

Debtors' and Committee's Objection/Response Deadline: August 27, 2012
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KENNEDY, JENNIK & MURRAY, P.C.
113 University Place, 7th floor
New York, NY 10003
Tel. (212) 358-1500
Fax: (212) 358-0207
Susan M. Jennik
Serge Ambroise

Counsel for the United Mine Workers of America

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:

Chapter 11

PATRIOT COAL CORPORATION, *et al.*,

Case No. 12-12900 (SCC)

Debtors.

(Jointly Administered)

-----X

**OMNIBUS REPLY TO THE OBJECTIONS TO MOTION OF
THE UNITED MINE WORKERS OF AMERICA PURSUANT TO
28 U.S.C. § 1412 AND RULE 1014, FED. R. BANKR. PROC., TO TRANSFER
THE CASE TO THE SOUTHERN DISTRICT OF WEST VIRGINIA**

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PRELIMINARY STATEMENT

The United Mine Workers of America (“UMWA”) submits this omnibus Reply to Objections filed to its motion to transfer this case to the Southern District of West Virginia (Doc. No. 116, 127), filed by the Debtors (“Debtors’ Objection”) (Doc. No. 425), and the Official Committee of Unsecured Creditors (“Creditors Committee Objection”) (Doc. No. 424).¹ The Objections give short shrift to the interest of justice standard and the principle that bankruptcy cases should be decided in a district with which the Debtors have a connection. Instead, the Objections rest largely on the assertion that New York City is an easily accessible transportation hub and therefore it is necessarily most convenient for the parties for the case to be heard in this District rather than in Charleston, West Virginia where its coalfields and employees are located.

The Debtors assert that their successful reorganization depends on obtaining financing and that therefore physical proximity to the financial advisors and financiers located in New York is essential. (Debtors’ Objection at 36.) The Debtors were solvent at the time they filed the consolidated Petitions. (Doc. No. 1 at 4.) Thus, this case is not primarily about the rights of creditors, nor is it primarily about obtaining adequate financing. Instead, as Debtors have repeatedly declared, this is a case about their obligations to unionized workers and retirees and West Virginia’s interest in responsible environmental regulation of mining operations within its borders. Debtors openly declare they filed this case to reduce their costs – primarily labor and environmental regulatory compliance costs. As detailed below, labor and environmental

¹ While the position of the Creditors Committee is relevant to this Motion, the UMWA notes that three of the seven members of the Creditors Committee have filed papers indicating their support of a change of venue: UMWA; American Electric Power (Joinder of American Electric Power, Monongahela Power Company, and Hope Gas, Inc. to the UMWA Motion (Doc. No. 178)); and the 1974 Pension Fund (Joinder of United Mine Workers of America 1992 Benefit Plan, United Mine Workers of America 1993 Benefit Plan, United Mine Workers of America 1974 Pension Trust and United Mine Workers of America Combined Benefit Fund to U.S. Trustee Motion (Doc. No. 423)).

management of Debtors' West Virginia operations are, according to Debtors' own assertions, far more critical to their reorganization than their relationships with lenders, suppliers or customers.

The paramount issues in this case will be resolved through the processes set forth in §§ 1113 and 1114 of the Bankruptcy Code, which, like the issues surrounding Debtors' environmental compliance liabilities, concern the Debtors' active revenue producing operations, nine out of twelve of which are in West Virginia with the remaining three in neighboring Kentucky. (*See* <http://www.patriotcoal.com/index.php?view=appalachia-operations&p=3&s=51> and <http://www.patriotcoal.com/index.php?view=illinois-basin-operations&p=3&s=53> (last visited July 17, 2012).)

Where the business activity and relationships that gave rise to the labor costs and other liabilities at issue are rooted primarily in the West Virginia coalfields, it would not be in the interest of justice to uphold Debtors' blatant forum shopping to enable it to have those issues decided in a district to which their only connection is two corporate entities created within weeks of the bankruptcy filing for the apparent purpose of obtaining venue. Debtors' claim that this Court is without power to prohibit such conduct disregards the power Congress gave the judiciary in § 1412's "interest of justice" prong and misapprehends the role of a bankruptcy court – as a court of equity – in denying legal effect to inequitable schemes.

The UMWA as representative of Debtors' active and retired employees and potentially the largest affected party in these proceedings, along with surety bondholders supporting Debtors' environmental obligations, local utilities and the Kentucky Department for Natural Resources, all take the same position as the West Virginia Attorney General: this case does not belong in New York but should be transferred to the Southern District of West Virginia.² The

² Sureties' Motion to Transfer Jointly Administered Cases to Southern District of West Virginia ("Sureties' Motion") (Doc. No. 287); Joinder of American Electric Power, Monongahela Power Company, and Hope Gas, Inc.

U.S. Trustee and UMWA Health & Retirement Funds also support the transfer of the case to an appropriate district.³

Under 28 U.S.C. § 1412: “A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.” Here, a preponderance of the evidence demonstrates that venue is not appropriate in this District and that it is in the interest of justice and for the convenience of the parties for the case to be transferred to the Southern District of West Virginia.

I. THE PARAMOUNT ISSUES IN THIS CASE ARE ROOTED IN THE WEST VIRGINIA COALFIELDS

A. The Major Goals of this Case Are to Reduce the Debtors’ Labor and Environmental Costs

Debtors have made clear that their preferred path to reorganization depends on reducing the labor and environmental costs associated with their coal mining operations. Debtors assert that “Patriot’s principal business is the mining and preparation of metallurgical coal and thermal coal... [and it] is a leading producer and marketer of coal in the United States, with operations and coal reserves in the Appalachia (Northern and Central) and Illinois Basin coal regions.”⁴ (Declaration of Mark N. Schroeder, dated July 9, 2012 (“Schroeder Decl. I”) (Doc. No. 4.), ¶ 6.)

The various Debtor entities that do not produce coal and are thus not involved in the business that generates the Debtors’ revenues – including the shell companies recently created in New

to the UMWA Motion (Doc. No. 178); Joinder of the West Virginia Attorney General to the UMWA Motion (“WV Attorney General’s Joinder”) (Doc. No. 390); Notice of the Commonwealth of Kentucky, Energy and Environmental Cabinet, Department for Natural Resources (Doc. No. 392).

³ Motion of United States Trustee to Transfer Venue (“U.S. Trustee Motion”) (Doc. No. 406, 407); Joinder of United Mine Workers of America 1992 Benefit Plan, United Mine Workers of America 1993 Benefit Plan, United Mine Workers of America 1974 Pension Trust and United Mine Workers of America Combined Benefit Fund to U.S. Trustee Motion (Doc. No. 423).

⁴ The term “Illinois Basin” is a geological terms used to describe a large coal producing region comprised of Illinois, Indiana and Western Kentucky. Debtors only active operations in the Illinois Basin – indeed its only active operations outside of West Virginia – are located in western Kentucky. Debtors do not mine coal in Illinois or Indiana.

York – have, at best, an indirect and attenuated connection to the issues to be resolved in this bankruptcy case. It is the coal producing entities, most of which are located in West Virginia, that incur the labor and environmental costs that will be at issue in this case.

Mark N. Schroeder (“Schroeder”), Debtors’ Senior Vice President and Chief Financial Officer, stated in his Declaration supporting the Petition that at the same time the entire industry faces a cyclical drop in the price of coal and new regulation, “the Debtors’ liabilities have been increasing as the Debtors face sharply rising costs to comply with such regulations and because of unsustainable labor-related legacy liabilities.” (Schroeder Decl. I, ¶ 21.) Schroeder broadcasts Debtors’ intention to seek modification of their contractual and statutory obligations to the UMWA, its members and retirees, stating:

The Debtors have substantial and unsustainable legacy costs, primarily in the form of medical benefits and pension obligations. . . . The [National Bituminous Coal Wage Agreement] contains many provisions that restrict the ability of signatory employers to deploy labor and operate their mines in a flexible and cost-effective manner, which puts signatory companies at a cost disadvantage with their union-free competitors. . . . The Debtors will use the tools available to them in chapter 11 to reorganize and emerge as a viable and strong competitor in the coal industry

(Schroeder Decl. I, ¶¶ 33, 35, 41.)

At the § 341 Meeting of the Creditors in this matter convened on August 23, 2012, Counsel for the U.S. Trustee questioned Schroeder about Patriot's reason for filing Chapter 11 bankruptcy:

- Q: Okay, okay. Can you tell me what the Reorganization (phonetic) Plan is, what is your idea having filed for Bankruptcy? What’s the objectives that the company is seeking to achieve under Chapter 11?
- A: Yeah, our objective is to exit the Bankruptcy Procedure as a healthier Company then we are as we enter the Bankruptcy. We have liabilities that we are trying to overcome. We have obligations that we are trying to overcome.
- Q: Right.
- A: So as part of the process we hope to overcome those liabilities in a manner that we can exit Bankruptcy as a producer of metallurgical and thermal coal.

Q: And how do you think, how it would, how are you planning to do that, in a general sense?

A: Trying to gain control over the costs that we incur in mining our coal.

Q: And when you say that, gain control over the costs, what do you mean by that?

A: Our costs are very high today and we need to find ways to lower the costs that we incur in mining the coal and selling the coal then to the public.

Transcript of the Patriot Coal 341 Meeting, August 23, 2012 (“341 Meeting Tr.”) at 44:13-45:9.)

(Emphasis added.) (Attached as Ex. A.) It is noteworthy that in response to this series of questions, Schroeder failed to mention less than favorable supply contract pricing, debt servicing costs, or costs related to the financial end of the business. According to Schroeder the only costs that will be targeted are those incurred on the ground, primarily in West Virginia – “the costs that we incur in mining the coal.” (*Id.*)

This announced course of action threatens significant detrimental impact on Debtors’ active unionized workforce – the vast majority of whom live and work in West Virginia – and its retired workforce, a large number of whom continue to reside in West Virginia and the neighboring coalfield states where they resided throughout their working lives.⁵ In addition, a reduction or cessation in the payments and benefits provided to active and retired members in the form of wages, pension and healthcare benefits would have a significant impact on West Virginia’s economy, which is one of several concerns expressed in the WV Attorney General’s Joinder (Doc. No. 390).

The WV Attorney General’s Joinder also references the state’s interest in Debtors’ significant environmental obligations, which are discussed more fully in the Sureties Motion. (Doc. No. 287.) The Sureties’ Motion makes clear the extent to which Debtors’ environmental

⁵ Debtors’ assertion that the UMWA “does not speak for nearly sixty percent of the Debtors’ current workforce” is immaterial to this motion or any of the central issues in this case. (Debtors’ Objection at 2-3.) Non-union employees’ wages, working conditions and benefits are not governed by any collective bargaining agreements and therefore will not be at issue in the process Debtors are expected to initiate under §§ 1113 and 1114 of the Code. Debtors are free to reduce non-union employee costs without resort to the Court.

permit obligations are concentrated in West Virginia and subject to West Virginia's comprehensive regulatory framework. (Doc. No. 287.) Debtors' filings in this case reflect that bonds totaling in excess of \$170 million have been posted with the West Virginia Department of Environmental Protection and other state agencies to secure obligations under various permits. (Doc. No. 18). The WV Attorney General's Joinder indicates that these environmental compliance liabilities, in addition to being a significant economic concern for the state, implicate West Virginia's fundamental role in preserving its citizens' public health and protecting the state's environment.

Just as plain as the fact that Debtors are primarily engaged in the production of coal is the fact that a great majority of that production occurs in West Virginia. Debtors' Objection concedes that "the majority of the Debtors' mines are located in West Virginia" but attempts to cloud the significance of this fact by asserting "there is no truth to the assertion that the 'majority of Debtors' business' is in West Virginia. (Debtors' Objection at 3.) The only significant business done by Debtors outside of their coal mining operations is done at the corporate headquarters located in St. Louis.⁶ (Declaration of Mark N. Schroeder, dated August 27, 2012 (Schroeder Decl. II, ¶¶ 8, 9.) Debtors seek to portray themselves as an international company because, like nearly all coal mined all over the world – whether by a large publicly held corporation or a sole-proprietor's "dog-hole" mine – their coal is sold globally. But an international customer base does not an international company make.

B. Debtors Have Few Ties To New York

Debtors' assertions that they and their creditors are dispersed nationally and internationally, do not support their position that venue is appropriate in New York. (Debtors'

⁶ Debtors also oppose transferring the case to St. Louis: "[a]lthough no motion to transfer to the Eastern District of Missouri is before this Court, any such motion should be denied." (Debtors' Objection at 60, n.31.)

Objection at 18-22.) Indeed, most of the points made by Debtors demonstrate that they have many more ties to West Virginia than they do to New York:

- The Debtors' corporate headquarters and executive offices are located in St. Louis; Debtors also maintain offices in West Virginia, but not in New York. (*Id.*, ¶¶ 8, 10-11; 341 Meeting Tr. at 69:19-21.)
- Three members of the executive management team are based in St. Louis; two are based in West Virginia; one lives in Ohio and has offices in St. Louis and West Virginia. None work or live in New York. (Schroeder Decl. II, ¶¶ 10-11.)
- The retirees reside in 41 different states: 38% live in West Virginia; 50% live in Illinois, Indiana and Kentucky. Debtors have not stated how many, if any, of the retirees reside in New York. (Schroeder Decl. II, ¶ 39.)
- Of the 50 largest unsecured creditors, none are based in New York and 10 are based in West Virginia, more than any other state. (Doc. No. 98.)
- Of the 99 Debtor entities, 50 were formed in Delaware, 37 in West Virginia, five in Virginia, four in Kentucky, two in New York and one in Indiana. (Schroeder Decl. II, ¶ 7.)
- In 2011, 5% of the Debtors coal was sold to customers in West Virginia; 3% was sold to customers in New York. (Schroeder Decl. II, ¶ 16.)
- Of the 15 largest lessors from whom coal mine property is leased, six are headquartered in West Virginia, none are headquartered in New York. (Schroeder Decl. II, ¶ 35.)
- Equipment lessors are located in neither West Virginia nor New York. (Schroeder Decl. II, ¶ 19.)
- Of the twenty top vendors of the Debtors for the first six months of 2012, two are located in New York. Debtors do not state how many are located in West Virginia. (Schroeder Decl. II, ¶ 47.)
- None of the five largest secured creditors is located in New York or West Virginia; they are located in California, Illinois, Missouri, New Jersey and Ohio. (Schroeder Decl. II, ¶ 41.)
- No member of the Creditors Committee is located in West Virginia or in New York. (Creditors Committee Objection at 8.)
- None of the eight directors on Patriot's Board is from West Virginia or New York. (Schroeder Decl. II, ¶ 13.)

- None of the Patriot Board of Director meetings were held in New York; one was held in West Virginia; most were held in St. Louis or telephonically. (*Id.*, ¶ 14.)

Of the detailed information provided by Debtors on the location of the interested parties in this case, only the DIP Agents, Joint Lead Arrangers and Bond Holders are located more in New York than in West Virginia. (Schroeder Decl. II, ¶¶ 28-31, 48-51.)

Debtors also represent that many of the sales contracts, leases and debt instruments are governed by New York law. (Debtors Objection at 18-22.) However, those choice of law clauses do not establish venue. Indeed, Debtors recently filed two actions in West Virginia for breach of sales contracts, both of which were governed by New York law. *Patriot Coal Sales LLC v. Keystone Industries LLC*, Case No. 2:12-cv-01808 (S.D.W.V.) (attached as Ex. B) at 6; *Patriot Coal Sales LLC v. Bridgehouse Commodities Trading Ltd, et al.*, Case No. 12-C-578 (Cir. Court, Kanawha Co., W.V.) (attached as Ex. C) at 26.⁷ In both cases, Debtors sued entities based outside of West Virginia in the West Virginia courts because that is where the coal is mined and thus where the alleged breaches occurred. (Ex. B, ¶¶ 2, 3, 6; Ex. C at 8-9, ¶¶ 1-5, 7.)

Contrary to repeated assertions in Debtors' Objection that their business is "global" or "international" the company is, and from its inception was designed to be, a predominantly West Virginia-based coal company. One of Debtors' first public communications to its shareholders reflects that the purpose of the spin-off from Peabody Energy Company ("Peabody") was to separate Peabody and its heavily-unionized Appalachian operations, which would become Patriot Coal Company, as Peabody increasingly expanded its global production strategy. One of many examples of such communications evidencing the stated purpose of the spin-off and true nature of Patriot as an Appalachian-centered company states:

⁷ The *Bridgehouse Commodities* case was subsequently removed to the United States District Court for the Southern District of West Virginia. Case 2:12-cv-03653.

Through separation, each company will be able to more narrowly focus on core business priorities to drive stockholder value. Peabody's asset base continues to evolve as a global coal investment, positioned to maximize stockholder value from its global reach. Patriot's asset base in Appalachia and the Illinois Basin is positioned to maximize stockholder value as a leading eastern U.S. producer.

Patriot Coal Corporation, Information Statement attached to 8-K Statement filed with the Securities and Exchange Commission on October 24, 2007.⁸ Indeed, the first recital in the agreement by which Patriot Coal Company was created states "Patriot is a wholly-owned subsidiary of PEC [Peabody Energy Corporation] formed for the purpose of taking title to the stock of certain PEC subsidiaries, the assets and liabilities of which constitute the coal mining business of PEC in West Virginia, all coal mines and certain coal reserves in Kentucky and certain coal reserves in the states of Ohio and Illinois." Separation Agreement, Plan of Reorganization and Distribution by and between Peabody Energy Corporation and Patriot Coal Corporation, at 6.⁹ Patriot only increased its already large footprint in the West Virginia coal mining industry through its July 23, 2008 acquisition of Magnum Coal, which added another 12 mining complexes, 7 preparation plants and 1,700 employees in West Virginia. See, http://www.sec.gov/Archives/edgar/data/1376812/000095010308000886/dp09365_ex9901.htm¹⁰

⁸ Referenced excerpts are attached as Exhibit D with full document available at: <http://www.sec.gov/Archives/edgar/data/1376812/000095013707015954/c19545exv99w1.htm>.

⁹ Referenced excerpts attached as Exhibit E, with attachment to 10/22/2007 Form 8-k. We note, and expect it will become relevant in these or ancillary proceedings, that while the stated purpose of Peabody's spinoff of its mostly unionized holdings predominantly located in West Virginia was to focus on its global expansion, the company also sought to shed obligations at issue in this case. On Peabody Energy's 3Q 2007 Earnings Conference Call, Peabody Chief Executive Officer Rick Navarre bragged of "significantly lower legacy liabilities as a result of the spinoff." He explained, "Our retiree, healthcare liability and related expense will be reduced by about 40%. Workers' compensation liability will be cut nearly 90% and asset retirement obligations will be one-third lower and the combined fund and multi-employer coal-act obligations will now fully reside with Patriot. In total, our legacy liabilities, expenses and cash flows will be nearly cut in half."

¹⁰ Referenced excerpts are attached as Exhibit F.

One must engage in some artful dodging to describe Debtors' business as anything other than a coal mining company with primary operations in West Virginia and, to a lesser extent, the neighboring state of Kentucky. Indeed, this is precisely how Debtors describe themselves in the above-referenced Securities and Exchange Commission filings. While their coal may be sold on a global market, it cannot seriously be contended that Debtors' revenue generating operations are "international" in scope. Indeed, with their operations confined largely to West Virginia and, to a much lesser extent, Kentucky, it is a stretch to even assert the company has a "national" presence in terms of its real revenue generating business. For all their arguments, Debtors' cannot escape the simple fact that the vast majority of their coal comes out of the ground in West Virginia and is mined by the hands of West Virginians.

Debtors make much of the decision in the *Enron* cases and cite to those decisions throughout their objection. *In re Enron Corp.*, 284 B.R. 376 (Bankr. S.D.N.Y. 2002) ("*Enron II*"); *In re Enron Corp.*, 274 B.R. 327 (Bankr. S.D.N.Y. 2002) ("*Enron I*"). *Enron*, however, presented a markedly different scenario from the one before the Court here. The *Enron* debtors represented collectively "a large, multifaceted national and international corporation with operations, financial interests, creditors and stockholders across the United States and around the world." *Enron I* at 334. On the date that it filed its bankruptcy petition in the Southern District of New York, "Enron Corp. and its affiliates employed approximately 25,000 full and part time employees worldwide." *Id.* at 337. (Emphasis added.) Moreover, *Enron's* business was much different from the enterprises at issue in this bankruptcy. As the Court noted in its January 11, 2002 decision: "Enron's wholesale business unit, which includes marketing and trading of energy and other commodities, is Enron's core operation and main profit driver. During the past

year, Enron maintained the world's largest online energy trading site (EnronOnline) and was the world's largest trader of electricity and natural gas." (*Id.*)

Debtors' business, by contrast, is the sale of a tangible product—coal mined from its facilities in West Virginia and Kentucky. Also, Debtors' do not have employees around the world – Debtors' operations are all within the United States and “[c]ollectively, the Debtors employ more than 4,000 people in active status, working in both full time and part time positions,” with an additional 645 on furlough or various types of leave. (Schroeder Dec. I, ¶ 15 and n. 2.) While it is true that the coal is sold in markets in the United States and various countries around the world, Debtors' core business is the straightforward sale of a tangible product. Enron, by comparison, was engaged in a wide variety of businesses, including: energy trading; providing its expertise in energy to industrial and commercial end-use retail customers; and, natural gas transmission systems. (*Enron*, Affidavit of Jeffrey McMahon, dated Dec. 3, 2001 (“McMahon Aff.”) (Doc. No. 3), ¶ 20) (attached as Ex. G). However, as noted above in the Court's decision, Enron's “core operation and main profit driver” was its energy trading division, a business involving an intangible “product” that, as evidenced by the business model, can be traded online from anywhere in the world. In short, “Enron is mainly a trader, rather than a producer, of energy.” (Alex Berenson and Richard A. Oppel Jr., *Once-Mighty Enron Strains Under Scrutiny*, N.Y. Times, Oct. 28, 2001, available at <http://www.nytimes.com/2001/10/28/business/once-mighty-enron-strains-under-scrutiny.html?pagewanted=all>, last visited Aug. 31, 2012.)

Moreover, in the Enron case, “as of the Petition Date, [Enron's] capital structure [was] highly leveraged” and “operational problems were exacerbated by [Enron's] highly leveraged debt structure.” (McMahon Aff., ¶¶ 32, 40.) The “debt structure” involved a series of “credit

facilities”—revolving credit agreements and credit lines—and lenders and investors such as Citibank, N.A., Chase Manhattan Bank, J.P. Morgan Chase, Salomon Smith Barney, and Harris Trust and Savings Bank. (*Id.* ¶¶ 32-36.). Enron’s Rule 1007-2 affidavit stated that the “Debtors’ debt levels became significantly more difficult to support as covenants were triggered by the weakening of the Debtors’ credit ratings and price of the Common Stock.” (*Id.*, ¶ 40.) Also, most will remember that Enron’s difficulties were precipitated by SEC inquiries, allegations of inappropriate accounting and the creation of a Special Committee to “examine and take appropriate actions with respect to transactions between Enron Corp. and entities connected to related parties.” (*Id.*, ¶¶ 25, 26; Floyd Harris, *Fun-House Accounting: The Distorted Numbers at Enron*, N.Y. Times, Dec. 14, 2001, available at <http://www.nytimes.com/2001/12/14/business/fun-house-accounting-the-distorted-numbers-at-enron.html>, last visited Aug. 31, 2012.)

Debtors in the Patriot bankruptcy are not experiencing anything like Enron’s complicated convergence of issues and Debtors’ business—mining and selling coal—is not as wide-ranging, diverse or ephemeral. In the Enron case, proximity to the Southern District of New York’s finance community was clearly an advantage to untangle and address the challenges posed by Enron’s energy trading and other businesses, as well as the substantial obligations resulting from Enron’s “credit facilities.” The Debtors here are not similarly situated.

II. THE COURT’S INHERENT EQUITABLE POWER AND STATUTORY AUTHORITY SUPPORT TRANSFER IN THE INTEREST OF JUSTICE

As a court of equity and pursuant to the power to transfer cases “in the interest of justice” under 28 U.S.C. § 1412, a bankruptcy court may decline to sanction Debtors’ contrivance regardless of whether it meets the minimum legal requisites for venue under 28 U.S.C. § 1408. *See In re Dunmore Homes, Inc.*, 380 B.R. 663 (Bankr. S.D.N.Y. 2008); *In re Winn-Dixie Stores, Inc.*, No. 05-11063 (Bankr. S.D.N.Y. Apr. 12, 2005). The statutory phrase “interest of justice”

has been described as “an elusive term not easily amenable to definition,” *In re Pinehaven Associates*, 132 B.R. 982, 990 (Bankr. E.D.N.Y. 1991), but held to create “a broad and flexible standard which must be applied on a case-by-case basis.” *In re Manville Forest Products Corp.*, 896 F.2d 1384, 1391 (2nd Cir. 1990). Among the factors courts consider in application of this flexible test are “fairness,” *Id.* at 1391, whether “either forum has an interest in having the controversy decided within its borders,” *In Re Dunmore Homes, Inc.*, 380 B.R. at 671-72, and “the integrity of the Bankruptcy Court system.” *In re Eclair Bakery Ltd.*, 255 B.R. 121, 142 (Bankr. S.D.N.Y. 2000).

As recounted in the U.S. Trustee’s Motion, as recently as six weeks before Debtors’ bankruptcy filings, not a single Debtor entity satisfied the statutory requirements for venue under § 1408. In order to manufacture compliance with the statute, Debtors created two new non-operating affiliates under New York law just a few weeks before filing their petitions. Debtors have not provided any information that would demonstrate that these shell companies were created for any purpose other than to bootstrap venue in this District. The U.S. Trustee makes the succinct observation that by these actions Patriot “has created facts to fit the statute.” (U.S. Trustee Motion at 3.)

At the 341 Meeting of Creditors, the U.S. Trustee questioned Patriot Senior Vice-President and Chief Financial Officer Schroeder about the eleventh hour creation of the two New York subsidiaries, PCX Enterprises and Patriot Beaver Dam Holdings, LLC. Schroeder admitted that he did not know the nature of the business operations of either subsidiary (341 Meeting Tr. 20:1-25, 37:25-38:2), did not know whether they resided or had offices in New York, and stated that it was his belief neither entity had any employees. (*Id.* at 21:18-25, 36:13-17). Schroeder testified that PCX Enterprises had assets of \$98,000 held in a bank account and that it was a

guarantor on the \$200 million convertible debt and \$250 million of secured debt. (*Id.* at 22:1-6; 23:9-13.) Schroeder was not aware of the assets of Patriot Beaver Dam Holdings and did not include this information in his Declaration submitted in support of Debtors' Objection. (*Id.* at 35:23-36:5; Schroeder Decl. II.) Patriot Beaver Dam Holdings is also a guarantor of the same debts as PCX Enterprises. (*Id.* at 36:21-37:1.) Debtors' only argument that either of these two entities have any legitimacy at all are that they are "guarantors of Debtors' obligations" and lenders have secured priority and super-priority liens against their assets. (Debtors' Objection at 52.) These contentions are as hollow as the companies themselves since there is no evidence that either of the newly created entities have any substantial assets backing those guaranties. The only evidence submitted by Debtors is that the PCX Enterprises guaranty of \$450 million is supported by assets of \$98,000, or .02%.

A. Basic Principles of Fairness and Equity Preclude Giving Legal Effect To Debtors' Contrivance, Which Threatens to Undermine the Integrity of the Bankruptcy System

Debtors' Objection asks the Court to focus on the relative convenience of New York City to the professionals retained in this case and to disregard the chief proposition of law advanced in *In re Winn-Dixie Stores, Inc.*, Case No. 05-11063-rdd (Bankr. S.D.N.Y.), (Transcript of Court Hearing held on April 2, 2005) ("4/2/2005 Tr.") (attached as Ex. H): that permitting an eleventh-hour corporate concoction of venue is not in the interest of justice.

In *Winn-Dixie*, Judge Drain held, based on the plain language of § 1412 and clear precedent, "that the statute is phrased in the disjunctive and that the interests of justice prong of it will not always serve the convenience of the parties..." *Id.* at 166 (citing *Port Jeff Corp.*, 118 BR 184, 192 (Bankr. E.D.N.Y. 1990)). Judge Drain unambiguously found that because debtors' New York subsidiary:

was formed solely to establish venue in New York, I conclude that the transfer of venue here would be in the interests of justice under Section 1412 ... I do not believe it is an unacceptable judicial intrusion on the statute, on Section 1408, to find that the interests of justice require transfer here and to close a loophole in the statute that would otherwise, according to the statute's plain terms, permit venue to be properly established here on the eve of filing ... I do this, again, not because venue was established here in bad faith or wrongfully, but simply because I don't believe it is just to exploit the loophole of the statute to obtain venue here.

Id. at 166-67.

Judge Drain's holding in *In re Winn-Dixie Stores, Inc.* fits squarely and neatly with the facts of this case, where a corporation concentrated in West Virginia with no real presence in New York before the eve of the bankruptcy created two shell subsidiaries to artificially manufacture venue. Debtors' Objection attempts to make factual distinctions between this and the *Winn-Dixie* case, by noting "the *Winn-Dixie* debtors' operations were located entirely in the Southeast United States and were concentrated in Florida." (Debtors' Objection at 46). As discussed more fully above, the geographical facts in this case are actually analogous, with Patriot's mining operations located entirely in adjacent states' coalfields and highly concentrated in West Virginia. Patriot's "operations" – in any meaningful sense of the word – are really not, as Debtors claim, "national and international in scope" (Debtors' Objection at 46-47.)

Patriot's incorporation of these two entities does not present grounds for application of the Second Circuit's holding in *Capitol Motors v. Leblanc Corp.*, 201 F.2d 356 (2nd Cir. 1953), where the New York entity that served as the basis for venue "although recently formed, had a separate and valid reason for existing ... [with] real buyers, different owners..." (4/2/2005 Tr.at 168) (Judge Drain distinguishing *Capitol Motors v. Leblanc*). Here, as the Trustee's examination of Patriot CFO Schroeder confirmed, Debtors' newly created New York subsidiaries were established on the eve of filing in an attempt to unjustly exploit an opportunity – already foreclosed by this Court – to obtain venue here. Through its last-minute formation of the two

New York entities and attempt to bootstrap the other 97 into this Court, Patriot has run afoul of this Court's maxim that venue is not appropriate where one is "building the shop that you choose to act in as opposed to going to it." (4/2/2005 Tr. at 170.)

Amidst much immaterial second-guessing of Judge Drain's understanding of the fact pattern in the *Capitol Motors* case, Debtors reference the Second Circuit's affirmation of the district court's denial of discretionary transfer in that case as justified in part "because the troubles of the business were not manufacturing but financial, and the heart – and also body – of that was in New York." (Debtors Objection at 50 (citing *Capitol Motors*, 201 F.3d at 358).) The significance of this distinction between bankruptcies rooted in operational as opposed to financial problems was also noted in the Court's opinion in *In re Dunmore Homes, Inc.*, 380 B.R. at 673 (noting that "sophistication of the financial markets was an essential factor in the successful financing and reorganization of the company" in the case *In re Enron*, 284 B.R. 376 (Bankr. S.D.N.Y. 2002), cited repeatedly by Debtors). In *Dunmore*, the Court transferred the case to California, observing that, among other factors, the physical location of the debtor's assets and employees in California and its history of having operated in that state outweighed the significance of its "recent incorporation in [New York] and its efforts to secure financing here." *Dunmore*, 350 B.R. at 673. Of course, it is abundantly clear from the record in this case that Patriot's problems are not financial, but are more akin to the hypothetical manufacturing troubles referenced by the Second Circuit in *Capitol Motors* to the extent Patriot admits the troubles that led to its bankruptcy are "the costs that we incur in mining the coal." (341 Meeting Tr. at 45:8-9.) Patriot's efforts to secure financing in New York will not be nearly as significant in this case as its anticipated efforts to evade its labor and environmental obligations to workers, retirees and other citizens of West Virginia.

B. West Virginia Has A Strong Interest in Having the Controversy Decided Within Its Borders

This Court, like many other bankruptcy courts, considers in its application of the § 1412 “interest of justice” prong whether “either forum has an interest in having the controversy decided within its borders.” *In re Dunmore Homes, Inc.*, 380 B.R. 663, 671-72 (Bankr. S.D.N.Y. 2008); *In re Onco Invest. Co.*, 320 B.R. 577 (Bankr. D. Del. 2005); *In re Condor Exploration, LLC*, 294 B.R. 370 (Bankr. D. Colo. 2003); *see also Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879-80 (1995) (recognizing a “local interest in deciding local controversies at home”). For decades, this Court has given deference to a state’s interest in having essentially local disputes resolved within the state’s borders. *See, e.g. Matter of Landmark Capital Co.*, 19 B.R. 342, 348 (Bankr. S.D.N.Y. 1982) (“[T]here is a local interest in having localized controversies decided at home.”)

The decision of the Attorney General of West Virginia to join the UMWA’s motion contributes to the interest of justice analysis. The Attorney General, acting in his capacity as the state of West Virginia’s chief legal officer, writes that “[t]he State of West Virginia and her citizens have a significant interest in the resolution of the matters that will arise in these consolidated cases, and I therefore respectfully request that they be decided within her borders.” (WV Attorney General’s Joinder, ¶ 6.) Among these significant interests are the integrity of the regulatory framework that ensures the continued viability of environmentally responsible coal extraction, the public health of the state’s citizens protected by that framework, and the potential for “adverse economic repercussions” for the state that could result from Debtors’ breach of its commitment to provide healthcare benefits earned by its active and retired employees.¹¹

¹¹ Such repercussions could include the direct economic impact of a reduction or cessation of benefits promised active and retired employees in exchange for their labor, the indirect economic impact on the economy of the state that would follow such reduction or cessation, or the economic repercussions of a prolonged work stoppage.

Transfer of this matter to the Southern District of West Virginia is consistent with this and other federal courts' established policy of deference to a state's demonstrated interest in having the type of local controversies which are paramount in this case resolved within its borders.

III. RESOLUTION OF THE SIGNIFICANT ISSUES IN THIS CASE WILL NOT BE MORE CONVENIENT IN NEW YORK

A. There Are Significant Costs and Disadvantages to Proceeding in New York

The Objections make much of the many flights and trains which arrive to and depart from New York and argue that this accessibility is determinative. Such an argument would result in the denial of virtually every motion to transfer venue from New York. The cases cited by Debtors which emphasized the importance of transportation accessibility did not consider the costs and inconvenience of traveling to a city such as New York. *Enron I*, 274 B.R. at 348; *Matter of Delaware & Hudson Ry. Co.*, 96 B.R. 467 (Bankr. D. Del. 1988).

By filing these cases in New York, the Debtors ensured that there would be travel costs for the company personnel who are located in either St. Louis and Charleston but not in New York. (Schroeder Decl., ¶¶ 8-11.) Debtors now argue that transferring the cases to Charleston would prohibitively increase the costs to the estate. In an effort to maximize the projected costs of transferring the case to West Virginia, the Debtors assert that professionals and company personnel need to purchase refundable tickets at prices exceeding \$2,200 because of the "flexibility necessary for business travel." (Debtors' Objection at 17-18, n.7; Creditors Committee Objections at 8-9.) The Objections also assert that there is only one direct flight each day from New York to Charleston, West Virginia – where the Southern District of West Virginia bankruptcy court is located – and no direct flights from St. Louis to Charleston. The Objections raise the spectre of lawyers and witnesses being physically unable to get to Charleston for hearings.

The reality is much different than that projected by the Objections. Bankruptcy court hearings are typically scheduled with adequate notice. There is rarely a need to purchase tickets at the last minute. And, non-refundable air tickets which are purchased and not used on the intended date, may normally be applied to a future trip to the same location with a small penalty. See <http://www.cnn.com/TRAVEL/ADVISOR/ticket.refunds/index.html> (“[M]ost airlines will allow flyers to apply the face value of the canceled ticket toward the purchase of a new ticket. In those cases, a penalty of \$50 or \$75 usually is charged.”) (last visited Aug. 31, 2012). It does not make economic sense to purchase a refundable ticket for \$2,000 in order to save a \$50 penalty fee.

The Objections also exaggerate the inaccessibility of Charleston by focusing only on non-stop flights. In fact, a simple Google search reveals that there are 45 one-stop flights available from New York City airports to Charleston for a date 21 days from the date of writing, ranging in price from \$238 to \$1,699. (Attached as Exhibit I.) A similar search from St. Louis to Charleston reveals 13 one-stop flights at prices ranging from \$600 to \$862. (Attached as Ex. J.) Charleston is not so remote and unreachable as portrayed by the Objections.

The Objections also fail to consider the additional costs incurred by traveling to New York. Hotel rooms are far more expensive in New York City than in Charleston, often by more than \$300 per night, as shown in the chart below:¹²

Date	Hotel	Location	Average Daily Rate	\$ Difference
9/11/12	Fairfield Inn Marriott	Charleston, WV	\$119.00	
	Fairfield Inn Marriott	New York, NY	\$479.00	+ \$360
	Hampton Inn	Charleston, WV	\$119.00	
	Hampton Inn	New York, NY	\$499.00	+ \$380
	Holiday Inn Express	Charleston, WV	\$110.00	

¹² Copies of the websites containing this information is attached as Ex. K.

	Holiday Inn Express	New York, NY	\$399.00	+ \$289
	Marriott	Charleston, WV	\$249.00	
	Marriott Marquis	New York, NY	\$619.00	+ \$370

In addition, there is the inconvenience, and consequent added cost, of more frequent airport delays and traffic jams. According to a report in 2010, New York City has the worst traffic in the country. (John R. Quain, “New York Has Worst Traffic in U.S. & Canada, Report Says,” N.Y. Times, Nov. 24, 2010, available at <http://wheels.blogs.nytimes.com/2010/11/24/new-york-has-worst-traffic-in-north-america-report-says/>, last visited Aug. 31, 2012.) Airports that serve New York City – Newark, LaGuardia and JFK – are among the top 6 airports with the most delayed arrivals. (Avoid Delays, (Nat’l Air Traffic Controllers Assoc.), <http://www.avoiddelays.com/worst-offenders/most-delayed-arrival-airports.asp>, last visited, Aug. 31, 2012.) The Charleston airport is not on the list of the 32 airports with the most delays.

Professional fees are another increased cost of continuing the case in New York City.¹³ Here, too, the Debtors can reduce their professional fees by relying on the less expensive local counsel in Charleston. Indeed, Debtors have already recognized their need for West Virginia counsel, having applied for approval to retain seven firms in West Virginia to handle matters in this case.¹⁴ Transfer of the case to West Virginia will result in cost savings in professional fees.

¹³ Debtors emphasize the prevalence of New York attorneys appearing in this action, including the undersigned. (Debtors’ Objection at 22-23.) But of course, Debtors ensured that New York attorneys would appear in this case by filing it in New York. Their logic is circular.

¹⁴ Pullin, Flanagan, Brown & Poe, PLLC, 901 Quarrier Street, Charleston, West Virginia 25309, rates of \$120-135 per hour (Doc. No. 324); The Rose Law Office, 300 Summers St., Charleston, WV 25301, rates of \$300 per hour (Doc. No. 325); Betts Hardy & Rodgers, PLLC, 500 Lee Street, East, Suite 800, Charleston, WV 25301, rates of \$165-255 per hour (Doc. No. 343); Dinsmore & Shohl LLP, 900 Lee Street, Suite 600, Charleston, West Virginia, 25301, rates of \$155-\$355 per hour (Doc. No. 345); Flaherty Sensabaugh Bonasso PLLC, 200 Capitol Street, Charleston, West Virginia 25301, rates of \$175-\$225 per hour (Doc. No. 346); Simmerman Law Office, PLLC, 254 East Main Street, Clarksburg, WV 26301, rates of \$125-\$250 per hour (Doc. No. 360); and Steptoe & Johnson PLLC, 400 White Oaks Boulevard, Bridgeport, West Virginia 26330, rates of \$90-\$245 per hour (Doc. No. 361, 379). As is to be expected, the rates of the New York law firms are considerably higher. Debtors’ counsel, Davis

Judge Drain stated in *Winn-Dixie*:

It is noted that many, if not most of the professionals, if not all of the professionals in the case, are based in New York. That will obviously increase the cost of the case if the case is transferred. However, it is quite possible that with the transfer, the Debtor will be able to, for itself, use local counsel efficiently and may be able to persuade other constituents to use local counsel efficiently to somewhat offset the travel cost for the New York professionals.

4/12/ 2005 Tr. at 161:22-162:10.

The Debtors' Objection argues that the availability of video and teleconferencing makes it possible for those in West Virginia to participate in hearings held in New York. (Debtors' Objection at 25-26.) The reverse is, of course, also true: those in New York can participate in hearings in West Virginia by video or teleconference. And, such access is much easier for the professionals and advisors in New York who have access to and are familiar with such technology, in contrast to the active and retired mines who are far less likely than sophisticated professionals to have access to videoconferencing equipment or the capability to effectively use it.

B. Negotiations between the Debtors and the Union Are Directly Related to the Operations, Members and Retirees in West Virginia

Michael Buckner serves on the Creditors' Committee in the Patriot bankruptcy proceeding as the representative of the UMWA. He has vast experience in collective bargaining with coal operators. (Buckner Decl., ¶ 1.)

