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)**
PATRIOT COAL CORPORATION, *et al.*, **Plaintiffs,** **-against-** **PEABODY HOLDING COMPANY, LLC and PEABODY ENERGY CORPORATION,** **Defendants.**	**Adversary Proceeding** **No. 13-04204-659** **Objection Deadline:** **September 17, 2013 at 4:00 p.m.** **(prevailing Central Time)** **Hearing Date (if necessary):** **September 24, 2013 at 10:00 a.m.** **(prevailing Central Time)** **Hearing Location:** **Courtroom 7, North**

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION
FOR A PRELIMINARY INJUNCTION PURSUANT TO 11 U.S.C. § 105(a)

Plaintiffs Patriot Coal Corporation and its affiliated debtors (collectively, "**Patriot**" or the "**Debtors**") respectfully submit this memorandum in support of their motion for a preliminary injunction under 11 U.S.C. § 105 extending the automatic stay to enjoin enforcement of the subpoena (the "**Subpoena**") (Ex. A) propounded on the Debtors by Peabody Energy Corporation and Peabody Holding Company, LLC (together, "**Peabody**") until the effective date of a confirmed plan of reorganization for Patriot Coal Corporation.

PRELIMINARY STATEMENT

The Debtors' reorganization stands at a most critical juncture. In the time since the filing of their bankruptcy petitions on July 9, 2012, the Debtors have taken substantial strides toward the reorganization of their businesses and set the stage for their emergence from bankruptcy. All estate stakeholders—including, perhaps most notably, Patriot's employees and retirees—have made sacrifices so that the Debtors can reorganize as a profitable business. The Debtors' 4,200 current employees and contractors and the more than 21,000 individuals for whom the Debtors pay or administer retiree healthcare benefits are all depending on the Debtors and their ability to reorganize successfully.

Now the Debtors and their advisors must dedicate their efforts to the final step of that process: development of a confirmable plan of reorganization consistent with the aggressive deadlines of their debtor-in-possession credit facility (the "**DIP Financing**"). In the space of a few months, the Debtors must craft a workable plan of reorganization, draft the accompanying disclosure statement, file the plan, secure creditor support, and, ultimately, obtain this Court's approval. Massive efforts—including negotiations with potential investors and financing sources—will be required to complete these steps in time. As such, any distraction threatens to derail the reorganization and nullify the efforts that the Debtors and their advisors have invested to date.

In the midst of this most crucial period in the Debtors' reorganization, Peabody has served upon the Debtors a third-party subpoena of massive scope. The Subpoena relates to a lawsuit brought by the United Mine Workers of America (the "**UMWA**") and others against Peabody under ERISA, which is currently pending in the Southern District of West Virginia. Compliance with that subpoena would require the Debtors to divert time, energy, and resources away from the plan confirmation process, at great expense to the Debtors. In light of the manifest threat such distraction and costs would pose to the reorganization, the Debtors requested that Peabody put off the Debtors' response to accommodate the pressing needs of securing emergence financing, drafting a viable plan and ample disclosure statement, and seeing the plan through to confirmation. Although Peabody has filed a motion to dismiss the operative complaint in the action brought by the UMWA—which, if granted, would eliminate the need for any discovery—Peabody refused. Regardless of its motives for doing so, responding to such third-party discovery risks imminent peril to the Debtors' ability to reorganize. For all of the reasons set forth below, the Debtors ask this Court to extend the automatic stay to enjoin enforcement of the Subpoena until the effective date of a confirmed plan of reorganization.

STATEMENT OF FACTS

A. The Debtors' Continuing Efforts to Reorganize

On July 9, 2012 (the "**Petition Date**"), the Debtors each filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"), and have since continued to operate as debtors in possession. As this Court is well aware, the Debtors have made tremendous progress toward emerging from bankruptcy as a successfully reorganized company since the Petition Date. The full extent of that progress is detailed elsewhere (e.g., Compl. ¶ 13), but highlights include obtaining approval of the $802 million DIP Financing, negotiating relief from the DIP Financing's EBITDA covenant with the financing lenders to ensure that the Debtors would not default as a result of the extended depression in the coal markets, and, most recently, reaching a consensual resolution with the UMWA regarding modification of the Debtors' collective bargaining agreements and the funding of a trust for certain benefits of the Debtors' represented retirees (respectively, the "**1113 Settlement**" and the "**1114 Settlement**"). (Decl. of John E. Lushefski in Supp. of Pls.' Mot. for a Prelim. Inj. Pursuant to 11 U.S.C. § 105(a), dated Sept. 3, 2013 ("**Lushefski Decl.**") ¶¶ 7-8.)

