Copies of the Exhibits will also be made available at www.patriotcaseinfo.com/exhibits.php and will be made available for inspection at the hearing.

Exhibit A-1:	Form of Beneficial Ballot for Class 1C
Exhibit A-2:	Form of Master Ballot for Class 1C
Exhibit A-3	Form of Beneficial Ballot for Class 1D
Exhibit A-4	Form of Master Ballot for Class 1D
Exhibit A-5	Form of Ballot for Class 1E
Exhibit A-6	Form of Ballot for Class 1F
Exhibit A-7	Form of Beneficial Ballot for Classes 2C-100C
Exhibit A-8	Form of Master Ballot for Classes 2C-100C
Exhibit A-9	Form of Ballot for Classes 2D-101D
Exhibit A-10	Form of Ballot for Classes 2E-101E

¹ Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.

Exhibit B:	Confirmation Hearing Notice
Exhibit C-1:	Unimpaired Class Non-Voting Notice
Exhibit C-2:	Impaired Class Non-Voting Notice

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