The UMWA's procedure for negotiating and ratifying collective bargaining agreements covering its members is set forth in the Union's Constitution. It provides a number of provisions enabling the membership's involvement in developing the Union's bargaining proposals.

Tentative collective-bargaining agreements are submitted to the membership for ratification by

Polk & Wardwell LLP, has a blended hourly rate for partners of \$959.13, and for associates of \$664.74 (Doc. No. 400). Counsel for the Creditors Committee, Kramer Levin Naftalis & Frankel LLP, bills partners at \$1,025- \$675 per hour and associates at \$765-\$375 per hour. (Doc. No. 444.)

secret ballot vote. Under the Constitution, the membership makes the final decision whether to accept or reject the negotiated terms. In particular, and for purposes of the instant matter, Article 19 of the UMWA Constitution dictates the procedures that would apply for negotiations concerning the modification of any contractual terms and conditions for the employees of Patriot. These provisions require the establishment of a Negotiating Committee; convening of a District Conference including elected representatives from all Local Unions having members covered by the agreement; and ratification of any agreement by a vote of the members affected. (*Id.*, ¶ 2.) The UMWA Constitution also provides in Article 19, at Section 7: “the rule of no contract, no work.” Any strikes involving Debtors would occur at their active union operations, all but one of which is in West Virginia. (*Id.*)

Given Debtors’ public pronouncements as well as its filings in this proceeding, the UMWA understands that Debtors intend to seek changes in the current collective bargaining agreements covering UMWA members. Consequently, UMWA International President Cecil Roberts (“Roberts”) has designated certain Union officials to serve on the Union’s bargaining team to negotiate with Debtors when they seek modifications to the current contracts. In addition to President Roberts, who will serve as the Chairman of the bargaining team, three International District Vice Presidents with active mines of the Debtors within their jurisdictions will be involved in the negotiations. They are: International District 17 Vice President Joe Carter, International District 31 Vice President Mike Caputo, and International District 12 Vice President Steve Earle. (*Id.*, ¶ 3.)

President Roberts, a fifth generation coal miner and longtime member of the UMWA is a West Virginia resident and works out of the UMWA’s offices in Triangle, Virginia and in Charleston, WV. (*Id.*, ¶ 4.) International District 17 Vice President Joe Carter is a fourth

generation coal miner, works out of the UMWA offices in Charleston and Beckley, WV and is a resident of Stanaford, WV. (*Id.*, ¶ 5.) International District 31 Vice President Mike Caputo is a third generation coal miner who works out of the UMWA office in Fairmont, WV and resides in Rivesville, WV. (*Id.*, ¶ 6.) International District 12 Vice President Steve Earle works out of the UMWA office in Madisonville, KY and is a resident of Depoy, KY. (*Id.*, ¶ 7.)

For each of the three UMWA Districts most directly affected by this bankruptcy proceeding, the elected leadership and appointed District staff personnel have maintained constant communication with their respective memberships. Debtors' stated intention to reduce the operational costs associated with the current collective bargaining agreements and retiree benefits are a significant concern to all of these members. (*Id.*, ¶ 8.)

In the event there are hearings in this case involving the modification of the collective bargaining agreements with the UMWA and/or retiree health benefits, the UMWA will present workers and retirees, most of whom live in or near Southern West Virginia, as witnesses. In addition, workers and retirees who are not called as witnesses but who would be affected by any modifications to their wages and benefits have an interest in attending and observing any such hearings. It would impose a hardship on these workers and retirees if the hearings were to be held in New York City. (*Id.*, ¶ 10.)

Debtors proposed modifications to the collective bargaining agreement under § 1113 will include "work rules" which will necessarily involve discussions between the day-to-day managers at Debtors' active operations (predominantly located in or near West Virginia) and local level union officials. (Schroeder Decl. I, ¶ 35.)

As part of its obligation to make "a reasoned finding on the record why it has determined that rejection should be permitted," *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 527 (1984), a

court must take evidence related to “the likelihood and consequences of a strike if the bargaining agreement is voided.” *See Truck Drivers Local 807, I.B.T., etc. v Carey Transp., Inc.*, 816 F.2d 82 (2d Cir. 1987). The Southern District of West Virginia is better situated to determine whether Debtors’ proposals and conduct during the § 1113 process of negotiation are likely to provoke a prolonged strike sustained by community support.

C. Judges In West Virginia Are Familiar With The Coal Mining Industry

Schroeder identifies as a potential target in these proceedings, provisions of the NBCWA “that restrict the ability of signatory employers to deploy labor and operate their mines in a flexible and cost-effective manner.” (Schroeder Decl. I, ¶ 35.) Among such provisions are literally hundreds of detailed work rules governing everything from the union's jurisdiction over particular types of work to the myriad processes involved in the safe mining of coal, some broadly applicable to all coal operations, some negotiated at a local level at each particular operation, and some even job-specific. Not only would good faith negotiation of these issues require the involvement of local union leadership at a level well below the International office headquartered in Washington and mine-level management well below the level headquartered in St. Louis, but any disputes over these issues would, in all likelihood, involve matters totally unfamiliar to this Court.

But judges in the Southern District of West Virginia live near coal miners, grew up with them, worship with them and break bread with them. They have for decades handled numerous disputes requiring interpretation of the NBCWA and familiarity with the coal industry. In the context of this case, the knowledge and experience of the West Virginia judges highlights the reason that “[i]t makes good sense to 'locate the bankruptcy in a venue where the judge presiding would more likely have active familiarity with the community and the milieu in which [the

Debtors] operate.” Such a judge “would be in a much better position to gauge the likelihood of an effective reorganization.” *In re B.L. of Miami, Inc.*, 294 B.R. 325, 332 (Bankr. D. Nev. 2003).

CONCLUSION

For all of the foregoing reasons, the UMWA Motion to Transfer this Case to the Southern District of West Virginia should be granted.

Dated: August 31, 2012
New York, NY

Respectfully submitted,

KENNEDY, JENNIK & MURRAY, P.C.
Counsel for the United Mine Workers of America

/s/ Susan M. Jennik

By: Susan M. Jennik
Serge Ambroise
113 University Place, 7th floor
New York, NY 10003
Tel. (212) 358-1500
Fax: (212) 358-0207
sjennik@kjmlabor.com
sambroise@kjmlabor.com

UNITED MINE WORKERS OF AMERICA

/s/ Grant Crandall

By: Grant Crandall
Arthur Traynor
18354 Quantico Gateway Drive, Suite 200
Triangle, VA 22172-1779
Tel. (703) 291-2400
Fax (703) 291-2448
gcrandall@umwa.org
atraynor@umwa.org

EXHIBIT A

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IN THE MATTER OF:

PATRIOT COAL 341 MEETING

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August 23, 2012

APPEARANCE(S): Andrea Schwartz
Trial Attorney - Office of the
US Trustee for the Southern Division
of New York

Mark Schroeder

Damian Schaible

Michelle McGreal

Serge Ambroise

Chris Kenny

TRANSCRIBER: LEX REPORTING SERVICE, INC.

AUDIO FILE NAME
082312 PATRIOT COAL 341 MEETING

1 MS. SCHWARTZ: Let the Record reflect that
2 the date is August 23, 2012; the time is
3 approximately 3:15 p.m. The name of the Case is
4 Patriot Coal Corporation. Good afternoon, my
5 name is Andrea Schwartz; I am a Trial Attorney
6 with the Office of the United States Trustee for
7 the Southern District of New York. We are an
8 office within the United States Department of
9 Justice. I am the Presiding Officer at this
10 Meeting of Creditors convenes pursuant to Section
11 341a of the United States Bankruptcy Code.

12 For those of you that don't know, the United
13 States Trustee supervises the administration of
14 bankruptcy cases filed under the Bankruptcy
15 Code. Debtors are required to appear to be
16 examined under oath regarding the bankruptcy
17 cases. The examination will be recorded. All
18 persons questioning the Debtor must state their
19 names and indicate who they represent.

20 May I have appearances, please?

21 MR. SCHAIBLE: Damian Schaible of Davis Polt
22 (phonetic) representing the Debtors.

23 MS. MCGREAL: Michelle McGreal of Davis Polt
24 representing - -

25 MS. SCHWARTZ: Could you speak up, please,

1 because you're going to have to state your - -

2 MS. MCGREAL: Michelle McGreal of Davis Polt
3 representing the Debtors.

4 MS. SCHWARTZ: Okay, at this time I would
5 like to swear in the Debtors' Representative.
6 Please raise your right hand.

7 (Debtors were duly sworn.)

8 M A R K S C H R O E D E R, having been previously
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. SCHWARTZ OF MR. SCHROEDER:

12 Q: And please state your name and spell it for
13 the Record?

14 A: Mark Schroeder, first name M-A-R-K, last name
15 S-C-H-R-O-E-D-E-R.

16 Q: And, Mr. Schroeder, where do you reside?

17 A: I reside in Caseyville, Illinois.

18 Q: What is your relationship to the Debtor?

19 A: I am the Senior Vice President and Chief
20 Financial Officer of the Debtors.

21 Q: Do you have photo identification here with you
22 today?

23 A: Yes, I do.

24 Q: Would you please show it to me? The Record
25 shall reflect that Mr. Schroeder has presented me with an

1 Illinois State Driver's License Number S63655457050, which
2 expires on February 19th, 2014; it has a picture of the
3 gentleman sitting in front of me, thank you very much.

4 A: Thank you.

5 MS. SCHWARTZ: Okay, for the Record, I
6 would like to state that at this time the Debtors
7 have not yet filed their Schedules of Assets and
8 Liabilities or the Statement of Financial
9 Affairs. They have received an extension of time
10 to do so by the Court. As a consequence of that,
11 this meeting of Creditors, under Section 341 of
12 the Bankruptcy Code is going to be kept open from
13 today and adjourned to a subsequent date. I will
14 ask some questions today and we will permit
15 Creditors here to ask questions of you, as well,
16 but we will not close the 341a Meeting until a
17 subsequent date, at which time we will have had
18 the Debtors having filed their Schedules of
19 Assets and Liabilities and Statements of
20 Financial Affairs enabling the United States
21 Trustee to ask additional questions if she needs
22 to based on the information contained in those
23 schedules, or for any other reason that happens
24 subsequent to today that the United States
25 Trustee believes that she should ask questions.

1 Do you understand that?

2 MR. SCHROEDER: Yes, I do.

3 BY MS. SCHWARTZ OF MR. SCHROEDER:

4 Q: Now, Mr. Schroeder, have you ever been
5 examined under oath before?

6 A: Yes, I have.

7 Q: In what Forum was that?

8 A: One instance where an individual was - - had a
9 case against an employer.

10 Q: Was it a Deposition, or was it in-Court
11 Testimony?

12 A: In-Court Testimony.

13 Q: Okay. Have you ever had a Deposition taken
14 before?

15 A: Yes, I have.

16 Q: Okay. Given that, I just will briefly go over
17 some ground rules for today's examination, since you have
18 already had experience, would that be okay with you?

19 A: Yes.

20 Q: All right, as I stated earlier this 341a
21 Meeting is going to be recorded. As such, I would
22 appreciate if you would give me verbal answers to my
23 questions, will you agree to do that?

24 A: Yes, I will.

25 Q: And the reason for that is fairly plain, that

1 the tape recorder can't pick up a head nod or a shoulder
2 shrug, etc., all right?

3 A: Understand, yes.

4 Q: If I ask you a question and you don't
5 understand my question, will you agree to tell me that, so
6 I can rephrase it?

7 A: Yes.

8 Q: Okay, so then we will have an understanding
9 that if you don't tell me you don't understand a question,
10 then we understood that you understood the question, all
11 right?

12 A: Yes.

13 Q: Okay, if you need a break, at any time, will
14 you agree to tell me and I'll try to accommodate you as
15 best I can?

16 A: Yes.

17 Q: Okay and I'd like you to understand a few
18 moments ago you took an oath that what you say here today
19 has the same force and effect as if you were testifying in
20 a Court where there was a Judge sitting on a bench as
21 well, do you understand that?

22 A: Yes.

23 MS. SCHWARTZ: Okay, good, let's see. I
24 notice that there are some people standing in the
25 back, are there no chairs?

1 MS. MCGREAL: Well they all seem to be
2 connected like this in the other room so I don't
3 really think I can pick up the room.

4 MS. SCHWARTZ: They are all connected, but
5 in that room, in the larger room over there,
6 there are chairs like mine, behind the desk,
7 please feel free to bring them in.

8 MS. MCGREAL: Thank you, I appreciate that.

9 MS. SCHWARTZ: I shouldn't want you to have
10 to stand.

11 BY MS. SCHWARTZ OF MR. SCHROEDER:

12 Q: Okay, Mr. Schroeder, are you personally
13 familiar with the financial affairs of the Debtors?

14 A: Yes, I am.

15 Q: Okay, what don't you tell me a little bit
16 about your background with the Company?

17 A: I've been with Patriot Coal since our spin-off
18 from Peabody (phonetic) Energy on - - in 2007, October of
19 2007, I've been Senior Vice President and Chief Financial
20 Officer since then.

21 Q: Okay and prior to the spin-off in 2007, were
22 you affiliated with the previous Company, Peabody?

23 A: Yes, I was.

24 Q: Can you tell us about that?

25 A: I worked with Peabody Energy from October of

1 2000 through October of 2007 with the spin-off.

2 Q: So basically you've been with the Company 22
3 years now?

4 A: Twelve years.

5 Q: Twelve years, that's - - there you go, I got
6 - - you got me, I'm - - I guess I'm a little nervous, too,
7 no, I'm kidding, so 12 years.

8 A: Yes.

9 Q: And have you always been in the same, had the
10 same capacity job?

11 A: No, I have not.

12 Q: Okay, would you tell us about your
13 responsibilities with the Company since you've been with
14 the Company?

15 A: Yeah, with Patriot I've had the same
16 responsibility the whole time, Senior Vice President and
17 Chief Financial Officer.

18 With Peabody Energy I held several different
19 positions while I was there, the seven years that I was
20 there.

21 Q: Could you just briefly describe the
22 progression from when you started to the time that it
23 became Patriot Coal spin-off?

24 A: Sure, sure. With Peabody I was hired as Vice
25 President and Controller in October of 2007 and I was in

1 that position for approximately two years. Transferred to
2 Vice President - Business Admin - - Business Development,
3 I believe that was the Title, was in that position for
4 approximately two years and then transferred to Vice
5 President of Materials Management for approximately two
6 years. And my last year was, the position was President -
7 Peabody China (phonetic) and that was the last position I
8 had prior to the spin-off with Patriot Coal.

9 Q: Now before you joined Peabody, were you with
10 any other Coal Companies before that?

11 A: No, I was not.

12 Q: Any Energy Companies?

13 A: No.

14 Q: Okay and do you hold any professional
15 licenses?

16 A: I'm a Certified Public Accountant.

17 Q: Any others?

18 A: No.

19 Q: Any Certificates of any kind?

20 A: I don't believe so.

21 Q: Okay. Your education, could you just briefly
22 describe that?

23 A: I'm a Graduate of Southern Illinois University
24 at Edwardsville with a BSBA with specialization in
25 Accounting.

1 Q: And did you have any post - - post College
2 Graduate work that you did?

3 A: No.

4 Q: Okay. Has the - - now, when we talk about the
5 Debtors, we're going to speak about Patriot Coal
6 Corporation and the 98 Companies that filed for
7 Bankruptcy, all right?

8 A: Yes.

9 Q: All right. Have any of those Companies, the
10 Patriot Coal Companies before filed for Bankruptcy?

11 A: No.

12 Q: Okay and can you briefly describe what
13 Companies are - - have not been put into Bankruptcy of the
14 Patriot Coal Enterprise?

15 A: There are two entities that were not put into
16 Bankruptcy, I can name their - - I might have to look to
17 get their specific Company name.

18 Q: That's okay.

19 MR. SCHAIBLE: Can we, can I - -

20 MS. SCHWARTZ: Yeah, you can show him, he
21 needs the - - the Record shall reflect that Mr.
22 Schaible is showing Mr. Schroeder a notepad and
23 Mr. Schroeder is looking at the notepad.

24 MR. SCHROEDER: Patriot Coal Receivables
25 is one entity and the other entity is Patriot

1 Ventures (phonetic) LLC.

2 BY MS. SCHWARTZ OF MR. SCHROEDER:

3 Q: Why weren't those Companies put into
4 Bankruptcy?

5 A: I believe the reasons Patriot Coal Receivables
6 is a Foreign Entity and Patriot Ventures, LLC is an Entity
7 that owns a interest in several joint ventures and due to
8 the joint venture arrangements we thought it best not to
9 include that Entity in the Bankruptcy.

10 Q: Thank you. Now do you foresee either of those
11 Companies being placed into Bankruptcy?

12 A: I'm not sure at this time.

13 Q: Okay, you've received an extension of time to
14 file your schedules until September 5th, is that correct?

15 A: Yes.

16 Q: And do you know of any reason today why you
17 would not be able to file your schedules by that time?

18 A: We are still working on the schedules, I think
19 as we get closer to September 7th we will either be ready
20 or ask the Court to extend that deadline again.

21 Q: September 5th.

22 A: September 5th, I'm sorry.

23 Q: You should keep that in your head, September
24 5th.

25 A: We will.

1 Q: Let me ask you something, Mr. Schroeder, just
2 so that I can understand, can you give me a description of
3 what it is you do for the Company? I got your Title, but
4 could you tell me what you do, what your responsibilities
5 are?

6 A: I can maybe answer it by telling you who
7 reports to me and those kind of functions then, or what I
8 oversee or manage.

9 Q: Okay.

10 A: So the whole Accounting Department, so that
11 would be the Controller Function, the Treasury Function,
12 Investor Relations, Tax, IT and Materials Management, so
13 those functions all report to me, so part of my role then
14 as Chief Financial Officer is to oversee and supervise
15 those functions.

16 Q: What is Materials Management?

17 A: The Purchasing Department is another name for
18 it, but managing the materials that we are buying, the
19 capital expenditures that we are buying and the materials
20 that we are buying to source our minds.

21 Q: Who do you report to?

22 A: Our Chief Executive Officer.

23 Q: And what is his name?

24 A: Burrell Engelhart (phonetic).

25 Q: I understand from our Bankruptcy Analyst,

1 who's worked on this case and, I don't know, were you at
2 the initial Debtor Interview? Who was there Damian,
3 Michelle were you there?

4 MS. MCGREAL: No.

5 MR. SCHAIBLE: Rob Mead (phonetic).

6 MS. MCGREAL: Robert Mead.

7 MS. SCHWARTZ: Could you say it louder for
8 me?

9 MS. MCGREAL: Robert Mead - -

10 BY MS. SCHWARTZ OF MR. SCHROEDER:

11 Q: Okay, he went to the initial Debtor Interview?
12 Okay, well, well, I was saying because I thought you might
13 happen to have this knowledge, but maybe you do, and that
14 is you understand that - - as we understand it, all the
15 local bank accounts that the Company has, when I say
16 local, I don't mean New York, I mean the smaller bank
17 accounts that are not your, you know, main operating
18 accounts, remain under FDI, amounts that are under the FDI
19 Insurance amount, is that correct?

20 A: I believe so.

21 Q: Would you know that?

22 A: I don't know for sure.

23 Q: How would you find that out?

24 A: Ask the Treasurer.

25 Q: Okay, would you do - - would you do that for

1 us, please, we would like to be sure of that information?

2 A: Sure.

3 Q: And perhaps your Counsel can maybe take a few
4 notes here on additional information to supply to our
5 office, we'd appreciate that.

6 A: Uh hum, uh hum.

7 Q: Mr. Schroeder, are you aware of any new bank
8 accounts having been open since the Bankruptcy Filing.

9 A: No, I am not aware of any new accounts.

10 Q: Okay, is it possible that that has happened,
11 but you're simply not aware of it?

12 A: No.

13 Q: Okay. Have post petition books and records
14 been established by the Companies?

15 A: Yes, they have.

16 Q: And where are they located?

17 A: In St. Louis, Missouri.

18 Q: Missouri? And are all - - I think I read this
19 on one of the papers, but are all the books and records
20 for the Company located in St. Louis?

21 A: Yes, they are.

22 Q: Is St. Louis, Missouri the Corporate
23 Headquarters?

24 A: Yes, it is.

25 Q: And that is located at what address, please?

1 A: 12312 Olive Boulevard, St. Louis, Missouri
2 63141.

3 Q: So - -

4 A: I think that's the zip code.

5 Q: Okay and is that where your office is?

6 A: Yes.

7 Q: Okay. Can you briefly just describe the
8 background and nature of the Debtor's business?

9 A: We are a producer of thermal and metallurgical
10 coal that we sell to utilities in the United States and
11 abroad and sell to steel producers in the United States
12 and abroad.

13 Q: And is Patriot - - does Patriot Coal, the
14 description that you just gave me of Patriot Coal's
15 business, does that differ from the Peabody nature of its
16 business, did the - - I'll rephrase this question, but
17 what I'm trying to ask you is, did the nature - - has the
18 nature of the business changed when it was spun off into
19 Patriot Coal, or is it basically the same?

20 A: Basically the same from the respect that we
21 mind coal and sell the coal both thermal and metallurgical
22 coal.

23 Q: And how is it different?

24 A: That's what we were doing before, I'm not sure
25 if your question was are we, in our operations, any

1 different we are in the sense that we had bought another
2 Company during the period after the spin-off, so for that
3 - -

4 Q: That's Magnum?

5 A: Yes, it is.

6 Q: Okay.

7 A: So from that respect it's different than the
8 entities that existed at the time of the spin-off.

9 Q: But the same type of business operations are,
10 that remain the same, is that right?

11 A: Yes.

12 Q: Hum, a little bit shortening the questions
13 because we're going to adjourn to another date, so I'm
14 trying to just get some of the main things asked. Now,
15 with respect to Patriot Coal filing for Bankruptcy, were
16 you involved in that decision process?

17 A: It was a Board decision, but I was involved
18 from the standpoint of providing information to the Board.

19 Q: Can you help me out a little bit, like; I'm
20 trying to understand what your involvement was, like, what
21 type of information were you providing?

22 A: Helping to arrange the Debtor and possession
23 financing, helping to lay out the information that led up
24 to the Bankruptcy Proceedings themselves.

25 Q: Uh hum and when did that discussion begin?

1 A: I don't recall the exact time.

2 Q: Well, would it have been greater than a year
3 ago?

4 A: No.

5 Q: Would it have been more than six months ago?

6 A: No, I don't believe so.

7 Q: Can you give me an estimate of when you think
8 those discussions started?

9 A: Within three months prior to the filing of
10 July 9th.

11 Q: Thank you. And you had mentioned earlier that
12 there are two Companies that were not placed into
13 Bankruptcy, were you part of the discussions to not put
14 those Companies into Bankruptcy?

15 A: No.

16 Q: Who was involved in that?

17 A: I'm not sure.

18 Q: You just know that they weren't put into
19 Bankruptcy?

20 A: Yes.

21 Q: Okay. I want to ask you some questions; I
22 have two sets of questions I wanted to ask you. I wanted
23 to ask you some questions about three of the Bankruptcy
24 Petitions that were filed. Now I understand that you
25 didn't sign the Bankruptcy Petitions and that someone

1 named Ms. Jones, Jacqueline Jones signed the Petitions, is
2 that your understanding?

3 A: I don't know actually.

4 Q: Let me show you what we'll mark as UST1, all
5 right, I'm showing you the Petition for PCX Enterprises,
6 Inc. Take a look at that and let me know if you have ever
7 seen it before.

8 A: I don't believe so.

9 Q: Okay, have you seen any of the Bankruptcy
10 Petitions of the 99 Companies that were filed?

11 A: Yes, I have, and I'm not saying I did not see
12 this one, I just - - I don't recall it right now.

13 Q: Okay, but my question is, did you - - were you
14 part of the review process in the Petitions being filed?

15 A: Yes.

16 Q: Okay and at some point in time did you have to
17 either approve or sign off on the information contained in
18 the Petitions?

19 A: Yes.

20 Q: When was that?

21 A: Early July of this year.

22 Q: In the - - in - - to who else had to sign off
23 on the Petitions?

24 A: I don't recall.

25 Q: Do you know of anyone else?

1 A: I don't recall.

2 Q: Would you say that Ms. Jones would have to do
3 that, since she signed them?

4 A: Yes.

5 Q: Okay and she's the Secretary of the Company,
6 correct?

7 A: Yes, yes.

8 Q: Does she report to you?

9 A: No.

10 Q: Do you have any interaction with her?

11 A: Yes.

12 Q: What is that?

13 A: We talk on a regular basis, so her, as
14 Secretary of the Company we have various interactions on
15 different affairs of the Company.

16 Q: Okay, looks, you're smiling, so I'm thinking
17 you like her?

18 A: For the Record, yes, I do.

19 MR. SCHAIBLE: It's hard not to like
20 Jackie.

21 BY MS. SCHWARTZ OF MR. SCHROEDER:

22 Q: Okay, I'm trying to understand, were you the
23 last person to sign off on, for example, the Patriot Coal
24 Corporation Petition before it could be filed?

25 A: I don't recall.

1 Q: All right, let me ask you a question about
2 this Petition in particular, this is that PCX Enterprises,
3 are you familiar with that Company?

4 A: Yes.

5 Q: Can you tell me about that Company?

6 A: I don't know a whole lot about that Company, I
7 know the Company is - - I know of the Company PCX
8 Enterprises.

9 Q: Now how do you know of it?

10 A: You have it in front of me here; you show me
11 that Jackie, Jacqueline Jones signed off on it, so I do
12 know of the Company.

13 Q: Okay, but I - - you're not saying that you
14 just heard of the Company right now when I showed you
15 this?

16 A: No, ma'am.

17 Q: Oh, okay, so I'm asking you independent of
18 showing you this, what is your knowledge of this Company?

19 A: This is an Entity that is incorporated in New
20 York, I believe - -

21 Q: Okay.

22 A: So I know of that, I know that that did occur.

23 Q: All right, do you know what its operations
24 are, business operations?

25 A: No, I don't.

1 Q: Do you know if it has any business operations?

2 A: I don't believe it has.

3 Q: Uh hum, do you - - does it have any employees?

4 A: I do not believe so.

5 Q: Okay, it says here on the petition that the
6 street address for the Company is at the Corporate
7 Headquarter address you said before the 12312 Olive
8 Boulevard, do you see that?

9 A: Yes, I do.

10 Q: Do you believe that's correct?

11 A: Yes.

12 Q: Okay and then it also says that the County of
13 Residence or of the principal place of business is New
14 York County, do you see that?

15 A: Yes, I do.

16 Q: And do you believe that that is correct?

17 A: I have no reason to believe it is not.

18 Q: Okay, well, well, I'm trying not - - what does
19 this Company do? I know you said it doesn't have any
20 employees, and it doesn't have any operations, but what
21 does it do?

22 A: I'm not sure.

23 Q: Okay, well, do you know if it has a residence
24 in New York?

25 A: No, I don't.

1 Q: Okay, do you know what assets this Company
2 has?

3 A: Yes.

4 Q: Can you tell me what they are, please?

5 A: I believe this Company has cash assets of
6 approximately \$98,000.

7 Q: Okay and do you know where that cash is
8 located?

9 A: I believe the cash is located in New York.

10 Q: Where is that?

11 A: In a bank account in Manhattan, I believe.

12 Q: Uh hum, where?

13 MR. SCHAIBLE: Can I show him?

14 MS. SCHWARTZ: Sure, I mean, I - - you're
15 going to show him a document, but he'll tell me
16 whether it's, you know, what he knows.

17 MR. SCHROEDER: Capital One Bank located at
18 1432 2nd Avenue, New York, NY 10021.

19 BY MS. SCHWARTZ OF MR. SCHROEDER:

20 Q: Okay and when was that account opened?

21 A: I believe June of 2012.

22 Q: Okay and do you know what the purpose of that
23 account is?

24 A: No, I don't.

25 Q: Who opened that account?

1 A: Someone within Patriot Coal.

2 Q: Right, who's the signatory on the account?

3 A: I don't know.

4 Q: Not you?

5 A: It could be me, I don't recall.

6 Q: Oh, okay. Does PCX Enterprises, Inc. have any
7 offices in New York?

8 A: Not that I'm aware of.

9 Q: Does PCX Enterprises, Inc. have any Creditors
10 that you're aware of?

11 A: Yes, I believe they are Guarantor on our
12 interesting 200 million dollar convertible debt and a 250
13 million dollar on secure debt.

14 Q: Yeah, see some of the questions I have - - I'm
15 asking them simply because we don't have the schedules
16 yet, so we just keep getting, just a small amount of
17 information with respect to that, I'm not going to ask you
18 every single question about - - I just had some questions
19 about the Petition itself really.

20 Now, it says here that there's a mailing
21 address at CT Corporation, that would just be for the
22 registered Agent, would that be your understanding?

23 A: I do not know.

24 Q: Okay.

25 MR. SCHAIBLE: Ms. Schwartz, may I ask a

1 question? Is the Trustee's Office using these
2 questions to support its venue Motion?

3 MS. SCHWARTZ: The US Trustee's Office is
4 using the questions to verify the information
5 contained in the Petition.

6 MR. SCHAIBLE: I understand the purpose of
7 a 341 Meeting is to provide information to
8 Creditors, not necessarily to support a Motion
9 that may have been filed by the Trustees'
10 Office.

11 BY MS. SCHWARTZ OF MR. SCHROEDER:

12 Q: Yeah, I agree with that and there will be a
13 whole host, more questions that we would have with respect
14 to the separate Motion.

15 Mr. Schroeder, are you aware that there have
16 been several Motions that have been filed to transfer
17 venue of the Companies cases from New York, outside of New
18 York?

19 A: Yes.

20 Q: Okay. We're really asking some general
21 questions that we ask on a regular basis with respect to a
22 few of the Petitions, and the Company in general, which I
23 think they are, and to the extent we want to ask more in-
24 depth questions, we will do so at another time, is that
25 all right with you, Mr. Schroeder?

1 A: I understand.

2 MS. SCHWARTZ: Is that all right with you,
3 Mr. Schaible?

4 MR. SCHAIBLE: I reserve my rights today.

5 MS. SCHWARTZ: Okay, you can reserve them.

6 MR. SCHAIBLE: To whether it's right or
7 not.

8 BY MS. SCHWARTZ OF MR. SCHROEDER:

9 Q: You can reserve your rights, that's fine.

10 Okay, anyway, I was asking you about the
11 validity of that information. I want to ask you another
12 question. I have three Petitions I wanted to ask you
13 about and they're the same questions. Taking this
14 Petition here, this is the main Petition that was filed
15 for Patriot Coal Corporation, have you seen this before?

16 A: Again, I don't recall, but that doesn't mean I
17 have not seen it.

18 Q: Okay and here it says that the address of
19 Patriot Coal Corporation is at the Corporate Headquarters,
20 do you see that?

21 A: Yes, I do.

22 Q: Do you believe that to be correct?

23 A: Yes, I do.

24 Q: Okay and here it says that the County of
25 Residence is St. Louis, County Missouri; do you believe

1 that that's correct?

2 A: Yes, I do.

3 Q: And why do you say that?

4 A: Well I see it on here, so I do believe it is
5 correct.

6 Q: And do you believe it's correct just because
7 you see it on this page, or do you have some independent
8 knowledge of that?

9 A: I will say because I see it on this page.

10 Q: Okay, well, now I'm going to - -

11 MR. SCHAIBLE: Ms. Schwartz, for the
12 Record, just for the Record today so it's - -

13 MS. SCHWARTZ: Yeah, sure.

14 MR. SCHAIBLE: I know that you're not - -
15 you're not intending to ask Legal questions - -

16 MS. SCHWARTZ: Right.

17 MR. SCHAIBLE: But Mr. Schroeder to be
18 understood is not a Lawyer - -

19 MS. SCHWARTZ: Okay.

20 MR. SCHAIBLE: Does not necessarily
21 understand the specific questions being asked in
22 the Petition.

23 MS. SCHWARTZ: Uh huh.

24 MR. SCHAIBLE: He did not sign the
25 Petitions.

1 MS. SCHWARTZ: Right.

2 MR. SCHAIBLE: And so he can answer
3 questions to the best of his ability - -

4 MS. SCHWARTZ: Right.

5 MR. SCHAIBLE: But the question as to the
6 legal import of a - - the, whatever the question
7 is on the Petition, the residents.

8 MS. SCHWARTZ: I just asked him if he
9 thought that the information was correct, the
10 street address.

11 MR. SCHAIBLE: Right, no, but there's a
12 specific question being asked on the Petition.

13 MS. SCHWARTZ: Yeah, right.

14 MR. SCHAIBLE: And I just want the Record
15 to be clear that Mr. Schroeder doesn't
16 necessarily know what is intended by County of
17 Residents or Principal Place of Business, those
18 are - -

19 MS. SCHWARTZ: I hear you.

20 MR. SCHAIBLE: Those are generally
21 understood to be Legal questions.

22 BY MS. SCHWARTZ OF MR. SCHROEDER:

23 Q: Mr. Schroeder, do you hear what your Counsel
24 has just said?

25 A: Yes.

1 Q: At the outset of me asking you questions
2 today, you agreed that you would tell me if you don't
3 understand one of my questions, right?

4 A: Yes.

5 Q: Okay. Now, in light of what your Counsel has
6 just said, do you not understand what I asked you?

7 A: I do understand what you asked me, but I don't
8 necessarily know what is meant by County of Residence or
9 Principal Place of Business as this form is filled out.

10 Q: Okay, that's fair enough, sure, and thank you
11 for the clarification, but I just, you know, we - -

12 MR. SCHAIBLE: And that clarification goes
13 with respect to the last Petition as well.

14 BY MS. SCHWARTZ OF MR. SCHROEDER:

15 Q: No, that's all right, but my point here is
16 that, if I ask you a question, and I'll ask, I'll say it
17 to you again, if you don't understand what I'm asking you,
18 do you agree to tell me?

19 A: Yes, I will.

20 Q: Okay, all right, no one's trying to trip you
21 up, or ask you something that, you know, I think my
22 questions have been very simple and straight-forward, and
23 if you don't understand I'm happy to clarify them for you
24 and I'm happy for Mr. Schaible to make a comment, if he
25 wants to try to help you, because he thinks that you might

1 not understand what I'm asking, all right?

2 MR. SCHAIBLE: Or he can just, or he may
3 just not know the answer.

4 MS. SCHWARTZ: Well, he'll - - I think he's
5 agreed - -

6 MR. SCHAIBLE: It may be a legal question.

7 MS. SCHWARTZ: Right, but he's agreed
8 several times now, Mr. Schaible, to tell me if
9 he doesn't know the answer to a question. I
10 think he's a relatively professional man, no
11 one's - -

12 MR. SCHAIBLE: That's really irrelative
13 (phonetic).

14 BY MS. SCHWARTZ OF MR. SCHROEDER:

15 Q: You know, I mean, do you agree Mr. Schroeder?

16 A: What was your question?

17 Q: That you'll - - that you'll tell me if you
18 don't know the answer to a question.

19 A: Yes.

20 MR. SCHAIBLE: Excellent.

21 BY MS. SCHWARTZ OF MR. SCHROEDER:

22 Q: Thank you, okay, so going back to this here
23 you see that it also says that there are the location of
24 principal assets of the business in New York, do you see
25 that?

1 A: Yes.

2 Q: Do you know what assets, any assets, of
3 Patriot Coal Corporation that are located in New York, and
4 that is not a legal question?

5 A: Okay, I don't know what location of principal
6 assets - -

7 Q: I'm not asking you that, I'm asking you - -

8 A: Necessarily means.

9 Q: Do you know any assets of Patriot Coal, any
10 assets of Patriot Coal Corporation in New York, do you
11 know of any?

12 A: No.

13 Q: Okay.

14 A: But - -

15 Q: Yeah.

16 A: I would not necessarily know of all assets of
17 Patriot Coal - -

18 Q: Corporation.

19 A: Corporation.

20 Q: Right and why is that?

21 A: Our Company has - - our Company's or Debtors
22 have extensive assets, I don't recall all assets that we
23 have, or where all assets are located.

24 Q: Okay. Let me go back for a second, because I
25 want to make sure I understand something. You said

1 earlier that you're the Chief Financial Officer, right?

2 A: Yes, I did.

3 Q: Okay and all of those different Departments
4 you told me report to you, right?

5 A: Yes.

6 Q: As part of that reporting they report on the
7 assets and the state and the financial condition of their
8 various divisions, right?

9 A: Yes.

10 Q: Okay and so is it, is it part of your
11 responsibility in your role to be aware of where the
12 assets of the Corporation are located?

13 A: Let me see, those Departments report to me,
14 those functions report to me, that doesn't mean that my
15 responsibility is to know where every asset is located.

16 Q: Okay, let me ask you something.

17 MR. SCHAIBLE: I'm sorry, just important,
18 important to note for the Record, there are
19 approximately 101 Entities that make up the
20 Patriot Coal Corporation and as you can imagine,
21 when you're operating a business, the businesses
22 are not operating on an entity-by-entity basis.

23 MS. SCHWARTZ: Yeah.

24 MR. SCHAIBLE: So Mr. Schroeder is well
25 aware of assets - -

1 MS. SCHWARTZ: Please don't tell me what
2 he's aware of.

3 MR. SCHAIBLE: Only by Patriot generally.

4 BY MS. SCHWARTZ OF MR. SCHROEDER:

5 Q: Excuse me; please don't tell me what he's
6 aware of and what he's not aware of. He's right here
7 sitting in front of me and I've asked him questions and I
8 think he's answering me, I've no reasons to believe that
9 he's not answering me truthfully, I'm listening carefully
10 to what he said, he's agreed already to tell me whether or
11 not if he doesn't understand a question, etc. If you want
12 to make some kind of legal argument or factual argument do
13 it another time, because there's a lot of people sitting
14 here and a lot of people will have questions and I'd just
15 like to get through my questions here. Mr. Schroeder will
16 answer anything and if he tells me he doesn't know, then I
17 believe that he doesn't know.

18 All right, let me show you this document, Mr.
19 Schroeder, and you tell me whether or not you've ever seen
20 it before. This is - - we're going to mark this document
21 as Document #2.

22 A: I have seen this document before.

23 Q: What is it?

24 A: It is Declaration of Mark M. Schroeder
25 pursuant to local Bankruptcy Rule 1007-2.

1 Q: And how do you know this document?

2 A: I have read this document and signed this
3 document.

4 Q: And is all the information contained in the
5 document true to the best of your knowledge?

6 A: Yes, it is.

7 Q: Okay and since the time that you signed the
8 document, let's take a look at that date here, looks like
9 it's July 9th, would that be your recollection?

10 A: Yes.

11 Q: Okay, since July 9th, is there anything that's
12 contained in this document that you think should be
13 changed or modified since you filed it, or since you
14 signed it?

15 A: I don't, I don't know.

16 Q: But you're not aware of anything as we sit
17 here today?

18 A: I'm not aware of anything as we sit here
19 today.

20 Q: Okay, I'm going to ask you two questions,
21 well, I want to ask you about two things you say in the
22 document here. Okay, take a look at Paragraph 7, please.
23 I have a copy for you Mr. Schaible.

24 MR. SCHAIBLE: Can you hand over - -

25 MS. SCHWARTZ: To make it easy for you.

1 Ms. McGreal, do you need one?

2 MS. MCGREAL: (Inaudible - talking very
3 low) this one here.

4 BY MS. SCHWARTZ OF MR. SCHROEDER:

5 Q: I'm just going to - - on Paragraph 7, let's
6 see, Paragraph 7 states the following, and correct me if I
7 read anything incorrectly. It says two of the Debtors are
8 organized under the Laws of the State of New York,
9 correct?

10 A: Yes.

11 Q: And earlier I think you testified that PCX
12 Enterprises was incorporated in New York, is that correct?

13 A: Yes.

14 Q: What is the other Entity that's incorporated
15 in New York that you're referring to in your Declaration?

16 A: Beaver, Patriot Beaver, I'm sorry; I'll say
17 that again, Patriot Beaver Dam Holdings, LLC.

18 Q: All right, well let me ask you this. I'm going
19 to show you what is Number 3. This is the Bankruptcy
20 Petition for Patriot Beaver Dam Holdings, LLC. Can you
21 take a look at it and let me know if you've ever seen it
22 before?

23 A: I don't recall if I've seen it.

24 Q: So you may have seen it?

25 A: Yes, ma'am.

1 Q: Okay. And you see here at the top it states
2 that the address for Patriot Beaver Dam is in Missouri at
3 that same Corporate address, right?