Thanks to the efforts of the Debtors' employees and advisors, the Debtors are on track for a successful reorganization. (Id. ¶ 6.) However, as would be expected of companies as large as and with businesses as complex as the Debtors', there is more work to be done. Certain critical near-term objectives must be achieved before a plan of reorganization can be filed and presented for confirmation, and they must be achieved while being mindful of the covenants—including, among others, the $100 million liquidity covenant—upon which the DIP Financing depends. (Id. ¶¶ 9-12, 19.)

Pursuant to an order entered by this Court on August 21, 2013 [ECF No. 4497], the Debtors' exclusive period within which to file a plan of reorganization has been extended to December 1, 2013, and the Debtors' exclusive period within which to solicit acceptances of a plan of reorganization has been extended to January 30, 2014. These dates are quickly approaching. Moreover, under the terms of the DIP Financing, a plan of reorganization acceptable to the DIP lenders must be filed by September 20, 2013, in order for the Debtors to receive an extension on the DIP Financing, without which the DIP Financing will mature on

October 4, 2013. (Lushefski Decl. ¶ 12.) Even with the extension, the DIP Financing will mature on December 31, 2013. (Id.; see also Superpriority Secured Debtor-in-Possession Credit Agreement [ECF No. 78, Ex. A] at 35.) Patriot must secure confirmation of a plan of reorganization with ample time to allow the plan to become effective and replace the DIP Financing with emergence financing by that date. (Lushefski Decl. ¶ 13.) This, in turn, requires Patriot to file a plan and disclosure statement well in advance of that time to allow for a sufficient solicitation period, consideration of plan objections, and a confirmation hearing. (Id.) Should the DIP Financing mature before the Debtors have secured exit financing, the Debtors' efforts toward reorganization may fail. And regardless of the maturity date, the Debtors must secure committed exit financing by October 31, 2013 to remain compliant with the DIP Financing covenants. (Id. ¶ 11; see also Amendment No. 2 to Credit Agreement [ECF No. 4442, Ex. A] at 2.)

To adhere to this timetable, the Debtors are currently engaged in active discussions with Knighthead Capital Management, LLC and Aurelius Capital Management, LP (the "**Potential Backstop Parties**") on the potential terms of a plan of reorganization that would involve an investment of hundreds of millions of dollars into the Debtors' estates through a rights offering backstopped by entities managed by the Potential Backstop Parties. (Lushefski Decl. ¶ 15.) The Debtors are also in discussions with certain other parties regarding exit financing proposals and potentially providing the Debtors the capital they need to emerge as a viable and competitive company. (Id. ¶ 16.) Under any scenario, the Debtors intend to—and must—move expeditiously toward plan confirmation with the best available financing package. (Id. ¶ 17.) Meanwhile, the Debtors must continue their diligent efforts to stabilize their businesses and reassure customers, suppliers, and employees.

Completing all of these endeavors by the requisite deadlines will require the constant engagement and the full attention of senior members of Patriot's management team, Patriot's legal and finance departments, and the Debtors' financial and legal advisors. (Id. ¶¶ 14, 20.) Any unnecessary distraction and dilution of resources at this critical point in the reorganization process thus poses a grave threat to the success of the reorganization.

B. The Debtors' Rule 2004 Investigation into Peabody

One critical component of the Debtors' reorganization effort has been their investigation into potential causes of action belonging to the Debtors' estate. Through the 2007 spinoff by which Peabody separated itself from Patriot (the "**Spinoff**"), Peabody divested itself of the vast majority of its mining operations that were represented by the UMWA and thus rid itself of approximately $600 million of retiree healthcare liabilities, along with hundreds of millions of dollars of other liabilities, including environmental reclamation obligations and black lung benefits. Patriot, in turn, became responsible for providing retiree healthcare and benefits to thousands of retirees who had never worked a day in their lives for Patriot.

In light of this history, the Debtors and the Official Committee of Unsecured Creditors of Patriot Coal Corporation (together with the Debtors, the "**Fiduciaries**") launched an investigation into, among other things, potential causes of action arising out of the Spinoff and related transactions. In connection with that investigation, the Fiduciaries first sent Peabody draft Rule 2004 document requests in January 2013. On April 2, 2013, after nearly three months of negotiating, the Fiduciaries moved this Court for leave to conduct discovery of Peabody [ECF No. 3494] (the "**Rule 2004 Motion**"). This Court granted the Rule 2004 Motion in substantial part at a hearing on April 23, 2013, and entered an agreed order June 7, 2013 [ECF No. 4114] (the "**Rule 2004 Order**"). Three days later, on June 10, 2013, the Fiduciaries served on counsel to Peabody the subpoena contemplated by that order (the "**Rule 2004 Subpoena**") (Ex. B), containing 37 requests pertaining to the Spinoff and the relationship between Peabody and Patriot thereafter.