4 A: Yes.

5 Q: And do you believe that's correct?

6 A: Yes.

7 Q: Okay, are you aware, can you tell me anything
8 about Patriot Beaver Dam Holdings, LLC?

9 MR. SCHAIBLE: If you don't know the answer

10 - -

11 MR. SCHROEDER: I don't, I don't recall.

12 BY MS. SCHWARTZ OF MR. SCHROEDER:

13 Q: Okay, do you know if Patriot Beaver Dam
14 Holdings, LLC is, in fact, a Patriot Coal Corporation
15 Entity?

16 A: I believe it is.

17 Q: Okay, how do you know that?

18 A: I've heard the name before, I believe it is.

19 Q: Okay and it says - - it's Holdings, LLC, is
20 your understanding that it's a Holding Company?

21 A: Based on the name, yes, I don't recall exactly
22 what it - -

23 Q: Okay, do you know if Patriot Beaver Dam
24 Holdings has any assets?

25 A: I believe it does, I don't know, I don't

1 recall what those assets are.

2 Q: You don't know any of the assets?

3 A: I don't recall.

4 Q: Of this Company?

5 A: Yes.

6 Q: Okay. Do you know why it was formed?

7 MR. SCHAIBLE: I think that getting into
8 questions about why an Entity was formed is
9 something that we should deal with in a separate
10 venue.

11 BY MS. SCHWARTZ OF MR. SCHROEDER:

12 Q: All right, let me ask you a different
13 question. Do you know if Patriot Beaver Dam Holdings has
14 any employees?

15 A: I don't believe it does.

16 Q: Do you know if it has any offices in New York?

17 A: I don't believe so.

18 Q: And I think you said you don't know what
19 assets it has, is that right?

20 A: That's correct.

21 Q: Do you know if it has any Creditors?

22 A: I believe it is a Guarantor of the 200 million
23 dollar convertible note and the 250 million dollar on
24 secured - -

25 Q: Similar to the PCX Enterprise, is that right?

1 A: Yes.

2 Q: Okay, going back to your Affidavit that you
3 signed - -

4 A: Yes.

5 Q: That sentence, the first sentence, the second
6 sentence says the principal assets of those two Debtors
7 and now we've said that that's PCX and Patriot Beaver Dam,
8 along with those of Patriot Coal, which you define here as
9 Patriot Coal Corporation, are located in New York.

10 Now, I asked you a few moments ago what assets
11 of Patriot Coal Corporation are located in New York.

12 A: Uh hum.

13 Q: And you were unable to tell me, does this
14 refresh your recollection at all?

15 A: No, it does not.

16 Q: So as we sit here today you can't state
17 specifically that you're aware of any assets of Patriot
18 Coal Corporation in New York?

19 A: I don't know.

20 Q: Okay.

21 A: I don't recall.

22 Q: All right, another question. Can I have that
23 back for a second?

24 A: Sure.

25 Q: Thank you. Do you know what business Patriot

1 Beaver Dam Holdings, LLC is engaged in?

2 A: No, I don't.

3 Q: Do you know whether - - you said - - it said
4 earlier that the discussions concerning reorganization
5 started approximately three months before the case was - -
6 the Company, you know, the cases were filed?

7 A: I think my answer was within the last three
8 months.

9 Q: Okay.

10 A: I don't recall when.

11 Q: Sorry, okay, within the last three months. Do
12 you know whether or not these two Companies that I asked
13 you about, PCX Enterprises or Patriot Beaver, were in
14 existence before you started having discussions with the
15 other Management about the Organization?

16 A: I don't believe they were.

17 MS. SCHWARTZ: Okay. At the next - - at
18 the next, the adjourn date for the 341, Mr.
19 Schaible; we would like Ms. Jones, the Signator
20 on the Petitions to be present.

21 MR. SCHAIBLE: Uh hum.

22 BY MS. SCHWARTZ OF MR. SCHROEDER:

23 Q: We usually do that on the first one, on the
24 first - - let me ask you a question, Mr. Schroeder. Who,
25 for PCX Enterprises, it's a Corporation; do you know who

1 the Board Members are?

2 A: No, I don't.

3 Q: Are you a Board Member of that Company?

4 A: I don't recall, but I will look. I am not a
5 Board Member.

6 Q: Okay. Are you, I guess, would you be a Board
7 Member of - - are you a Board Member of Patriot Beaver Dam
8 Holdings? Well, actually you wouldn't. Would you be a
9 Member of that, that's an LLC, is that what, I guess, I
10 don't know if there's a Board, I don't think so, I think
11 it Members?

12 A: I don't believe so.

13 Q: Could you tell me what you're looking at?

14 A: This is a Management Structure Report, so it
15 is providing the Management Name and the Title for each of
16 our 100 plus subsidiaries.

17 Q: And would it be accurate to say that because
18 you have so many Companies you're not sure of which ones
19 you're a Member of the Board of and which ones you're not?

20 A: Yes.

21 MS. SCHWARTZ: Thank you and have you
22 provided that to us, Mr. Schaible?

23 MR. SCHAIBLE: I'm not sure, but we brought
24 you a copy, would you like it?

25 MS. SCHWARTZ: I would love it, thank you.

1 MR. SCHAIBLE: You could have it.

2 BY MS. SCHWARTZ OF MR. SCHROEDER:

3 Q: Oh, thank you, thank you, so I can get the
4 information right off of there. Have you seen this
5 before, Mr. Schroeder?

6 A: Yes, I have.

7 Q: And is the information contained in this
8 document, correct?

9 A: I don't know, to the best of my knowledge it
10 is - -

11 Q: Okay.

12 A: I did not prepare it.

13 Q: Well let's mark that as D1, so that we will
14 know what document we were talking about, you know, as
15 part of the Record of today's 341a Meeting. Let's see
16 here, I had one, I had another question about one of the
17 bank accounts and that is the bank account at Risch
18 (phonetic) and Tang Naticksas (phonetic), is that a
19 Naticksas, or in Texas?

20 MR. SCHAIBLE: Natick, Texas (phonetic).

21 MS. SCHWARTZ: Yeah, that bank account, I
22 believe that in the Order authorizing the
23 Company to continue using cash, its Cash
24 Management System, it was represented that there
25 was a zero balance in that account?

1 MR. SCHAIBLE: I took direction of the US
2 Trustees Office we removed all cash out of that
3 account.

4 BY MS. SCHWARTZ OF MR. SCHROEDER:

5 Q: Is that correct, Mr. Schroeder?

6 A: I believe so.

7 Q: Thank you, okay, I had to verify that, thank
8 you, all right.

9 MR. SCHAIBLE: That was a previously
10 existing account which held funds until the US
11 Trustees Office directed as to (Inaudible).

12 BY MS. SCHWARTZ OF MR. SCHROEDER:

13 Q: Yeah, I imagine they didn't fall within the
14 guidelines for bank accounts, the Chapter 11 operating
15 guidelines and the depositories. Just give me a moment;
16 I'm just looking over my questions here.

17 A: Sure.

18 Q: Thank you. A lot of the information that we
19 will sometimes ask at 341a Meetings is contained in the
20 schedules, so since you have - - your Company has gotten
21 an extension of time to file these schedules, we're - -
22 I'm going to hold off until I get the schedules instead of
23 asking you all of those questions before I have that.

24 A: I understand.

25 Q: Currently are the Debtors operating at a

1 profit or a loss?

2 A: We operated at a loss through June 30th of
3 2012; we've not publicly filed any financial statements
4 since then.

5 Q: Okay, what you have - - you will be filing
6 Monthly Operating Reports with the Court because the
7 Companies are under the protection of the Bankruptcy Laws,
8 so I'm asking you as of today, I understand you haven't
9 filed any public reports, but are you operating at profit
10 or loss today?

11 MR. SCHAIBLE: As this is a public Company,
12 I just want to be clear of whether we're being
13 directed by the Government to disclose, I just
14 want to be careful about disclosure, for
15 instance, this is a public Company and you're
16 asking for information which has not yet been
17 released in a Monthly Operating Report, so I
18 want to be clear as to whether we're being
19 directed to disclose this information, because I
20 don't want to, I want to avoid any disclosure
21 and beutities (phonetic).

22 MS. SCHWARTZ: Well is there a problem with
23 him answering the question, Mr. Schaible?

24 MR. SCHAIBLE: Well he's going to be
25 providing information about the profit or loss

1 of a Public Company, I had it at the Public
2 Release and its Public Release would be as part
3 of the Monthly Operating Report, I just, again,
4 I'm not, I'm not challenging the question, I
5 just want to make sure that we understand.

6 MS. SCHWARTZ: All right, well then, well
7 then, then, okay, well you are challenging - -
8 you are challenging the question.

9 MR. SCHAIBLE: Well, I just want to make
10 sure we understand - - or something.

11 MS. SCHWARTZ: But let us be clear that you
12 are challenging the question, but it's all
13 right, I will hold off on responding because I'm
14 understanding from your Counsel that he has some
15 sensitivity to your giving that information at
16 this time.

17 MR. SCHAIBLE: Just concerns about
18 selective disclosure under the security
19 (Inaudible).

20 MS. SCHWARTZ: Okay, well we don't want to
21 - - we don't - - we certainly are not asking you
22 any questions where we want you to, you know,
23 take any action outside of any other Law, but
24 I've never had anyone object to the question of
25 whether or not you're operating at a profit or a

1 loss before, so because your Lawyer is concerned
2 about you giving that information.

3 MR. SCHROEDER: Well, if I can answer - -

4 MS. SCHWARTZ: Sure.

5 MR. SCHROEDER: I am also concerned - -

6 MS. SCHWARTZ: Please don't say anything
7 outside of your, you know.

8 MR. SCHROEDER: I am also concerned and
9 that's why I answered the question that through
10 June 30th we were operating at a loss that is
11 publicly disclosed information.

12 BY MS. SCHWARTZ OF MR. SCHROEDER:

13 Q: Okay, okay. Can you tell me what the
14 Reorganization (phonetic) Plan is, what is your idea
15 having filed for Bankruptcy? What's the objectives that
16 the Company is seeking to achieve under Chapter 11?

17 A: Yeah, our objective is to exit the Bankruptcy
18 Procedure as a healthier Company then we are as we enter
19 the Bankruptcy. We have liabilities that we are trying to
20 overcome. We have obligations that we are trying to
21 overcome.

22 Q: Right.

23 A: So as part of the process we hope to overcome
24 those liabilities in a manner that we can exit Bankruptcy
25 as a producer of metallurgical and thermal coal.

1 Q: And how do you think, how it would, how are
2 you planning to do that, in a general sense?

3 A: Trying to gain control over the costs that we
4 incur in mining our coal.

5 Q: And when you say that, gain control over the
6 costs, what do you mean by that?

7 A: Our costs are very high today and we need to
8 find ways to lower the costs that we incur in mining the
9 coal and selling the coal then to the public.

10 Q: Uh hum. Is the Company current today paying
11 its post petition, its post petition obligations?

12 A: I believe so.

13 Q: Okay. Okay. Let me just check one thing,
14 okay? I did want to ask you something and I think it is
15 definitely a fair question and I think this is probably
16 going to be one of the last questions I have and then I'm
17 going to open it up to questions for the rest of the - -
18 and this is really based on reading what you said in your
19 Affidavit, you know, with respect to the Company's and the
20 question I asked you about the assets of Patriot Coal
21 Corporation.

22 I want you to look at something here and you
23 let me know if you have an understanding why this is.
24 This is the Bankruptcy Petition I showed you earlier for
25 Patriot Beaver Dam Holdings, do you see that?

1 A: Yes, I do.

2 Q: All right, let me ask you something before I
3 even ask you anything about this document, do you
4 understand what venue is?

5 A: Yes, I do.

6 Q: Okay and what is your understanding of that?

7 MR. SCHAIBLE: I'm going to ask Mr.
8 Schroeder not to answer your question, a venue
9 is a legal question and I'm - - I don't think
10 we're going to answer that question.

11 BY MS. SCHWARTZ OF MR. SCHROEDER:

12 Q: Okay, I'm not going to ask his - - I'm not
13 going to ask his legal opinion. What is your
14 understanding, a delay (phonetic) person, what is your
15 understanding of what that means?

16 A: A venue is a place.

17 Q: Right and - - and do you understand - - is it
18 your understanding, all right, I'll leave that, not a
19 problem, but I want to ask you a question, and that is, if
20 you see here on this Bankruptcy Petition, you see here,
21 this section here, where it says information regarding the
22 Debtors venue?

23 A: Yes, I see the information.

24 Q: Okay and you see that there's one choice
25 that's checked off here?

1 A: Yes, I do.

2 Q: Okay, what does it say on the Petition as to
3 what the basis; the venue is on this Petition, please take
4 a look at that?

5 A: I can read it to you. Debtor has been
6 domiciled (phonetic) or has a residence principal place of
7 business or principal assets in this District for 180 days
8 immediately proceeding the date of this Petition or for a
9 longer part of such 180 days then in any other District.

10 Q: Okay and I think you said that you had to sign
11 off on these Petitions, is that right?

12 A: I don't recall each Petition that I signed off
13 on.

14 Q: But in general you signed off on all of them,
15 is that right?

16 A: I believe so.

17 Q: Okay and in that process, would you have any
18 input or knowledge with respect to this particular part of
19 the Petition?

20 A: No.

21 Q: Okay, so then it - - would it be fair to say
22 that with respect to the Petition for Patriot Coal
23 Corporation, let me just find it, all is on the same place
24 on Paragraph D, you see that that first option that you
25 just read is not checked on that Petition?

1 A: I see that, yes.

2 Q: Right and just read what the second one says.

3 A: There is a Bankruptcy Case concerning Debtors,
4 Affiliates, General Partner or Partnership pending in this
5 District.

6 Q: Right, now the only reason I wanted to ask you
7 about that is because in your Affidavit you say at
8 Paragraph 7, which I showed you earlier, and you read
9 earlier.

10 A: Uh hum.

11 Q: And you also stated that it's correct that the
12 principal assets of Patriot Coal are located in New York,
13 you see that?

14 A: Yes, I do.

15 Q: Right and that's correct, right?

16 A: As far as I understand, yes.

17 Q: Okay, so why is it then that - - why is it
18 then, let me just say my question, please, why is it then
19 that for this Company, Patriot, if you know, Patriot Coal
20 Corporation did not claim that venue was based on the
21 first one that said principal assets in the District, do
22 you know?

23 A: I do not know.

24 MS. SCHWARTZ: Okay, all right, as I stated
25 at the onset this meeting is going to be

1 continued.

2 Mr. Schaible, the continued date that we
3 would like to adjourn the meeting to is
4 September 27th at 3 p.m., does that work for you?

5 MR. SCHAIBLE: I'd like to reserve to make
6 sure that we filed our schedules first on that
7 date.

8 BY MS. SCHWARTZ OF MR. SCHROEDER:

9 Q: That's fine. Oh, well, okay, thanks. Mr.
10 Schroeder, earlier I had asked you if you foresee any
11 problems with filing your schedules by the date that the
12 Court has given you an extended time to file them,
13 September 5th. Do you see a problem getting your schedules
14 in by that date?

15 A: At this point, no, but I know they are very
16 extensive yet and we have more work to go, so I think we
17 will continue to endeavor to get them done by then, but we
18 may need to ask the Court for an extension again.

19 Q: Yeah and it - -

20 MR. SCHAIBLE: We don't know.

21 MS. SCHWARTZ: I'm sorry?

22 MR. SCHAIBLE: I'm sorry; we just don't
23 know at this time, we're doing our best.

24 MS. SCHWARTZ: Okay, okay, all right, so
25 let's do that then, we're going to - - we're

1 going to - - I'm going to now turn, let the
2 meeting be, have Creditors ask questions.

3 MR. SCHROEDER: Sure, what was - -

4 MR. SCHAIBLE: I'm sorry, what was the
5 date?

6 MS. SCHWARTZ: I had suggested September
7 27th at 3 p.m., see if that works for you.

8 MR. SCHAIBLE: That date works for me.

9 MS. SCHWARTZ: You don't have to tell me
10 right this moment.

11 MR. SCHAIBLE: Okay.

12 MS. SCHWARTZ: I - - please take your time
13 and check your schedule - -

14 MR. SCHAIBLE: Sure, sure.

15 MS. SCHWARTZ: And see if that works, we're
16 flexible, we'll ask you to put a notice on the
17 Docket of the adjourned date, okay?

18 MR. SCHAIBLE: Yes.

19 MS. SCHWARTZ: We're hoping we see your
20 Schedules and Statements of Financial Affairs by
21 the 5th and I'm sure you're working hard to try
22 to do that.

23 Now, part of the reason for a Meeting of
24 Creditors under Section 341, is to allow
25 Creditors to ask the Debtor questions.

1 At this point I'm directing my statements
2 to those sitting in the room.

3 First, I'd like to know is there anyone
4 here that would like to ask any questions of the
5 Debtor. I see one hand, two hands, okay. To
6 you gentlemen, I'm just going to let you know
7 that the Meeting of Creditors is an opportunity
8 for you to ask questions, it's not a Deposition
9 to the extent that you want to ask very detailed
10 questions about your Creditors, Claims, etc.,
11 there are devices under the Bankruptcy Code that
12 provide the opportunity for you to make an
13 application, to take a Deposition, a 30b6,
14 whatever, to ask detailed questions, okay? So,
15 but I will permit, you know, questions to take
16 place and let's start, okay.

17 At this time, thank you. Mr. Schroeder, as
18 far as my questions are concerned, I'm pretty
19 much finished. I may ask a couple of
20 interjecting questions when the other Credits,
21 thank you so much, sir. Sir, would you come up?

22 MR. KENNY: Sure.

23 MS. SCHWARTZ: And then I'm going to move
24 this chair over here, so that you can sit.

25 MR. KENNY: Perfect.

1 MS. SCHWARTZ: Okay, just please state your
2 name and the Law Firm, or whatever Company
3 you're with and who you represent.

4 MR. KENNY: Sure, Chris, last name is Kenny
5 (phonetic); I'm with Aurelius (phonetic) Capital
6 Management, representing Aurelius Capital
7 Management.

8 MS. SCHWARTZ: Okay. This is Mr.
9 Schroeder; he's here on behalf of Patriot Coal
10 Corporation.

11 MR. KENNY: Thank you for attending. I
12 have a series of questions laid out in sort of
13 categories, I guess I'll just sort of run
14 through them and, you know, hopefully to the
15 extent you can answer them, you know, we'll go
16 from there.

17 BY MR. KENNY OF MR. SCHROEDER:

18 Q: As it relates to burdensome contracts, we note
19 that Coal Supply Contract, the Below Market Coal Supply
20 Contract is approximately a 70 million dollar liability
21 based on Public Filings, is this one of the Contracts that
22 has been rejected to date, and, if not, why not?

23 MR. SCHAIBLE: You need not answer the why
24 not because it leads, involves a legal
25 (Inaudible - talking low).

1 MR. SCHROEDER: I don't think it has been
2 rejected yet.

3 BY MR. KENNY OF MR. SCHROEDER:

4 Q: And to the extent that, and I don't mean to be
5 ploy, but to the extent it's not a legal question, why
6 hasn't this been one of those Contracts rejected, it's
7 enormous in size, 70 million dollars, and it's, you know,
8 dollars that would otherwise go to Creditors?

9 A: Yeah, we have not paid any amounts on that
10 Contract - -

11 Q: Uh hum.

12 A: And there are no payments that we would make
13 on that Contract in the near term.

14 Q: Okay. As it relates to Labor Negotiations,
15 have you begun negotiating potential changes to Labor
16 Contracts or Retiring (phonetic) Health Plans?

17 A: I don't believe so.

18 Q: I guess that limits my second part. In I
19 think one of the discussions, or one of the meetings there
20 was something called a Gateway Contract in terms of
21 Patriot has had some success in navigating, or in
22 negotiating Gateway Contracts away from, I guess, the
23 standard UMWA Contract, I'm unfamiliar with what a Gateway
24 Contract is, is there - - could you just outline for me
25 like what are some of the potential costs and benefits

1 that Patriot might realize under a Gateway Contract versus
2 a UMWA?

3 A: Very detailed analysis between the two, I
4 could not identify what those are; there are some general
5 differences that have to do with the funding of health
6 care costs.

7 Q: For example?

8 A: Whether health care costs aren't paid in
9 total, or if there is something less than the total amount
10 paid.

11 Q: Yes. But, you know, I guess if we're to stick
12 with general there's no, like, you haven't had a Gateway
13 Contract in the past that you could use as a proxy to sort
14 of give an example for like a before and after, or
15 anything like that?

16 A: Well, there are Gateway - - there are Gateway
17 like Contracts that do exist out there.

18 Q: Uh hum.

19 A: But it's a very detailed difference, and I
20 can't run down those differences off-hand.

21 Q: Okay. As it relates to subsidiary
22 liabilities, it's our understanding that for coal act
23 (phonetic) liabilities the liabilities are established for
24 entities that were under common control as of say like
25 1992, 1994, again, so therefore not all entities that

1 Patriot owns would necessarily be subject to coal act
2 liabilities. Can you tell me which entities don't have
3 coal act liabilities?

4 MR. SCHAIBLE: To be clear you've just
5 stated a legal analysis that Mr. Schroeder is
6 not going to be able to confirm nor deny.

7 MR. KENNY: Uh hum.

8 MR. SCHAIBLE: So he - - I'm not sure how
9 to answer that question.

10 MS. SCHWARTZ: You have to keep your
11 questions to factual questions.

12 MR. SCHAIBLE: In other words, whether a
13 given entity has liabilities is - -

14 MR. KENNY: Fair enough, I'll - -

15 MR. SCHAIBLE: A legal question he's not
16 going to be able to answer.

17 MS. SCHWARTZ: Okay.

18 BY MR. KENNY OF MR. SCHROEDER:

19 Q: I'll restructure the question as such, is that
20 to - - for the Patriot Entities that were spun off from
21 Peabody, do you happen to know if all of those were in
22 existence as of say 1992?

23 A: I don't know.

24 Q: As - -

25 BY MS. SCHWARTZ OF MR. SCHROEDER:

1 Q: Can I ask a question here, excuse me for one
2 second. I was under the impression based on what you had
3 said, but maybe I didn't get it right, I thought that when
4 the Patriot Entities were spun off in 2007, does that mean
5 that, and I apologize if I don't - - if this is not a
6 great question, but it wasn't just a reformulation of the
7 existing Peabody Companies, like, in other words, like
8 Peabody went off and did its own business and Patriot Coal
9 did its own business?

10 A: Peabody is still in the same business that
11 Patriot Coal is in, so Peabody had a number of Entities
12 that remained with Peabody and some Entities that went
13 with Patriot.

14 Q: And how many - - can you tell us how many
15 Entities essentially, you know, in other words, if there
16 were 100 Entities, did 2 Entities go off to Patriot Coal
17 and what was the, I, you know, percentage, half of them go
18 to Patriot Coal?

19 A: I don't remember the number, but a large
20 number stayed with Peabody and a large number went with
21 Patriot?

22 Q: That doesn't tell me any, I mean, you know I
23 can't tell the difference between - -

24 A: I don't recall how many of our current 101
25 Subsidiaries existed with the spin-off; it would have been

1 a number less than that, in that some Entities came about
2 with the Magnum Coal Acquisition.

3 Q: Right.

4 A: I don't remember how many Entities stayed with
5 Peabody, but again, it would have been a large number,
6 it's about one or two is an extensive number.

7 Q: Right, right, right, right. Would you say - -
8 could you estimate the number of Patriot Coal Entities
9 that formerly were Peabody Entities of the 101, a
10 percentage?

11 MR. SCHAIBLE: If you don't know, don't
12 estimate.

13 MS. SCHWARTZ: No, if - - I'm not asking
14 for exact, I'm asking if he can estimate.

15 MR. SCHROEDER: I would say at least half.

16 MS. SCHWARTZ: Okay, go ahead; sorry to
17 interrupt, I was just trying to follow the train
18 of thought.

19 BY MR. KENNY OF MR. SCHROEDER:

20 Q: I totally understand. I guess moving on, on
21 the Multi-Employer Pension, what's your estimate of the
22 current withdrawal liability?

23 MR. SCHAIBLE: Again, I mean, I believe
24 withdrawal liability and estimated withdrawal
25 liability requires a great deal of legal

1 analysis and Mr. Schroeder is not going to be
2 able to plan at this point.

3 BY MR. KENNY OF MR. SCHROEDER:

4 Q: Okay, is that going to be something that's
5 going to come out in the next week, in the schedules?

6 MS. SCHWARTZ: Direct your questions to Mr.
7 Schroeder.

8 BY MR. KENNY OF MR. SCHROEDER:

9 Q: Mr. Schroeder, is that some information that's
10 going to come out in the next week, the next, I guess,
11 whenever the schedules are filed September 5th - - you.

12 A: No, no.

13 Q: Is there a reason that, or rather, let me
14 rephrase that, why wouldn't that piece of information come
15 out, it seems pretty important to Creditors?

16 MR. SCHAIBLE: If you don't know, you don't
17 have to answer.

18 MR. SCHROEDER: I don't know the amount.

19 BY MR. KENNY OF MR. SCHROEDER:

20 Q: Right, I know that you don't know the amount,
21 I'm saying, it seems like an amount that should be
22 calculated and disclosed this is of keen interests to
23 Creditors, the question is, are you going to calculate it
24 in the midst of a (Inaudible).

25 A: It is an extensive calculation, I believe, and

1 I don't know that we are calculating it at this point.

2 MR. SCHAIBLE: But he doesn't know. But do
3 you know if you are calculated?

4 MR. SCHROEDER: I don't know if we are
5 calculated at this point.

6 MR. SCHAIBLE: Okay.

7 BY MR. KENNY OF MR. SCHROEDER:

8 Q: Got it. For Selenium (phonetic), the
9 Charleston Gazette reported that, on a Court Hearing, that
10 there's negotiations between environmental groups and
11 Patriot as relates to potentially extending the consent
12 decree deadline for broader obligations, do you know
13 anything about what the broader obligations are?

14 MS. SCHWARTZ: Yeah, shorter than that.

15 MR. SCHAIBLE: Just to be clear, just to be
16 clear, this is a Public Forum and so Mr.
17 Schroeder should not answer any questions that
18 involve confidentiality.

19 MS. SCHWARTZ: Like I'm sure you've - -

20 MR. SCHAIBLE: As I'm sure as it may be the
21 case that that does.

22 MS. SCHWARTZ: Okay, to shorten that, first
23 of all just ask him the question - -

24 MR. KENNY: Yeah.

25 MS. SCHWARTZ: I mean, you read a whole

1 thing about what was reported.

2 MR. SCHROEDER: Okay.

3 MS. SCHWARTZ: Who knows what was reported
4 in that paper, I mean, you know what I'm saying,
5 ask him the question.

6 MR. SCHROEDER: Yeah.

7 MS. SCHWARTZ: You read a whole thing about
8 what was reported.

9 MR. SCHROEDER: Okay.

10 MS. SCHWARTZ: Who knows what was reported
11 in that paper, I mean, you know what I'm saying,
12 ask him the question.

13 MR. SCHROEDER: I - -

14 MR. SCHAIBLE: He's not - - this isn't a
15 Research Analysis.

16 MS. SCHWARTZ: Okay, look, Mr. Schaible,
17 let the guy ask his question, he's going to have
18 only about two more minutes, because we're going
19 to let other - - okay?

20 BY MR. KENNY OF MR. SCHROEDER:

21 Q: Fair enough, I'll drop that one. From the
22 increase of 307 million dollars for the Selenium
23 obligation, that was reported in your June 30th (Inaudible)
24 Reports of Public, do you have an estimate for what the
25 annual ongoing cash expense for that Selenium clean-up

1 obligation is going to be previously you had disclosed 7
2 million dollars, or something of that Order, do you have a
3 ballpark for what that Annual Expense is going to be
4 following an increase?

5 A: It's not public information.

6 Q: Uh hum.

7 A: So I do have an estimate, but it's not public
8 information that I can share at this time.

9 Q: Not public in that it hasn't been disclosed
10 because I guess that kind of assumes the answer, but is it
11 subject to confidentiality, which I guess is the - -

12 A: Not public because it has not been disclosed.

13 Q: Okay.

14 BY MS. SCHWARTZ OF MR. SCHROEDER:

15 Q: And when will it be disclosed?

16 A: That's not a number that we do disclose.

17 Q: Okay.

18 A: It's future information that we would not
19 disclose and - -

20 MS. SCHWARTZ: Okay, if you need that
21 information, these are all 2005 (phonetic).

22 MR. KENNY: Got it.

23 MS. SCHWARTZ: Do you know what that is?

24 MR. KENNY: I do not.

25 MS. SCHWARTZ: Okay.

1 BY MR. KENNY OF MR. SCHROEDER:

2 Q: Yeah, I realize that you didn't - - you didn't
3 file a Press Release ahead of the 10Q (phonetic) like as
4 in past times where you update the sort of unpriced
5 portion, or rather the book business for 2012 and 2013,
6 is, you know, do you have that information available and
7 can you relay that?

8 A: It's not public information; I don't have the
9 information with me.

10 Q: Okay.

11 MS. SCHWARTZ: You can ask two more
12 questions.

13 MR. KENNY: All right, let me focus then.

14 MS. SCHWARTZ: Because you've been asking
15 questions for over 10 minutes now.

16 BY MR. KENNY OF MR. SCHROEDER:

17 Q: Which Entities are utilizing the Dip Loan
18 (phonetic) and in what amounts? Said differently, which
19 Entities are net consumers and net producers of cash?

20 A: We have a concentrated cash collection and
21 cash disbursement accounts.

22 Q: Uh hum.

23 A: With other Entities then with Inter-Company
24 transactions between the concentration account Companies
25 and those individual Companies, so multiple Entities

1 utilize a benefit of the dip financing.

2 Q: How about I focus it in then, because I
3 realize that was perhaps too broad, what about, say,
4 Apogee, Hobbit and Catenary (phonetic) and the
5 environmental liabilities they have, is that funded
6 through the dip or are they generating cash to fund those
7 liabilities?

8 A: I don't know off-hand if they're generating
9 cash today.

10 Q: Okay, I guess, this last question then. Are
11 the retiree benefit obligations being self-funded, or are
12 those funded through the dip?

13 A: Again, all disbursements and cash collections
14 run through a centralized entity or centralized account,
15 so there are multiple entities that have obligations that
16 are Inter-Company Payables and Receivables.

17 Q: I'll ask it differently then. Understanding
18 the Cash Concentration Account and the Inter-Company
19 Receivable and Payables, have there been any Companies
20 where retiree benefit obligations are paid on their behalf
21 in which they are increasing the payable that they owe to
22 Patriot Coal Corp. to take it as your Cash Management
23 Entity?

24 A: I would think the answer to that is yes, I
25 don't know.

1 Q: And I would take it that, just as it relates
2 to the Inter-Companies, this would be something that's
3 disclosed in the schedules, correct?

4 A: We will provide Inter-Company information as
5 part of the schedules and statement.

6 MR. KENNY: Okay, I guess then my time is
7 up, thank you.

8 MS. SCHWARTZ: Is there any other question
9 you have to ask?

10 BY MR. KENNY OF MR. SCHROEDER:

11 Q: Well I did have, if you give me the moment, I
12 did have a question, it's just, what would you think is
13 sort of a steady state amount of LC's required to support
14 Patriot's ongoing business operations?

15 A: We have, I believe, 356 million today - -

16 Q: Uh hum.

17 A: We've had that balance for a little while now
18 - -

19 Q: Right.

20 A: I don't know what the balance will be three
21 months, six months, nine months from now - -

22 Q: Uh hum.

23 A: But it's been at that level roughly 356
24 million now for awhile.

25 Q: Okay, I mean, I just note that there's like a

1 45 million dollar LC posted to like West Virginia as it
2 relates to some of the environmental stuff, I wasn't sure
3 if there's some of these LC's which you'll complete some
4 sort of obligation they've, you know, poof go away.

5 A: Is that a question?

6 Q: Yes, I'll - - are there any - - are there any
7 LC's that you anticipate that are going to go away in the
8 near term?

9 A: Not in the near, well, I don't anticipate any
10 going away in the next month or two.

11 Q: Uh hum. What about in the next 18?

12 A: I'm sure there will be some changes to the LC
13 balance, I don't know how much to anticipate it's going to
14 go up or down in the next 18 months.

15 MR. KENNY: Okay, fair enough, thank you.

16 MS. SCHWARTZ: Thank you, Mr. Kenny. Sir?

17 NEW SPEAKER: (Inaudible - talking too low).

18 MS. SCHWARTZ: Okay, good, does anybody
19 else have any questions or would like to examine
20 the Debtor? Okay, I have - - yes, sir, come on
21 up. Please state your name for the Record and
22 the party whom you represent?

23 MR. AMBROISE: Serge Ambroise, with
24 Kennedy, Jennik and Murray, Counsel to the
25 United Mineworkers.

1 MS. SCHWARTZ: Thank you, sir, go ahead.

2 MR. AMBROISE: Just a couple of quick
3 questions.

4 BY MR. AMBROISE OF MR. SCHROEDER:

5 Q: You were asked if PCX Enterprises has any bank
6 accounts in New York, I believe, and your answer was, no,
7 is that correct?

8 A: No.

9 MR. SCHAIBLE: I don't think that was his
10 answer.

11 MS. SCHWARTZ: That wasn't his answer.

12 MR. SCHROEDER: That wasn't my answer.

13 BY MR. AMBROISE OF MR. SCHROEDER:

14 Q: Oh, what was your answer?

15 A: Yes.

16 Q: Yes, okay. Oh, that was the one with the
17 98,000, is that correct?

18 A: Yes.

19 Q: Okay, I guess this - - I don't think you were
20 asked if Patriot Beaver Dam Holdings had any bank
21 accounts, okay, that's a question I had for you?

22 A: I don't believe it does.

23 Q: Okay. Does PCX Enterprises have any property,
24 real property, do you know?

25 A: I don't believe so.

1 Q: All right, the same question for Patriot
2 Beaver Dam Holdings?

3 MR. SCHAIBLE: Just be - - just be clear
4 for the Record, when you say real property, what
5 do you mean, you mean, you mean the commonly
6 designed real property buildings and property
7 - - and real estate?

8 MR. AMBROISE: Yes.

9 MR. SCHAIBLE: I just wanted to make sure.
10 BY MR. AMBROISE OF MR. SCHROEDER:

11 Q: Yes, same question for Patriot Beaver Dam
12 Holdings any real property, if you know?

13 A: I don't believe so.

14 Q: Do you know if there are any Contracts with
15 any - - and those PCX Enterprises have any Contracts with
16 any New York Companies?

17 A: I don't know.

18 Q: And to the extent that you know, same question
19 for Patriot Beaver Dam Holdings?

20 A: I don't know.

21 MR. AMBROISE: All right, that's it.

22 MS. SCHWARTZ: Okay, thank you. Does
23 anybody else have any questions that they would
24 like to ask of the Debtors today? Okay, before
25 we adjourn, I had asked you some questions

1 earlier also with respect to each of PCX
2 Enterprises and Patriot Beaver Dam. You
3 testified that you didn't have the information
4 with respect to the questions I asked you to the
5 extent subsequent to today, you have that
6 information or can obtain that information from
7 other people at your Company, I'd ask that you
8 please provide that to my office.

9 MR. SCHROEDER: Can I ask you what
10 information specifically you're referring to?

11 MS. SCHWARTZ: Yes, sure. I asked with
12 respect to each Company, some of them you
13 answered, you had some information, but I asked
14 about what assets Patriot Beaver Dam had that
15 were in New York.

16 MR. SCHROEDER: Okay.

17 MS. SCHWARTZ: I asked what assets Patriot
18 Coal Corporation had that were in New York and
19 you were unable to identify them for me. It may
20 be that you put this information in papers that
21 you file with respect to the Venue Motions, but
22 to the extent you have that information would
23 be, I would ask that you please provide it to
24 us. I had asked and continue, would like to
25 know how each of these Companies were funded,

1 where them, you said that there was \$98,000 that
2 was placed in a bank account for PCX Enterprise,
3 I would like to know where that \$98,000 came
4 from.

5 I also asked what - - why the Holding
6 Company was formed and you had indicated you
7 didn't know and you also had stated, Mr.
8 Schaible, that that was a legal question. I
9 believe that that may, in fact, be a factual
10 question, as well, and to the extent that you
11 have information that you can provide us with
12 respect to those two Companies, I'd appreciate
13 it.

14 I has also, and I think, Mr. Schroeder, you
15 can confirm, neither of those Companies have
16 employees, is that correct?

17 MR. SCHROEDER: That's my understanding.

18 BY MS. SCHWARTZ OF MR. SCHROEDER:

19 Q: And neither of those Companies have offices in
20 New York, is that correct?

21 A: That's my understanding.

22 Q: And I don't know if you could answer this
23 question, but if you can, would you know the
24 reorganization needs of those two Companies?

25 A: No, I don't.

1 Q: Okay, so if subsequent to today, consulting
2 with your other - -

3 MR. SCHAIBLE: I'm sorry, just to be clear,
4 Mr. Schroeder did testify that both of those
5 Companies are Guarantors and their approximately
6 450 million dollars - -

7 MS. SCHWARTZ: That's, well actually here's
8 the 200 number, but what I was - -

9 MR. SCHAIBLE: 200 plus.

10 MS. SCHWARTZ: Right, but that was when I
11 asked him whether or not those Companies had
12 Creditors and that was what his response was,
13 not what the reorganization needs were for the
14 Company, so if you, Mr. Schaible, think that
15 that's the need for the reorganization, then I'm
16 sure that you can provide - - you through - -

17 MR. SCHAIBLE: Again, we'll take all of
18 these - -

19 MS. SCHWARTZ: That's fine.

20 MR. SCHAIBLE: We'll take all of these
21 questions under advisement.

22 MS. SCHWARTZ: That's fine.

23 MR. SCHAIBLE: On the Record we're not
24 agreeing to provide this information, but we'll
25 take the request under advisement and we

1 appreciate it.

2 MS. SCHWARTZ: Okay and I'm asking, I just,
3 for the Record, I'm asking you for the
4 information.

5 MR. SCHAIBLE: Sure, I understand that.

6 MS. SCHWARTZ: Okay. Just to be clear, I
7 think those were pretty much the questions that
8 Mr. Schroeder said he didn't have specific
9 knowledge.

10 MR. SCHAIBLE: Okay, thank you, we'll take
11 the - - those requests under advisement and
12 we'll be in touch with you at (Inaudible)
13 Office, thank you.

14 MS. SCHWARTZ: Yeah, I'm just checking my
15 - - right, and I had said that for the adjourn
16 date - -

17 MR. SCHAIBLE: Uh hum.

18 MS. SCHWARTZ: Ms., what was her name?

19 MR. SCHAIBLE: Jones.

20 MS. SCHWARTZ: Jones, Ms. Jones, we would
21 ask that she be here so we can ask her specific
22 questions about, among other things, the
23 Petitions that she assigned.

24 MR. SCHAIBLE: Sure.

25 MS. SCHWARTZ: Okay, so - -

1 MR. SCHAIBLE: Again, taking it under
2 advisement.

3 MS. SCHWARTZ: What we will - - well,
4 there's no under advisement about that, this
5 Meeting is being adjourned because you did not
6 produce the party who signed the Petitions, that
7 is in part why it's being adjourned, it's also
8 being - -

9 MR. SCHAIBLE: It's my understanding.

10 MS. SCHWARTZ: Let me please - - I - - let
11 me please finish. The Meeting is being
12 adjourned because you have an - - you received an
13 extension date to file your Schedules and
14 Statements of Financial Affairs.

15 It is also being adjourned because the
16 person that you offered today to testify on
17 behalf of the Company cannot answer specific
18 questions about the Petitions, he's not the
19 Signator, he said he couldn't answer there, he
20 said that he believes that he signed off on them,
21 but he doesn't have specific recollection about
22 each Petition, okay, that's what we're saying, we
23 want the person who signed the Petitions to be
24 able to be here to answer questions.

25 Okay, at this point we will adjourn the

1 Meeting until a date that works for the Company
2 and for the United States Trustees Office, the
3 Debtors will put a Notice on the Docket advising
4 of the adjourn date.

5 Mr. Schroeder, I want to thank you very
6 much for coming here today and answering my
7 questions.

8 MR. SCHROEDER: Thank you.

9 MS. SCHWARTZ: Okay, thank you.

10 MR. SCHROEDER: Nice to meet you.

11 MS. SCHWARTZ: Nice to meet you.

12 [END OF HEARING]

13

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C E R T I F I C A T E

I, {Joanne R. Costello}, certify that the foregoing transcript of proceedings was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Signature: {*Joanne R. Costello*}

Date: {08/26/12}

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

PATRIOT COAL SALES LLC)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
KEYSTONE INDUSTRIES LLC)	
)	
Defendant.)	

COMPLAINT

COMES NOW Plaintiff, Patriot Coal Sales LLC, and for its Complaint against Defendant, Keystone Industries LLC, states the following:

The Parties

1. Patriot Coal Sales LLC (“Patriot”) is, and at all relevant times was, a limited liability corporation organized and existing under the laws of the State of Delaware with its principal place of business in St. Louis, Missouri. Patriot sells varying grades of coal mined by affiliated entities. Patriot’s only member is Patriot Coal Corporation, a corporation organized and existing under the laws of the State of Delaware with its principal place of business in St. Louis, Missouri.

2. Keystone Industries LLC (“Keystone”) is, and at all relevant times was, a limited liability corporation organized and existing under the laws of Maryland with a principal place of business in Fort Myers, Florida. Keystone’s members are all individuals residing in Florida.

Jurisdiction and Venue

3. For jurisdictional purposes, Patriot is a citizen of Delaware and Missouri and Keystone is a citizen of Maryland and Florida. 28 U.S.C. § 1332(c)(1).

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy, exclusive of interest and costs, exceeds \$75,000, and this action is between citizens of different states.

5. This Court may properly exercise personal jurisdiction over Keystone because it has sufficient minimum contacts with West Virginia, including entering into a contract in West Virginia that was to be performed in West Virginia.

6. Venue is proper in this District because a substantial part of the events or omissions giving rise to this claim occurred in this District. 28 U.S.C. § 1391(b)(2).

Keystone Breaches the Parties' Contract

7. On or about December 7, 2011, Patriot and Keystone entered into a contract pursuant to which Keystone agreed to purchase coal from Patriot (the "Coal Confirmation"). Because the Coal Confirmation contains a confidentiality provision, Patriot will file a true and accurate of copy the Coal Confirmation under seal as Exhibit 1 hereto.

8. Pursuant to the Coal Confirmation, Keystone was to take delivery of, and pay for, coal from Patriot upon certain specified terms and conditions during 2012. Those terms and conditions required Keystone to take monthly delivery of its total purchase obligation on a pro rata basis.

9. It is Patriot's understanding that Keystone intended to resell the Patriot coal to its own buyer. Keystone's obligations under the Coal Confirmation were not contingent, however, upon Keystone identifying or contracting with a buyer nor are Keystone's obligations contingent upon the performance of its buyer.

10. Keystone has not taken or paid for any coal as it is obligated to do under the Coal Confirmation.

11. On May 11, 2012, Patriot sent a letter notifying Keystone that it was in breach and default of the Coal Confirmation (the "Notice of Default"). A true and accurate copy of the Notice of Default will be filed under seal as Exhibit 2, hereto. The Notice of Default provided Keystone thirty (30) days to cure its default under the Coal Confirmation.

12. As of the date of this Complaint, Keystone has not cured its breach and default of the Coal Confirmation. Keystone failed to take or pay for a single ton of coal as it is obligated to do under the Coal Confirmation despite having contracted to take and pay for hundreds of thousands of tons of coal by the date of this Complaint.

13. By its words and actions, Keystone has repudiated the Coal Confirmation in its entirety.

COUNT FOR BREACH OF CONTRACT

14. Keystone and Patriot entered into the Coal Confirmation. The Coal Confirmation is a valid and enforceable contract.

15. Both Keystone and Patriot had mutual obligations under, and received consideration from, the Coal Confirmation.

16. Patriot was willing and able to fully perform its obligations under the Coal Confirmation and did in fact perform any and all obligations as they arose. Any conditions precedent to Keystone's performance of the Coal Confirmation have occurred or otherwise been satisfied.

17. Keystone breached the Coal Confirmation by failing to take delivery of and pay for its coal obligation as provided for by the Coal Confirmation. Keystone also breached the Coal Confirmation by failing to cure its default under the Coal Confirmation.

18. Patriot has been damaged by Keystone's breach of the Coal Confirmation, including but not limited to, the present value of the loss of sales to Keystone in the quantities and prices specified under the Coal Confirmation for the entire duration of the contract.

WHEREFORE, Patriot prays for judgment in its favor and against Keystone: (a) for damages representing the present value of the loss of sales to Keystone in the quantities and prices specified in the Coal Confirmation, in an amount to be determined at trial, but in any event in excess of the jurisdictional minimum; (b) pre- and post-judgment interest; and (c) for such further and additional relief as the Court deems just and proper.

Respectfully submitted,

PATRIOT COAL SALES, LLC

By Counsel,

DINSMORE & SHOHL, LLP

/s/ W. Henry Jernigan, Jr.

W. Henry Jernigan, Jr. (WVSB #1884)

900 Lee Street, Suite 600

Huntington Square

Charleston, WV 25301

Telephone: (304) 357-0900

Fax: (304) 357-0919

henry.jernigan@dinsmore.com

THOMPSON COBURN LLP

Roman P. Wuller

Mark A. Mattingly

One US Bank Plaza

St. Louis, Missouri 63101

Telephone: (314) 552-6000

Fax: (314) 552-7000

mmattingly@thompsoncoburn.com

Attorneys for Plaintiff

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Patriot Coal Corporation
12312 Olive Highway
Suite 403
St. Louis, MO 63111
314.278.3800
www.patriotcoal.com

November 8, 2011

Keystone Industries
Mike Gatens
1376 Jackson Street - Suite 401
Fort Meyers, FL 33901

Dear Mr. Gatens

This letter confirms the agreement between Keystone Industries ("Buyer") and Patriot Coal Sales LLC ("Seller") with respect to the transaction dated November 8, 2011 as described below and in the Additional Terms and Conditions as set forth in Exhibit A as attached hereto (hereinafter referred to as "Confirmation")

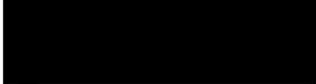
TRANSACTION TYPE: Physical
PRODUCT: High Volatile Met Coal
BUYER: Keystone Industries
SELLER: Patriot Coal Sales LLC
BUYER'S CONTACT: Mike Gatens (239) 822-6401
SELLER'S CONTACT: Steve McComas (304) 380-0277
TERM: January - December 2012

QUANTITY:



RWB 12/7/11

SCHEDULE:



ppc 12/6/11

BASE PRICE:

PAYMENT TERMS:

Payment shall be made 10 Days after receipt of invoice *

INVOICES:

Seller shall submit an invoice for coal delivered to Buyer in a form acceptable to the Parties at the address below.

Name: Keystone Industries
Address: 1376 Jackson Street Suite 401
Fort Meyers, FL 33901
Attn: Jane Schipp: jschipp@keystoneindustriesslco.com



ppc 12/6/11 *RWB 12/7/11*

Ex. 1

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DELIVERY POINT:

[REDACTED]

DESTINATION:

Gulf export or shipments to Canada. Seller retains the right to refund of black lung excise tax and Buyer shall provide Seller necessary documentation to obtain such refund.

Should Buyer decide to sell the coal purchased under this offer to non-export destinations then Seller's reasonable approval shall be required, and such reasonable approval shall not be unreasonably withheld, and the price shall be increased by \$1.10 per ton to compensate Seller for the loss of the black lung excise tax refund rights.

SOURCE:

[REDACTED]

SPECIFICATION:

Typical as received basis in accordance with ASTM standards for each shipment in a month, as follows:

Quality Type (Units)	Typical	Min/Max Value	Premium-Penalty	Reject
Moisture				
Ash (Dry)				
Sul (Dry)				
Fluidity				
Vol				
Oxidation				
Amu				
FBI				

QUALITY PRICE ADJUSTMENTS:

[REDACTED]

SAMPLING:

Sampling for each shipment shall be performed at the Delivery Point via automatic sampler with the cost for such sampling for Seller's account.

ANALYSIS:

Analysis shall be performed in accordance with ASTM standards by a mutually acceptable independent commercial laboratory appointed by Seller. Cost for such analysis shall be for Seller's account. Such analysis shall be final and binding and govern for payment.

WEIGHTS:

The weight for each Shipment shall be determined by certified barge draft survey taken at the Delivery Point by a mutually acceptable third party. The cost of weighing shall be for Seller's account and shall be final and binding and governing for payment.

off

Dec 06 2011 8:28AM

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All of the terms, conditions and provisions as provided above are hereinafter defined as the "Transaction". In addition to the terms and conditions as contained in this Confirmation, the attached Additional Terms and Conditions are hereby made part of this Confirmation. In the event any terms of this Transaction are conflicting or inconsistent with the terms of the Additional Terms and Conditions, the terms of this Transaction will control. If this Confirmation correctly sets forth the terms and conditions of this Transaction, please promptly confirm in a reply to us by signing below and sending this Confirmation (or a copy hereof) to us by fax to (304) 513-0080.

If Buyer objects to any differences between the binding agreement of the parties regarding this Transaction and the contents of the Confirmation, Buyer must promptly notify Seller of its objections in writing.

If you are in agreement with the foregoing, please execute where indicated below and fax a copy of this letter to Seller at (304) 513-0080.

Sincerely,

Patriot Coal Sales LLC

By: *Mark J. Roth*

Title: PRESIDENT

Date: 12/7/2011

AGREED TO AND ACCEPTED BY:

Keystone Industries

By: *Philp [Signature]*

Title: Director of Project Finance

Date: 12/6/11

Handwritten initials

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EXHIBIT A

ADDITIONAL TERMS AND CONDITIONS

1. **Substitution.** Seller shall have the right, but not the obligation, to supply coal from sources other than that specified, but any such substitute coal(s) shall be substantially of the quality set forth in this Confirmation. The price for such substitute coal will be equal to, on a cents per million Btu basis, the cost of purchasing and transporting coal from the original Source to the Buyer's plant, with any increased or decreased transportation expense for Seller's account. In the event that substitute coal is supplied, the Point of Delivery shall be the dock where the substitute coal is shipped.
2. **Title/Risk of Loss.** Seller warrants good title to all coal delivered hereunder. Title to and risk of loss of all coal bought and sold under this agreement will pass to Buyer and coal will be considered to be delivered by Seller when it is loaded into the barge at the Delivery Point.
3. **Force Majeure.** If because of force majeure either party is unable to carry out its obligations, in whole or in part, under this Confirmation, except obligations to pay money to the other party, then the obligations of such party shall be suspended to the extent made necessary by such force majeure and during its continuance, provided such force majeure is eliminated insofar as possible and economically practicable with all reasonable dispatch. Any deficiency in coal tonnage to be delivered under this Confirmation caused by such force majeure shall not be made up except by mutual consent of the Buyer and Seller, subject to a mutually agreeable schedule. Should the force majeure continue for 60 consecutive days, the party not claiming force majeure may, at its option, terminate this Confirmation on 3 days prior written notice.

The term "Force Majeure" as used in this Confirmation shall mean any cause beyond the reasonable control of either party (including any third parties to which either party has contracted), and without the fault or negligence of the party invoking this clause, including, but not limited to: acts of God, earthquakes, floods, fires and explosions, lightning, fog, hurricanes, acts of public enemies, war or warlike acts of any kind, riots, terrorism, rebellion or revolution, mobilization, civil commotion, strikes, threats of violence, labor disputes, labor or material shortages, lockouts, insurrections, boycotts, and acts of judicial or military authorities, embargoes, blockades, governmental restrictions on exports, imports or foreign exchange, failure to obtain one or more permits for the mine after making commercially reasonable efforts to do so, breakdowns to equipment, plants or facilities (including a forced outage or an extension of a scheduled outage of plants, equipment or facilities to make repairs to avoid breakdowns thereof or damage thereto) or adverse geological conditions at the mine. Without limiting the generality of the foregoing, Force-Majeure may be invoked if any such above event has taken place at the mine and/or at the docks serving the mine or the plant, and/or at the plant. Force Majeure shall not be based on: (i) Buyer's inability to economically use the coal purchased hereunder; or (ii) Seller's ability to sell the coal at a price greater than the price set forth herein. Settlement of a strike, lockout or other labor dispute shall be deemed beyond the reasonable control of the party claiming excuse thereby regardless of the cause of, or the ability of such party to settle, such dispute.

The parties hereto agree that if, as a result of a force majeure event, the affected party is unable to meet all of its obligations under this Confirmation and any other coal sales agreement which Seller has entered into with respect to the Source, or Buyer has entered into with respect to supply of coal, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated on a pro rata basis unless prohibited in a prior agreement. The affected party shall

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p. 5

provide suitable proof to the other party to substantiate any claim or allocation made under this section

- 4. Analysis. Seller or Seller's contractor shall analyze Seller's split sample pursuant to all applicable ASTM standards for the quality parameters set forth in this Confirmation and shall send a report of its analysis within 48 hours after the loading of the relevant trainload or barge lot of coal to the following electronic mail (email) addresses:

ngstehens@KeystoneIndustriesllc.com
 f.schupp " " " " " "

rw B 12/7/11
 PPK 12/5/11

or to such other person and/or location as Buyer shall notify Seller in writing (or Seller shall deliver such report by any other method agreed upon by Seller and Buyer) prior to the arrival of the trainload or barge lot of sampled coal at Buyer's discharge facility. The results of the analysis of Seller's split sample shall determine quality of coal delivered hereunder for acceptance or rejection purposes.

If the sampling system utilized at the mine becomes inoperative for any reason, Buyer and Seller will agree on an alternate method of sampling.

- 5. Failure to Remit Payment. Failure of the Buyer to pay for coal delivered in accordance with the terms hereof shall give Seller the option to (a) suspend further shipments until all previous shipments are paid for, or (b) cancel the Confirmation upon written notice to Buyer. Additionally, Seller may charge interest at the Prime Rate, as published in the Money Rates section of The Wall Street Journal, plus [REDACTED]. If in the judgment of Seller, Buyer's ability to perform hereunder has become impaired, Seller shall have the right, upon notice to Buyer, to suspend further shipments until Seller receives adequate assurance of Buyer's performance in accordance with Section 15. If such security is not furnished within ten (10) days after receipt of such notice, Seller shall have the right to cancel this Confirmation upon written notice to Buyer.
- 6. Assignment. This Confirmation shall not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Confirmation without such consent to a parent company, or any other affiliate of the assigning party, or for purposes of securing indebtedness, but assignor shall continue to be liable for its performance hereunder.
- 7. Waiver of Default/Termination Rights. A party's failure to insist in any one or more instances upon strict performance of a provision of, or to take advantage of any of its rights under this Confirmation shall not be construed as a waiver of such provision or right. No default of either party to this Confirmation in the performance of any of its covenants or obligations hereunder, except the obligation for payment, shall result in a right to the other party to cancel this contract unless such defaulting party shall fail to correct the default within thirty (30) days after written notice of claim of such default has been given by the party claiming such default.
- 8. Notice. Notice sent by facsimile, first class, certified or registered U.S. Mail, or a reputable overnight courier service, addressed to the party to whom such notice is given, at the address of such party stated below or to such other address (or facsimile number) as such party may designate, shall be deemed sufficient notice in any case requiring notice under this Confirmation.

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If to Buyer: *Keystone Industries, LLC*
1375 Jackson Street, Suite 401
Port Myers, Florida 33901
Attn: Tom Schell

234-837-7474 P
2514 F

jschipp@keystoneindustrial.com

If to Seller:

Patriot Coal Sales LLC
Attn: Contract Administration
12312 Olive Boulevard, Suite 400
St Louis, MO 63141
Phone Number: 314-275-3800; Facsimile: 314-275-3880

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RWB
12/7/11

9. Warranty and Limitation of Liability. EXCEPT AS EXPRESSLY STATED IN THIS CONFIRMATION, SELLER MAKES NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING FROM A COURSE OF DEALING, USAGE OF TRADE, OR OTHERWISE, REGARDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, QUANTITY, OR OTHERWISE. Neither party shall be liable for any punitive, special, incidental or consequential damages (including without limitation, loss of profits or overhead), based upon breach of warranty or of contract, negligence or any other theory of legal liability arising out of this Confirmation.
10. Confidentiality. Each party acknowledges that this Confirmation contains confidential information which would put them at a competitive disadvantage if disclosed to the public. During the term hereof and for a period of one (1) year thereafter, the terms of this Confirmation shall be kept confidential by the parties, except to the extent of disclosure (i) required by law, regulation, or judicial or administrative order, (ii) to the advisors, agents, accountants, or lawyers of a party, or (iii) upon the written request of a party in which case the other party shall not unreasonably withhold its consent to such written request.
11. Applicable Law. This Confirmation shall be construed and governed in accordance with the laws of the state of New York, including, without limitation, the Uniform Commercial Code, without giving effect to principles of conflicts of law.
12. Entire Agreement; Amendments. This Confirmation (which is comprised of this Exhibit A and the Transaction to which it is attached and made a part) contains the entire agreement of the parties, is expressly limited to the terms and conditions specifically set forth or incorporated by reference herein, and supersedes all prior communications between the parties regarding the subject matter of this Confirmation. This Confirmation shall be amended or modified only by agreement of the parties in writing.
13. Severability; Survival; No Third Party Beneficiaries. This Confirmation supersedes and replaces any other offers or representations regarding this Transaction to the extent of any irreconcilable conflict. Should any provision of this Confirmation for any reason be declared invalid or unenforceable by an order of any court having jurisdiction, such decision shall not affect the validity or enforceability of the remaining provisions of this Confirmation, and such provisions shall remain in full force and effect as if this Confirmation had been executed without the invalid or unenforceable provision. This Confirmation is made and entered into for the sole protection and legal benefit of the parties, and their permitted successors and assigns, and no other person shall

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be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Confirmation.

14. Duty to Mitigate Damages. Both parties shall be subject to a commercially reasonable good faith obligation to mitigate any damages hereunder.

15. Uniform Commercial Code. The parties hereto acknowledge and agree that this Agreement is subject to the applicable provisions of the Uniform Commercial Code as adopted by the State of New York and as modified from time to time; provided, however, that each party hereto hereby expressly waives any right to consequential, incidental, punitive, exemplary or indirect damages, lost profits, or business interruption damages it may have thereunder.

16. Adequate Assurance. If Buyer's long-term creditworthiness significantly deteriorates from the date of this Confirmation (as determined by Seller using commercially reasonable standards), Buyer shall provide Seller with Adequate Assurance. Adequate Assurance for Buyer may mean collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Seller. Letter(s) of Credit means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P's or A3 from Moody's, in a form acceptable to Seller in whose favor the Letter of Credit is issued. Costs of a Letter of Credit shall be borne by Buyer. Until Buyer delivers Adequate Assurance to Seller, Seller shall have the right, without limiting any other rights that may be available to Seller, to require payment not more than three (3) business days in advance of loading of a Shipment.

Buyer shall deliver within 60 days following the end of each fiscal year, a copy of their consolidated financial statements for such fiscal year. Provided, however, should any such statements not be available on a timely basis due to a delay in preparation, such delay shall not be an Event of Default so long as Buyer diligently pursues the preparation and delivery of the statements.



Patriot Coal Corporation
12312 Olive Boulevard
St. Louis, Missouri 63141
314:275:3600
www.patriotcoal.com

May 11, 2012

Mr. Tom Scholl
Keystone Industries, LLC
1375 Jackson St., Suite 401
Fort Myers, FL 33901

Re: Notice of Default of Coal Confirmation Letter dated November 9, 2011 between
Keystone Industries ("Keystone") and Patriot Coal Sales LLC ("Patriot")

Dear Mr. Scholl:

Pursuant to the Coal Confirmation Letter ("the Agreement"), Patriot hereby notifies Keystone that it is in breach and default of the Agreement. Specifically, the Agreement obligates Keystone to purchase certain quantities of coal in 2012 scheduled at approximately [REDACTED]. Keystone is in default of this obligation as it has failed to make any purchases over the last four months.

Pursuant to Section 7 of the Additional Terms and Conditions of the Agreement, Patriot demands that Keystone cure its default within thirty (30) days after the date hereof. If Keystone fails to cure its default, Patriot will pursue its rights and remedies under the Agreement to the fullest extent of the law.

Please contact me at (304) 380-0327 at your earliest convenience to discuss these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert W. Bennett". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Robert W. Bennett
Senior Vice President & Chief Marketing Officer

cc: Jane Schipp, Keystone
S. McComas, Patriot

Ex. 2

REDACTED

EXHIBIT C

**REQUEST
 FOR SERVICE ABROAD OF JUDICIAL OR
 EXTRAJUDICIAL DOCUMENTS
 DEMANDE AUX FINS DE SIGNIFICATION OU DE NOTIFICATION A L'ÉTRANGER
 D'UN ACTE JUDICIAIRE OU EXTRAJUDICIAIRE**

Convention on the Service Abroad of Judicial and Extrajudicial Documents in
 Civil or Commercial Matters, signed at The Hague, the 15th of November 1965.
 Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en
 matière civile ou commerciale, signée à La Haye le 15 novembre 1965.

Identity and address of the applicant Identité et adresse du requérant <u>Kanawha County Circuit Clerk</u> <u>111 Court Street</u> <u>Charleston, WV 25301</u> <u>United States of America</u> <u>Tel. (305) 357-0440</u>	Address of receiving authority Adresse de l'autorité destinataire <u>The Chief Registrar</u> <u>Isle of Man Courts of Justice</u> <u>Deemsters Walk</u> <u>Douglas</u> <u>ISLE OF MAN</u> <u>IMI SAR</u>
---	---

The undersigned applicant has the honour to transmit – in duplicate – the documents listed below and, in conformity with Article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e.:

Le requérant soussigné a l'honneur de faire parvenir – en double exemplaire – à l'autorité destinataire les documents ci-dessous énumérés, en la priant, conformément à l'article 5 de la Convention précitée, d'en faire remettre sans retard un exemplaire au destinataire, à savoir :

(Identity and address) (identité et adresse) <u>Bridgehouse Commodities Trading Limited (Registered Office)</u> <u>Bridge House</u> <u>Bridge Street</u> <u>Castletown, IM9 1AX</u> <u>ISLE OF MAN</u>
--

<input checked="" type="checkbox"/>	a) in accordance with the provisions of sub-paragraph a) of the first paragraph of Article 5 of the Convention* selon les formes légales (article 5, alinéa premier, lettre a)*
<input type="checkbox"/>	b) in accordance with the following particular method (sub-paragraph b) of the first paragraph of Article 5)*: selon la forme particulière suivante (article 5, alinéa premier, lettre b)* : _____
<input type="checkbox"/>	c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of Article 5)* le cas échéant, par remise simple (article 5, alinéa 2)*

The authority is requested to return or to have returned to the applicant a copy of the documents - and of the annexes* - with the attached certificate.
 Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte - et de ses annexes* - avec l'attestation ci-jointe.

List of documents / Énumération des pièces

<ul style="list-style-type: none"> • <u>Summons</u> • <u>Complaint</u>
--

* If appropriate / s'il y a lieu

Done at / Fait à <u>Circuit Court for Kanawha County,</u> <u>West Virginia,</u> The / le <u>Office of Circuit Clerk</u>	Signature and/or stamp Signature et / ou cachet
---	--



CERTIFICATE ATTESTATION

The undersigned authority has the honour to certify, in conformity with Article 6 of the Convention,
 L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention,

1. that the document has been served*
 que la demande a été exécutée*

-- the (date) / le (date):	_____
-- at (place, street, number): à (localité, rue, numéro) :	_____

-- in one of the following methods authorised by Article 5: dans une des formes suivantes prévues à l'article 5 :	
<input type="checkbox"/>	a) in accordance with the provisions of sub-paragraph a) of the first paragraph of Article 5 of the Convention* selon les formes légales (article 5, alinéa premier, lettre a)*
<input type="checkbox"/>	b) in accordance with the following particular method*: selon la forme particulière suivante* : _____
<input type="checkbox"/>	c) by delivery to the addressee, if he accepts it voluntarily* par remise simple*

The documents referred to in the request have been delivered to:
 Les documents mentionnés dans la demande ont été remis à :

Identity and description of person: Identité et qualité de la personne :	_____
Relationship to the addressee (family, business or other): Liens de parenté, de subordination ou autres, avec le destinataire de l'acte :	_____

2. that the document has not been served, by reason of the following facts*:
 que la demande n'a pas été exécutée, en raison des faits suivants*:

- In conformity with the second paragraph of Article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement*.
 Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint*.

Annexes / Annexes

Documents returned: Pièces renvoyées :	_____
In appropriate cases, documents establishing the service: Le cas échéant, les documents justificatifs de l'exécution :	_____

* if appropriate / s'il y a lieu

Done at / Fait à _____ The / le _____	Signature and/or stamp Signature et / ou cachet
--	--

WARNING
AVERTISSEMENT

Identity and address of the addressee
Identité et adresse du destinataire
Bridgehouse Commodities Trading Limited (Registered Office)
Bridge House
Bridge Street
Castletown, IM9 1AX
ISLE OF MAN

IMPORTANT

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE 'SUMMARY OF THE DOCUMENT TO BE SERVED' WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

IF YOUR FINANCIAL RESOURCES ARE INSUFFICIENT YOU SHOULD SEEK INFORMATION ON THE POSSIBILITY OF OBTAINING LEGAL AID OR ADVICE EITHER IN THE COUNTRY WHERE YOU LIVE OR IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED.

ENQUIRIES ABOUT THE AVAILABILITY OF LEGAL AID OR ADVICE IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED MAY BE DIRECTED TO:

TRÈS IMPORTANT

LE DOCUMENT CI-JOINT EST DE NATURE JURIDIQUE ET PEUT AFFECTER VOS DROITS ET OBLIGATIONS. LES « ÉLÉMENTS ESSENTIELS DE L'ACTE » VOUS DONNENT QUELQUES INFORMATIONS SUR SA NATURE ET SON OBJET. IL EST TOUTEFOIS INDISPENSABLE DE LIRE ATTENTIVEMENT LE TEXTE MÊME DU DOCUMENT. IL PEUT ÊTRE NÉCESSAIRE DE DEMANDER UN AVIS JURIDIQUE.

SI VOS RESSOURCES SONT INSUFFISANTES, RENSEIGNEZ-VOUS SUR LA POSSIBILITÉ D'OBTENIR L'ASSISTANCE JUDICIAIRE ET LA CONSULTATION JURIDIQUE, SOIT DANS VÔTRE PAYS, SOIT DANS LE PAYS D'ORIGINE DU DOCUMENT.

LES DEMANDES DE RENSEIGNEMENTS SUR LES POSSIBILITÉS D'OBTENIR L'ASSISTANCE JUDICIAIRE OU LA CONSULTATION JURIDIQUE DANS LE PAYS D'ORIGINE DU DOCUMENT PEUVENT ÊTRE ADRESSÉES À :

Legal Aid of West Virginia
922 Quarrier Street, 4th Floor
Charleston, WV 25301
Tel. 866-255-4370

It is recommended that the standard terms in the notice be written in English and French and where appropriate also in the official language, or in one of the official languages of the State in which the document originated. The blanks could be completed either in the language of the State to which the document is to be sent, or in English or French.

Il est recommandé que les mentions imprimées dans cette note soient rédigées en langue française et en langue anglaise et le cas échéant, en outre, dans la langue ou l'une des langues officielles de l'État d'origine de l'acte. Les blancs pourraient être remplis, soit dans la langue de l'État où le document doit être adressé, soit en langue française, soit en langue anglaise.

SUMMARY OF THE DOCUMENT TO BE SERVED
ÉLÉMENTS ESSENTIELS DE L'ACTE

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, signed at The Hague, the 15th of November 1965 (Article 5, fourth paragraph).
 Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye le 15 novembre 1965 (article 5, alinéa 4).

Name and address of the requesting authority: Nom et adresse de l'autorité requérante :	<u>Kanawha County Circuit Clerk</u> <u>111 Court Street</u> <u>Charleston, WV 25301</u> <u>United States of America</u> <u>Tel. (305) 357-0440</u>
--	--

Particulars of the parties*: Identité des parties* :	<u>Patriot Coal Sales LLC</u> <u>c/o Roman Wuller, Esq.</u> <u>Thompson Coburn LLP</u> <u>One US Bank Plaza</u> <u>St. Louis, MO 63101</u> <u>United States of America</u> <u>Tel. (314) 552-6000</u>
---	---

* If appropriate, identify and address of the person interested in the transmission of the document
 S'il y a lieu, identité et adresse de la personne intéressée à la transmission de l'acte

JUDICIAL DOCUMENT**
 ACTE JUDICIAIRE**

Nature and purpose of the document: Nature et objet de l'acte :	<u>Summons and Complaint from the Circuit Court for the County of Kanawha, State of West Virginia claiming damages for breach of contract and fraud against Bridgehouse Commodities Trading Limited and other defendants.</u>
--	---

Nature and purpose of the proceedings and, when appropriate, the amount in dispute: Nature et objet de l'instance, le cas échéant, le montant du litige :	<u>The breach of contract claim is for damages in the amount of the present value of the loss of coal sales to Bridgehouse Commodities Trading Limited by Patriot Coal through 2013 in the quantities and prices specified in the contract, pre- and post-judgment interest, and any other relief the Court deems just and proper. The fraud claim is for damages representing the present value of what Patriot would have received under the contract, punitive damages, pre- and post-judgment interest and any other relief the Court deems just and proper. Patriot has demanded a trial by jury on each claim.</u>
--	--

Date and Place for entering appearance**: Date et lieu de la comparution** :	<u>Appearance must be entered within 30 days of receipt of these documents in the Circuit Court of Kanawha County, West Virginia at 111 Court Street, Charleston, WV 25301; Tel. (305) 357-0440</u>
---	---

Court which has given judgment**: Jurisdiction qui a rendu la décision** :	<u>Not applicable.</u>
---	------------------------

Date of judgment**: Date de la décision** :	<u>Not applicable.</u>
--	------------------------

Time limits stated in the document**: Indication des délais figurant dans l'acte** :	<u>Appearance must be entered within 30 days of receipt of these documents in the Circuit Court of Kanawha County, West Virginia at 111 Court Street, Charleston, WV 25301; Tel. (305) 357-0440</u>
---	---

** if appropriate / s'il y a lieu

<input type="checkbox"/> EXTRAJUDICIAL DOCUMENT** ACTE EXTRAJUDICIAIRE**	
Nature and purpose of the document; Nature et objet de l'acte :	_____
Time-limits stated in the document**; Indication des délais figurant dans l'acte** :	_____
** if appropriate / s'il y a lieu	

CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Patriot Coal Sales LLC	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Case No. 12-C-578
	:	
Bridgehouse Commodities Trading	:	Judge Zakaib
Limited;	:	
	:	
Donald A. Jordan;	:	
	:	
Sentrum Holdings Limited; and	:	
	:	
Bridgehouse Capital Limited,	:	
	:	
Defendants.	:	

SUMMONS

To Bridgehouse Commodities Trading Limited:

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Tyler Williams, Plaintiff's attorney, whose address is P.O. Box 11887, Charleston, WV 25339, United States of America, an answer, including any related counterclaim you may have, to the complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have that must be asserted by counterclaim in the above styled civil action.

Dated: 6/15/12

Cathy S. Gibson
Clerk of Court
By: L. Allen
Deputy Clerk

✓ copy
2012 APR -3 PM 4:37
FILED
CATHY S. GAYSON, CLERK
WEST VIRGINIA CIR. COURT

IN THE CIRCUIT COURT FOR THE COUNTY OF KANAWHA
STATE OF WEST VIRGINIA

PATRIOT COAL SALES LLC)
)
 Plaintiff,)
)
 v.)
)
 BRIDGEHOUSE COMMODITIES)
 TRADING LIMITED;)
)
 DONALD A. JORDAN;)
)
 SENTRUM HOLDINGS LIMITED; and)
)
 BRIDGEHOUSE CAPITAL LIMITED)
)
 Defendants.)

Case No. 12-C-578
Judge Zakay

COMPLAINT

COMES NOW Plaintiff Patriot Coal Sales LLC, and for its Complaint against Defendants Bridgehouse Commodities Trading Limited, Donald A. Jordan, Sentrum Holdings Limited, and Bridgehouse Capital Limited states the following:

The Parties

1. Patriot Coal Sales LLC ("Patriot") is, and at all relevant times was, a limited liability corporation organized and existing under the laws of the State of Delaware with its principal place of business in St. Louis, Missouri and with offices in Charleston, West Virginia. Patriot sells varying grades of coal mined by affiliated entities.
2. Bridgehouse Commodities Trading Limited ("Bridgehouse") is, and at all relevant times was, a corporation organized and existing under the laws of the Isle of Man. Bridgehouse has offices in London, England and Doha, Qatar.

3. Donald A. Jordan ("Jordan") is an alien currently residing outside of the United States. He is, and at all relevant times was, the "managing director" of Bridgehouse and an officer and/or employee of Bridgehouse.

4. Sentrum Holdings Limited ("Sentrum") is, and at all relevant times was, a corporation organized and existing under the laws of the British Virgin Islands. Upon information and belief, Sentrum's principal place of business is London, England.

5. Bridgehouse Capital Limited ("Bridgehouse Capital") is, and at all relevant times was, a corporation organized and existing under the laws of England and Wales with a principal place of business in London, England.

Jurisdiction and Venue

6. This Court has personal jurisdiction over Defendants under West Virginia's Long-Arm Statute, W. Va. Code § 31D-15-1501(d)(1) and (2), in that Bridgehouse made a contract to be performed, in whole or in part, by a party thereto in this state. Sentrum and Bridgehouse Capital contracted to ensure Bridgehouse's performance of its contract in this state. Alternatively, Defendants committed a tort, in whole or in part, in this state by fraudulently inducing Patriot to contract by providing false assurances of Bridgehouse's performance.

7. Venue is proper in this County under W. Va. Code § 56-1-1(a)(1) in that this is where the cause of actions arose.

The Confirmation and Comfort Letter

8. In 2011, Bridgehouse and Patriot entered into negotiations for Bridgehouse to purchase coal from Patriot. Jordan negotiated on Bridgehouse's behalf.

9. Bridgehouse agreed to take delivery of, and pay for, a certain quantity of coal at a set price during 2012 and 2013. The agreement between Bridgehouse and Patriot was

memorialized in a coal confirmation letter dated September 16, 2011 ("the Confirmation"). The specific quantities and prices for the coal Bridgehouse promised to purchase from Patriot in 2012 and 2013 are set forth on page 1 of the Confirmation. The specific quantities and prices are not reproduced here because of the Confirmation's confidentiality provision. Because the Confirmation contains a confidentiality provision, a true and accurate copy of the Confirmation will be filed under seal as Exhibit 1 hereto if the Court grants Patriot's Motion to File Exhibits Under Seal filed contemporaneously with the Complaint.

10. Jordan executed the Confirmation on behalf of Bridgehouse on September 16, 2011.

11. Patriot conditioned its acceptance of the Confirmation upon Bridgehouse providing evidence of its creditworthiness and general ability to perform its obligations under the Confirmation. In response to Patriot's request, Bridgehouse and Jordan furnished a comfort letter dated October 27, 2011 ("the Comfort Letter"). The Comfort Letter provided that two affiliated entities, Sentrum and Bridgehouse Capital, would, *inter alia*, maintain affiliation and effective control of Bridgehouse and ensure that Bridgehouse remained adequately capitalized and funded to meet its financial obligations to Patriot under the Confirmation. A true and accurate copy of the Comfort Letter is attached hereto as Exhibit 2.

12. In the Comfort Letter, Sentrum and Bridgehouse Capital specifically promised to ensure that:

- a. [Bridgehouse] will be adequately capitalized and funded to ensure that [it] is able to meet its obligations to [Patriot], as well as [its] other creditors;
- b. Cause [Bridgehouse] to take such actions as are needed to meet its payment and other financial obligations owed to [Patriot];

c. Cause [Bridgehouse] to take such corporate actions as are needed to perform and observe all of the terms, covenants and conditions of the [Confirmation] and any other agreements and extensions of credit made by [Patriot] to [Bridgehouse]; and

d. [Bridgehouse] shall take such actions as are needed to maintain its corporate existence and to operate and maintain its current lines of business.

13. The Comfort Letter states that it "will remain in full force and effect so long as [Bridgehouse] is indebted to [Patriot]." As of the date of this Complaint, Sentrum and Bridgehouse Capital remain obligated under the Comfort Letter because Bridgehouse remains indebted to Patriot under the terms of the Confirmation.

14. The Comfort Letter states that "[Sentrum] and [Bridgehouse Capital] confirm and agree that [Patriot] shall be entitled to rely on this Comfort Letter in entering into the [Confirmation] and extending other credit to [Bridgehouse]." Patriot did, in fact, rely on the Comfort Letter when it executed the Confirmation on October 27, 2011 after receiving the Comfort Letter on that same date.

15. Under the terms of the Confirmation, Bridgehouse agreed to purchase coal from Patriot beginning January 1, 2012 through the end of 2013. Bridgehouse was obligated to take delivery of its coal requirements under the Confirmation ratably on a monthly or bi-monthly basis. The Confirmation called for Bridgehouse to take delivery of the coal in West Virginia.

Bridgehouse's Breach of the Confirmation

16. Bridgehouse failed to take delivery of, or pay for, any of its coal purchase obligation for January and February 2012 as required by the Confirmation.

17. In light of Bridgehouse's failure to purchase coal as required by the Confirmation, Patriot sent a "Notice of Default" dated March 2, 2012 demanding that Bridgehouse cure its default under the Confirmation within thirty (30) days. Because the Notice of Default contains

information deemed confidential under the Confirmation, a true and accurate copy of the Notice of Default will be filed under seal as Exhibit 3 hereto if the Court grants Patriot's Motion to File Exhibits Under Seal filed contemporaneously with the Complaint.

18. A copy of the Notice of Default was also sent to each Sentrum and Bridgehouse Capital – the parties who issued the Comfort Letter.

19. Bridgehouse failed to cure the default within thirty (30) days as required by the Confirmation.

20. As of the date of this Complaint, neither Sentrum nor Bridgehouse Capital has responded to the Notice of Default. Nor have Sentrum or Bridgehouse Capital caused Bridgehouse to perform as required by the Confirmation or otherwise satisfy Bridgehouse's obligations to Patriot as required under the Comfort Letter.

21. Bridgehouse has failed to take a single ton of coal under the Confirmation despite promising to buy a certain quantity of tons during the first two months of 2012 and a large quantity of coal from Patriot during the remainder of 2012 and 2013.

COUNT I

Breach Of Contract Against Defendant Bridgehouse

22. Patriot hereby incorporates by reference paragraphs 1-21 as if fully set forth herein.

23. Bridgehouse and Patriot entered into the Confirmation. The Confirmation is a lawful, valid and enforceable contract.

24. Both Bridgehouse and Patriot had mutual obligations under, and received consideration from, the Confirmation.

25. To the date of Bridgehouse's default, Patriot fully performed the Confirmation. Any conditions precedent to Bridgehouse's performance of the Confirmation have occurred or otherwise been satisfied.

26. Bridgehouse breached the Confirmation by failing to purchase its coal obligation for January and February 2012. Bridgehouse also breached the Confirmation by failing to cure the Event of Default.

27. Patriot has been damaged by Bridgehouse's breach of the Confirmation, including but not limited to, the present value of the loss of sales to Bridgehouse through 2013 in the quantities and prices specified under the Confirmation.

WHEREFORE, Patriot prays for judgment in its favor and against Bridgehouse: (a) for damages representing the present value of the loss of sales to Bridgehouse through 2013 in the quantities and prices specified in the Confirmation, in an amount to be determined at trial, but in any event in excess of the jurisdictional minimum; (b) pre- and post-judgment interest; and (c) for such further and additional relief as the Court deems just and proper.

COUNT II

Breach of Contract Against Defendants Sentrum and Bridgehouse Capital

28. Patriot hereby incorporates by reference paragraphs 1-27 as if fully set forth herein.

29. Sentrum and Bridgehouse Capital provided the Comfort Letter to Patriot in order to induce Patriot to contract with Bridgehouse. The Comfort Letter is a lawful, valid and enforceable contract.

30. Under the terms of the Comfort Letter, Sentrum and Bridgehouse Capital made certain promises regarding Bridgehouse's capitalization, its payment of its indebtedness to

Patriot, and generally ensuring that Bridgehouse performed its obligations under the Confirmation. In exchange, Patriot entered into the Confirmation and extended credit to Bridgehouse under the terms of the Confirmation.

31. Patriot entered into the Confirmation with Bridgehouse, extended credit to Bridgehouse under the terms of the Confirmation, and otherwise fully performed the Confirmation up to the date of Bridgehouse's default. Any conditions precedent to Sentrum's and Bridgehouse Capital's performance of their promises under the Comfort Letter have occurred or otherwise been satisfied.

32. Sentrum and Bridgehouse Capital breached the Comfort Letter by, *inter alia*, failing to cause Bridgehouse to take such actions as were needed to: (a) meet its payment and other financial obligations to Patriot; (b) perform and observe all of the terms, covenants and conditions of the Confirmation; and (c) maintain and operate its current lines of business. If Bridgehouse is unable to satisfy a judgment resulting from this lawsuit, Sentrum and Bridgehouse Capital will also have breached the Comfort Letter by failing to ensure that Bridgehouse was adequately capitalized and funded so as to meet its obligations to Patriot.

33. Patriot has been damaged by Sentrum's and Bridgehouse Capital's breach of the Comfort Letter, including but not limited to, the present value of the loss of sales to Bridgehouse through 2013 in the quantities and prices specified under the Confirmation.

WHEREFORE, Patriot prays for judgment in its favor and against Sentrum and Bridgehouse Capital: (a) for damages representing the present value of the loss of sales to Bridgehouse through 2013 in the quantities and prices specified in the Confirmation, in an amount to be determined at trial, but in any event in excess of the jurisdictional minimum; (b)

pre- and post-judgment interest; and (c) for such further and additional relief as the Court deems just and proper.

Alternative COUNT III:

Fraud Against All Defendants

34. Patriot hereby incorporates by reference paragraphs 1-33 as if fully set forth herein.

35. Patriot brings this Alternative Count III in the event Defendants disavow the enforceability of the Comfort Letter for any reason.