On June 20, 2013, Peabody provided the Fiduciaries with its objections to the Rule 2004 Subpoena (Ex. C), as contemplated by the Rule 2004 Order. Despite the breadth of inquiry afforded to debtors under Rule 2004, Peabody objected to every single request contained in the Rule 2004 Subpoena as "overbroad" and "unduly burdensome." While having been obligated to produce documents under the Rule 2004 Order as of June 20, 2013, and having known the tenor of the Rule 2004 Subpoena's requests since January 11, 2013, to date Peabody has provided the Fiduciaries with only 4,688 documents and has declared that "there's no possibility that this process will finish before the beginning of next year, some time in the early part of next year." (Hr'g Tr. 77:4-6, Aug. 20, 2013 (Mr. Newman).)

C. Peabody Propounds an Admittedly Overbroad and Unduly Burdensome Subpoena on Patriot

On October 23, 2012, the UMWA and a number of retirees initiated an action against Peabody in the United States District Court for the Southern District of West Virginia (the "**West Virginia Court**"), captioned Lowe v. Peabody Holding Co., No. 12-cv-06925. The plaintiffs in that action allege, among other things, that Peabody intended to interfere with the benefits owed to their retirees by effectuating the Spinoff of Patriot. (Compl., ECF No. 39 in 12-cv-06925 (S.D. W.V.).) Peabody moved to dismiss the claims against it in their entirety on February 20, 2013. (ECF No. 46 in 12-cv-06925 (S.D. W.V.).) That motion was fully briefed as of March 13, 2013 and currently remains pending before the West Virginia Court.

On February 26, 2013, the West Virginia Court issued a scheduling order that sets the close of discovery at January 15, 2014. (ECF No. 48 in 12-cv-06925 (S.D. W.V.).) Peabody did not provide its first set of document requests to the Lowe plaintiffs until June 10, 2013. (ECF

No. 66 in 12-cv-06925 (S.D. W.V.).) The Lowe plaintiffs served their first set of document requests (the "**UMWA Requests**") on Peabody the following day (ECF No. 67 in 12-cv-06925 (S.D. W.V.)), to which Peabody objected on July 15, 2013 (Ex. D). As of August 14, 2013, Peabody had yet to produce any documents in response to the UMWA Requests. (Pls.' Mem. in Supp. of Mot. to Compel, ECF No. 78 in 12-cv-06925 (S.D. W.V.), at 4 n.1.)

On or about August 7, 2013, Peabody served on CT Corporation System, Patriot's service agent, the Subpoena, which demands that Patriot produce documents responsive to 57 individual requests (the "**Requests**") by September 6, 2013. (Ex. A.) The Subpoena's Requests cover a broad spectrum of topics, though a significant proportion seek documents pertaining to Patriot's financial state, financial projections, and valuations of assets and liabilities. Of the 57 Requests in the Subpoena, no fewer than 17 are identical or substantially similar to requests contained in the Rule 2004 Subpoena to which Peabody objected as being "overbroad" and "unduly burdensome." (Compare Ex. A, Request No. 8, with Ex. C, Obj. No. 21; 9, with 21; 10, with 21; 24, with 5; 25, with 7; 26, with 6; 27, with 9; 28, with 12; 29, with 18; 33, with 24; 34, with 26; 35, with 27; 36, with 29; 37, with 30; 38, with 31; 39, with 31; 40, with 36.) Three of the Requests are also substantially similar to certain of the UMWA Requests to which Peabody objected as "overbroad" and "unduly burdensome." (Compare Ex. A, Request Nos. 37, 38, 39, with Ex. D, Obj. Nos. 28, 29.) The Subpoena also includes a definition that is identical to one utilized by the Rule 2004 Subpoena and which Peabody objected was "overbroad" (compare Ex. A, Definitions ¶ 6, with Ex. C at 4 (objection to Definition No. 6)), as well as an instruction that is substantially similar to an instruction contained in the Rule 2004 Subpoena that Peabody claimed to be "unduly burdensome" (compare Ex. A, Instructions ¶ 3, with Ex. C at 6 (objection to Instruction No. 5)). For its part, Peabody has touted the scope of the efforts required to comply with the narrower Rule 2004 Subpoena as a "monumental process" (Hr'g Tr. at 78:14) that will require a "huge process to identify what is it that we need to be looking for to educate the attorneys that are reviewing [the documents] and so forth" (id. at 78:21-23).

Peabody's Subpoena upon the Debtors also comes at a time when Peabody has not begun a substantial review of its own documents relevant to the allegations in Lowe. The Lowe complaint alleges that Peabody violated Section 510 of ERISA by spinning off Patriot for the purpose of disposing "of [its] largest liabilities, including retiree, pension, and health and welfare benefits." (Compl., ECF No. 39 in 12-cv-06925 (S.D. W.V.), at ¶¶ 4, 147.) Thus, as Peabody acknowledged in its pending motion to dismiss and trumpeted in response to the Lowe plaintiffs' motion to compel Peabody's production of documents, "the crux of [the Lowe] Plaintiffs' claim is Peabody's actions at the time of the October 31, 2007 spinoff" (Peabody's Opp'n to Pls.' Mot. to Compel, ECF No. 81 in 12-cv-06925 (S.D. W.V.) (Ex. E), at 10), that is, whether Peabody effected the Spinoff for the specific purpose of "prevent[ing] participants from attaining ERISA rights" (Defs.' Mem. of Law in Supp. of Mots. to Dismiss Pls.' Second Am. Compl., ECF No. 47 in 12-cv-06925 (S.D. W.V.), at 8). Peabody's documents, not Patriot's documents, are at the heart of this question. At an August 20, 2013 conference before the Court, Peabody acknowledged that it only began running searches to isolate the potential universe of documents responsive to the Rule 2004 Subpoena in "early August" (Hr'g Tr. at 75:18-76:5) and anticipates that review and production of documents will take until "some time in the early part of next year" (id. at 77:4-6). Despite the fact that Peabody has only recently begun the process of reviewing its own documents—the only source for evidence of Peabody's intent in effectuating the Spinoff—it is nonetheless seeking massive discovery from the third-party Debtors. That is entirely improper and inequitable.

Based on information currently available to them and comparisons to previous document requests, collections, and reviews, the Debtors estimate that complying with the Subpoena in its current form will cost the Debtors hundreds of thousands, if not millions, of dollars and require thousands of hours of work from their advisors. (Lushefski Decl. ¶¶ 23-27.) Locating and collecting documents responsive to the Subpoena will require the Debtors' officers and employees to divert their attention from the tasks at hand, which can only be done at the expense of work that is essential to the Debtors' reorganization. (Id.) Moreover, the Debtors can ill afford an expensive discovery exercise given their current financial condition and continuing efforts to meet the covenants of the DIP Financing. (Id. ¶¶ 28-30.)

APPLICABLE STANDARD AND GOVERNING LAW

Section 105 of the Bankruptcy Code allows this Court to "issue any order, process, or judgment that is necessary or appropriate to carry out" the Code's provisions, 11 U.S.C. § 105(a), and should be used to enjoin a third-party action or process pursuant thereto when, among other things, "the logistical stress" of discovery in that action would "imminently, substantially and irreparably" harm the reorganization process. Haw. Structural Ironworkers Pension Trust Fund v. Calpine Corp., No. 06 Civ. 5358 (PKC), 2006 WL 3755175, at *5 (S.D.N.Y. Dec. 20, 2006); see In re Master Mortg. Inv. Fund, Inc., 168 B.R. 930, 934-35 (Bankr. W.D. Mo. 1995) (recognizing that an injunction under § 105 may be "necessary and proper to effectuate reorganization" when there would be little likelihood of a successful reorganization without one); see also In re United Health Care Org., 210 B.R. 228, 232 (S.D.N.Y. 1997) (noting injunction should issue when a third-party action "would consume time and energy . . . that would otherwise be devoted to a [debtor's] reorganization effort"). Section 105's broad power to enjoin acts that threaten a debtor's reorganization process "provides the Court with the necessary authority to extend the protection of the automatic stay to discovery from the Debtors," which is an "essential attribute of the Court's power to administer a bankruptcy proceeding." In re Residential Capital, LLC, 480 B.R. 529, 537, 539 (Bankr. S.D.N.Y. 2012). In evaluating a motion for an injunction under section 105, courts apply the "usual standards" applicable to a request for a preliminary injunction in the bankruptcy context. See, e.g., Nat'l Bank of Ark. v. Panther Mountain Land Dev., LLC (In re Panther Mountain Land Dev., LLC), 686 F.3d 916, 927 (8th Cir. 2012); Steaks to Go, Inc. v. Steak-Out Franchising, Inc. (In re Steaks to Go, Inc.), 226 B.R. 32, 34-35 (Bankr. E.D. Mo. 1998).