36. Patriot was unwilling to agree to the Confirmation without sufficient assurances as to Bridgehouse's wherewithal to meet its purchase, payment and other obligations under the Confirmation.

37. In order to induce Patriot to enter into the Confirmation, Defendants arranged for Sentrum and Bridgehouse Capital to present Patriot with the Comfort Letter.

38. In the Comfort Letter, Sentrum and Bridgehouse Capital promise Patriot that they will take action to ensure that Bridgehouse remains adequately capitalized, pays its indebtedness to Patriot, and generally performs its obligations under the Confirmation.

39. These statements in the Comfort Letter were material. Patriot would not have entered into the Confirmation without the representations made in the Comfort Letter.

40. These statements were false if Defendants never intended to be bound by them.

41. Patriot justifiably relied upon Defendants' statements. Defendants, per Patriot's demand, obtained the Comfort Letter and presented the same to Patriot in order to assuage Patriot's concerns about Bridgehouse's ability to perform its obligations under the Confirmation. Patriot did, in fact, so rely upon Defendants' statements and the Comfort Letter in deciding to

agree to and execute the Confirmation. The Comfort Letter specifically states that Patriot "shall be entitled to rely on this Comfort Letter in entering into the [Confirmation] and extending other credit to [Bridgehouse]."

42. Patriot was damaged by Defendants' statements. If Defendants had not defrauded Patriot into contracting by providing the Comfort Letter, Patriot would have sold the coal provided for under the Confirmation to a different buyer.

43. Patriot is entitled to punitive damages. Defendants' conduct is reprehensible in that they presented the Comfort Letter while secretly harboring intent not to abide by the Comfort Letter's terms. Through their intentional misconduct, Defendants convinced Patriot to contract believing it had assurances as to Bridgehouse's performance when, in fact, there were no such assurances. This left Patriot with limited contractual recourse in the event of a breach. Thus, Defendants intentionally misled Patriot.

WHEREFORE, Patriot prays for judgment in its favor and against Defendants: (a) for damages representing the present value of what Patriot would have received under the Confirmation (the loss of sales through 2013 in the quantities and prices specified in the Confirmation), in an amount to be determined at trial, but in any event in excess of the jurisdictional minimum; (b) punitive damages in an amount to be determined at trial; (c) pre- and post-judgment interest; and (d) for such further and additional relief as the Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL COUNTS.

RESPECTFULLY SUBMITTED,

PATRIOT COAL SALES, LLC

By Counsel,

DINSMORE & SHOHL LLP

By: Tyler N. Williams, Jr.

W. Henry Jernigan, Jr. (WVSB # 1884)

Tyler N. Williams (WVSB # 11722)

900 Lee Street, Suite 600

Huntington Square

Charleston, WV 25301

Telephone: 304-357-0900

FAX: 304-357-0919

henry.jernigan@dinsmore.com

tyler.williams@dinsmore.com

THOMPSON COBURN LLP

Roman P. Wuller

Mark A. Mattingly

One US Bank Plaza

St. Louis, Missouri 63101

314-552-6000

FAX 314-552-7000

rwuller@thompsoncoburn.com

mmattingly@thompsoncoburn.com

Attorneys for Plaintiff

EXHIBIT 1
FILED UNDER SEAL



Patriot Coal Corporation
12312 Olive Boulevard
Suite 400
St. Louis, MO 63141
314.275.3600
www.patriotcoal.com

September 16, 2011

Mr. Donald A. Jordan
Bridgehouse Commodities Trading Limited
55 Baker Street, 7th Floor
London W1U 8EW
United Kingdom

Dear Donald:

This letter and the Additional Terms and Conditions set forth in Exhibit A attached hereto (together hereinafter referred to as the "Confirmation") confirm the agreement between Patriot Coal Sales LLC ("Seller") and Bridgehouse CIN Energy ("Buyer") with respect to the transaction dated August 5, 2011.

TRANSACTION TYPE: Physical
PRODUCT: Thermal Coal
BUYER: Bridgehouse Commodities Trading Limited
SELLER: Patriot Coal Sales LLC
BUYER'S CONTACT: Donald A. Jordan Cell: 248-761-0862
SELLER'S CONTACT: Beverly P. Reynolds Cell: 804.638.9562
TERM: January 1, 2012 through December 31, 2013
QUANTITY: [REDACTED]
SCHEDULE: [REDACTED]
BASE PRICE: [REDACTED]

Redactions
GHS 7/24/12

INVOICES:

Seller shall submit an invoice for coal delivered to Buyer semi-monthly following delivery and acceptance of Coal by Buyer to the address below:

ATTN: Donald A. Jordan
Name: Bridgehouse Commodities Trading Limited
Address: 16th Floor, Amwal Tower
West Bay, Doha
Qatar
Email: djordan@bridgehousecapital.com

PAYMENT TERMS:

[REDACTED]

[REDACTED]

DELIVERY POINT:

[REDACTED]

SOURCE:

[REDACTED]

SPECIFICATION:

Typical as received basis in accordance with American Society for Testing and Materials ("ASTM") standards for each shipment as follows:

Quality	Payment Basis "As Received"	Reject
Moisture	[REDACTED]	[REDACTED]
Ash	[REDACTED]	[REDACTED]
BTU/lb	[REDACTED]	[REDACTED]
Sulfur	[REDACTED]	[REDACTED]
Coal Size	[REDACTED]	[REDACTED]

Buyer may reject any shipment falling outside of the aforementioned reject specifications by prompt written notification to Seller within 24 hours of receipt of origin sampling analysis from Seller, but in any event prior to unloading the coal. Upon Buyer's rejection, title to and risk of loss of coal shall immediately revert back to Seller. Seller shall remove rejected coal at Seller's cost.

**QUALITY PRICE
ADJUSTMENTS:**

[REDACTED]

SAMPLING:

Sampling, via mechanical sampler using ASTM standards, for each shipment shall be performed at the Delivery Point with the cost for such sampling for Seller's account.

ANALYSIS:

Analysis shall be performed in accordance with ASTM standards by an independent commercial laboratory appointed by Seller and agreed to by Buyer. Cost for such analysis shall be for Seller's account. Such analysis shall be final and binding and govern for payment.

WEIGHTS:

The weight for each shipment shall be determined by certified barge draft survey by an independent third party surveyor at the Delivery Point. The cost of weighing shall be for Seller's account and shall be final and binding and govern for payment.

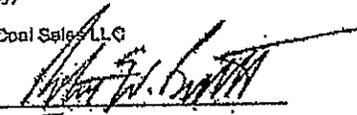
If you are in agreement with the foregoing, please execute where indicated below and fax a copy of this letter to Seller at (314) 275-9660.

(The remainder of this page is intentionally blank.)

IN WITNESS WHEREOF, Buyer and Seller have caused this Confirmation to be executed by their respective, duly authorized representatives as of the date first set forth above.

Sincerely,

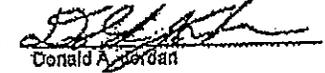
Patriot Coal Sales LLC

By: 

Title: PRESIDENT

Date: OCTOBER 27, 2011

AGREED TO AND ACCEPTED BY:

By: 

Donald A. Jordan

Title: Managing Director

Date: September 16, 2011

EXHIBIT A

ADDITIONAL TERMS AND CONDITIONS

1. **Substitution.** Seller shall have the right, but not the obligation, to supply coal from sources other than the specified Source, but any such substitute coal(s) shall be of the quality set forth in the specifications in this Confirmation. The price for such substitute coal will be equal to, on a cents per million Btu basis, the cost of purchasing and transporting coal from the original Source to the Delivery Point, with any increased or decreased transportation expense for Seller's account.
2. **Title/Risk of Loss.** Seller warrants good and marketable title to all coal delivered hereunder free and clear of all claims, liens, security interests, encumbrances, or an interest therein or thereto by any person arising prior to the transfer of title to Buyer. Seller shall indemnify, defend and hold harmless Buyer from any and all claims arising prior to the transfer of title to the coal from Seller to Buyer. Title to and risk of loss of all coal bought and sold under this Confirmation will pass to Buyer and coal will be considered to be delivered by Seller when it is loaded into the barge at the Delivery Point and each barge is fully loaded and lashed. Seller shall arrange for and pay all costs of transporting the coal to the Delivery Point and handling and loading the coal into barges to the proper track and proper distribution in such barges. Seller shall cooperate in good faith and in a commercially reasonable manner with Buyer's transportation company, expected to be American Commercial Lines LLC, to confirm a loading schedule and minimize loading and transportation times.
3. **Force Majeure.** If because of Force Majeure either party is unable to carry out its obligations, in whole or in part, under this Confirmation, except obligations to pay money to the other party, then the obligations of such party shall be suspended to the extent made necessary by such Force Majeure and during its continuance, provided such Force Majeure is eliminated insofar as possible and economically practicable with all reasonable dispatch. Any deficiency in coal tonnage to be delivered under this Confirmation caused by such Force Majeure shall not be made up except by mutual consent of the Buyer and Seller, subject to a mutually agreeable schedule. Should the Force Majeure continue for 60 consecutive days, the party not claiming Force Majeure may, at its option, terminate this Confirmation on 3 days prior written notice.

The term "Force Majeure" as used in this Confirmation shall mean any cause beyond the reasonable control of either party (including any third parties to which either party has contracted), and without the fault or negligence of the party invoking this clause, including, but not limited to: acts of God, earthquakes, floods, fires and explosions, lightning, fog, hurricanes, acts of public enemies, war or warlike acts of any kind, riots, terrorism, rebellion or revolution, mobilization, civil commotion, strikes, threats of violence, labor disputes, labor or material shortages, lockouts, insurrections, boycotts, and acts of judicial or military authorities, embargoes, blockades, governmental restrictions on exports, imports or foreign exchange, failure to obtain one or more permits for the Source after making commercially reasonable efforts to do so, breakdowns to equipment, plants or facilities (including a forced outage or an extension of a scheduled outage of plants, equipment or facilities to make repairs to avoid breakdowns thereof or damage thereto) or adverse geological conditions at the Source. Without limiting the generality of the foregoing, Force-Majeure may be invoked if any such Force Majeure event has taken place at the Source and/or at the railroads serving the Source or the plant, and/or at the plant. Force-Majeure shall not be based on: (i) Buyer's inability to economically use the coal purchased hereunder; or (ii) Seller's ability to sell the coal at a price greater than the Base Price set forth herein.

Settlement of a strike, lockout or other labor dispute shall be deemed beyond the reasonable control of the party claiming excuse thereby regardless of the cause of, or the ability of such party to settle, such dispute.

The parties hereto agree that if, as a result of a Force Majeure event, the affected party is unable to meet all of its obligations under this Confirmation and any other coal sales agreement which Seller has entered into with respect to the Source, or Buyer has entered into with respect to supply of coal, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated on a pro rata basis unless prohibited in a prior agreement. The affected party shall provide suitable proof to the other party to substantiate any claim or allocation made under this section.

4. Analysis. Seller or Seller's contractor shall send a report of its analysis within 48 hours after the loading of the barge of coal to the following electronic mail (email) addresses:

djordan@bridgehousecoal.com

or to such other person and/or location as Buyer shall notify Seller in writing (or Seller shall deliver such report by any other method agreed upon by Seller and Buyer) prior to the arrival of the barge lot of sampled coal at Buyer's destination point. The results of the analysis of Seller's split sample shall determine quality of coal delivered hereunder for acceptance or rejection purposes.

If the sampling system utilized at the Delivery Point becomes inoperative for any reason, Buyer and Seller will agree on an alternate method of sampling.

5. Failure to Remit Payment. Failure of the Buyer to pay for coal delivered in accordance with the terms hereof shall give Seller the option to (a) suspend further shipments until all previous shipments are paid for or (b) cancel the Confirmation upon written notice to Buyer. Additionally, Seller may charge interest at the Prime Rate, as published in the Money Rates section of The Wall Street Journal, plus [REDACTED]. If in the reasonable judgment of Seller, Buyer's ability to perform hereunder has become impaired, Seller shall have the right, upon notice to Buyer, to suspend further shipments until Seller receives adequate assurance of Buyer's performance in accordance with Section 16. If such security is not furnished within ten (10) days after receipt of such notice, Seller shall have the right to terminate this Confirmation upon written notice to Buyer.
6. Assignment. This Confirmation shall not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Confirmation without such consent to a parent company, or any other affiliate of the assigning party or for purposes of securing indebtedness, but assignor shall continue to be liable for its performance hereunder.
7. Waiver of Default/Termination Rights. A party's failure to insist in any one or more instances upon strict performance of a provision of, or to take advantage of any of its rights under this Confirmation shall not be construed as a waiver of such provision or right. No default of either party to this Confirmation in the performance of any of its covenants or obligations hereunder, except the obligation for payment, shall result in a right to the other party to cancel this contract unless such defaulting party shall fail to correct the default within thirty (30) days after written notice of claim of such default has been given by the party claiming such default.

8. Notice. Notice sent by facsimile, first class, certified or registered U.S. Mail, or a reputable overnight courier service, addressed to the party to whom such notice is given, at the address of such party stated below or to such other address (or facsimile number) as such party may designate, shall be deemed sufficient notice. In any case requiring notice under this Confirmation.

If to Buyer:

Bridgehouse Commodities Trading Limited
Attn: Donald A. Jordan
16th Floor, Amwal Tower
West Bay, Doha
Qatar
Phone: +974-4491-3900
Facsimile: +974-4491-3901

If to Seller:

Patriot Coal Sales LLC
Attn: Contract Management
12312 Olive Boulevard, Suite 400
St. Louis, MO 63141
Phone Number: 314-275-3600; Facsimile: 314-275-3660

9. Warranty and Limitation of Liability. EXCEPT AS EXPRESSLY STATED, IN THIS CONFIRMATION, SELLER MAKES NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING FROM A COURSE OF DEALING, USAGE OF TRADE, OR OTHERWISE, REGARDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, QUANTITY, OR OTHERWISE. Neither party shall be liable for any punitive, special, incidental or consequential damages (including without limitation, loss of profits or overhead), based upon breach of warranty or of contract, negligence or any other theory of legal liability arising out of this Confirmation.
10. Confidentiality. Each party acknowledges that this Confirmation contains confidential information which would put them at a competitive disadvantage if disclosed to the public. During the term hereof and for a period of one (1) year thereafter, the terms of this Confirmation shall be kept confidential by the parties, and not used by the recipient party for its own use and benefit, except to the extent of disclosure (i) required by law, regulation, or judicial or administrative order, (ii) to the advisors, agents, accountants, or lawyers of a party, or (iii) upon the written request of a party in which case the other party shall not unreasonably withhold its consent to such written request. The identity of customers of Buyer shall be considered confidential information, provided, however, that nothing herein shall restrict the ability of Seller to sell coal to entities (a) who are currently customers of Seller or have previously been customers of Seller or (b) whom Seller independently approaches without the use or benefit of information provided by Buyer. The provisions of this paragraph shall survive termination of this Agreement.

11. Applicable Law. This Confirmation shall be construed and governed in accordance with the laws of the state of New York, including, without limitation, the Uniform Commercial Code, without giving effect to principles of conflicts of law.
12. Entire Agreement/Amendments. This Confirmation contains the entire agreement of the parties, is expressly limited to the terms and conditions specifically set forth or incorporated by reference herein, and supersedes all prior communications between the parties regarding the subject matter of this Confirmation. This Confirmation shall be amended or modified only by agreement of the parties in writing.
13. Severability/Survival/No Third Party Beneficiaries. This Confirmation supersedes and replaces any other offers or representations regarding this transaction to the extent of any irreconcilable conflict. Should any provision of this Confirmation for any reason be declared invalid or unenforceable by an order of any court having jurisdiction, such decision shall not affect the validity or enforceability of the remaining provisions of this Confirmation, and such provisions shall remain in full force and effect as if this Confirmation had been executed without the invalid or unenforceable provision. This Confirmation is made and entered into for the sole protection and legal benefit of the parties, and their permitted successors and assigns, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Confirmation.
14. Duty to Mitigate Damages. Both parties shall be subject to a commercially reasonable good faith obligation to mitigate any damages hereunder.
15. Uniform Commercial Code. The parties hereto acknowledge and agree that this Confirmation is subject to the applicable provisions of the Uniform Commercial Code as adopted by the State of New York and as modified from time to time; provided, however, that each party hereto hereby expressly waives any right to consequential, incidental, punitive, exemplary or indirect damages, lost profits, or business interruption damages it may have thereunder.
16. Adequate Assurances. In the event of an adverse change in Buyer's or any of Buyer's affiliate's credit rating as Issued by Standard and Poor's ("S&P") (or the equivalent as defined by another public rating agency), Buyer shall provide assurances (as set forth herein) as to its ability to perform its obligations under this Confirmation. If Buyer's or any of Buyer's affiliate's senior unsecured or corporate credit rating falls below BBB- (as rated by S&P or the equivalent as rated by other public ratings agencies), Buyer shall provide Seller with Adequate Assurance. If Buyer is not publicly rated and Buyer's long-term creditworthiness significantly deteriorates from the date of this Confirmation (as determined by Seller using commercially reasonable standards), Buyer shall provide Seller with Adequate Assurance. Adequate Assurance for Buyer may mean collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Seller. The term "Letter(s) of Credit" as used in this Confirmation shall mean one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P's or A3 from Moody's, in a form acceptable to Seller in whose favor the Letter of Credit is issued. Costs of a Letter of Credit shall be borne by Buyer. Until Buyer delivers Adequate Assurance to Seller, Seller shall have the right, without limiting any other rights that may be available to Seller, to require payment not more than three (3) business days in advance of loading of a Shipment.
17. Change in Laws. The Base Price shall include, as of August 6, 2011 ("Bid Date"), the cost of all presently applicable federal, state and local statutes, regulations, ordinances, rulings or requirements which affect the production, severance, preparation or sale of coal under the

Confirmation. Buyer and Seller agree that if any federal, state, or local governmental authority, subsequent to the Bid Date, (a) enacts, promulgates or otherwise makes effective any new statute, ordinance, regulation, ruling or requirement, or (b) amends, modifies, or changes in any way the text, interpretation, application or enforcement of any existing statute, ordinance, regulation, ruling, requirement or mine permit (collectively referred to herein as "Change in Law"), and such Change in Law increases or decreases the direct or indirect cost of the production, severance, preparation or sale of coal under the Confirmation, then Seller shall provide Buyer with written notice of the Change in Law as soon as Seller has identified the cost or savings thereof and shall include the date on which such increase(s) or decrease(s) shall be effective. The Base Price or adjusted Base Price shall be adjusted upward or downward by the amount of the cost or savings of the Change in Law as of the effective date of such Change in Law, and Seller shall be entitled to recover its costs or Buyer shall be entitled to recover any cost savings benefit related to the Change in Law for coal previously shipped to Buyer by a retroactive price adjustment. Seller shall provide Buyer with reasonably detailed documented evidence to support such increase(s) or decrease(s).

18. Additional Transportation Or Other Charges. Unless due to Force Majeure or Buyer's failure to perform, if Buyer is charged for any increased transportation charges or other charges, penalties or other costs, including demurrage, attributable solely to Seller's failure to timely and appropriately load the coal in accordance with the specifications set forth above or the other terms of this agreement, Seller shall promptly reimburse Buyer for such actual charges after written notice thereof, provided such charges are usual and customary. Such reimbursement shall be in addition to any other remedies to which Buyer may be entitled.

EXHIBIT 2



Sentrum Limited
Seventh floor
59 Mark Lane
London
E14 5BE
United Kingdom
T: +44 (0)20 7478 9222
F: +44 (0)20 7495 8802
www.sentrum.com

Carol Damba
Patriot Coal Corporation
12312 Olive Boulevard
Suite 400
St. Louis, MO 63141
USA

27th October 2011

Dear Ms. Damba,

The undersigned, Sentrum Holdings Limited (Sentrum) and Bridgehouse Capital Limited (Bridgehouse) (Sentrum and Bridgehouse are collectively referred to as the "Affiliates"), are familiar with and do hereby request and approve of the proposed extension of credit to Bridgehouse Commodities Trading Limited, an Isle of Man corporation (BCTL), pursuant to the terms of a proposed Confirmation of Agreement (the Agreement) made by Patriot Coal to BCTL. Affiliates do hereby request that Patriot Coal extend such credit to BCTL.

In order for Patriot Coal to enter into the Agreement and to otherwise extend credit to BCTL upon such terms and conditions as are mutually agreeable to Patriot Coal and BCTL and without further notice to Affiliates, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Affiliates hereby agree as follows:

So long as any indebtedness of BCTL to Patriot Coal under the Agreement or otherwise remains outstanding and unpaid, Affiliates represent and warrant to Patriot Coal that:

- a. Affiliates are affiliated with BCTL and will maintain affiliation and effective control of BCTL. All of the outstanding capital stock of BCTL has been validly issued, are fully paid and the shares are free and clear of all liens, charges, encumbrances and security interests of every kind and nature;
- b. Affiliates are each a corporation duly incorporated, validly existing and in good standing under the laws of the British Virgin Islands and England and Wales respectively, duly qualified and in good standing in all other jurisdictions wherein the character of the properties owned or held by it or the nature of the business transacted by it makes such qualification necessary, and has corporate power to issue this Comfort Letter; and
- c. The making and issuance by Affiliates of this Comfort Letter has been duly authorized by all necessary corporate action and will not violate any provisions of any law, rule, regulation, order, writ, judgment, decree, determination or award presently in effect having applicability to the undersigned or of the Articles of Incorporation or Memorandum of Association of the undersigned or result in a breach of or constitute a default under any indenture or bank loan or credit agreement or any other agreement or instrument to which the undersigned is a party or by which it or its property may be bound or affected.

So long as any indebtedness of BCTL to Patriot Coal under the Agreement or otherwise remains outstanding and unpaid, Affiliates each covenant to Patriot Coal that:

- a. BCTL will be adequately capitalized and funded to ensure that BCTL is able to meet its obligations to Patriot Coal, as well as BCTL's other creditors;
- b. Cause BCTL to take such actions as are needed to meet its payment and other financial obligations owed to Patriot Coal;
- c. Cause BCTL to take such corporate actions as are needed to perform and observe all of the terms, covenants and conditions of the Agreement and any other agreements and extensions of credit made by Patriot Coal to BCTL; and
- d. BCTL shall take such actions as are needed to maintain its corporate existence and to operate and maintain its current lines of business.

Affiliates confirm and acknowledge that performance of all of the terms herein contained is necessary, and shall act in good faith to fulfill all obligations under this Comfort Letter.

The construction, interpretation, invalidity and enforceability of this Comfort Letter shall be governed in all respects by the laws of the State of Delaware, without regard to its conflict of laws principles.

This Comfort Letter will remain in full force and effect so long as BCTL is indebted to Patriot Coal.

Affiliates confirm and agree that Patriot Coal shall be entitled to rely on this Comfort Letter in entering into the Agreement and extending other credit to BCTL.

Yours sincerely,



Andrew J. Ruhan
Chairman & CEO
Sentrum Holding Limited
Bridgehouse Capital Limited

EXHIBIT 3
FILED UNDER SEAL



Patriot Coal Corporation
500 Lee Street, East
Suite 900
Charleston, WV 25301
304.380.0200
www.patriotcoal.com

March 2, 2012

VIA FACSIMILE AND FEDERAL EXPRESS

Bridgehouse Commodities Trading Limited

Attn: Donald A. Jordan

16th Floor, Amwal Tower

West Bay, Doha

Qatar

Facsimile Number: 974-4491-3901

Re: Notice of Default of Coal Confirmation Letter By and Between Bridgehouse
Commodities Trading Limited ("Bridgehouse") and Patriot Coal Sales LLC
("Patriot")

Dear Mr. Jordan:

Pursuant to the Coal Confirmation Letter dated September 16, 2011 (the "Agreement"), Patriot hereby notifies Bridgehouse that it is in breach and default of the Agreement. Specifically, the Agreement provides that Bridgehouse is required to purchase certain quantities of coal [REDACTED]. Bridgehouse, however, has failed to purchase the required quantities of coal over the last two months. The following schedule shows the quantity deficiencies through the end of February, 2012 and some of the monetary damages suffered by Patriot due to the breach and default by Bridgehouse:

	<u>Actuals</u>	<u>Obligation</u>	<u>Variance</u>	<u>ICAP Price¹</u>	<u>Patriot Damages²</u>
Jan-Feb 2012	0 Tons	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Pursuant to the Additional Terms and Conditions to the Agreement, Patriot demands that Bridgehouse cure the event of default within thirty (30) days after the date hereof by remitting the damages set forth above and taking the future coal requirements pursuant to the Agreement.

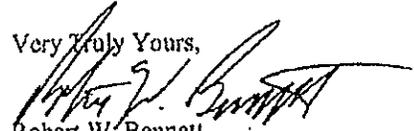
¹The ICAP Price represents the ICAP United, Inc. March prompt price per ton as of February 29, 2012 for the [REDACTED]

[REDACTED]

Redactions
GHS
7/24/12

If Bridgehouse fails to cure the event of default, Patriot will pursue its rights under the Agreement to the fullest extent of the law. Please contact me at (304) 380-0327 at your earliest convenience to discuss these matters.

Very Truly Yours,


Robert W. Bennett

cc: Sentrum Holdings Limited
55 Baker Street
Seventh Floor
London
W1U 8EW
United Kingdom

Bridgehouse Capital Limited
Suite 426 Linen Hall
162-168 Regent Street,
London
W1B 5TE
United Kingdom

EXHIBIT D

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to publicly update or review any forward-looking statement made by us or on our behalf, whether as a result of new information, future developments, subsequent events or circumstances or otherwise.

THE SPIN-OFF

Peabody announced on April 19, 2007 that it was evaluating strategic alternatives for selected subsidiaries in Appalachia and the Illinois Basin. After a thorough strategic review of Peabody's global portfolio, Peabody determined that separating this group of assets from its other operations would allow Patriot to be in a better position to thrive under its own management focus and long-term growth plans, and allow the separate entities to create more long-term value individually than through the combined entity. Peabody, as the Company's sole stockholder prior to the spin-off, and its Board of Directors determined the financial terms of the spin-off by evaluating information such as: production forecasts; near-term and longer-term outlook in the markets in which Patriot operates; capital structure, including current and projected debt levels, borrowing capacity and existing liabilities; and certain other financial studies, analyses and investigations that it deemed relevant.

The transaction, which is intended to be in the form of a tax-free dividend to Peabody stockholders, is subject to a number of conditions, including the receipt of a favorable ruling from the IRS, which was received on September 26, 2007, and necessary consents and regulatory approvals, most of which may be waived by Peabody. Peabody's current dividend will not be affected by the distribution.

Reasons for the Spin-Off

Peabody's Board of Directors believes that the spin-off will separate businesses with fundamentally different characteristics that require management to pursue distinct operating and business strategies. The separation is intended to benefit stockholders by allowing Patriot to maximize the performance of its assets through undivided senior management focus on and capital allocation to these businesses.

The Board of Directors of Peabody considered the following potential benefits in making the determination to effect the spin-off. In evaluating these potential benefits, Peabody's Board considered Patriot's capital structure, debt levels and retiree healthcare liabilities and the effect on Patriot of the agreements being entered into with Peabody in connection with the spin-off. See "Unaudited Pro Forma Combined Financial Data."

- *Patriot's operations in Appalachia and the Illinois Basin represent a unique set of commercial and operational profiles.* Patriot's operations in Appalachia and the Illinois Basin differ from Peabody's operations in several respects, including: geologic characteristics of the coal reserves, mining conditions, workforce management approaches, business and regulatory environment, mine size, coal qualities and supply/demand dynamics. Peabody's management believes that a management team focused on these unique aspects will better position Patriot to maximize its operating performance.
- *Through separation, each company will be able to more narrowly focus on core business priorities to drive stockholder value.* Peabody's asset base continues to evolve as a global coal investment, positioned to maximize stockholder value from its global reach. Patriot's asset base in Appalachia and the Illinois Basin is positioned to maximize stockholder value as a leading eastern U.S. producer. Peabody's management believes that a separate focus on these distinctive value creation philosophies will allow each set of operations to unlock value not currently being realized.
- *With its strong presence in Central Appalachia, Patriot will be well-positioned to be a consolidator within that highly fragmented region.* In recent years, Patriot's access to resources has been limited as Peabody's strategy has focused on international markets and the western and midwestern portions of the United States. As an independent entity, Patriot will not compete with Peabody's other operations for capital. Instead, Patriot will be in a position to pursue strategies its Board and management believe will create long-term stockholder value, including acquisition and organic growth opportunities in the highly fragmented Central Appalachian region.

Neither we nor Peabody can assure you that, following the spin-off, any of these benefits will be realized to the extent anticipated or at all. See "Risk Factors."

EXHIBIT E

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Peabody Energy Corporation
701 Market Street
St. Louis, Missouri 63101-1826

October 22, 2007

Dear Peabody Energy Corporation Stockholder:

We are pleased to inform you that on October 10, 2007, the Board of Directors of Peabody Energy Corporation (Peabody) approved the spin-off of Patriot Coal Corporation (Patriot), a wholly-owned subsidiary of Peabody. Following the spin-off, Patriot's assets and business will consist of coal operations and reserves in Central Appalachia, Northern Appalachia and the Illinois Basin.

The spin-off of Patriot will occur on October 31, 2007 by way of a pro rata distribution of Patriot's common shares to Peabody's stockholders. In the distribution, each Peabody stockholder will receive one share of Patriot common stock for every ten shares of Peabody common stock held at 5:00 p.m., New York City time, on October 22, 2007, which is the record date of the spin-off. The dividend will be paid in book-entry form and physical stock certificates will be issued only upon request. Stockholder approval of the spin-off is not required, and you are not required to take any action to receive your Patriot common stock.

We believe that the separation of Patriot from Peabody will provide a better structure for each company to pursue the most appropriate long-term growth opportunities and business strategies by allowing them to focus on their own distinct businesses, opportunities and markets. In addition, we believe that the two companies, each with unique financial characteristics, may appeal to different investor bases.

Following the spin-off, you will own shares in both Peabody and Patriot. Peabody common stock will continue to trade on the New York Stock Exchange under the symbol "BTU". Patriot common stock has been authorized for listing on the New York Stock Exchange under the symbol "PCX".

We intend for the spin-off to be tax-free for stockholders. To that end, we have received a favorable ruling from the Internal Revenue Service with respect to the spin-off and a favorable opinion of Ernst & Young LLP, confirming the spin-off's tax-free status, but any cash you receive instead of fractional shares will be taxable to you. The spin-off is also subject to other conditions, including necessary regulatory approvals. We recommend, of course, that you consult your own tax advisor as to the particular consequences of the spin-off to you.

The enclosed information statement, which is being mailed to all Peabody stockholders, describes the spin-off in detail and contains important information about Patriot, including its financial statements.

We look forward to your continued support as a stockholder of Peabody. We remain committed to working on your behalf to build long-term stockholder value.

Sincerely,

A handwritten signature in black ink that reads "Gregory H. Boyce".

Gregory H. Boyce
President and Chief Executive Officer

SEPARATION AGREEMENT, PLAN OF REORGANIZATION AND DISTRIBUTION

SEPARATION AGREEMENT, PLAN OF REORGANIZATION AND DISTRIBUTION (this "Agreement"), dated as of October 22, 2007, by and between Peabody Energy Corporation, a Delaware corporation ("PEC") and Patriot Coal Corporation, a Delaware corporation ("Patriot" and together with PEC, the "Parties", and each individually, a "Party").

RECITALS

A. Patriot is a wholly-owned subsidiary of PEC formed for the purpose of taking title to the stock of certain PEC subsidiaries, the assets and liabilities of which constitute the coal mining business of PEC in West Virginia, all coal mines and certain coal reserves in Kentucky and certain coal reserves in the states of Ohio and Illinois.

B. The Board of Directors of PEC has determined that it is in the best interests of PEC and its shareholders to transfer and assign to Patriot effective at and after the Effective Time (as defined herein) and as a contribution to the capital of Patriot, the capital stock of the PEC subsidiaries that currently operate the Patriot Business (as defined herein) as listed in Exhibit A hereto and certain related assets and to receive in exchange therefor shares of Patriot Common Stock (as defined herein).

C. The Board of Directors of PEC has further determined that it is in the best interests of PEC and its shareholders to make a distribution (the "Distribution") to the holders of PEC Common Stock (as defined herein) of all of the outstanding shares of Patriot Common Stock at the rate of one share of Patriot Common Stock for every ten shares of PEC Common Stock outstanding as of the Record Date (as defined herein).

D. The Parties intend that the Contribution (as defined herein) constitute a reorganization described in Section 368(a)(1)(D) of the Code (as defined herein) and that the Distribution not be taxable to PEC or its shareholders pursuant to Section 355 of the Code.

E. The Parties have determined that it is necessary and desirable to set forth the principal corporate transactions required to effect the Contribution and the Distribution and to set forth other agreements that will govern certain other matters following the Distribution.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements and covenants contained in this Agreement and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01. Definitions . As used herein, the following terms have the following meaning:

EXHIBIT F

On a pro forma basis, the combination of Patriot and Magnum would have sold more than 40 million tons in 2007 and generated revenues of just under \$2.0 billion. Proven and probable reserves on a combined basis will exceed 1.9 billion tons. The combined assets will provide Patriot a more balanced production mix, with approximately 70% underground and 30% surface mining. With a strong base of low-sulfur thermal coal and growing production of metallurgical coal, Magnum's properties are in close proximity to Patriot's Central Appalachian properties, thereby enabling cost-effective optimization of the combined assets.

"The transaction is expected to provide substantial commercial and operational synergies," said Whiting. "It will create economies of scale, enhance our product line, grow our customer base, provide more transportation options, and accelerate our brokerage and trading activities. We look forward to completing this transaction as soon as possible and welcoming Magnum's 1,700 highly-skilled employees to the Patriot team."

"We believe this presents a unique opportunity to consolidate two significant, complementary coal companies, achieving the benefits of scale and diversity that we believe are critical to further industry consolidation and long-term success in the coal sector. The combination of talent from these two management teams will create a premier organization to manage and grow the enterprise," said Robb E. Turner, Chairman of Magnum and Senior Partner of ArcLight Capital Partners, LLC, majority stockholder of Magnum. "We invest opportunistically across the entire energy industry and are particularly excited about the prospect of expanding our participation in the coal sector via an investment in Patriot." Following the closing, ArcLight will own approximately 16% of Patriot shares, and Magnum's other stockholders will own a combined 15% interest.

Lehman Brothers acted as financial advisor to Patriot and Citi acted as financial advisor to Magnum for this transaction.

Conference Call

Management will hold a conference call to discuss the proposed acquisition on April 3, 2008 at 10:00 a.m. Central Daylight Time. The conference call can be accessed by dialing 800-398-9398, or through the Patriot Coal website at www.patriotcoal.com. International callers can dial 612-332-0335 to access the conference call. A replay of the conference call will be available on the company's website and also by telephone, at 800-475-6701 for domestic callers or 320-365-3844 for international callers, passcode 918325.

geologic, equipment and operational risks associated with mining; supplier and contract miner performance and the availability and cost of key equipment and commodities; the Company's ability to replace coal reserves; labor availability and relations; availability and costs of transportation; weather patterns affecting energy demand; legislative and regulatory developments; risks associated with environmental laws and compliance; the outcome of pending or future litigation; and the availability and costs of competing energy resources. The Company undertakes no obligation (and expressly disclaims any such obligation) to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise. For additional information concerning factors that could cause actual results to materially differ from those projected herein, please refer to the Company's Form 10-K and 8-K reports.

#

EXHIBIT G

WEIL, GOTSHAL & MANGES LLP
Attorneys For The Debtors
767 Fifth Avenue
New York, New York 10153
(212) 310-8000
Martin J. Bienenstock (MB 3001)
Brian S. Rosen (BR 0571)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----		X
	:	
In re	:	Chapter 11
	:	
ENRON CORP., ET AL.,	:	Case No. 01-16034 ()
	:	
	:	
Debtors.	:	Jointly Administered
-----		X

**AFFIDAVIT OF JEFFREY MCMAHON
PURSUANT TO LOCAL BANKRUPTCY RULE 1007-2**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Jeffrey McMahon, being duly sworn, deposes and says:

1. On December 2, 2001 (the "Petition Date"), Enron Corp. and certain of its direct and indirect subsidiaries (collectively, the "Debtors") commenced cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). I am the Executive Vice President and Chief Financial Officer of Enron Corp. In that capacity, I am familiar with the day-to-day operations, business and financial affairs of the Debtors. I have served in this capacity since October 2001.

2. I am authorized to submit this affidavit in support of the Debtors' petition for relief under chapter 11 of title 11 of the Bankruptcy Code.

3. A description of the nature of the Debtors' business and a concise statement of the circumstances leading to the commencement of the Debtors' chapter 11 cases are set forth below. Most recently, Dynegy, Inc. ("Dynegy") terminated a merger agreement by and among Enron Corp., Dynegy and certain related parties, dated November 9, 2001 (the "Merger Agreement"), that was a key ingredient in the success of Enron Corp.'s strategic plan to restructure and rehabilitate its financial condition. At that time, Enron Corp. was facing a liquidity crisis and faced the downgrade of its long term debt rating to below investment grade, which would have undermined one of Enron Corp.'s core businesses. The Merger Agreement was designed to assure Enron Corp.'s trading counterparties and the debt rating agencies that Enron Corp. was still an investment grade credit risk because of its prospective merger with Dynegy (the "Merger"). As Dynegy's Chairman and Chief Executive Officer, Chuck Watson, has publicly stated, the Merger was to "arrest" Enron Corp.'s faltering condition, and to convince the rating agencies not to downgrade Enron Corp.'s debt to non-investment grade or "junk" status. Subsequently, Dynegy engaged in numerous acts, including the termination of the Merger, that underlie Enron Corp.'s complaint against Dynegy filed with this Court on December 2, 2001.

4. To the best of my knowledge, information and belief, no committee has been organized prior to the Petition Date.

5. Pursuant to Fed. R. Bankr. P. 1007(d) and Local Bankruptcy Rule 1007-2, set forth on Schedule 1 hereto is a consolidated list of the names, addresses and, where available, telephone numbers of the creditors of the Debtors holding the twenty largest unsecured claims, excluding insiders. Such list includes the amount of the claim,

the nature of the claim (i.e., trade debt, bank loan, government contract, etc.) and, if appropriate, an indication of whether such claim is contingent, unliquidated, disputed or partially secured, subject, however, to certain reservations of rights stated on Schedule 1 regarding, among other things, the actual validity of any such claims.

6. Set forth on Schedule 2 hereto is a consolidated list of the names and addresses of the Debtors' creditors holding the five largest secured claims (exclusive of insiders). Such list includes the amount of each claim, a brief description and an estimate of the value of the collateral securing the claim, if available, and whether the claim or lien is disputed, subject, however, to certain reservations of rights stated on Schedule 2 regarding, among other things, the actual validity of any such claims.

7. A summary of the consolidated assets and liabilities of the Debtors and their non-debtor operating domestic and foreign affiliates (the "Non-Debtor Affiliates") as of September 30, 2001, is set forth in paragraph 19 of this Affidavit.

8. Set forth on Schedule 3 is a list of the number and classes of stock, debentures and other securities of Enron Corp. Schedule 3 includes the number of shares held by each of Enron Corp.'s executive officers and directors.

9. To the best of my knowledge, none of the Debtors has any property that is in the possession or custody of any custodian, public officer, mortgagee, pledgee, assignee of rents or secured creditor (other than bank accounts which may be subject to claims of setoff by the lenders identified below and stock of certain of Enron Corp.'s subsidiaries pledged to such lenders, if any), or agent for any such entity.

10. Set forth on Schedule 4 hereto is a list of the premises owned, leased, or held under other arrangement, from which the Debtors operate their business.

11. Set forth on Schedule 5 hereto is a list of the locations of the Debtors' substantial assets within and outside the territorial limits of the United States.

12. To the best of my knowledge, there are no actions or proceedings, pending or threatened, against the Debtors or their property where a judgment against the Debtors or a seizure of any of their property is imminent.

13. Set forth on Schedule 6 hereto are the names of the individuals who comprise Enron Corp.'s existing senior management, their tenure with Enron Corp. and a brief summary of their relevant responsibilities and experience.

14. Each of the Debtors intends to continue to operate as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Set forth on Schedule 7 hereto is the estimated amount of the payroll to employees of such Debtors (exclusive of officers, directors and stockholders) for the thirty-day period following the commencement of the Debtors' chapter 11 cases.

15. Set forth on Schedule 8 hereto are the amounts to be paid to the Debtors' officers, directors, stockholders and financial consultants for services for the thirty-day period following the commencement of their chapter 11 cases.

16. Set forth on Schedule 9 hereto are the estimated consolidated cash receipts and disbursements and net cash gain or loss for the thirty-day period following the commencement of the Debtors' chapter 11 cases.

17. In addition to the foregoing information, on December 2, 2001 the Debtors filed with the Court a consolidated list containing the name and address of each of their known or potential creditors.