Although a section 105 injunction is most commonly used to stay third-party litigation against non-debtors, the Debtors seek only a more limited order staying the Debtors' response to third-party discovery pending confirmation and implementation of the Debtors' plan of reorganization. In the recent, illustrative case of In re Residential Capital LLC, Judge Glenn of the U.S. Bankruptcy Court for the Southern District of New York used section 105's broad power to "limit or condition discovery from a debtor to protect a debtor from unreasonable burden or expense that threatens administration of a bankruptcy case." 480 B.R. at 544. Faced with a burdensome demand for production of 43,000 loan files sought by plaintiff and defendants in a pending litigation, Judge Glenn first reasoned that the Bankruptcy Code's fundamental objective "to marshal and protect the assets and the property of the estate" dictated that "[r]equiring the Debtors to provide discovery in a manner that threatens the Debtors' ability to reorganize cannot be sanctioned under the Bankruptcy Code." Id. at 537. Thus, applying a six-factor test he developed to assess whether the automatic stay should be extended to discovery requests when the Debtors had not sought a Section 105 injunction, Judge Glenn concluded that discovery against the debtors would be stayed for approximately four months during which "[t]here are simply too many critical matters scheduled in this case that will occur . . . to require the Debtors to respond to the document production requests," as "the requested discovery must be stayed to protect a debtor from unreasonable burden that threatens administration of these bankruptcy cases." Id. at 545.

Accordingly, this Court should consider (1) whether there is a likelihood of Patriot's successful reorganization; (2) whether there is imminent irreparable harm to Patriot's estate or to the Patriot's ability to reorganize in the absence of an injunction; (3) whether the balance of harms tips in favor of Patriot; and (4) whether the public interest weighs in favor of an injunction. In re Three Seas Realty II, L.L.C., No. 10-948, 2010 WL 2857598, at *4 (Bankr. N.D. Iowa July 19, 2010) (quoting Nev. Power Co. v. Calpine Corp. (In re Calpine Corp.), 365 B.R. 401, 409 (S.D.N.Y. 2007)).

ARGUMENT

THE AUTOMATIC STAY SHOULD BE EXTENDED TO THIRD-PARTY DISCOVERY AT THIS CRITICAL JUNCTURE TO AVERT A SIGNIFICANT THREAT TO THE DEBTORS' REORGANIZATION

The Court should issue an order extending the automatic stay to the Subpoena because: (1) the Debtors' reorganization is likely to be successful; (2) the effort that the Debtors and their officers would be required to invest in responding to the Subpoena, and the costs associated with doing so, risks imminent, irreparable harm to the Debtors' ability to reorganize; (3) the Debtors will suffer great harm if they must divert critical resources from the reorganization and spend millions of dollars responding to third-party discovery prior to emergence, whereas Peabody and other third parties will not be harmed by a three-month delay of their discovery requests; (4) the public interest in a successful reorganization of the Debtors weighs heavily in favor of an injunction. In re Three Seas, 2010 WL 2857598, at *3; see Haw. Structural Ironworkers Pension Trust Fund, 2006 WL 3755175, at *5.

A. The Debtors' Reorganization Is Likely to Succeed

The great strides the Debtors have made in the over thirteen months since the filing of their petitions demonstrate that the reorganization is likely to succeed—provided that the Debtors are permitted to maintain their focus on the upcoming final steps to reorganization. (Lushefski Decl. ¶¶ 6-8.) As outlined above, bankruptcy courts considering an extension of the stay pursuant to section 105 evaluate the debtors' "likelihood of successful reorganization." In re Three Seas, 2010 WL 2857598 at *4 (quoting In re Calpine, 365 B.R. at 409); Lahman Mfg. Co. v. First Nat'l Bank of Aberdeen (In re Lahman Mfg. Co.), 33 B.R. 681, 685 (Bankr. D.S.D. 1983). Of course, the uncertainties of a complex bankruptcy case such as this one mean that "determining the probability of a successful reorganization is always somewhat speculative" prior to the filing of a plan. In re Lahman, 33 B.R. at 685; accord Lyondell Chem. Co. v. CenterPoint Energy Gas Servs., Inc. (In re Lyondell Chem. Co.), 402 B.R. 571, 589 (Bankr. S.D.N.Y. 2009) (noting that it is difficult "to predict what will ultimately happen in a large chapter 11 case as new issues arise"). Accordingly, as long as there is a "reasonable likelihood" that the debtors will successfully reorganize, the "likelihood of a successful reorganization" factor will weigh in favor of an injunction. In re Lyondell, 589; In re Lahman, 33 B.R. at 685 (noting that "[a] bankruptcy court should resolve issues in favor of reorganization" and that "the debtor must be allowed to present a plan"); see also Haw. Structural, 2006 WL 3755175, at *4.

As explained above, the Debtors have made ever-accelerating steps toward a successful reorganization, including, most recently, the 1113 Settlement and 1114 Settlement. (Lushefski Decl. ¶¶ 6-8.) Further, the Debtors and their advisors are actively engaged in discussions with potential sources of emergence financing regarding the contours of a plan of reorganization that would involve a rights offering backstopped by the Potential Backstop Parties or other possible sources of such financing. (Id. ¶¶ 15-17.) While crucial steps—such as the filing of a plan and disclosure statement—lie ahead, the Debtors' record of success to date shows that the reorganization is "on track" to succeed. (Id. ¶ 6.)

B. The Cost and Distraction of Responding to Peabody's Blunderbuss Discovery Requests Will Threaten the Reorganization

1. Responding to Peabody's Onerous Requests Will Consume Critical Estate Resources and Distract Key Employees from the Reorganization

Peabody's onerous discovery requests will divert the time and energy of key employees whose full efforts are required to maintain Patriot's business operations and shepherd the reorganization to completion. As has already been explained, overseeing the drafting of the plan and disclosure statement and the financial and business structuring of the plan and emergence financing will require the full efforts of Patriot's senior officers. (Id. ¶¶ 14, 20.) Moreover, as the Court is aware, Patriot does not have the luxury of multiple months to draft its plan and disclosure statement: under the DIP Financing, Patriot must file its plan by September 20. (Id. ¶ 12.) The initial drafting of a plan and disclosure statement will then be followed by a grueling process of refining both documents. (Id. ¶ 14.)

Managing the Debtors' response to Peabody's discovery requests will require the Debtors to divert substantial resources from the more pressing tasks of reorganization—for perhaps over a year, if the Debtors' review and production takes approximately as long to complete as Peabody estimates it will require for its review and production of documents in response to the Fiduciaries' Rule 2004 requests. It is obvious that Patriot's legal department, including its senior officers, will be required to work continually with outside counsel to determine the scope of Peabody's document requests. (Id. ¶¶ 23-24.) But because a substantial percentage of Peabody's requests are aimed at financial projections, historical coal pricing, and forecasts relating to the 2007 Spinoff, Patriot's finance department will also be required to invest substantial resources to locate historical financial documents and help explain the import of these plans and projections to outside counsel. (Id. ¶ 25.) Of course, the bulk of the work reviewing documents and preparing them for production will be done by outside counsel and vendors. (Id. ¶ 23.)

Based on the Debtors' past experience (such as in responding to the UMWA's information requests over the course of the 1113/1114 process and to other discovery requests), responding to the Subpoena would involve the review and production of hundreds of thousands of documents. This process would cost, at a minimum, hundreds of thousands of dollars—and potentially millions of dollars—and require thousands of hours of labor. (Id. ¶ 27.) These costs were not factored into the Debtors' business plan or DIP Financing covenants. (Id. ¶ 28.) Peabody itself—the largest private-sector coal company in the world, and certainly not an entity currently in the midst of reorganization—complained that the production to which it had agreed prior to the Court granting the Rule 2004 Motion would subject it to "substantial cost" and that actually complying with the Rule 2004 Subpoena would "force[] [it] to incur vastly higher costs and burdens." (Obj. to the Mot. of the Debtors and the Official Comm. of Unsecured Creditors for Leave to Conduct Discovery of Peabody Energy Corp. Pursuant to Rule 2004 [ECF No. 3674] at 7; see also id. at 15 (noting that "the costs of attorney review . . . are substantial"), 17 (contending that the production to which Peabody had voluntarily agreed was imposing "substantial expense").) Yet now Peabody has propounded upon the Debtors a vastly broader subpoena, containing 20 more requests than the Rule 2004 Subpoena and covering a time period nearly twice as long as that agreed to in connection with that discovery, and Peabody seeks compliance with its subpoena in far less time than Peabody estimates it will require to comply with the Rule 2004 Subpoena. The Debtors simply cannot afford to expend millions of dollars on this inordinate third-party discovery exercise now, when they have already needed to obtain relief from the covenants of their DIP Financing and are actively seeking investors to inject liquidity into the company. (Lushefski Decl. ¶ 29.)