Nature of the Debtors' Businesses and Statement of
Circumstances Leading to the Debtors' Chapter 11 Filings

Business:

18. The Debtors and their approximately 3,500 other direct and indirect subsidiaries (collectively, the "Enron Companies"), building upon knowledge gained in over 70 years of experience in the energy business, have grown into a worldwide leader in products and services related to the sale and delivery of natural gas, electricity and communications to wholesale and retail customers. As of the Petition Date, the Enron Companies employed approximately 25,000 individuals throughout the world and were recently ranked seventh on the Fortune 500 list of the largest U.S. corporations.

19. For the fiscal year ended December 31, 2000, the Enron Companies generated \$101,000,000,000 in annual revenues on a consolidated basis. As set forth in the Enron Companies' Form 10-Q filed on November 19, 2001 (the "10-Q") for the quarter ended on September 30, 2001, the Enron Companies' consolidated books and records reflected assets totaling approximately \$61,000,000,000 and liabilities totaling approximately \$52,000,000,000.¹

20. The Enron Companies divide their business operations into four primary business units: Enron Wholesale Services, Enron Retail Services, Enron Transportation Services, Enron Global Services, and Enron Broadband Services. These business units provide the following services:

- (a) Enron Wholesale Services encompasses the global wholesale businesses related to natural gas, power, metals, coal, crude and liquids, weather, forest products and steel. This business unit also

¹ As indicated in the 10-Q, the numbers set forth above are unaudited.

includes EnronOnline®, the world's largest e-commerce site for global commodity transactions.

- (b) Enron Retail Services extends Enron Corp.'s energy expertise and capabilities to end-use retail customers in the industrial and commercial business sectors to manage their energy requirements and reduce their total energy costs.
- (c) Enron Transportation Services operates one of the largest gas transmission systems in the United States spanning approximately 25,000 miles with a peak capacity of 10,000,000,000 cubic feet per day.
- (d) Enron Global Services includes energy-related assets throughout the world that are not included in the Wholesale, Retail and Transportation business units, including, but not limited to, assets in the United States, Brazil, Europe and India.

21. Enron Corp. sponsors several tax-qualified noncontributory defined benefit pension plans that provide benefits for substantially all of its employees. Enron Corp. funds annually the minimum amount required by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), plus additional amounts as appropriate based upon their liquidity and business outlook. Enron Corp. also provides other post-employment benefits for healthcare and life insurance to most retirees and their dependents, and to surviving spouses of many deceased employees and retirees.

Market Information:

22. As of October 31, 2001, there were approximately 743,904,638 shares of Enron Corp.'s common stock issued and outstanding. As of December 31, 2000, the outstanding shares of Enron Corp.'s common stock were held by approximately 58,920 holders of record. Enron Corp.'s common stock (the "Common Stock") is publicly traded under the symbol "ENE" on the New York Stock Exchange, the Chicago Stock Exchange and the Pacific Stock Exchange.

Events Leading Up To the Commencement of the Chapter 11 Cases:

23. On October 16, 2001, Enron Corp. announced its third quarter 2001 earnings results, reporting a loss for the quarter and reducing shareholders' equity by approximately \$1,200,000,000. This announcement precipitated a significant decrease in the share price of the Common Stock and subsequent decreases in the Debtors' credit ratings for long-term debt, with a warning that further downgrades were possible.

24. These events precipitated a loss of investor confidence, which created additional pressure upon the Debtors' credit rating and significantly affected the Debtors' ability to raise capital.

25. On October 22, 2001, Enron Corp. announced that the Securities and Exchange Commission (the "SEC") had requested information relating to certain related-party transactions.

26. The Debtors undertook several steps in an effort to restore investor confidence, customer confidence and maintain their liquidity. First, on October 31, 2001, Enron Corp. announced that its Board of Directors (the "Board") had elected William K. Powers, Jr., the Dean of the University of Texas School of Law, as a director. In addition, Enron Corp. announced that the Board had appointed a special committee (the "Special Committee"), to be chaired by Mr. Powers, to examine and take appropriate actions with respect to transactions between Enron Corp. and entities connected to related parties. The Special Committee also was charged with communicating with the SEC and recommending any other actions that it deemed appropriate.

27. The Special Committee thereafter retained the law firm of Wilmer, Cutler & Pickering ("Wilmer Cutler"), including its partner William R. McLucas, the

former head of the SEC's Division of Enforcement, as its counsel. Wilmer Cutler, in turn, retained the international accounting and auditing firm of Deloitte and Touche LLP to provide independent accounting advice in connection with the Special Committee's investigation.

28. Second, the Debtors sought to improve their liquidity by drawing down \$3,000,000,000 on their committed lines of credit and using those proceeds to redeem their commercial paper (thereby eliminating the execution risk of funding the commercial paper market). The Debtors also obtained an additional \$1,000,000,000 in a new secured line of credit from J.P. Morgan Chase & Co. and Salomon Smith Barney, the investment banking arm of Citigroup, Inc., secured by the Enron Companies' Transwestern Pipeline Company and the Northern Natural Gas Company assets.

29. Third, on November 9, 2001, in a further effort to improve their liquidity and restore customer and shareholder confidence, Enron Corp. and certain of its affiliates entered into the Merger Agreement, whereby Enron Corp. agreed to merge with and into Dynegy. Under the terms of the Merger Agreement, Dynegy essentially agreed to acquire Enron Corp. for approximately \$9,000,000,000 in Dynegy stock and assume approximately \$13,000,000,000 in debt. Concurrently therewith, Enron Corp., the Northern Natural Gas Company, a subsidiary of Enron Corp. ("Northern Natural"), and Dynegy entered into a Subscription Agreement whereby Dynegy purchased \$1,500,000,000 of preferred stock of Northern Natural.

30. Fourth, the Debtors initiated an action plan for restructuring their business. The key aspects of the action plan involved: (i) concentrating primarily on the Debtors' core businesses; (ii) taking aggressive steps to rationalize the existing cost

structure; (iii) accelerating the process of divesting non-core business assets; (iv) restructuring scheduled maturities of debt and other obligations; (v) completing the investigation by the Special Committee with respect to related-party transactions; (vi) reviewing and strengthening the Debtors' corporate governance; and (vii) explaining certain disclosures with a focus on increasing transparency.

31. The Merger was terminated and these chapter 11 cases were necessitated before the restructuring could be completed out of court. Two issues will have significant impacts on the reorganization of the Debtors and the values available to creditors. These are whether Dynegy is liable to the Debtors' estates for wrongfully terminating the Merger and for other acts, and whether Dynegy's assertion of rights to control the pipeline owned by the Debtors' indirect subsidiary is valid. Therefore, the Debtors commenced their adversary proceeding immediately upon commencement of these chapter 11 cases so that these critical issues can be resolved promptly, providing certainty and speed to their reorganizations.

Indebtedness:

32. As of the Petition Date, the Debtors' capital structure is highly leveraged. The indebtedness of the Debtors includes: (i) approximately seventy financing facilities having a maximum aggregate availability of well over \$4,000,000,000, including the Short-Term Credit Facility, the Long-Term Credit Facility and the Pipe Facilities (each as defined below); (ii) approximately \$3,300,000,000 pursuant to notes issued under the Harris Trust Indenture (as described below); and (iii) approximately \$1,900,000,000 pursuant to notes issued under the Zero Coupon Notes Indenture (as defined below).

33. The Short Term Credit Facility: As of the Petition Date, Enron Corp. is obligated for unsecured debt in the aggregate amount of \$1,750,000,000 under the 364-Day Revolving Credit Agreement, dated May 14, 2001 (as it may be amended, modified and supplemented from time to time through and including the Petition Date, the "Short-Term Credit Facility"), among Enron Corp., as borrower, and Citibank, N.A. and The Chase Manhattan Bank, as co-administrative agents, and several banks and other financial institutions, as lenders.

34. The Long Term Credit Facility: As of the Petition Date, Enron Corp. is obligated in the aggregate amount of \$1,250,000,000 under the Long-Term Credit Revolving Agreement, dated May 18, 2000 (as amended, modified and supplemented from time to time through and including the Petition Date, the "Long Term Credit Facility"), among Enron Corp., as borrower, and Citibank, N.A. and The Chase Manhattan Bank, as co-administrative agents, and several banks and other financial institutions, as lenders.

35. The Pipe Facilities: As of the Petition Date, Enron Corp. is obligated in the aggregate amount of \$1,000,000,000 pursuant to secured credit lines entered into on November 16, 2001 and November 21, 2001 between Enron Corp., J.P. Morgan Chase & Co. and Salomon Smith Barney, the investment banking arm of Citigroup, Inc. (as amended, modified and supplemented from time through and including the Petition Date, collectively, the "Pipe Facilities"), secured by the Transwestern Pipeline Company and the Northern Natural assets.

36. The Harris Trust Indenture: Enron Corp. is party to that certain Indenture, dated November 1, 1985 (as amended, modified and supplemented from time

to time, the "Harris Trust Indenture"), between Enron Corp. and Harris Trust and Savings Bank, under which Enron Corp. authorized the execution and delivery of the Harris Trust Indenture to provide for the issuance from time to time of its unsecured debentures, notes or other evidences of indebtedness. As of the Petition Date, Enron Corp. has issued and outstanding approximately \$3,300,000,000 in principal amount of notes under the Harris Trust Indenture.

37. The Zero Coupon Notes Indenture: Enron Corp. issued Zero Coupon Convertible Senior Notes due 2021, pursuant to that certain indenture, dated February 7, 2001 (as amended, modified and supplemented from time to time, the "Zero Coupon Notes Indenture"). The notes issued under the Zero Coupon Notes Indenture were offered at an issue price of \$655.24 per note. Although Enron Corp. is not obligated to pay interest on the 2001 Notes prior to maturity, on February 7, 2021 noteholders would receive \$1,000 per note, representing a yield to maturity of 2.125% per year calculated from February 7, 2001.²

Management and Board Changes:

38. On October 24, 2001, Andrew Fastow resigned from his position as the Chief Financial Officer ("CFO") of Enron Corp. Jeffrey McMahon assumed the position of CFO on such date.

39. In August of 2001, Jeff Skilling resigned from his position as the Chief Executive Officer ("CEO") of Enron Corp. and Kenneth Lay, the Chairman of the Board of Enron Corp., assumed the responsibilities of CEO. In addition, Greg Whalley and

² As indicated in Enron Corp.'s Form 10-K, the Debtors are also parties to smaller credit facilities and debt arrangements.

Mark Frevert were promoted to president and chief operating officer and vice chairman, respectively, and joined Mr. Lay in the Office of the Chairman. The Office of the Chairman serves as the Debtors' chief operating decision maker in allocating resources to and assessing the performance of its business units. In connection with these events, the Debtors reorganized the manner in which its business units report to the Office of the Chairman.

Request For Relief:

40. The Debtors' operational problems were exacerbated by their highly leveraged debt structure. The Debtors' debt levels became significantly more difficult to support as covenants were triggered by the weakening of the Debtors' credit ratings and price of the Common Stock. Absent the commencement of their chapter 11 cases, the Debtors may have difficulty paying all amounts due under their credit facilities.

41. To continue their business operation without change in the face of the foregoing operational and financial difficulties is not in the best interests of the Debtors, their employees, creditors, customers, shareholders and other parties in interest. From a financial perspective, the Debtors must shed a significant portion of their debt and debt service in order to realign their capital structure and reposition their business.

42. In order to implement the restructuring and reorganization of the Debtors' business and financial affairs, while minimizing the adverse effects of the substantial debt service obligations, contraction in credit and other negative factors, the protection of chapter 11 is essential to the preservation and enhancement of the Debtors' businesses, their employees, the communities in which they maintain and operate facilities, and the protection of all parties in interest.

ENRON CORP.

By: /s/ Jeffrey McMahon
Name: Jeffrey McMahon
Title: Executive Vice President
and Chief Financial Officer

Sworn to before me on this
____ day of December, 2001

Notary Public

SCHEDULE 1

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the Debtors' creditors holding the 20 largest unsecured claims, excluding prepayments made by the Debtors on account of merchandise that has not been received as of the Petition Date. The list has been prepared in accordance with Rule 1007(d) of the Federal Rules of Bankruptcy Procedure. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is less than the total amount of such creditor's claim or (3) claims held by any of the Debtors' employees. The information herein shall not constitute an admission of liability by, nor is it binding on, the Debtors. This list reflects amounts as of December 2, 2001.

Name of Creditor and Complete Mailing Address Including Zip Code (Debtor)	Name, Telephone Number and Complete Mailing Address, Including Zip Code of Employee, Agent, or Department of Creditor Familiar with Claim Who May Be Contacted	Nature of Claim (trade debt, bank loan, government contract, etc.)	Indicate if Claim is contingent, unliquidated, disputed or subject to set-off	Amount of Claim (If secured also state value of security)
Chase Manhattan Bank (Enron Corp.)	Institutional Trust Services 600 Travis Street Houston, TX 77002 Phone: (713) 216-6877 Fax: (713) 577-5200	Note		1,907,698,000.00
Citibank, N.A. (Enron Corp.)		Bank Loan		1,750,000,000.00
Citibank, N.A. (Enron Corp.)		Bank Loan		1,250,000,000.00
Bank of New York (Enron Corp.)	Attn: Beata Hryniewicka 5 Penn Plaza, 13th Floor New York, NY 10001 Phone: (212) 896-7140:	Note		500,000,000.00
Bank of New York (Enron Corp.)	Attn: Beata Hryniewicka 5 Penn Plaza, 13th Floor New York, NY 10001 Phone: (212) 896-7140	Note		325,000,000.00
Bank of New York (Enron Corp.)	Attn: Beata Hryniewicka 5 Penn Plaza, 13th Floor New York, NY 10001 Phone: (212) 896-7140	Note		250,000,000.00
Bank of New York (Enron Corp.)	Attn: Beata Hryniewicka 5 Penn Plaza, 13th Floor New York, NY 10001 Phone: (212) 896-7140	Note		250,000,000.00
Bank of New York	Attn: Beata Hryniewicka 5 Penn Plaza, 13th Floor New York, NY 10001 Phone: (212) 896-7140	Note		250,000,000.00

Name of Creditor and Complete Mailing Address Including Zip Code (Debtor)	Name, Telephone Number and Complete Mailing Address, Including Zip Code of Employee, Agent, or Department of Creditor Familiar with Claim Who May Be Contacted	Nature of Claim (trade debt, bank loan, government contract, etc.)	Indicate if Claim is contingent, unliquidated, disputed or subject to set-off	Amount of Claim (If secured also state value of security)
Bank of New York (Enron Corp.)	Attn: Beata Hryniewicka 5 Penn Plaza, 13th Floor New York, NY 10001 Phone: (212) 896-7140	Note		222,500,000.00
Bank of New York (Enron Corp.)	Attn: Beata Hryniewicka 5 Penn Plaza, 13th Floor New York, NY 10001 Phone: (212) 896-7140	Note		200,000,000.00
Bank of New York (Enron Corp.)	Attn: Beata Hryniewicka 5 Penn Plaza, 13th Floor New York, NY 10001 Phone: (212) 896-7140	Note		200,000,000.00
Bank of New York (Enron Corp.)	Attn: Beata Hryniewicka 5 Penn Plaza, 13th Floor New York, NY 10001 Phone: (212) 896-7140	Note		150,000,000.00
Risk Management & Trading Corp. (Enron Energy Services, Inc.)	1400 Smith Houston, TX 77002-7327	Trade Debt		126,208,622.65
Bank of New York (Enron Corp.)	Attn: Beata Hryniewicka 5 Penn Plaza, 13th Floor New York, NY 10001 Phone: (212) 896-7140	Note		100,000,000.00
Barclays Bank PLC -- London (Enron North America Corp.)	54 Lombard St. London EC3P 3AH	Trade Debt		126,071,170.00
The Chase Manhattan Bank (Enron North America Corp.)	One Chase Manhattan Plaza New York, NY 10017 Phone: 212/270-6000 Fax: 212/552-4910	Trade Debt		113,262,221.17
Enron North America Corp. (Enron Energy Services, Inc.)	Acct: 375-049-4099 Houston, TX 77002	Trade Debt		107,475,154.89
Al Rajhi (Enron Metals & Commodity Corp.)	Saudi Arabia	Financial		101,343,685.67
UBS AG (Enron North America Corp.)	299 Park Avenue New York, NY 10171	Trade Debt		74,301,346.58

Name of Creditor and Complete Mailing Address Including Zip Code (Debtor)	Name, Telephone Number and Complete Mailing Address, Including Zip Code of Employee, Agent, or Department of Creditor Familiar with Claim Who May Be Contacted	Nature of Claim (trade debt, bank loan, government contract, etc.)	Indicate if Claim is contingent, unliquidated, disputed or subject to set-off	Amount of Claim (If secured also state value of security)
The Chase Manhattan Bank, London (Enron North America Corp.)	357C Chaseside Bournemouth DO, BH7 7DB	Trade Debt		71,856,071.76

**DECLARATION UNDER PENALTY OF PERJURY
ON BEHALF OF A CORPORATION**

I, the undersigned authorized officer of a corporation named as one of the Debtors in these cases, declare under penalty of perjury that I have reviewed the List of Creditors Holding 20 Largest Unsecured Claims and that it is true and correct to the best of my knowledge, information, and belief.

Dated: New York, New York
December __, 2001

/s/ Jeffrey McMahon
ENRON CORP.
Name: Jeffrey McMahon
Title: Executive Vice President
and Chief Financial Officer

SCHEDULE 2

CREDITORS HOLDING FIVE LARGEST SECURED CLAIMS³

The list does not include persons who come within the definition of "insider" set forth in 11 U.S.C. § 101. The information herein shall not constitute an admission of liability by, nor is it binding on, the Debtor. This list reflects amounts as of December 2, 2001.

Creditor's name and mailing address including zip code	Co-Debtor	Husband, Wife or joint community	Date claim was incurred, nature of lien, and description and estimated value of collateral securing claim	Contingent	Unliquidated	Disputed	Amount of claim without deducting value of collateral	Unsecured portion, if any
Citibank, N.A.			November 16, 2001 and November 21, 2001: Lien upon assets of Transwestern Pipeline Company and Northern Natural Gas Company				\$600,000,000	
The Chase Manhattan Bank			November 16, 2001 and November 21, 2001: Lien upon assets of Transwestern Pipeline Company and Northern Natural Gas Company				\$400,000,000	
[Not available at this time. To be provided at a later date.]								
[Not available at this time. To be provided at a later date.]								
[Not available at this time. To be provided at a later date.]								

³ Includes secured creditors, other than contingent creditors.

**DECLARATION UNDER PENALTY OF PERJURY
ON BEHALF OF A CORPORATION**

I, the undersigned authorized officer of a corporation named as one of the Debtors in these cases, declares under penalty of perjury that I have reviewed the List of Creditors Holding Five Largest Secured Claims and that it is true and correct to the best of my knowledge, information, and belief.

Dated: New York, New York
December ____, 2001

/s/ Jeffrey McMahan
ENRON CORP.
Name: Jeffrey McMahan
Title: Executive Vice President and
Chief Financial Officer

SCHEDULE 3

**NUMBER AND CLASSES OF SHARES OF STOCK, DEBENTURES, AND
 OTHER SECURITIES OF ENRON CORP. THAT
 ARE PUBLICLY HELD, AND THE NUMBER OF
 REGISTERED HOLDERS THEREOF,
 LISTING SEPARATELY THOSE SECURITIES HELD BY EACH OF THE
 DEBTORS' OFFICERS AND DIRECTORS AND THE AMOUNTS SO HELD**

Type of Security	Number of Shares	Number of Registered Holders	As of Date
Common Stock	754,307,414	58,920	12/31/00

Name of Officer or Director	Number of Shares Owned	As of Date
Robert A. Belfer	8,438,839	2/15/01
Norman P. Blake, Jr.	24,611	2/15/01
Ronnie C. Chan	19,199	2/15/01
John H. Duncan	174,253	2/15/01
Mark A. Frevert	1,267,351	2/15/01
Ken L. Harrison	938,262	2/15/01
Stanley C. Horton	357,712	2/15/01
Robert K. Jaedicke	57,087	2/15/01
Kenneth L. Lay	5,392,718	2/15/01
Charles A. LeMaistre	56,287	2/15/01
John Mendelsohn	5,563	2/15/01
Jerome J. Meyer	17,400	2/15/01
Paulo V. Ferraz-Pereira	3,195	2/15/01
Kenneth D. Rice	1,469,133	2/15/01
Frank Savage	4005	2/15/01
Jeffrey K. Skilling	1,941,377	2/15/01
John A. Urquhart	47,795	2/15/01
John Wakeman	20,987	2/15/01
Herbert S. Winokur, Jr.	107,755	2/15/01

Type of Security	Number of Shares	Number of Registered Holders	As of Date
Preferred Convertible Stock	1,212,972	160	12/31/00

Name of Officer or Director	Number of Shares Owned	As of Date
Robert A. Belfer	214,580	2/15/01

SCHEDULE 4

PREMISES OWNED, LEASED, OR HELD UNDER OTHER ARRANGEMENT FROM WHICH THE DEBTORS OPERATE THEIR BUSINESSES

1. Enron Building, 1400 Smith, Houston, Texas
2. Two Pacific Place, 1111 S. 103rd Street, Omaha, Nebraska
3. 1775 Eye Street, Washington, D.C.
4. Two Allen Center, 1200 Smith Street, Floors 3, 5, 10 and 11, Houston, Texas
5. Three Allen Center, 333 Clay Street, Houston, Texas
6. 600 Jefferson, 600 Jefferson Street, Suites 500 and 600, Houston, Texas
7. 600 Jefferson, 600 Jefferson Street, Suite 1030, Houston, Texas
8. Clay Garage, 777 Clay, Houston, Texas
9. City of Houston Department of Aviation, SW Taxiway BB, Houston, Texas
10. Navigation Warehouse, 3405 Navigation Boulevard, Houston, Texas

SCHEDULE 5

LOCATION OF THE DEBTORS' SUBSTANTIAL ASSETS IN THE UNITED STATES, AND THE NATURE, LOCATION, AND VALUE OF ANY ASSETS HELD BY THE DEBTORS OUTSIDE THE TERRITORIAL LIMITS OF THE UNITED STATES

All of Enron Corp.'s material assets consist of stock in its direct subsidiaries.

All or substantially all of the Debtors' corporate books and records are located at the corporate headquarters of Enron Corp., 1400 Smith Street, Houston, Texas 77002-7369.

[Information regarding the location of the other Debtors' Substantial Assets is not available at this time and will be provided at a later date.]

SCHEDULE 6

**THE DEBTORS' EXISTING SENIOR MANAGEMENT,
THEIR TENURE WITH THE DEBTORS, AND A SUMMARY OF
THEIR RELEVANT RESPONSIBILITIES AND EXPERIENCE**

Name/Position	Summary of Responsibilities and Experience
Kenneth L. Lay, Chairman and Chief Executive Officer	Mr. Lay was Chief Executive Officer of Enron Corp. from February 1986 to February 2001. Previously, Mr. Lay was Chairman of the Board of Enron Corp.
Mark A. Frevert, Vice Chairman	Mr. Frevert was Chairman and Chief Executive Officer of Enron Wholesale Services from June 2000 to August 2001. He was Chairman and Chief Executive Officer of Enron Europe from March 1997 to June 2000. From 1993 to March 1997, Mr. Frevert served ECT in a variety of executive managerial positions.
Lawrence G. Whalley, President and Chief Operating Officer	Mr. Whalley was President and Chief Operating Officer of Enron Wholesale Services. He joined Enron in 1992 as an associate in the finance department and later held positions in risk management and natural gas marketing. In 1996, he headed Enron's European commodity merchant business. Returning to Houston in 1998, Whalley served as Chief Executive Officer of Global Risk Management for Enron Corp., President and Chief Operating Officer of Enron North America, and Chairman and CEO of Enron Net Works.
Raymond M. Bowen, Jr., Executive Vice President, Finance and Treasurer	Mr. Bowen was Chief Operating Officer of Enron Industrial Markets from 1999 to 2001. From 1998 to 1999, Mr. Bowen was Treasurer of Enron Capital & Trade Resources. Previously, Mr. Bowen was the managing director of Enron North America and head of the Commercial Transactions Group. He joined Enron in 1996 and has worked in Enron Energy Services, Enron Capital Management and Enron Capital & Trade Resources. Prior to joining Enron, Mr. Bowen was Vice President and Senior Banker in Citicorp's petroleum, metals and mining department based in Houston. He joined Citibank in 1991 from Bankers Trust Company.

<p>Richard B. Buy, Executive Vice President and Chief Risk Officer</p>	<p>Mr. Buy was Executive Vice President and Chief Risk Officer of Enron Corp.; Senior Vice President and Chief Risk Officer of Enron Corp. from March 1999 until July 1999. He was the Managing Director and Chief Risk Officer of ECT, from January 1998 to March 1999; and Vice President and Chief Credit Officer, ECT from August 1995 to January 1998.</p>
<p>Richard A. Causey, Executive Vice President and Chief Accounting Officer</p>	<p>Mr. Causey was the Executive Vice President and Chief Accounting Officer of Enron Corp. since July 1999; Senior Vice President and Chief Accounting and Information Officer of Enron Corp. from January 1997 to July 1999; Managing Director of ECT from June 1996 to January 1997; and Vice President of ECT from January 1992 to June 1996.</p>
<p>James V. Derrick, Jr., Executive Vice President and General Counsel</p>	<p>Mr. Derrick was Executive Vice President and General Counsel of Enron Corp. since July 1999; Senior Vice President and General Counsel of Enron Corp. from June 1991 to July 1999; and Partner at Vinson & Elkins from January 1977 until June 1991.</p>
<p>Steven J. Kean, Executive Vice President and Chief of Staff</p>	<p>Mr. Kean was the Executive Vice President and Chief of Staff of Enron Corp. since July 1999; and Senior Vice President of Government Affairs of Enron Corp. from 1997 to 1999. From 1989 to 1997, Mr. Kean held a variety of management positions in Enron Corp. subsidiaries.</p>
<p>Mark E. Koenig, Executive Vice President, Investor Relations</p>	<p>Mr. Koenig was Executive Vice President of Investor Relations of Enron Corp. since July 1999; Senior Vice President, Investor Relations of Enron Corp. from July 1997 until July 1999; and Vice President, Investor Relations of Enron Corp. from December 1992 until July 1997.</p>
<p>Jeffrey McMahon, Executive Vice President and Chief Financial Officer</p>	<p>Mr. McMahon was Chairman and CEO of Enron's Industrial Markets Group. From 1998 to 2000, Mr. McMahon was Enron's Treasurer. Mr. McMahon joined Enron in 1994 and spent three years in the London office as Chief Financial Officer for Enron's European operations. Upon returning to the United States, Mr. McMahon was Executive Vice President of Finance and Treasurer for Enron Corp. In 2000, he was named President and Chief Operating Officer of Enron Net Works, where he had responsibility for Enron's e-commerce activities.</p>

J. Mark Metts, Executive Vice President, Corporate Development	Mr. Metts was Executive Vice President, Corporate Development of Enron Corp. since August 1999. Previously, Mr. Metts was a Partner at Vinson & Elkins L.L.P. from January 1991 until August 1999.
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SCHEDULE 7

**ESTIMATED AMOUNT OF WEEKLY PAYROLL TO EMPLOYEES
EXCLUSIVE OF OFFICERS, DIRECTORS AND SHAREHOLDERS
FOR THE 30-DAY PERIOD FOLLOWING THE PETITION DATE**

Week	Estimated Payroll
Week 1	[Not available at this time. Will be provided at a later date.]
Week 2	[Not available at this time. Will be provided at a later date.]
Week 3	[Not available at this time. Will be provided at a later date.]
Week 4	[Not available at this time. Will be provided at a later date.]
Week 5	[Not available at this time. Will be provided at a later date.]

SCHEDULE 8

**CERTAIN AMOUNTS PROPOSED TO BE PAID BY THE
DEBTORS FOR SERVICES FOR THE 30-DAY
PERIOD FOLLOWING THE PETITION DATE**

Payments to Officers, Directors and Stockholders	Payments to Business Consultants
[Not available at this time. Will be provided at a later date.]	[Not available at this time. Will be provided at a later date.]

SCHEDULE 9

**DEBTORS' ESTIMATED CASH DISBURSEMENTS AND RECEIPTS
FOR THE 30-DAY PERIOD FOLLOWING THE PETITION DATE**

Estimated Cash Receipts	Estimated Cash Disbursements	Estimated Net Cash Gain (Use)
[Not available at this time. Will be provided at a later date.]	[Not available at this time. Will be provided at a later date.]	[Not available at this time. Will be provided at a later date.]

EXHIBIT H

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1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 05-11063-rdd
5 -----x
6 IN RE:
7 WINN-DIXIE STORES, INC.
8 -----x
9 United States Custom House
10 One Bowling Green
11 New York, New York
12
13 April 12, 2005
14 12:50 p.m.
15
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19 B e f o r e:
20 ROBERT D. DRAIN,
21 United States Bankruptcy Judge
22
23 Motion to Transfer Venue of the Debtors'
24 Bankruptcy Cases to the United States
25 Bankruptcy Court for the Middle District
of Florida, Jacksonville Division or Such
Other District Where Venue Would Be
Appropriate filed by Buffalo Rock Company
Application of Official Committee of
Unsecured Creditors Of Winn-Dixie Stores,
Inc., et al., For Order Authorizing
Retention and Employment of Milbank,
Tweed, Hadley & McCloy LLP as Counsel

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2 RE: Doc #561; Motion of Riverdale Farms,
3 Inc. to Join Motion of Buffalo Rock
4 Company to Transfer Venue of the Debtors'
5 Bankruptcy Cases to the United States
6 Bankruptcy Court for the District of
7 Florida

8 RE: Doc # 569; Debtors' Response to Motion
9 of Buffalo Rock Company to Transfer Venue

10 RE: Doc # 612; Motion for Relief from Stay
11 Motion for Relief from Stay Joint Motion
12 of Debtors and Commonwealth of Kentucky
13 for Relief from Stay to Allow for
14 Continuation of Condemnation Proceedings

15 Motion to Join in the Motion of Buffalo
16 Rock Company to Transfer Venue (related to
17 document(s)407) filed by Bradley T.
18 Keller, Richard S. Ehster

19 RE: Doc #624; Motion to Join the Motion of
20 Buffalo Rock Company to Transfer Venue
21 (related document(s){407}) filed by Ernst
22 Properties, Inc.

23 RE: Doc #640 Response of Clorox Sales Co.
24 to Motion to Join the Motion of Buffalo
25 Rock Company to Transfer Venue

26 Objection of Official Committee of
27 Unsecured Creditors of Winn-Dixie Stores,
28 Inc., et al., to Motion of Buffalo Rock
29 Company, Transferring Venue of Debtors'
30 Cases

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2 RE: Doc #644; Objection of Edens & Avant,
3 Weingarten Realty Investors, Palm Springs
4 Mile Associates, Ltd., Villa Rica Retail
5 Properties, L.L.C., ALG Limited
6 Partnership and Curry Ford, LP to the
7 Objection of The Official Committee of
8 Unsecured Creditors

6

7 RE: Doc #647; Opposition by Buffalo Rock
8 Company Seeking Entry of an Order
9 Transferring Venue of Debtors' Cases
10 (related document(s)[407])

9

10 Objection of Wilmington Trust Company, as
11 Indenture Trustee, and Joinder in
12 Objection of Official Committee of
13 Unsecured Creditors of Winn-Dixie Stores,
14 Inc., et al., to Motion of Buffalo Rock
15 Company Seeking Entry of an Order
16 Transferring Venue of Debtor

13

14 Joinder of Certain Utility Companies in
15 Support of Motion of Buffalo Rock Company
16 to Transfer Venue

16

17 Motion to Join in Support of Motion of
18 Buffalo Rock Company to Transfer Venue
19 filed by Dairy Farmers of America, Inc.

18

19 Motion to Join Motion of Buffalo Rock
20 Company to Transfer Venue filed by Ja-Ru,
21 Inc., Beaver Street Fisheries, Inc.

21

22 Motion to Join Motion to Transfer Venue
23 (related document(s) 407) filed by Florida
24 Power & Light Company

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2 RE: Doc #690; Omnibus Response to
3 Objections to Motion of Buffalo Rock
4 Company to Transfer Venue of the Debtors'
5 Bankruptcy Cases to the United States
6 Bankruptcy Court for the Middle District
7 of Florida, Jacksonville Division (related
8 document(s)[643])

6

7 RE: Doc #696; Notice of Hearing on April
8 12, 2005 (related document(s) [411], [23],
9 [562], [536], [296], [24], [489], [564],
10 [13], [472], [407], [612], [495], [510],
11 [487], [488])

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13 Reported by:
14 Todd DeSimone, RPR

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2 A P P E A R A N C E S :

3

BURR & FORMAN LLP
3100 Southtrust Tower
420 North 20th Street
Birmingham, Alabama 35203
Attorneys for Buffalo Rock Company,
Inc.
BY: ROBERT B. RUBIN, ESQ.
DEREK F. MEEK, ESQ.
MARC P. SOLOMON, ESQ.

8

9

DECHERT LLP
30 Rockefeller Plaza
New York, New York 10112
Attorneys for Buffalo Rock Company,
Inc.
BY: ELISE SCHERR FREJKA, ESQ.
JOEL LEVITIN, ESQ.

13

14

SKADDEN ARPS SLATE MEAGHER & FLOM LLP
Four Times Square
New York, New York 10036
Attorneys for Debtors
BY: GEORGE A. ZIMMERMAN, ESQ.
D.J. BAKER, ESQ.
STEVEN EICHEL, ESQ.

18

19

MILBANK, TWEED, HADLEY & McCLOY LLP
One Chase Manhattan Plaza
New York, New York 10005-1413
Attorneys for The Official
Committee of Unsecured Creditors
BY: LUC A. DESPINS, ESQ.
MATTHEW S. BARR, ESQ.
DENNIS F. DUNNE, ESQ.

24

25

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2 A P P E A R A N C E S: (Continued)

3

DLA PIPER RUDNICK GRAY CARY US LLP
1200 Nineteenth Street, NW
Washington, DC 20036-2412
Attorneys for Kraft Foods, et al.
BY: DANIEL J. CARRIGAN, ESQ.
JOSEPH I. MARCHESE, ESQ.

7

8 GREENBERG TRAUIG, LLP
Met Life Building
200 Park Avenue
New York, New York 10166
Attorneys for Equity One
BY: RICHARD S. MILLER, ESQ.
MARK D. BLOOM, ESQ.

12

13 WHITEMAN, BANKES & CHEBOT, LLC
Suite 1300
Constitution Place
325 Chestnut Street
Philadelphia, Pennsylvania 19106
Attorneys for Sunkist Growers,
et al.
BY: JEFFREY M. CHEBOT, ESQ.

17

18

BALLARD SPAHR ANDREWS & INGERSOLL, LLP
1735 Market Street
51st Floor
Philadelphia, Pennsylvania 19103
Attorneys for New Plan Excel Realty
Trust, Inc, et al.
BY: DAVID I. POLLACK, ESQ.

22

23

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2 A P P E A R A N C E S: (Continued)

3

KOZYAK, TROPIN & THROCKMORTON, P.A.
2525 Ponce de Leon
Coral Gables, Florida 33134
Attorneys for Lennar Partners
BY: JOHN W. KOZYAK, ESQ.

6

7

WOLF, HILL, McFARLIN & HERRON, P.A.
1851 West Colonial Drive
Orlando, Florida 32804
Attorneys for Richard Ehsten
BY: FRANK M. WOLFF, ESQ.
DAVID R. McFARLIN, ESQ.

10

11

12 PORZIO BROMBERG & NEWMAN P.C.
100 Southgate Parkway
13 Post Office Box 1997
Morristown, New Jersey 07962-1997
Attorneys for Riverdale Farms
14 BY: WARREN J. MARTIN, JR., ESQ.

15

16

TOGUT SEGAL & SEGAL LLP
One Penn Plaza
New York, New York 10119
Conflicts Counsel for Debtors
17 BY: ALBERT TOGUT, ESQ.

18

19

20

U.S. DEPARTMENT OF JUSTICE
21 OFFICE OF THE UNITED STATES TRUSTEE
33 Whitehall Street
22 21st Floor
New York, New York 10004
23 BY: RICHARD C. MORRISSEY, ESQ.
DEIRDRE MARTINI, ESQ.

23

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2 A P P E A R A N C E S: (Continued)

3 HELD & ISRAEL, ESQS.
4 Suite 1916 Riverplace Tower
5 1301 Riverplace Boulevard
6 Jacksonville, Florida 32207
7 Attorneys for Beaver Street
8 Fisheries, et al.
9 BY: EDWIN W. HELD, JR., ESQ.

7

8 OTTERBOURG STEINDLER HOUSTON & ROSEN P.C.
9 230 Park Avenue
10 New York, New York 10169
11 Attorneys for Wachovia Bank
12 BY: JONATHAN N. HELFAT, ESQ.

11

12 ELK BANKIER CHRISTU & BAKST LLP
13 Esperante
14 Suite 1330
15 222 Lakeview Avenue
16 West Palm Beach, Florida 33401
17 Attorneys for Garden Park Plaza
18 BY: MICHAEL R. BAKST, ESQ.

16

17 SCARCELLA ROSEN & SLOME LLP
18 333 Earle Ovington Boulevard
19 Ninth Floor
20 Uniondale, New York 11553
21 Attorneys for Florida Power & Light
22 BY: JIL MAZER-MARINO, ESQ.

20

21

22 HERRICK FEINSTEIN LLP
23 2 Penn Plaza
24 Newark, New Jersey 07105
25 Attorneys for Ernst Properties
BY: JOHN AUGUST, ESQ.

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A P P E A R A N C E S: (Continued)

KELLEY DRYE & WARREN LLP
101 Park Avenue
New York, New York 10178
Attorneys for various landlords
BY: ROBERT LEHANE, ESQ.

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THE COURT: Let's go on the
record on Winn-Dixie.

4

MR. RUBIN: Your Honor, I'm
counsel for the movant. Your Honor, if I
may, we have handed up to your clerk some
agreed stipulation of facts --

8

MR. BAKER: Excuse me, we had a
couple of noncontested matters. I wonder
if we could do those first in case anybody
is here for those.

12

THE COURT: Sure.

13

MR. BAKER: At the request of
the U.S. Trustee, your Honor, most of the
matters that were originally set today
were delayed or adjourned pending a
determination by your Honor of the venue
motion. There were I think three matters
that the parties conclude it probably made
sense to go ahead and present an order on.

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The first of those related to
the Debtors' request for an order under
Section 365(d)(4) extending the time to
assume or reject nonresidential real
estate leases. There were I think five

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2 objections. What we agreed to with all of
3 the objecting parties was to seek a bridge
4 order that would simply continue the time
5 period for making that determination or
6 requesting a further extension to the next
7 scheduled hearing in this case. I think
8 all of the objecting parties were fine
9 with that.

10 THE COURT: All right. I've
11 reviewed that order, and that is fine.
12 That will be entered today.

13 MR. BAKER: The next matter,
14 your Honor, the Commonwealth of Kentucky
15 had started a condemnation action with
16 respect to two properties, or the frontage
17 along two store properties. We've talked
18 to the Commonwealth's Legal Office. They
19 convinced the Debtors that it made sense
20 to let that go forward. It will generate
21 a modest cash inflow to the Debtor, and
22 actually they think that benefits store
23 traffic. So they were willing to do that.
24 As far as we know, there are no objections
25 to that.

12

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2 THE COURT: Does anyone want to
3 be heard on that motion?

4 Hearing no one, I will grant
5 that based on the moving papers. It is
6 clearly in the interest of the Debtor.

7 MR. BAKER: The final matter,
8 your Honor, was to authorize the retention
9 of Milbank Tweed as Committee counsel.
10 Insofar as we are aware, no objections
11 were filed to that.

12 THE COURT: I haven't seen any
13 either.

14 Does anyone want to address
15 this motion?

16 Again, based on there being no
17 objections, as well as my review of the
18 moving papers and the affidavit, I will
19 approve the retention.

20 MR. BAKER: Thank you, your
21 Honor.

22 Now we are ready to go into the
23 venue matter, which Mr. Zimmerman will be
24 primarily handling for the Debtors.

25 MR. ZIMMERMAN: Your Honor, the

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1
2 Debtors have only one witness we would
3 like to call at this time, Mr. Larry
4 Appel.

5 MR. RUBIN: Excuse me, your
6 Honor, before we commence this proceeding,
7 we have a stipulation of facts that have
8 been entered into between the Debtors and
9 the movant. Pursuant to our telephonic
10 hearing on Friday, we were able to take
11 Mr. Appel's deposition yesterday.
12 Mr. Zimmerman and I have signed the
13 stipulation. We would like to submit it
14 to the Court. Then, of course, if he
15 wants to proceed with his testimony.