Under the circumstances, the Debtors' request is modest compared to other chapter 11 proceedings. In case after case, bankruptcy courts (and district courts reviewing bankruptcy court orders) have stayed entire third-party actions that posed a threat to a debtor's reorganization by diverting the attention and efforts of a debtor's employees. See, e.g., Haw. Structural, 2006 WL 37551575, at *5 (affirming bankruptcy court's order enjoining a securities class action against non-debtor directors of a debtor; "the logistical stress on [the debtor] from attempting to simultaneously undertake a massive reorganization while monitoring and producing documents in [the third-party litigation] threatened to irreparably impair the company's reorganization process"); In re Calpine, 365 B.R. at 412 (affirming bankruptcy court's order enjoining third-party litigation; "based on [one employee's] responsibilities in [the debtor's] day-to-day operations as well as its restructuring effort and the burden on his time caused by the [enjoined] litigation, [the debtor] would suffer irreparable harm in the absence of a stay"); see also Clark Oil & Refining Corp. v. Chicap Pipeline Co. (In re Apex Oil Co.), 91 B.R. 865, 869 (Bankr. E.D. Mo. 1988) (explaining that a section 105 injunction is appropriate when "'the action sought to be enjoined would so consume the time, energy, and resources of the debtor that it would substantially hinder the debtor's reorganization effort'" (quoting Baldwin-United Corp. v. Paine Webber Grp., Inc. (In re Baldwin-United Corp), 57 B.R. 759, 768 (Bankr. S.D. Ohio 1985)). The risks of distracting a debtor's employees through discovery are even more acute when the debtor faces a "very difficult few months ahead" to see its reorganization to completion. In re Residential Capital, 480 B.R. at 546; see also id. at 548 (ordering a stay of all third-party discovery on debtors and finding that "the Debtors simply cannot also undertake the very substantial burden" of responding to third-party discovery during a critical point in their reorganization).

Because responding to Peabody's discovery poses an imminent threat to the Debtors' reorganization, the Court should order third-party discovery stayed until the effective date of a confirmed plan of reorganization. Only then will the Debtors have the organizational capacity and financial stability to respond without peril to their reorganization and continued corporate existence.

C. The Harm to the Debtors' Ability to Reorganize Merits an Injunction

The short stay the Debtors seek will save them from imminent peril to their ability to reorganize. Avoiding such irreparable harm greatly outweighs any conceivable harm that will flow from a delay to Peabody in receiving discovery in Lowe.

1. Peabody Is Not Entitled to the Discovery It Seeks

In the first instance, a stay will not prejudice Peabody because Peabody's Subpoena violates Federal Rule of Civil Procedure 45(c). Rule 45 requires Peabody to "take reasonable steps to avoid imposing undue burden or expense" on Patriot, Fed. R. Civ. P. 45(c)(1), because a non-party such as Patriot should "be protected against significant expense," Stockdale v. Stockdale, No. 08-1773, 2009 WL 4030758, at *1 (E.D. Mo. Nov. 18, 2009). For that reason, Rule 45 requires courts to quash or modify third-party subpoenas that "fail[] to allow a reasonable time to comply" or "subject[] a person to undue burden." Fed. R. Civ. P. 45(c)(3).[1]

Although the need to protect "non-parties from 'burdensome' discovery requests is of particular concern in bankruptcy cases" such as this one, In re Residential Capital, 480 B.R. at 543, Peabody chose to propound an overbroad subpoena that fails to hew to that basic principle of law.

[1] The Debtors reserve any and all rights to move to quash the Subpoena upon expiration of any stay imposed by this Court or in the event that this Court denies the Debtors' motion.

Even a cursory examination of the Subpoena reveals that its requests—almost all of which deal with what has happened to Patriot since the Spinoff—are either unrelated to the ERISA claim that is actually at issue in Lowe or seek documents that are already in Peabody's custody.

In fact, Peabody itself has described the post-Spinoff requests the Lowe plaintiffs have propounded upon it as imposing an "extreme burden" on Peabody and being "wholly unrelated" to the claims at issue in Lowe. (Ex. E at 8, 10.) Peabody cannot equitably maintain that the Debtors—third parties to Lowe—ought to be forced to produce the very same materials Peabody acknowledges to be irrelevant to the Lowe action.

Further, the documents actually touching upon the central allegation in Lowe—that Peabody intentionally structured the Spinoff to interfere with the plaintiffs' ERISA-protected rights—are Peabody emails, Peabody board minutes, and Peabody analyses of the Spinoff and its effect on the Lowe plaintiffs' benefits. These documents are in Peabody's possession, not the Debtors'.[2] Indeed, this is why the Fiduciaries sought and obtained leave to propound discovery upon Peabody under Rule 2004.[3] As the very same documents sought by the Rule 2004 requests will bear on the allegations in Lowe, Peabody's representation that its review in response to the Rule 2004 requests has just begun and will not be completed until early 2014 is a tacit admission that discovery in response to the UMWA's requests in Lowe is in its infancy. Peabody should not be permitted to impose a costly discovery program upon the Debtors while it is shirking its own responsibilities.

[2] Even those requests to which Peabody has not previously objected are in blatant violation of Rule 45, as more than half of them improperly ask Patriot to produce documents that are already in Peabody's own custody or control or are confidential. See Precourt v. Fairbank Reconstruction Corp., 280 F.R.D. 462, 467 (D.S.D. 2011) (explaining that a subpoena should be quashed if "the party seeking the information can easily obtain the same information without burdening the nonparty" or if "the subpoena seeks the nonparty's confidential information").

[3] To the extent the Debtors have any such pre-Spinoff documents, these documents are copies of documents in Peabody's possession.

2. A Short Stay of Discovery Will Not
Prejudice Peabody's Defense of the Lowe Action

Even if Peabody' Subpoena were not prima facie overly burdensome and in blatant disregard of Rule 45(c)(1), Peabody would still suffer no prejudice from a short delay of discovery in Lowe. Because Peabody's motion to dismiss is currently pending before the West Virginia Court, it is possible that all claims against Peabody will be dismissed in the interim, vitiating any need for discovery. And even if the claims against it are not dismissed, Peabody's own conduct in Lowe belies any assertion that it requires discovery immediately. While the Lowe plaintiffs propounded discovery requests upon Peabody on June 11, 2013, Peabody had not produced a single document two months later when the Lowe plaintiffs filed a motion to compel against Peabody. (Pls.' Mem. in Supp. of Mot. to Compel, ECF No. 78 in 12-06925 (S.D. W.V.), at 4 n.1.) And Peabody's assertion that completion of production in response to the Rule 2004 Subpoena will take until "early some time next year" demonstrates that it will be practically impossible for Peabody to complete production of documents and fact depositions in accordance with the current scheduling order in Lowe, which sets the "deposition deadline and close of discovery" at January 15, 2014. (ECF No. 48 in 12-cv-06925 (S.D. W.V.).) Peabody's refusal to postpone the Debtors' response to its subpoena borders on hypocrisy given Peabody's laxity in complying with its own discovery obligations as a party in Lowe.

As bankruptcy courts have stayed discovery on debtors even when such a stay would "pose[] a significant hurdle to the advancement of the litigation," a stay is all the more appropriate here when the de minimis prejudice from a short stay of discovery is greatly outweighed by the benefits to the Debtors and the public at large of preserving the Debtors' ability to successfully reorganize. In re Residential Capital, 480 B.R. at 546.

D. An Injunction Is Required to Protect the Public Interest in the Debtors' Successful Reorganization

Extending the automatic stay to protect the Debtors from third-party discovery until the effective date of a confirmed plan will serve the public interest. The Debtors are one of the nation's leading producers of coal, and the coal the Debtors' employees mine and ship is essential to the nation's electric utilities and steel industry. Were the Debtors' reorganization to fail, the Debtors' mining complexes would be sold at fire-sale prices at a time when the market for coal is depressed and buyers are not likely to be found. The Debtors' 4,200 employees and contractors would suddenly be left jobless, wreaking havoc on communities where generations of miners are the bedrock of the local economy. And the Debtors would be unable to provide funding to the VEBA that is the central component of the 1114 Settlement, jeopardizing retiree healthcare for thousands of families. In short, the sacrifices all estate stakeholders have made to date would be for naught.

Because reorganization is the best guarantee of maximizing the estate's value and ensuring the continued, productive employment of a debtor's assets, courts readily conclude the public interest is fostered as long as an injunction will promote a successful reorganization. E.g., Am. Film Techs., Inc. v. Taritero (In re Am. Film Techs., Inc.), 175 B.R. 847, 849 (Bankr. D. Del. 1994); see also Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 453 (1999) ("[T]he two recognized policies underlying Chapter 11 [are] preserving going concerns and maximizing property available to satisfy creditors."). Thus, there can be no question that the continued operation and reorganization of the Debtors serves the public interest, and that an injunction serves the public interest by averting an imminent risk to the Debtors' ability to reorganize successfully.

CONCLUSION

For all of these reasons, Patriot respectfully requests that the Court grant its motion for a preliminary injunction and enter an order[4]:

(1) extending the automatic stay to enjoin enforcement of the Subpoena against the Debtors until the effective date of a confirmed plan of reorganization; and

(2) awarding the Debtors such other and further relief that this Court deems just and proper.

Dated: New York, New York
September 3, 2013

Respectfully Submitted,

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[4] A copy of the proposed order granting the relief requested in this Motion (the "**Proposed Order**") will be provided to the Core Parties (as defined in the Order Establishing Certain Notice, Case Management and Administrative Procedures [ECF No. 3361]) and to Peabody. A copy of the Proposed Order will be made available at www.patriotcaseinfo.com/orders.php