16 THE COURT: I'm assuming your
17 examination is premised on the facts being
18 agreed to, correct?

19 MR. ZIMMERMAN: Yes, but we
20 will not be repeating any of those facts
21 in the direct testimony.

22 MR. DESPINS: Luke Despins with
23 Milbank Tweed on behalf of the Committee.

24 The stipulation is between the
25 Debtors and the movant. The Committee

14

1 APPEL - DIRECT
2 will cross the witness on the stipulation
3 when the witness is put up.

4 THE COURT: Okay.

5 MR. RUBIN: May we approach
6 with the stipulation?

7 THE COURT: Yes.

8 * * *

9 L A R R Y B. A P P E L:
10 called as a witness, having been first
11 duly sworn, was examined and testified
12 as follows:

13 DIRECT EXAMINATION

14 BY MR. ZIMMERMAN:

15 Q. Would you state your full name
16 for the record, please?

17 A. Larry Bruce Appel.

18 Q. By whom are you employed?

19 A. Winn-Dixie Stores.

20 Q. What is your current position
21 with Winn-Dixie?

22 A. Senior vice president, general
23 counsel, and corporate secretary.

24 Q. How long have you had that
25 position?

15

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2 A. Approximately two and a half
3 years.

4 Q. Could you briefly summarize
5 your responsibilities as senior VP and
6 general counsel?

7 A. Sure. I supervise the Legal
8 Department. I oversee the operation of
9 our compliance program. As corporate
10 secretary, I'm responsible for
11 communications and operations between
12 management and the board of directors, and
13 I also oversee our Loss Prevention and our
14 Security departments as well.

15 Q. Just for convenience, I'm going
16 to refer to the Debtors as Winn-Dixie
17 unless I specify otherwise.

18 A. I understand.

19 Q. Mr. Appel, were you involved
20 personally in the deliberations by
21 Winn-Dixie leading to the filing of the
22 Chapter 11?

23 A. Yes, I was.

24 Q. Were you involved in the
25 deliberations leading to the selection of

16

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2 New York as the original venue?

3 A. Yes, I was.

4 Q. What other members of
5 Winn-Dixie management were involved in
6 those processes?

7 A. Winn-Dixie management would
8 have included Bennett Nussbaum, our chief
9 financial officer, Peter Lynch, our CEO,
10 and Jay Skelton, our chairman of the
11 board, as well as myself.

12 Q. In connection with the decision
13 to both file for Chapter 11 and the
14 initial selection of New York as a venue,
15 did you have any advisors participating in
16 those deliberations?

17 A. Yes, we did.

18 Q. Could you identify them?

19 A. We have legal advisors, King &
20 Spalding and Skadden Arps, and we have
21 restructuring advisors, Crossroads Group
22 and our investment bankers, Blackstone.

23 Q. Before deciding on New York as
24 the initial venue, did management consider
25 the possibility of commencing Chapter 11

17

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2 in Jacksonville, Florida?

3 A. Yes, we did.

4 Q. Were you personally involved in
5 those deliberations?

6 A. Yes, I was.

7 Q. Did those deliberations include
8 an analysis of the potential benefits and
9 any downsides of Jacksonville versus New
10 York?

11 A. Yes.

12 Q. Can you tell us what you
13 remember being discussed about potential
14 benefits of a filing in Jacksonville?

15 A. The potential benefits of being
16 in Jacksonville, Florida, well, we
17 discussed the fact that company management
18 is located in Jacksonville and it would be
19 a little bit more convenient for us for
20 court hearings if we didn't travel back
21 and forth.

22 We also discussed the fact that
23 we are a Jacksonville-based company. We
24 are 75 years old. The founding family is
25 in Jacksonville. The company and the

18

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2 founding family, the Davis family, have
3 substantial roots in Jacksonville, invest
4 in the communities civically and
5 charitably, and Jacksonville would be a
6 community that we had some goodwill and
7 would want Winn-Dixie to restructure
8 successfully.

9 Q. Were there any potential
10 downsides in the management discussions
11 about the possibility of Jacksonville as
12 the venue?

13 A. I wouldn't necessarily call it
14 a downside, but we did talk about the fact
15 that we were a very large, if not the
16 largest, company in Jacksonville, and that
17 if the proceedings were in Jacksonville,
18 there would be a lot of press coverage on
19 those proceedings.

20 And not that we were worried
21 one way or the other about it being good
22 or bad, but we definitely had a belief
23 that one of the keys to restructuring
24 successfully was sort of segmenting to a
25 small group the case management, to the

19

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2 lawyers and some of the financial people,
3 and really keeping the large bulk of our
4 employees not distracted by restructuring
5 cases, but focused on what was important
6 to the operational turnaround, which is
7 taking care of our customers in the
8 stores.

9 And more coverage, whether bad
10 or good, might make it a little more
11 difficult, just the more people read.

12 Q. In the deliberations about
13 where to file venue, I take it there were
14 deliberations and discussions about New
15 York as a possible venue?

16 A. Yes.

17 Q. Did you participate in those
18 discussions?

19 A. Yes, I did.

20 Q. Could you tell me, was there an
21 analysis of the relative benefits and
22 downsides of filing in New York as well?

23 A. Yes.

24 Q. What do you remember about the
25 potential benefits being discussed about

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2 New York as a venue?

3 A. The most significant benefit of
4 New York was our belief that our creditors
5 would find it a convenient forum for us to
6 be in. We had talked to our advisors. We
7 had talked to our outside restructuring
8 advisors, folks who have a lot of
9 experience in restructuring such as ours,
10 who have experience in retail
11 restructurings.

12 Based on their experience,
13 based on their understanding of our
14 specific facts, and I believe based on
15 their reaching out to, directly or
16 indirectly, to some of the significant
17 creditors that would be involved in our
18 case, they talked to us about the fact
19 that New York would be a good place to
20 establish a strong relationship with our
21 important creditors, and that having
22 strong relationships with the creditors
23 would be an important part of the
24 successful turnaround.

25 That was, to some extent,

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2 consistent with our own data. We looked
3 at our list of our top 100 creditors and
4 we saw 30 of them had offices in New York
5 and 9 of them had offices in Florida.
6 With travel schedules and everything we
7 looked at, it made sense to us. So that
8 was a major consideration.

9 Q. Do you know what specific
10 creditors your financial advisors may have
11 reached out to in advising you?

12 A. I believe that we had some
13 level of direct or indirect input from
14 some of our bondholders or their
15 representatives and from our lending
16 group.

17 Q. Who was the lender?

18 A. Wachovia is the primary agent.

19 Q. Do you directly have interface
20 with Wachovia?

21 A. Yes.

22 Q. Is there a specific branch that
23 is handling this?

24 A. Yes, the New York office.

25 Q. Was there any discussion of any

22

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2 potential negatives with respect to New
3 York?

4 A. Other than I would have to take
5 a -- some people like me would have to
6 take a few more plane trips, no.

7 Q. Are you familiar with the
8 motion papers filed by Buffalo Rock?

9 A. Yes, I am.

10 Q. There was a suggestion that New
11 York was selected in an effort by the
12 Debtors to somehow escape or run away or
13 evade Jacksonville. Is that true?

14 A. That is patently untrue.

15 Q. Based on your personal
16 involvement in the deliberative process,
17 was there any discussion about escaping or
18 running away or in any way trying to avoid
19 Jacksonville?

20 A. I believe I was involved in
21 every discussion on this issue, and there
22 was none at any time. It was absolutely
23 to the contrary. We were trying to do
24 something that would make us most
25 accessible to the creditor community, not

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2 inaccessible.

3 Q. In coming to New York, did the
4 management make a conclusion as to bottom
5 line whether New York would be an
6 appropriate place for this restructuring
7 to take place?

8 MR. RUBIN: Objection to the
9 form of the question, your Honor.

10 THE COURT: On what basis?

11 MR. RUBIN: Calls for a mental
12 conclusion on the part of the witness.

13 MR. ZIMMERMAN: I think a
14 witness is, first of all, permitted to
15 testify about his own mental conclusions,
16 because I don't know who else could.

17 THE COURT: Why don't you
18 phrase the question just in his role as
19 general counsel.

20 Q. Based on your understanding,
21 based on your role as general counsel and
22 your involvement in the process, can you
23 tell me what the bottom-line conclusion
24 was of the company with respect to the
25 appropriateness of New York as a venue for

24

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2 this filing?

3 A. Sure. That New York was an
4 appropriate venue for us.

5 Q. Based on the developments that
6 have occurred subsequent to the filing,
7 including the Buffalo Rock motion, do you
8 know whether management's assessment and
9 conclusions that you've just testified to
10 changed in any way?

11 A. No, they haven't changed at
12 all.

13 Q. You still believe New York is
14 an appropriate forum?

15 A. Absolutely. To the extent that
16 one of the main considerations was
17 convenience to creditors, the fact that
18 the Creditor Committee and several of our
19 trade vendors and landlords and others
20 have submitted motions to that effect
21 suggest that we were right.

22 Q. Did management at one point
23 become aware of the fact that Buffalo Rock
24 had filed a motion to transfer venue?

25 A. Yes.

25

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2 Q. Do you know how they became
3 aware of that?

4 A. I believe that either Jan Baker
5 or somebody else at the Skadden firm
6 provided me a copy of the filing, and we
7 made management aware of it.

8 Q. Did you review the motion to
9 transfer?

10 A. Yes, I did.

11 Q. The fact that the motion to
12 transfer had been made, did that receive
13 press in Florida?

14 A. Yes, it did. It received a
15 great deal of press.

16 Q. Were there any press reports
17 purporting to summarize or quote from some
18 of Buffalo Rock's moving papers?

19 A. There were many.

20 Q. Buffalo Rock, in its motion,
21 suggests that the Debtors selected New
22 York to somehow reduce or eliminate
23 creditor involvement in the proceedings.
24 Are you aware of that? Are you familiar
25 with those charges?

26

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2 A. I know what it says.

3 Q. I know you testified to it

4 before, but was that the intent of

5 Winn-Dixie in selecting New York?

6 A. Absolutely not. Nothing could

7 be farther from the truth.

8 Q. Was it ever discussed to file

9 in New York to reduce or eliminate

10 creditor involvement?

11 A. The opposite was discussed.

12 Q. Did management discuss and

13 consider an appropriate response to the

14 motion that was made by Buffalo Rock?

15 A. Yes, we did.

16 Q. Did you personally participate

17 in those discussions?

18 A. Yes.

19 Q. Did the company ultimately

20 reach a decision as to how to best respond

21 to the motion?

22 A. We ultimately decided to file

23 the response which we did requesting a

24 transfer of venue to Florida.

25 Q. Who else other than yourself

27

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2 was involved in that deliberative process?

3 A. The same individuals from
4 management that I mentioned before. That
5 would be myself, Peter Lynch, Bennett
6 Nussbaum, Jay Skelton, and the same
7 advisor group, being Blackstone,
8 Crossroads, Skadden Arps. At that point I
9 don't think King & Spalding would have
10 been involved.

11 Q. Does the Debtor still believe
12 that New York is an appropriate venue?

13 A. Yes.

14 Q. Why has the Debtor decided to
15 now ask this court to transfer these
16 proceedings to Jacksonville?

17 A. Basically all of the facts that
18 caused us to make the initial decision,
19 none of them had changed. But there was
20 one new intervening subsequent event or
21 fact, if you will, which was the filing of
22 the motion.

23 It was a motion that I think
24 purposely contained some very harsh
25 language and was picked up that way in the

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2 press. It said things like "fabricating
3 venue." It talked about management making
4 decisions to hide from creditors. It
5 talked about bad faith, references like
6 Enron, comparisons like Enron. The press
7 asked questions like did we pick New York
8 because it was debtor-friendly, because we
9 would get larger retention programs,
10 because our advisors would make more
11 money.

12 All of those things were
13 inaccurate. None of those things were
14 things that we discussed, considered.
15 They were just absent. As a result, A, I
16 don't want to use the word offensive, but
17 it was offensive to the management team.
18 Nobody likes to be painted with that kind
19 of brush.

20 More importantly, you could use
21 the word distracting, but damaging, the
22 distraction was damaging to the company.
23 I had business leaders who travel
24 regularly, our CEO saying he gets asked on
25 every trip why are we in New York and are

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2 we hiding from something not being in
3 Florida. Our HR Group was telling me
4 there was a huge awareness within just
5 sort of general associates of this issue
6 and are we doing something shady.
7 Frankly, that was damaging to us.

8 As I said before, one of the
9 things we thought was important was to
10 segregate case management and allow the
11 large majority of our associates to focus
12 on the business. We were being damaged by
13 all of the inaccurate statements that came
14 out as a result of that motion. We had
15 said all along we would be happy in
16 Florida and we weren't hiding from
17 anything.

18 And, frankly, we needed to stop
19 that damage, and actions speak louder than
20 words, so the best thing we need to do is
21 file the response we did and say we always
22 would have been happy in Florida, let's
23 move it to Florida.

24 Q. Do you believe that moving to
25 Florida, to Jacksonville, Florida, will

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2 undo all of the harm that has been caused
3 by these charges that were publicized
4 against you?

5 A. No, we don't. I think once you
6 cast those aspersions out in the air,
7 there is no way to undo all of it.

8 Q. Then tell us why you believe
9 that since those charges have now been
10 cast, why moving to Jacksonville is better
11 for the company in the company's view than
12 staying.

13 A. All of this is a balance. On
14 the one hand, we can stay in New York and
15 people can read about a legal decision
16 that was entered, or we can come back to
17 Jacksonville and physically show people
18 that we are there and we have nothing to
19 hide. On balance, the latter of those two
20 may be more powerful and more effective.

21 I think the most important
22 thing that can come out of today is for
23 our communities and our associates and our
24 constituencies to understand after this
25 process that we, as a company, did nothing

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2 inappropriate, illegal, unethical, or in
3 bad faith. Those kinds of innuendo are
4 damaging to our state.

5 MR. ZIMMERMAN: No further
6 questions, your Honor.

7 THE COURT: Okay. Does anyone
8 wish to cross-examine Mr. Appel?

9 MR. DESPINS: Your Honor, just
10 a question. I'm not sure where we are
11 procedurally in the sense that it is the
12 movant's motion, they tendered stipulated
13 facts, but then the Debtor presented a
14 witness.

15 So are the movants -- is their
16 case closed? Where are we in the process?
17 I don't want to cross-examine until I know
18 where the movants are. First they have to
19 put their case on.

20 THE COURT: But you don't wait
21 for their case to close to cross-examine.
22 Are you asking whether the movants want to
23 examine on direct?

24 MR. DESPINS: That is the first
25 question. It is their case to put on

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2 first. Is their case closed?

3 THE COURT: Do you want any
4 additional direct examination of
5 Mr. Appel?

6 MR. RUBIN: We would like to
7 ask a couple of questions.

8 THE COURT: Okay. Why don't
9 you go ahead and then we will have
10 cross-examination.

11 DIRECT EXAMINATION

12 BY MR. RUBIN:

13 Q. Mr. Appel, in your testimony
14 today you indicated that financial
15 advisors on behalf of the company talked
16 to bondholders and lenders prior to the
17 filing of the bankruptcy case in respect
18 to the choice of New York as the venue for
19 this case; is that not correct?

20 A. I said that I believe they did
21 speak either directly or indirectly to
22 those constituencies or their advisors.

23 Q. Did you not in your deposition
24 yesterday testify that none of your
25 advisors spoke with any of the trade

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2 creditors who are also creditors in this
3 case, that the discussion of venue was
4 limited to bondholders and lenders?

5 A. No, I think what I said
6 yesterday is I was unaware whether they
7 had spoken to any trade creditors, but
8 they very well may have. I don't know of
9 that.

10 Q. You are not aware of any trade
11 creditors that your advisors spoke to in
12 respect to the issue of venue prior to the
13 filing of the petition, are you?

14 A. That's correct.

15 Q. I will ask you, sir, have you
16 seen the stipulation of facts that has
17 been filed this morning?

18 A. Yes, I have.

19 Q. And you've authorized your
20 counsel to execute that stipulation on
21 behalf of the company; is that not
22 correct?

23 A. Yes, I have.

24 Q. The facts as stated in the
25 stipulation are true and correct to the

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2 best of your knowledge, information, and
3 belief; are they not?

4 A. To the best of my knowledge,
5 information, and belief, yes, they are.

6 MR. RUBIN: Now, in addition to
7 the stipulation, there were certain
8 exhibits introduced into evidence
9 yesterday in respect to the deposition,
10 Judge, which we would like to make part of
11 the record in respect to the stipulation.

12 All of the exhibits which we
13 wish to introduce, starting with Exhibit 3
14 and ending with Exhibit 11, are pleadings
15 that have been filed in this case and the
16 Court could take judicial knowledge of.

17 THE COURT: You don't need to
18 introduce those. I will take judicial
19 knowledge of them. You can identify them
20 for the record.

21 Q. First of all, Mr. Appel, you
22 did identify for us --

23 MR. RUBIN: And if I may
24 approach the witness, your Honor?

25 THE COURT: Sure.

35

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2 Q. Mr. Appel, for the record, you
3 did identify as an exhibit the articles of
4 incorporation of Dixie Stores, Inc.?

5 A. I did, yes.

6 MR. RUBIN: We offer that.

7 Q. You also identified as an
8 exhibit to your deposition the petition
9 that was filed by Dixie Stores, Inc.; is
10 that not correct?

11 A. I did.

12 Q. You then also identified an
13 engagement letter dated February the 7th
14 by and between Skadden Arps and Winn-Dixie
15 Stores, Inc. in respect to the engagement
16 of Skadden; did you not?

17 A. Yes, sir.

18 Q. You did also identify the
19 bankruptcy petition of Table Supply Food
20 Stores Co., Inc.; is that not correct?

21 A. Yes, that's correct.

22 Q. You did identify the
23 declaration of Bennett L. Nussbaum
24 pursuant to Local Bankruptcy Rule 1007-2
25 in support of first-day motions and

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2 applications; did you not?

3 A. Yes, sir.

4 Q. You identified also as an
5 exhibit to your deposition the summary of
6 the schedules of Winn-Dixie Stores, Inc.;
7 is that not correct?

8 A. Yes.

9 Q. You identified, did you not,
10 sir, as part of your deposition testimony
11 the motion of Richard J. Ehster and
12 Bradley T. Keller to join in the motion of
13 Buffalo Rock; is that not correct, sir?

14 A. Yes, it is.

15 Q. You also identified as an
16 exhibit to your deposition a part of the
17 schedules of Winn-Dixie Stores, Inc.,
18 paragraph 18 of the schedule statement of
19 affairs, including the nature, location,
20 and name of each business of each Debtor;
21 is that not correct?

22 A. Schedule 18 of the statement of
23 financial affairs, yes.

24 Q. You also did identify for the
25 purposes of your deposition the Debtors'

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2 response to the motion of Winn-Dixie
3 Stores, Inc.?

4 A. I believe I did.

5 MR. RUBIN: Judge, we offer all
6 those. I ask the Court to take judicial
7 knowledge of those.

8 THE COURT: I will take
9 judicial knowledge.

10 MR. RUBIN: Thank you, sir.

11 Q. You are aware of the fact, are
12 you not, sir, that there were also not
13 only joinders filed in respect to the
14 Buffalo Rock motion, but also joinders
15 filed by others in support of Buffalo Rock
16 as well as joinders in opposition to the
17 motion filed with the Committee? There
18 were joinders on both sides?

19 A. Yes. I specifically mentioned
20 the Creditor Committee because our
21 understanding is they act as fiduciaries
22 for all creditors.

23 MR. RUBIN: Those are all the
24 questions. We would like the opportunity
25 to argue the stipulation to the Court at

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2 the appropriate time, go through the
3 stipulation, and give the Court our
4 version of what we think the law is.

5 THE COURT: Okay, very well.

6 MR. McFARLIN: Your Honor, may
7 I ask a couple of questions on direct
8 examination before we get to that?

9 My name is David McFarlin. We
10 are representing a couple of the employee
11 creditors and retirees of Winn-Dixie.

12 THE COURT: Okay.

13 MR. McFARLIN: Just a couple of
14 questions, Mr. Appel.

15 DIRECT EXAMINATION

16 BY MR. McFARLIN:

17 Q. You had indicated that employee
18 distraction or avoiding employee
19 distraction was one of your considerations
20 in selecting venue; is that correct?

21 A. It was a small factor, but
22 sure. We wanted to have our associates
23 focused on the task at hand, taking care
24 of customers.

25 Q. And associates are employees?

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2 A. Yes. We use the term
3 associates to refer to employees.

4 Q. Are you familiar with the
5 Winn-Dixie nonqualified deferred
6 compensation plans, in particular a
7 management security plan and a
8 supplemental retirement plan?

9 A. Yes, I am.

10 Q. What are those?

11 A. They are deferred compensation
12 retirement plans.

13 Q. Who gets to participate in
14 those?

15 A. Well, the plans set forth the
16 criteria, but, broadly speaking,
17 management employees.

18 Q. Would you be able to
19 participate?

20 A. I would.

21 Q. Could you tell me approximately
22 how many participants are involved in
23 those plans?

24 A. I'm sorry, I don't know the
25 answer to that.

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2 Q. Can you tell me, give or take
3 \$50 million, the total amount of the
4 obligations of Winn-Dixie under those
5 plans?

6 A. I apologize, but no, I can't.
7 I don't know the number.

8 Q. Even give or take \$50 million?

9 A. I really don't. If I had an
10 opportunity to look at financial
11 statements, I'm sure I could derive it,
12 but I don't know it sitting here right
13 now.

14 MR. McFARLIN: Thank you, I
15 appreciate it.

16 THE COURT: Before we get to
17 cross, does anyone else want to ask direct
18 questions?

19 MR. RUBIN: I have one more
20 question, your Honor. May I ask it?

21 THE COURT: Yes.

22 DIRECT EXAMINATION

23 BY MR. RUBIN:

24 Q. Mr. Appel, in the stipulation
25 your counsel signed, in paragraph 12 it

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2 states "All of the Debtors' employees are
3 employed in the southeastern United
4 States." You agreed with that statement.

5 But the one thing that is
6 missing, how many employees are there of
7 the company?

8 A. I think what I had asked it to
9 say is "substantially all." But it is
10 substantially all. It may be all. I'm
11 not sure. It is roughly 79,000.

12 Q. 79,000 employees?

13 A. I think that is the right
14 number.

15 Q. Substantially all of those are
16 in the southeastern United States?

17 A. I believe that's correct.

18 MR. RUBIN: Thank you, Judge.
19 That is it.

20 MR. MARTIN: Your Honor, Warren
21 Martin for Riverdale Farms. I joined in
22 the motion. A couple of questions.

23 DIRECT EXAMINATION

24 BY MR. MARTIN:

25 Q. Mr. Appel, you testified quite

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2 clearly that it was not Debtors' intention
3 to limit creditor involvement in choosing
4 New York as a venue?

5 A. Absolutely not, that's correct.

6 Q. Does it have that effect,
7 though, in any event?

8 A. I don't think so.

9 Q. How about employees?

10 A. Involvement?

11 Q. Yes. Let's say you were to
12 file a motion affecting employees. Do you
13 think employees would show up here in New
14 York?

15 A. It is undeniable the large
16 majority of our associates are in the
17 southeast and it would be easier for them
18 to be in Jacksonville, marginally easier
19 for them to be in Jacksonville than New
20 York. That is true. But it would never
21 have been our intent to choose New York to
22 limit their ability to attend here.

23 Q. Would the same go for your
24 run-of-the-mill trade creditors such as my
25 client, Riverdale Farms, which is located

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2 in Florida?

3 A. If your client is located in
4 Florida, that would be true. I don't know
5 what "run-of-the-mill trade creditors"
6 means. So no, I don't think it would
7 generally be true of run-of-the-mill trade
8 creditors. When we looked at our top 100,
9 30 of them had offices in New York and 9
10 had offices in Florida.

11 MR. MARTIN: No further
12 questions.

13 MR. HELD: Your Honor, I have a
14 couple of questions. I'm Edwin Held on
15 behalf of Beaver Street Fisheries.

16 DIRECT EXAMINATION

17 BY MR. HELD:

18 Q. Mr. Appel, are you aware of any
19 objections by the members of the Committee
20 individually in their capacity as
21 creditors to Buffalo Rock's motion for
22 change of venue?

23 A. I don't think so, no. Are
24 there? I don't think so.

25 Q. I'm not aware of any.

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2 Are you aware of any members of
3 the Committee in their individual capacity
4 joining in with the Committee --

5 A. Wait, did New Plan file? I
6 can't remember. I thought New Plan had
7 filed a motion, but I may be wrong.

8 MR. DUNNE: Your Honor, I will
9 help him out. The clients are listed in
10 the relevant pleadings.

11 A. I just don't remember, I'm
12 sorry.

13 Q. With respect to employees,
14 isn't it true that more employees are
15 located in Jacksonville than in any other
16 area of the country?

17 A. That may be true. We have a
18 substantial store base there and we have
19 our corporate office there. But we have
20 more stores in Miami. There are a large
21 number of employees in Jacksonville. I
22 don't know if there are more there than
23 anywhere else.

24 Q. Do you know approximately how
25 many employees are employed in the

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2 administrative offices?

3 A. A couple of thousand maybe.

4 Q. Do you know approximately how
5 many employees are employed in the general
6 distribution center?

7 A. I'm sorry, I don't know.

8 Q. Would it be in the hundreds or
9 thousands?

10 A. My guess is it would be in the
11 hundreds, but I really don't know.

12 MR. HELD: No further
13 questions, your Honor.

14 THE COURT: Mr. Despins?

15 CROSS-EXAMINATION

16 BY MR. DESPINS:

17 Q. Good afternoon, Mr. Appel.

18 A. Good afternoon.

19 MR. DESPINS: May I approach
20 the witness with the stipulated facts?

21 THE COURT: Yes.

22 Q. Just a few questions regarding
23 the agreed facts, Mr. Appel.

24 The first one, let me direct
25 your attention to paragraph 2, which says

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2 "Dixie Stores was the first filed
3 bankruptcy case, and the Debtors selected
4 venue for the bankruptcy cases in New York
5 Bankruptcy Court by virtue of their status
6 as affiliates of Dixie Stores."

7 Two questions regarding this.
8 First, there is another debtor called I
9 believe Table Supply?

10 A. Yes.

11 Q. Is it the company's belief that
12 that debtor could file on its own in New
13 York without relying on the affiliate
14 provision of 1408?

15 A. Yes.

16 Q. So, therefore, when you use the
17 word "Debtors" there, it probably should
18 read "the Debtors other than Table
19 Supply"?

20 A. I guess that is technically
21 correct, yes.

22 Q. The second point is, it says
23 "The Debtors selected venue for their main
24 bankruptcy cases based on the affiliate
25 provision."

1 APPEL - CROSS

2 It could be semantics, but do
3 you mean to say there that the Debtors
4 relied on that section of 28 USC rather
5 than that was the reason why you came to
6 New York?

7 MR. RUBIN: Objection. The
8 document speaks for itself. It has been
9 submitted by his counsel.

10 MR. DESPINS: I can
11 cross-examine him on the intent.

12 A. When I read this, and if I read
13 this wrong, I'm sorry, "selected" meant
14 that was the provision we relied on.
15 Absolutely, the reason we, quote, selected
16 New York were all of the reasons that I
17 talked about before, not a provision in a
18 bankruptcy statute.

19 Q. I will direct you to paragraph
20 5 and 9 of the stipulated facts. Those
21 paragraphs are essentially the same,
22 except one relates to Dixie Stores, the
23 other relates to Table Supply. Both of
24 them say that these entities have no
25 business operations, no physical presence

1 APPEL - CROSS
2 in New York, no employees, and no
3 prepetition liabilities.

4 I would like you to focus on
5 the words "prepetition liabilities" which
6 are repeated in paragraph 5 and paragraph
7 9.

8 First, a preliminary question,
9 are you familiar with the concept of
10 control group liability? Do you know what
11 that term means?

12 A. Yes.

13 Q. Can you describe --

14 A. In certain circumstances,
15 whether with respect to employee benefit
16 plans, tax, liability, or otherwise,
17 subsidiaries and parent that are part of a
18 control group can be jointly liable for
19 certain things, certain obligations.

20 Q. Do you believe that Dixie
21 Stores and Table Supply would both be part
22 of the Winn-Dixie control group?

23 A. We did not focus on control
24 group liabilities when we drafted this.
25 But if your question is could there be

1 APPEL - CROSS
2 control group liabilities that Dixie
3 Stores, prepetition, could have been
4 liable for, I think the answer is probably
5 yes.

6 Q. Just to be clear, Dixie Stores
7 and Table Supply are both 100 percent
8 controlled by Winn-Dixie?

9 A. Absolutely, they both are.

10 Q. Let me direct your attention to
11 paragraph 14. It says "All of the
12 Debtors' officers and directors and
13 management are located in the southeastern
14 United States."

15 "Located" can have many
16 meanings. What did you intend to convey
17 by "located"?

18 A. I believe all of our officers,
19 their primary company office, if you will,
20 is in the southeast. For our directors,
21 they all either own a home in the
22 southeast or have an office in the
23 southeast.

24 Q. But these directors might very
25 well have other homes elsewhere?

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1 APPEL - CROSS

2 A. Sure, absolutely.

3 Q. For example, isn't it a fact
4 that the chief financial officer of the
5 company has his primary residence or one
6 of his residences in California?

7 A. I believe his primary
8 residence, his wife and young child live
9 in California, and he commutes from time
10 to time back and forth. He also has a
11 home in Miami.

12 Q. Paragraph 16 says "A
13 substantial number of the Debtors'
14 creditors have offices in the southeastern
15 United States."

16 Couldn't the same be true of
17 the New York area?

18 A. Yes. As I said, 30 of our
19 largest 100 have offices in the New York
20 area.

21 Q. Turning to paragraph 18, it
22 says that "The Debtors believe that they
23 can achieve a successful reorganization in
24 the Florida Bankruptcy Court."

25 Same question, couldn't the

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1 APPEL - CROSS
2 same be true of the Southern District of
3 New York Bankruptcy Court?

4 A. Yes, absolutely.

5 Q. The last paragraph is paragraph
6 19, and it says "The Debtors believe that
7 it may be less expensive to administer
8 these bankruptcy cases in the Florida
9 Bankruptcy Court than in the New York
10 Bankruptcy Court."

11 First question is, is that
12 really a statement of intent or goal, or
13 do you think it is a fact that it will be
14 cheaper if the case is in Florida?

15 A. I believe both are true. It is
16 a statement of intent and goal, and I do
17 believe it is a fact that they may be less
18 expensive in Florida than in New York.

19 Q. You used the words "may be."
20 Actually, the stipulation uses the words
21 "may be." So it may not be as well?

22 A. Yes. I mean, I don't have a
23 crystal ball. There are a lot of things
24 that will change. We are going to have
25 certain New York advisors who end up

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1 APPEL - CROSS
2 having to take trips to Jacksonville that
3 they otherwise wouldn't have had to take.
4 We will have certain local counsel for the
5 company or some of the other
6 constituencies that the estate ends up
7 paying for. They will add local counsel
8 in Florida.

9 When I looked at it from the
10 company's perspective, I tried to decide,
11 whether through thoughtful delegation of
12 assignment and Skadden rates and local
13 Florida counsel rates, I reached the
14 conclusion I very well might be able to
15 manage the case in such a way that the
16 overall expense would be lower in Florida
17 than in New York.

18 Q. What kind of analysis have you
19 done to reach that conclusion?

20 A. Back of the napkin. You know,
21 I've looked -- I know what it costs to fly
22 here. I know what my New York lawyer,
23 sort of what the range and average rates
24 are. I know what quality local counsel in
25 Florida, what the range and average rates

1 APPEL - CROSS
2 are. I took a look at some of the
3 activities and tried to decide what I
4 might be comfortable letting Florida
5 counsel run lead in. I tried to think
6 about what percent of the case that might
7 be, what average case fees are.

8 Like I said, I don't have a
9 crystal ball, but I did the best that I
10 could to try to think about how I would
11 manage fees appropriately for the benefit
12 of the estate.

13 Q. But your back of the napkin
14 analysis, did it focus on the Debtors'
15 side of professionals?

16 A. Yes, that is the only thing
17 that I'm really aware of, is the Debtors'
18 side.

19 Q. But you are aware that the
20 Committee has its own set of
21 professionals, correct?

22 A. Absolutely. And I'm assuming
23 that the Committee would equally try to
24 manage expense and utilize lower-cost
25 providers for servicers that are

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1 APPEL - CROSS

2 appropriate.

3 Q. But you have no control over
4 that part, as the company?

5 A. I don't know what control I
6 have over -- I don't know what I get to
7 say about fee applications that the estate
8 pays for from non-company advisors.

9 Q. What about the banks, the banks
10 have counsel?

11 A. Yes.

12 Q. And the company reimburses the
13 banks for their cost of counsel, correct?

14 A. It is absolutely fair to say
15 that my back of the napkin analysis was
16 based on company cost, and I am aware that
17 there are other parties that would have
18 other costs. That is why, at the end of
19 the day, it says "may."

20 As you said, that would be my
21 intent to try to accomplish that. We will
22 never know, because we will be in one
23 place or the other. We won't be in both.
24 We will never get to look back, I think,
25 unless you have something in mind that I

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1 APPEL - CROSS

2 can't conceive of right now. I'm not
3 trying to be difficult.

4 Q. Let's talk about the employees
5 for a second.

6 If the employees were able to
7 participate in court hearings by
8 conference call, by phone, do you think
9 that that would minimize this issue of
10 convenience to the employees?

11 A. Surely if you can participate
12 by conference call, then that is helpful,
13 sure.

14 Q. Are you aware that is what is
15 done in the Southern District of New York
16 for the other large cases?

17 A. Specifically with respect to
18 employees, I wasn't aware of that. I'm
19 aware of the fact that we have
20 participated in a number of meetings with
21 various creditors, and here I assume we
22 are talking about employees that are
23 creditors, which is by no means all of our
24 employees, the large majority of whom,
25 under our first-day motions, we were able

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1 APPEL - CROSS
2 to pay their prepetition claims. And the
3 large majority of our associates -- that
4 is just the term we use, I apologize, it
5 is a habit -- won't be creditors.

6 But I have participated in
7 meetings here in New York with creditors
8 and had various creditors and their
9 representatives participate
10 telephonically.

11 Q. Have you ever had any contacts
12 with representatives from the movant,
13 Buffalo Rock?

14 A. Yes, I have.

15 Q. Can you describe in what
16 context?

17 A. Sure. I had a telephone
18 conversation with the general counsel of
19 Buffalo Rock shortly after their motion
20 was filed.

21 Q. How did that come about? Was
22 it telephonic?

23 A. It was a telephone call. I
24 actually was here in New York at the time.
25 I took it from Skadden Arps' office.

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1 APPEL - CROSS

2 Q. Who was the representative from
3 Buffalo Rock that you talked to?

4 A. The general counsel of the
5 company.

6 Q. Do you recall the general
7 counsel's name?

8 A. I apologize, I should, but I
9 don't have it at the tip of my tongue.

10 Q. Who initiated the call?

11 A. I called him.

12 Q. After pleasantries were
13 exchanged, I assume, what did you tell
14 him?

15 A. Essentially I said a
16 two-sentence summary of a lot of what I
17 said today. I said "We chose New York
18 because we thought it would be more
19 convenient for the creditors, not because
20 we were trying to hide from any creditors.
21 We were taken aback by the severity of the
22 language that you used, and we would like
23 to understand why you did what you did and
24 where we are going to go from here."

25 Q. What was the response from the

1 APPEL - CROSS

2 general counsel of the movant?

3 A. We talked back and forth for a
4 little while, and ultimately he indicated
5 that they had, I don't know whether he had
6 come or his outside advisors, but Buffalo
7 Rock had been represented at the Creditor
8 Committee formation meeting, I think that
9 is the appropriate term for it, here in
10 New York, and that they did not feel that
11 they had been treated appropriately.

12 They were disappointed that
13 they were not on the Creditor Committee.
14 They were concerned about their ability to
15 have access to the matter in New York.

16 Q. Was the statement made, and I'm
17 going to read from your deposition
18 yesterday, by the general counsel of
19 Buffalo Rock, something to the effect of
20 "We can be in Jacksonville, we can be in
21 New York, we just want to be on the
22 Creditors Committee"?

23 A. Yes. When he said "We can be
24 in Jacksonville or we can be in New York,"
25 or whenever he said "Jacksonville is okay,

1 APPEL - CROSS
2 New York is even better," and he said "We
3 just want to be on the Creditor
4 Committee," I remember it distinctly,
5 because, A, it was the last sentence of
6 the call. It was sort of the summary of
7 the call, if you will.

8 B, because, frankly, it was a
9 little bit difficult to hear. We had been
10 dealing for several days with the rhetoric
11 of that motion, with the publicity
12 fallout, with feeling like we were being
13 painted by doing something in bad faith.
14 And, you know, I will admit to not being
15 pleased to hear that at the end of the day
16 they didn't appear to care about the
17 underlying issue very much.

18 Q. In fact, didn't that general
19 counsel for Buffalo Rock state something
20 to the effect that if they can be on the
21 Creditors Committee, this motion would go
22 away?

23 MR. RUBIN: Your Honor, I
24 object on the basis of Rule 408 of the
25 Federal Rules of Evidence. That would be

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1 APPEL - CROSS
2 settlement negotiations between the
3 parties and inadmissible into evidence as
4 to what would cause the motion to be
5 withdrawn, if it was withdrawn.

6 MR. DESPINS: Your Honor, if I
7 may be heard on this issue.

8 408 says that you cannot put on
9 evidence to prove liability or the
10 weakness of the claim. The claim at issue
11 here is whether venue should be changed.
12 So if the general counsel of Buffalo Rock
13 told Mr. Appel "We think our basis to
14 change venue is weak, we don't have a good
15 case," that couldn't come in as part of
16 the settlement discussion. That is not
17 the case here. We are trying to put this
18 in to show intent. Our view, frankly, is
19 it is incredibly improper to use a motion
20 to change venue to essentially circumvent
21 the U.S. Trustee's decision to appoint or
22 not to appoint somebody to the Committee.

23 In fact, Judge Gonzalez, in the
24 WorldCom decision, reached a similar
25 conclusion of 408 on different facts. But

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1 APPEL - CROSS
2 in that case the taxing authorities moved
3 to disqualify the debtors' accountants.
4 That threat came in the context of
5 settlement discussion about the merits of
6 the taxing authorities' claims. When the
7 debtor tried to put on evidence of that
8 threat, the taxing authorities said "Oh,
9 408, settlement privilege, we can't use
10 that." Judge Gonzalez said "No, this has
11 nothing to do with the merit of the
12 claims. It has to do with why this motion
13 to disqualify the accountants was brought
14 by the taxing authorities."

15 It is exactly the same issue
16 here. That is why we should be hearing
17 from the witness what the answer was.

18 THE COURT: I agree with that.
19 The objection is overruled. I think that,
20 again, Buffalo Rock, I fully believe that
21 the objection is meritorious, but I don't
22 believe the question goes to that issue.

23 Q. Let me restate the question.

24 Was there a statement from the
25 representative of Buffalo Rock in that

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1 APPEL - CROSS
2 conversation, to the effect, not
3 literally, but if they were placed on the
4 Creditors Committee, this motion to change
5 venue would go away?

6 A. First of all, for whatever it
7 is worth, I didn't think of the
8 conversation I had as settlement
9 discussions. I always prefaced that in
10 the discussions.

11 The answer to your question is
12 yes. Because they had indicated that they
13 were frustrated and didn't think they
14 would get transparency in the matter in
15 New York, I said to them there were
16 certain things that were under our
17 control. "If we agree to have regular
18 conversations, whether it is general
19 counsel to general counsel, CFO to CFO,
20 would that help you?"

21 Over the course of the
22 conversation, that evolved into
23 essentially a three-tier discussion. "If
24 we are on the Creditor Committee and have
25 a vote, we are done. If we are on the

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1 APPEL - CROSS

2 Creditor Committee and we don't have a
3 vote, I can't tell you we are done, but I
4 think I can sell that. And informal
5 discussions aren't going to cut it."

6 Q. Let's focus for a minute on the
7 company's decision to not object to a
8 change of venue to Florida, which was
9 already explored on direct, but I will
10 spend a minute on it.

11 Would it be fair to say that if
12 the negative PR aspects, public relation
13 aspects, of this whole motion to change
14 venue could be removed, that the company
15 would be satisfied with staying in New
16 York?

17 A. If they could be removed?

18 Q. Yes, if they could be undone
19 somehow. I'm not saying that they can.

20 A. You asked me before whether I
21 thought, if the statement in the
22 stipulation said New York instead of
23 Florida, could we successfully reorganize
24 here, and I said yes.

25 So I think the answer to that

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1 APPEL - CROSS

2 is definitely yes, unless I'm
3 misunderstanding the question.

4 Q. The next question is, to a
5 certain extent the negative PR, the
6 negative public relations, is something
7 that cannot be undone, you've already
8 received that?

9 A. Correct, it can't be fully
10 undone.

11 Q. Presumably there are two things
12 the Court can do with this current motion,
13 either grant it, meaning transfer the case
14 to Florida, and would that undo all the
15 negative PR that you've suffered?

16 A. All, no.

17 Q. And the Court could also decide
18 to retain the case, saying that the case
19 is properly venued here?

20 A. Yes.

21 Q. If the Court did find the case
22 was properly venued here, would that go a
23 long way to defuse all this negative
24 publicity?

25 A. Sure. I assume the finding

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1 APPEL - REDIRECT

2 that it was properly venued here, that
3 would mean we as a company complied with
4 the law in choosing venue and never acted
5 in bad faith, that would go a long way
6 towards helping us, undoing the damage
7 that has been done.

8 Q. We hear that loud and clear.

9 A. That is very important to us.

10 MR. DESPINS: Your Honor, if I
11 can just talk to my clients for one
12 minute.

13 THE COURT: Okay.

14 (Pause.)

15 MR. DESPINS: That is all we
16 have, your Honor.

17 THE COURT: Any redirect?

18 MR. RUBIN: Just a couple of
19 questions, if I may, your Honor.

20 REDIRECT EXAMINATION

21 BY MR. RUBIN:

22 Q. Mr. Appel, how many stores of
23 Winn-Dixie Stores, Inc. are located in the
24 State of Florida?

25 A. Somewhere in the low 400's. I

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1 APPEL - REDIRECT

2 don't have the exact number.

3 Q. How many stores are operating
4 today all throughout the southeastern
5 United States?

6 A. Around 920. So call it 45
7 percent, 40, 45 percent, something like
8 that, are in Florida.

9 Q. Do you have an estimate as to
10 how many employees are also in the State
11 of Florida?

12 A. Round numbers, I would say
13 maybe slightly more than the percentage of
14 stores. So call it 50.

15 Q. Approximately 50,000?

16 A. 50 percent of the 80,000. If
17 40 or 45 percent of the stores and then
18 our corporate offices -- I would assume it
19 is slightly more -- a slightly larger
20 percent of our associates are in our
21 stores. So call it half.

22 Q. Would it be fair to say there
23 are approximately 40,000 employees located
24 in the State of Florida in all different
25 capacities?

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1 APPEL - REDIRECT

2 A. Back of the napkin math, yes, I
3 think that is probably pretty close.

4 Q. All right. One other question,
5 then.

6 Based on the questions that
7 Mr. Held asked you in respect to employee
8 participation in the case, the employees
9 by and large are nonunion; is that not
10 correct?

11 A. All of our U.S. employees are
12 nonunion.

13 Q. So they are not organized with
14 union representation in that fashion?

15 A. You are correct.

16 Q. One last question.

17 You have made an investigation
18 as to the hourly rates for your counsel in
19 Florida, and you testified yesterday that
20 in some instances the hourly rates of
21 Florida counsel would be half of those of
22 Skadden; is that correct?

23 A. It is close to half, yes.

24 MR. RUBIN: That is all, Judge.
25 Thank you.

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1 APPEL - REDIRECT

2 MR. MARTIN: Your Honor, Warren
3 Martin, attorney for Riverdale Farms.

4 REDIRECT EXAMINATION

5 BY MR. MARTIN:

6 Q. Mr. Appel, you attended the
7 organizational meeting up here in New York
8 for creditors, to form the Creditors
9 Committee?

10 A. Yes, I did.

11 Q. The next day, Winn-Dixie held a
12 meeting in Jacksonville for creditors; is
13 that correct? On or about the next day,
14 the next couple of days?

15 A. The day after the meeting for
16 the formation of the Creditors Committee,
17 we held a meeting for creditors in
18 Jacksonville?

19 Q. Yes. Are you aware of that?

20 A. I don't think so. Shortly
21 after -- either shortly before or shortly
22 after the formation meeting, there was a
23 meeting in Orlando that was prescheduled
24 and we do sort of every quarter or every
25 six months at the request of a vendor

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1 APPEL - REDIRECT

2 trade group. I think it is mostly health
3 and beauty, but whoever they are, that
4 many of our major vendors are in that
5 trade group. We meet with them on a
6 regular basis.

7 We did have a meeting with them
8 at that time, but it wasn't timed to be
9 coincident with that Creditors Committee
10 meeting. In fact, it had been scheduled
11 for earlier and we delayed it for a week
12 and a half if I remember correctly.

13 Q. And you were at that meeting in
14 Orlando?

15 A. No, I was not.

16 Q. Are you aware as to how many
17 creditors attended that meeting?

18 A. I had heard that it was a
19 relatively small number from what the
20 normal attendance was, but I'm not
21 certain.

22 Q. If I said 100, would that sound
23 about right?

24 A. No. I thought it was a much,
25 much smaller number. But I really don't

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1 APPEL - REDIRECT

2 know. I wasn't there. I thought it was
3 less than 20.

4 The recollection I got from our
5 CFO who went was it was much smaller than
6 previous times. I had been there once
7 before and there were about two dozen
8 people in the room. But I don't know how
9 many people were there.

10 Q. One other question.

11 Did I or any representative of
12 Riverdale Farms tell you that if we were
13 on the Creditors Committee we would
14 withdraw our joinder in the motion?

15 A. Absolutely not.

16 MR. MARTIN: Thank you. No
17 further questions.

18 MR. McFARLIN: I have a couple
19 of questions.

20 REDIRECT EXAMINATION

21 BY MR. McFARLIN:

22 Q. Mr. Appel, are you familiar
23 with avoidance actions in Chapter 11's or
24 bankruptcy in general?

25 A. I'm sorry, I'm not.

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1 APPEL - REDIRECT

2 Q. Are you familiar with
3 preference actions?

4 A. Generally I'm aware of the
5 preference concept.

6 Q. Correct me if I am wrong, it
7 was hard to hear, I believe your testimony
8 was you did participate in the preparation
9 of the Debtors' schedules and statement of
10 affairs?

11 A. Yes, that's correct.

12 Q. With respect to payments to
13 creditors that is referred to in paragraph
14 3 of the statement of affairs, are you
15 familiar with the number of payments that
16 were actually made and the number of pages
17 as referred to in the statement of
18 affairs?

19 A. I don't have that in front of
20 me. I don't have it memorized.

21 Q. The statement of affairs sets
22 forth the list of payments as voluminous
23 in nature, consisting of approximately
24 76,000 entries on 2,000 pages. It would
25 be too burdensome to attach everything,

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1 APPEL - REDIRECT

2 etc.

3 A. That is in a three-month period
4 prior to filing?

5 Q. Yes.

6 A. I'm generally aware of that.

7 Q. With respect to these payments
8 and with respect to preferences, wouldn't
9 it also be true that the payments within
10 90 days may trigger certain preference
11 litigation?

12 A. We believe we were solvent in
13 that time period.

14 Q. You acknowledge solvency during
15 that time period?

16 A. I'm sorry?

17 MR. DUNNE: Your Honor, I
18 object to trying to get any testimony out
19 as to solvency within the 90 days prior.

20 MR. McFARLIN: I haven't asked
21 for solvency.

22 THE COURT: Do you want to
23 reask your question?

24 MR. McFARLIN: I will rephrase
25 it.

1 APPEL - REDIRECT

2 Q. With respect to a situation
3 where the Debtors are insolvent and there
4 are approximately 76,000 payments made,
5 wouldn't you agree that the number of
6 preference-type actions either in the way
7 of demands or actual adversary proceedings
8 or lawsuits would be numerous?

9 MR. ZIMMERMAN: Objection. A,
10 this calls for a legal conclusion. B, we
11 don't know the facts or nature of these
12 cases. C, you don't need testimony about
13 preference. I don't see what the
14 relevance of any of this is.

15 THE COURT: Are you just really
16 pointing out that there are listed
17 potentially 76,000 claims?

18 MR. McFARLIN: I was leading up
19 to that the witness' books and records --

20 THE COURT: I will take
21 judicial notice of that.

22 MR. McFARLIN: I have no
23 further questions.

24 MR. DESPINS: Just a very quick
25 question.

1 APPEL - RECROSS

2 RECROSS-EXAMINATION

3 BY MR. DESPINS:

4 Q. You've done no solvency or
5 insolvency analysis on this company, have
6 you?

7 A. No, I haven't.

8 Q. Sort of back of the napkin
9 analysis, do you know what the full fare
10 coach airfare is from New York to
11 Jacksonville?

12 A. It depends on when you book it,
13 but it is anywhere --

14 Q. I'm talking full fare, no
15 restrictions.

16 A. It is slightly more than
17 \$1,000, I believe.

18 Q. What about a hotel in
19 Jacksonville, ballpark?

20 A. They are a lot less expensive
21 than here. It is less than \$100.

22 Q. Let me make it easier for you.
23 The hotel where Skadden is staying.

24 A. The nicest hotel -- no, I won't
25 make a joke at Skadden's expense. It is

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2 probably \$100, in all seriousness.

3 MR. DESPINS: Thank you.

4 THE COURT: You could step
5 down.

6 Are there other witnesses that
7 are anticipated to be called?

8 MR. ZIMMERMAN: None for the
9 Debtor.

10 MR. RUBIN: None, your Honor.

11 THE COURT: It is 10 to 2. I
12 think we could use a lunch break, at least
13 I could. Why don't we return about 20 of
14 3.

15 (Luncheon recess from 1:50 p.m.
16 through 2:43 p.m.)

17 THE COURT: We are back on the
18 record in Winn-Dixie. We will proceed
19 with oral argument.

20 MR. ZIMMERMAN: I'm the culprit
21 for the scheduling conflict, so Mr. Rubin
22 has been kind enough to let me go first.
23 To make something clear, there was some
24 cross-examination before about Debtor no
25 longer opposing Buffalo Rock's motion.

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2 That is true, but it is beyond that. The
3 Debtors are affirmatively seeking a
4 transfer to Jacksonville.

5 If I may, I would like to
6 briefly address two topics. First, the
7 propriety of New York ab initio, and,
8 second, what led the Debtors to now seek
9 to go to Jacksonville. The fact record
10 now is closed. The evidence is undisputed
11 that there wasn't a scintilla of bad faith
12 here. There was never an intention to
13 somehow evade or run away from
14 Jacksonville. In fact, it is directly to
15 the contrary. This is a well-reputed
16 company. Terrific goodwill, philanthropic
17 founders. The last thing they would need
18 to do is escape Jacksonville.

19 Nor is there evidence that
20 there was an effort to pick a forum that
21 would inconvenience creditors. The
22 un rebutted evidence is directly to the
23 contrary. There was a careful business
24 judgment analysis by management weighing
25 the same types of factors the Court does.

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2 On balance, there is one thing that is
3 indisputable, there is not a forum in the
4 country that every creditor group and
5 every constituency is going to agree to.
6 That is off the table. The issue is which
7 forum can maximize the conveniences of as
8 many critical players as you can and
9 facilitate the successful reorganization
10 of the company. The record is what it is.
11 There are creditors in the southeast.
12 There are substantial participants in this
13 process in New York and the tristate area.

14 Based on their own judgment,
15 their analysis of the issues, the advice
16 of their expert advisors, based on actual
17 experience and contacts with prospective
18 creditors and prospective participants,
19 the conclusion was reached New York was
20 the appropriate forum. Did they solicit
21 trade creditors' views? Of course not. A
22 debtor is not going to go to their trade
23 creditors and say "We are going to file
24 for bankruptcy, where would you like us to
25 file?" Some things are best left to

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2 managerial discretion.

3

4 The only thing that is left on
5 the argument by Buffalo Rock that this was
6 improperly selected for a bad purpose is
7 rhetoric. There is no evidence. They had
8 ample opportunity yesterday to
9 cross-examine and they established nothing
10 in that. They had ample opportunity to
11 today. There is not a shred of evidence
12 supporting that allegation. Nor do they
13 dispute nor can they dispute that venue
14 was absolutely appropriate under the four
15 corners of this statute. That is not an
16 issue. The only way they get out of that
17 is to ask this court, somehow using its
18 equitable powers under Section 105, to
19 find not only that despite the fact that
20 venue is undeniably within the four
21 corners of this statute and despite the
22 fact that the evidence is uncontroverted
23 that it was a good-faith decision, you
24 should bend over backwards to transfer it
25 and find bad faith on those grounds. That
makes absolutely no sense. It would be a

1
2 perversion of Section 105. 105 leads
3 inescapably to a different conclusion.
4 This was a good-faith finding.

5 The one case I would cite on
6 this proposition, Judge, because it is a
7 Second Circuit Court of Appeals case, is
8 Capitol Motor against LeBlanc, 201 F.2d
9 356, where a company transferred its stock
10 to another company for the sole purpose of
11 becoming a subsidiary so it can then latch
12 on to the other company's bankruptcy
13 filing. That was done on the eve of
14 filing, and then both companies, within
15 minutes of each other, filed for
16 bankruptcy.

17 The Second Circuit rejected a
18 bad-faith argument because they said it
19 fit within the technical requirements of
20 the statute. The subsidiary can file
21 where its parent does. There was a
22 legitimate potential reorganization.
23 There was no effort to frustrate
24 creditors. That was the bad faith, if
25 there was going to be one, frustrating

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2 creditors. On those grounds, they found
3 no bad faith. In fact, the stock transfer
4 in that case was unlawful because it
5 violated a stock transfer restriction,
6 and, nevertheless, the Second Circuit said
7 it is not bad faith.

8 Here it is the opposite, there
9 is no unlawful activity whatsoever. Under
10 the Second Circuit law, clearly this is an
11 appropriate venue, no bad faith. So why
12 are we joining, then, in the motion? And
13 this was clearly a long, careful decision,
14 and with all due respect, you can take
15 judicial notice of the fact that after
16 everything that has gone on to date, the
17 last thing the Debtors wanted to do is
18 join in a motion with Buffalo Rock.

19 But here are the facts.
20 Buffalo Rock filed its papers. The
21 bad-faith allegation, the escaping
22 Jacksonville, frustrating creditors, was
23 all over the papers. As undoubtedly could
24 not have been a surprise to them, it was
25 picked up by the press. The creditors, I

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2 believe the Committee, in their
3 opposition, says that since the Debtors
4 selected New York and since the Debtors
5 now want to move, we have the burden of
6 showing some change that occurred
7 post-filing. Without debating whether
8 that is the right standard or not, let's
9 apply that standard. The testimony is
10 clear, there was a substantial and
11 dramatic change. That was Buffalo Rock's
12 filing. For better or worse, because you
13 don't have to plead evidence, you can
14 basically say whatever you want, and that
15 is apparently what they did. Without any
16 evidence, it is all over the press.

17 The fact is the testimony is,
18 again, undisputed, that caused real
19 serious, tangible harm to this company.
20 People in the field are getting constant
21 feedback from associates, employees. They
22 are being deluged with these problems.
23 And people are wondering just what the
24 heck went on here, why did this company do
25 this, are these charges true? And can the

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2 Debtors engage in a press campaign? Sure.
3 Can they benefit from a finding by this
4 court that they acted totally appropriate
5 at all times? Absolutely. I think the
6 testimony was clear, that would go, quote,
7 a long way. But the problem is that
8 doesn't take us where they need to go.

9 I think Mr. Appel made it
10 clear, his words were eloquent, actions
11 speak louder than words. Do the Debtors
12 believe they can have a successful
13 reorganization in New York? Absolutely.
14 They filed here. Do they believe they can
15 have a successful reorganization in
16 Florida? Absolutely. The problem is once
17 the courtroom process is over and there is
18 hopefully a successful reorganization,
19 life goes on. That is the period of time,
20 that is the event that we have to plan for
21 now. And the Debtors, who know their
22 constituencies and know their community
23 better than anybody else in this
24 courtroom, in their business judgment have
25 made a conclusion they need not only to

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2 take the stand here and swear under oath
3 to disavow those baseless charges of bad
4 faith, they need to do everything they can
5 proactively to show that they are
6 perfectly happy to go to Jacksonville.
7 They were happy to commence in
8 Jacksonville, but on balance determined it
9 would be better for all involved to go to
10 New York.

11 But they need to show their
12 constituencies that not only can they
13 swear to the truth, but they can act on
14 it, and they affirmatively are joining and
15 requesting that this court, for all the
16 reasons that I discussed and for the
17 testimony, the un rebutted sworn testimony,
18 that the best interests of this estate
19 would be to move this case to
20 Jacksonville.

21 Thank you.

22 MR. RUBIN: Would you like for
23 us to go next, your Honor?

24 THE COURT: Yes.

25 MR. RUBIN: Your Honor, we

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2 appreciate the opportunity to be heard
3 this afternoon and a bit of this morning.

4 We stand by the motion which we
5 filed, the cases which we've cited and the
6 facts which we have articulated in that
7 motion, and the response which we filed.
8 But, more importantly, we stand by the
9 stipulation of facts which we filed
10 earlier today with the Court. And
11 although we appreciate the fact that the
12 Debtor consents and we think that is
13 extremely important that the Debtors'
14 wishes be adhered to in respect to moving
15 the case to Jacksonville, we also believe
16 that the facts as alleged in the
17 stipulation point out the motion papers
18 that we filed were absolutely correct, as
19 well as the response, that venue was
20 manufactured here in the Southern District
21 of New York by the actions taken by the
22 Debtor in respect to the filing of these
23 cases. However you want to characterize
24 them, that is up to the Court to
25 characterize it. The facts are pretty

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2 clear, they are pretty salient.
3 First of all, on February the
4 21st these cases were filed. There are 24
5 cases in all. 19 of those cases are
6 Florida corporations. What was the nexus
7 between New York and these debtors? That
8 nexus was created on February the 9th,
9 2005, some 12 days before the filing of
10 the petition, by the incorporation of a
11 company known as Dixie Stores, Inc., a New
12 York corporation which came into existence
13 on the 9th and did not exist prior to that
14 date. It is clear also from the
15 stipulation that Dixie Stores has no
16 prepetition creditors. Dixie Stores has
17 no assets except for a \$100,000 bank
18 account which is at the Wachovia Bank here
19 in New York. How did that bank account
20 come into existence? That money was
21 either wire-transferred or deposited by
22 Winn-Dixie Stores itself to that bank
23 account. That happened on or about
24 February 12th. So there was absolutely no
25 nexus between these debtors and the State

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2 of New York.

3 There is no physical presence

4 of Dixie Stores in the State of New York

5 other than the bank account. Paragraph 6

6 of the stipulation is clear. The Debtor

7 and the movant stipulate that DSI, Dixie

8 Stores, Inc., was formed solely to

9 establish venue in the New York Bankruptcy

10 Court. The testimony was clear, and

11 substantially clear from the witness this

12 morning, that there are approximately

13 80,000 employees, over 40,000 of them are

14 located in the State of Florida, that 40

15 percent of the stores of the Debtor are

16 located in the State of Florida, that all

17 of the management of the Debtor is located

18 in the State of Florida, that all of the

19 substantial assets of the Debtor are

20 located in the southeastern United States,

21 Alabama, Mississippi, Georgia, Florida,

22 North and South Carolina, etc., Louisiana.

23 The second hook for venue, on

24 or about February 12th, 2005, Table

25 Supply, a Florida corporation, not

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2 qualified to do business in the State of
3 New York, established a bank account at
4 Wachovia Bank here in New York City.
5 Where did that money come from? That
6 money came from Winn-Dixie Stores, Inc.
7 So what is the nexus, then,
8 after the establishment of that bank
9 account, between New York and this debtor?
10 The nexus is approximately \$200,000 in
11 assets as opposed to the total amount of
12 assets of the Debtor in accordance with
13 its summary of schedules of an amount of
14 \$1,724,693,681.28. My math has always
15 been paltry and poor, but we have tried to
16 calculate that, and we believe that the
17 \$200,000 worth of deposits in the State of
18 New York represent 1/100 of 1 percent of
19 the total assets of this debtor.

20 It is telling in paragraph 10
21 of the stipulation that the Table Supply
22 bank account was created solely to sustain
23 venue in the New York Bankruptcy Court.
24 Substantially all of the Debtors' assets
25 other than the DSI bank account and this

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2 Table Supply bank account are located in
3 the southeastern United States. That is
4 paragraph 11.

5 Paragraph 12, all of the
6 Debtors' employees are employed in the
7 southeastern United States. The Debtors'
8 books and records, including those of
9 Table Supply and Dixie Stores, are located
10 in Jacksonville, Florida, paragraph 13 of
11 the stipulation. All of the Debtors'
12 officers and directors and management are
13 located in the southeastern United States,
14 paragraph 14. 15, all of the Debtors'
15 corporate decision-making occurs in
16 Jacksonville, Florida. The Debtors
17 consent in paragraph 17. In paragraph 18,
18 the Debtors believe they could achieve a
19 successful reorganization in the Florida
20 Bankruptcy Court. In paragraph 19, the
21 Debtors believe it may be less expensive
22 to administer the case.

23 Your Honor, this is clearly a
24 case that is governed by 28 USC Section
25 1408, subparagraph 1. Venue was

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2 manufactured. This is blatant forum
3 shopping by this debtor in the filing of
4 these cases in the Southern District of
5 New York. We believe that if you take
6 those facts as you see them, then both the
7 Table Supply and the Dixie Stores cases
8 are subject to dismissal. There is no
9 possibility of a reorganization of Dixie
10 Stores. It has no business. There is no
11 possibility of a reorganization of Table
12 Supply. It hasn't operated, in accordance
13 with the papers here, at least since 2002.

14 We believe that the Court
15 should transfer these cases to the
16 Bankruptcy Court for the Middle District
17 of Florida located in the Jacksonville
18 Division because they should have never
19 been filed here in the first place. They
20 are not properly filed here. They are
21 subject to 1408, subparagraph 1. This was
22 a bad-faith filing and it should be moved.

23 Thank you.

24 THE COURT: When you say 1408,
25 subparagraph 1, what, in effect, are you

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2 referring to that fits into that section?

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MR. RUBIN: That the assets
4 were not here in a greater portion of the
5 last 180 days prior to the filing of the
6 bankruptcy. There is no connection
7 whatsoever --

8

THE COURT: Doesn't the statute
9 actually say "or such lesser amount"?

10

MR. RUBIN: Yes. These were
11 fabricated situations where these cases
12 should be transferred, your Honor. This
13 was manufactured venue.

14

THE COURT: I'm just trying to
15 focus on the statute.

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MR. RUBIN: And the second
17 basis for transfer of course is 1412,
18 convenience of the parties, and justice
19 requires that the cases be transferred.
20 We have gone through the litany of those
21 items with employees, creditors, etc. I
22 think in either basis the Court can
23 transfer this case.

24

THE COURT: Do any of the other
25 people who joined in the motion want to

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2 speak?

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MR. McFARLIN: Yes, your Honor.

4

Your Honor, I'm David McFarlin.

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I think everyone agrees that we

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have a perception problem here with the

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filing of this case. I guess what

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happened here is we disagree on who

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created the problem. The Committee would

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argue that Buffalo Rock has created this

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perception problem by objecting and

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seeking to transfer venue, and we would

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join with Buffalo Rock in suggesting that

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the problem was created by the Debtor in

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filing this bankruptcy case in a distant

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forum with no meaningful connection to its

17

base of operation.

18

My clients are represented by

19

the key managers, executives, and retirees

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of Winn-Dixie that participated in these

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nonqualified deferred compensation plans.

22

With all due respect to the very talented

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professionals in this room today, I think

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that those managers and executives are

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going to be the people that are most

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2 important in deciding whether or not
3 Winn-Dixie reorganizes. I think herein
4 lies the rub. Although these managers and
5 executives that participate in these plans
6 in the aggregate have very large claims,
7 individually they don't have enough that
8 would permit them to participate in this
9 case in a distant forum. The economics
10 simply won't justify that.

11 THE COURT: Since the major
12 reason, if not the only reason, that the
13 Debtor has changed its position on venue
14 is to deal with perception, and since
15 obviously perception is important here, I
16 will ask you some questions about that.

17 What do you mean by your
18 clients participating?

19 MR. McFARLIN: These employees,
20 these executives and retirees, want to be
21 able to participate in this bankruptcy
22 case in the sense of coming to a hearing.

23 THE COURT: Do you practice
24 bankruptcy law, sir?

25 MR. McFARLIN: Yes, sir.

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2 THE COURT: How often in your
3 experience have you seen employees come
4 and actively speak and participate in
5 hearings?

6 MR. McFARLIN: The point is
7 well-taken. I think I probably overstated
8 the case. What I meant to say, your
9 Honor, is that I think we have gotten to a
10 point now where a working stiff with a
11 million-dollar claim can no longer
12 economically afford to retain a New York
13 lawyer to represent them in a Chapter 11
14 case in bankruptcy. Were this case in
15 Jacksonville, I think that these employees
16 could participate through legal counsel in
17 the bankruptcy case in a meaningful way.

18 But your point is well-taken.
19 I don't expect that these employees are
20 going to show up at hearings and give the
21 court recommendations or advice or
22 argument about the way the case ought to
23 move.

24 THE COURT: Do you think 1114
25 is applicable here for your clients?

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2 MR. MCFARLIN: I can talk
3 around that a little bit. I think
4 arguably that our clients could separately
5 be represented through a committee. For
6 example, I think that their interests are
7 somewhat different from the current
8 Creditors Committee. And that may solve
9 some of their problems, because under the
10 current setup here, they are not on the
11 Committee. Their interests are certainly
12 divergent from what the current Committee
13 representatives would have the Court do.

14 And I guess the third point is,
15 and it goes back to the perception, I
16 think it is one thing to be permitted to
17 participate through a committee, but I
18 think it is another matter to be forced to
19 participate through a committee simply
20 because the Debtor elected to file its
21 case in a distant forum.

22 I think that perception is
23 going to be very important because I
24 happen to think that these managers and
25 executives are important to what happens

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2 in this reorganization. If they feel that
3 they have been disenfranchised, then I
4 don't think that they are going to be
5 putting in the blood, sweat, and tears
6 that is necessary for a reorganization,
7 and I don't think that bodes well for
8 reorganization.

9 THE COURT: They are very
10 important obviously. I just wonder
11 whether -- well, frankly, I wonder if they
12 are being misinformed about what the
13 process is like. Did you represent all
14 the people that sent the letters to court?

15 MR. McFARLIN: No, sir. I
16 would not encourage them to send letters
17 to court. But we have spoken to a
18 significant number of the participants in
19 this plan. I subsequently became aware
20 that they had sent letters, and it is
21 certainly not a recommendation that we
22 made.

23 THE COURT: I'm perfectly happy
24 to get letters. That is not the issue. I
25 just worry about people being given the

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2 wrong impression about what it takes to be
3 active in a bankruptcy case and what their
4 rights are, which are substantial and real
5 in any bankruptcy case. Seeing your
6 retirement nest egg in jeopardy is
7 frightening enough as it is.

8 I would hope that in any future
9 issue about venue people not be stirred up
10 needlessly about what normally happens in
11 a bankruptcy case and what people's rights
12 are. If it is a difference between a \$400
13 lawyer and a \$200 lawyer, I can understand
14 that for some people. But if people are
15 being told that you actually have to come
16 in person and attend every bankruptcy
17 hearing, then they are just being lied to,
18 and that is not right.

19 MR. McFARLIN: Agreed. Thank
20 you, Judge.

21 THE COURT: Congress
22 specifically set up a section because they
23 were concerned about retirees that gave
24 them rights that are unique. The right to
25 a committee under the proper circumstances

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2 paid for by the estate, no one else has
3 that.

4 MR. McFARLIN: Yes, sir.

5 MR. MARTIN: Good afternoon,
6 your Honor, Warren Martin, Porzio,
7 Bromberg & Newman, attorneys for Riverdale
8 Farms.

9 Your Honor, before I begin, I
10 intend to say I have one war story to
11 answer the question that you asked the
12 gentleman before me. I had a bankruptcy
13 case where I represented the committee and
14 it was a hospital that was the debtor.
15 The committee was going forward and
16 objecting to a WARN Act severance claim
17 that would affect employees. The hospital
18 was in the district where the case was
19 pending, which happened to be Newark, New
20 Jersey. Much to my frustration, about 150
21 employees showed up at that hearing, and I
22 was the bad guy trying to sever their
23 claims, but, nonetheless, because of the
24 location of the case, they had the
25 opportunity to do that. We can't foresee

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2 every possible motion or issue that might
3 come up, but those types of things I think
4 are the reasons why Congress enacted the
5 venue provision that it did enact in 1408.

6 Your Honor, I think it is hard
7 for all of us to say bye to a nice case,
8 both the Court and counsel, including
9 myself. I'm up here to work myself out of
10 a job.

11 THE COURT: Well, I don't get
12 paid by the case.

13 MR. MARTIN: But none of us
14 ever think we are going to get another
15 case, but somehow we do.

16 The problem that I have with
17 this, and my analysis, Judge, kind of
18 started and ended with 1408. That is what
19 I'm here to talk about. 1408 gives three
20 options, principal place of business,
21 principal assets, domicile, which
22 essentially is state of incorporation for
23 a corporation. It doesn't also say "or
24 any one of the other 50 states where you
25 form a company 12 days before the filing."

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2 Dixie Stores clearly, as is in
3 the stipulation, paragraph 6, had no
4 purpose for filing a bankruptcy and no
5 purpose for its formation, in fact, other
6 than to establish venue. In my view,
7 because of that, it is not a proper
8 debtor. Dixie Stores is the only entity,
9 I submit, that technically meets 1408.

10 With respect to Table Supply,
11 Inc., I do not believe that that meets
12 1408's requirements because its principal
13 assets were not in this district for the
14 greater portion of the 180 days prior to
15 the petition. Now, its principal assets
16 might have been its name and an empty bank
17 account for 178 days, but those were its
18 principal assets, and its asset of
19 \$100,000 cash was only there for 12 days.
20 So I believe that Table Supply does not at
21 all comply with 1408. The only company
22 that can comply with 1408 is Dixie Stores.
23 Again, we have the admission that that was
24 formed solely to establish venue.

25 Frankly, I thought about

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2 whether or not I would do this as a
3 bankruptcy attorney to get venue, would I
4 set up a corporation like that. I would
5 ask the Court to reflect upon that as
6 well, whether this would be an
7 inappropriate use of the bankruptcy code.
8 Good lawyering is great, and we all try to
9 be creative and do the best thing for our
10 client, but some lawyering, I think, is so
11 clever that we do an injustice to the
12 language and the intent of the statute.

13 I think the venue statute in
14 1408 was intended by Congress that there
15 be some meaningful nexus to a debtor.
16 What we have here, from what I heard from
17 the testimony, was a large bank creditor
18 and some bondholder creditors who felt it
19 would be better to be in New York and some
20 herculean efforts by the Debtor to make
21 that happen. I submit, like was stated in
22 the Committee's brief, that Congress means
23 what it says and says what it means.
24 Unless we want to entirely gut 1408, this
25 case must move to Florida.

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Thank you, your Honor.

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MR. AUGUST: Good afternoon,

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your Honor, John August of Herrick

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Feinstein on behalf of Ernst Properties.

6

I will be very brief.

7

We had filed a joinder in which

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we joined in all of Mr. Rubin's arguments

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for a transfer and suggested that if your

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Honor is going to transfer, that the more

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convenient and the most central location

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would be the Eastern District of

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Louisiana. I just wanted to basically

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summarize that the Debtors are present in

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Louisiana. They have significant

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operations there and in states to the

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west. The Eastern District of Louisiana

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is centrally located and we think provides

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the most convenient location for all the

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employees and all the local creditors.

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Also, there was a case, Jitney

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Jungle, that was still pending in the

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Eastern District of Louisiana, and the

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court there presided over a significant

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sale of assets to the debtors in that

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2 case. So we think that court already has
3 some familiarity with the issues that
4 would arise in this case, your Honor.

5 THE COURT: Anyone else who
6 joined?

7 MS. MARTINI: Good afternoon,
8 your Honor. For the record, Deidre
9 Martini, United States Trustee for Region
10 2.

11 Your Honor, my remarks this
12 afternoon are postured more in the nature
13 of a venue statement than they are a venue
14 position, because I believe that my role
15 in this dispute, after all, I was one of
16 the first on the scene, if you will, is to
17 assist the Court in applying the
18 appropriate standard to determine the
19 merits of this motion.

20 As a party in interest, but not
21 a true stakeholder in this case, it is
22 inappropriate for me to opine on the
23 ultimate resolution of this issue, but
24 rather give the Court some background on
25 the U.S. Trustee's views on venue. To do

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2 that I would like to take a minute to tell
3 you factually how we got involved in the
4 case originally.

5 As the Court is aware, and most
6 of the parties are, in the prefiling stage
7 we are given an enormous amount of
8 information to review to get the debtor
9 prepared to enter into bankruptcy and to
10 seek protection under Title 11. As part
11 of that review, we inquire of every debtor
12 to explain to us their connections to New
13 York and to give us nexus to venue in the
14 Southern District of New York. That
15 information was communicated to us. And
16 when I say "us," I was involved in almost
17 every conversation, conference call, and
18 negotiation in the prefiling stage, as was
19 Richard Morrissey, who is present here in
20 court.

21 The Debtor answered our
22 questions as to venue, and the information
23 that was communicated prior to the filing
24 was sufficient then and now factually to
25 support venue in the Southern District of

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2 New York. I was unaware that there was an
3 affiliate that was created 12 days before
4 the filing. However, I have to state that
5 in all of the communications and
6 conferences that were held, that question
7 was not directed at the Debtor, any of its
8 representatives, or counsel.

9 Your Honor, it is
10 understandable that the creation of DSI
11 could be perceived as enhancing or
12 bolstering the Debtors' connections to New
13 York. But there are two debtors here with
14 assets in New York, and in our view, at
15 the time of the filing there was nothing
16 present that violated Title 28.

17 As the U.S. Trustee, I have an
18 obligation to this court to alert the
19 Court of any violations of bankruptcy
20 code, and federal law for that matter,
21 chime in on issues of appearance, and
22 probably most importantly issues relating
23 to integrity of the system. It is not my
24 intention to alter any of the current
25 procedures that we now employ within the

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2 U.S. Trustee's Office. However, upon
3 reflection, I may in the future probe a
4 little deeper so that these types of facts
5 come to light a lot sooner in the case
6 than later.

7 I would like to note, on
8 timing, this is -- a venue challenge to me
9 is a challenge that should be viewed
10 almost as a first-day type of issue. The
11 motion should be made immediately upon
12 discovery of the facts which would form
13 the basis for the request to transfer
14 venue. The motion should be brought prior
15 to major milestones in the case. In this
16 case, we have approval of DIP financing.
17 There is certain procedures, reclamation
18 procedures, that have been employed, a
19 huge number of interim and final orders.
20 I haven't checked PACER, but there must be
21 50 or 60 orders that have been entered in
22 this case. When there is a venue
23 challenge well into the case, such as this
24 one, I think the Court should look at the
25 timing of the motion to evaluate whether

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2 or not there is more strategic-like
3 factors that are present and why other
4 creditors, notably the Committee, have a
5 vastly different view of venue.

6 In turning to the venue issue,
7 absent evidence that the filing was in bad
8 faith, which I don't think, as I listened
9 to the testimony today, that there was any
10 evidence whatsoever proffered in that
11 regard, coupled with compliance with
12 Section 1408, I think the Court has to
13 look at the interests of justice and the
14 convenience of the parties.

15 The U.S. Trustee and the Office
16 of the U.S. Trustee is in a very, very
17 unique position because we are not
18 creditors, we are not stakeholders in the
19 outcome. We are truly unique in that we
20 are disinterested. We are a national
21 program, and this case will be
22 administered and monitored by me if it
23 stays in New York, or by Felicia Turner if
24 it is transferred to Florida. So we truly
25 don't have an interest at all in where the

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2 case is ultimately postured.

3 My position today is that the
4 Court should undertake a convenience
5 analysis and hear from the parties that
6 are most affected even when there is the
7 Debtors' acquiescence to this transfer.
8 This acquiescence, as stated by the Court,
9 is due to its perception that there is
10 negative ramifications and that the
11 disruption that this venue dispute has
12 created will derail the reorganization
13 process. Movants have the burden of proof
14 on this issue. The Debtors' support of
15 the transfer may not be dispositive since
16 the Committee and what I have calculated
17 to be almost \$600 million of debt have
18 objected to the transfer.

19 So the U.S. Trustee encourages
20 the Court to apply the standard under 1412
21 to allow the true stakeholders in this
22 case to be heard.

23 THE COURT: Thank you.

24 MS. MARTINI: Your Honor, I
25 have a flight to Washington D.C. that I'm

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2 trying to get on.

3 THE COURT: So you can be
4 excused.

5 MS. MARTINI: Richard Morrissey
6 is also here in court.

7 THE COURT: Okay, thank you.

8 MR. DUNNE: Your Honor, Dennis
9 Dunne of Milbank, Tweed, Hadley & McCloy
10 on behalf of the Official Committee of
11 Unsecured Creditors in these cases.

12 At the outset, I want to make
13 clear that the Creditors Committee is
14 merely dealing with the cards that they
15 were dealt, and given those cards,
16 weighing all the options and trying to do
17 what is consistent with their fiduciary
18 duties to maximize recovery to the
19 unsecured creditors. The Creditors
20 Committee obviously did not exist and had
21 no input on any of the pre-bankruptcy
22 planning.

23 We would also like to contrast
24 that with Buffalo Rock, who we submit has
25 unclean hands. The testimony was

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2 un rebutted that the primary reason for
3 their filing of the motion when they did
4 was that they were upset they weren't
5 appointed to the Official Creditors
6 Committee. They knew that they couldn't
7 make a motion to compel the Court or to
8 have the Court compel the U.S. Trustee to
9 appoint them, so they tried to make an end
10 run around that process and use the venue
11 motion as the lever for trying to extract
12 appointment to the Creditors Committee.

13 What is amazing about that,
14 your Honor, is that it seems to have been
15 successful to one degree, which is that
16 the Debtors' position changed as a result
17 of the consequences of that motion. The
18 Debtors are saying "Look, there was no bad
19 faith, we acted in good faith, the venue
20 is appropriate under 1408 here." And,
21 indeed, under a 1412 analysis, that may
22 lead to staying in New York, but because
23 of the PR, the press, which is already --
24 you know, the genie is out of the bottle,
25 your Honor, on the articles that have been

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2 written in the Florida newspapers. But
3 because of the press that they have
4 received, they changed their position, and
5 I submit, your Honor, that one factor that
6 is not present in any case law under 1412
7 is the opinion of journalists in other
8 forums.

9 The reasons that the Committee
10 is opposing the motion can be distilled to
11 two, which is that we believe it is more
12 convenient for most creditors, and, this
13 may be more important, more convenient for
14 those creditors who are likely to have
15 meaningful disputes with the estate, who
16 have appeared to date on disputes that
17 aren't resolved yet, and I will come back
18 to that in a few minutes.

19 The Committee is also convinced
20 that Florida will be more expensive than
21 New York. I know we heard Mr. Appel's
22 testimony where he went out of his way to
23 say it may be that Florida could be
24 cheaper, but that is back of the envelope,
25 it is really just a Debtors' side analysis

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2 if they could shift a sufficient amount of
3 the work from Skadden to local counsel.

4 I could tell you the Committee
5 members have been in a number of cases,
6 some with local counsel, some without, and
7 they understand -- they believe that that
8 leads to incremental costs in terms of
9 travel of New York counsel to another
10 jurisdiction, having local counsel at all
11 the hearings, and having them on the
12 conference calls. It also doesn't
13 address, and I think Mr. Appel admitted as
14 much, that there will be incremental costs
15 for the Piper Rudnick firm and the trade
16 creditors they represent will have to go
17 out and get Florida counsel, and Kelley
18 Drye and the landlords they represent will
19 have to go out and get local counsel. As
20 fiduciaries who are charged with
21 minimizing liabilities, maximizing returns
22 to unsecureds, the Committee has come out
23 on balance as believing that Florida will
24 be more expensive.

25 Before I turn to the statute,

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2 your Honor, I did want to address the
3 burden, which is we cited cases, and I
4 don't believe anybody has cited contrary
5 authority, that the burden remains with
6 the movant. The Debtors' change of
7 position does not change that burden. I
8 heard the phrase "business judgment"
9 several times. The analysis under 1412 or
10 1408 does not revolve around a business
11 judgment test. In fact, the cases we cite
12 are undisputed that the best evidence,
13 even when the Debtors have changed their
14 mind on their preference, the best
15 evidence of the Debtors' preference is
16 what did they actually do under the
17 petition date. In this case, they filed
18 in New York. Once we are at Section 1412,
19 that creates a presumption that it stays
20 here, unless rebutted.

21 The last point is that
22 Mr. Zimmerman talked about there being a
23 change since the petition date. Again,
24 the change is the number of journalists
25 who have written articles that have picked

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2 up on some of the adjectives used by
3 Buffalo Rock in their pleadings. I submit
4 anybody to read those cases. Those aren't
5 the changes they are talking about. They
6 are talking about the changes related to
7 venue, i.e., did your headquarters move
8 across the country, did you move your
9 assets from Oregon to Wisconsin, things
10 that would directly justify a change of
11 position with respect to venue. Your
12 Honor, nothing of that sort has occurred
13 here.

14 That being said, as kind of a
15 preface, your Honor, let's start with
16 1408, because I don't think anybody has
17 really parsed through this. I think the
18 Supreme Court, under Ron Pair and the
19 litany of those cases, has made it clear
20 the analysis should begin and end with a
21 literal reading. What I think the other
22 parties have missed is that 1408 only
23 deals with Dixie Stores and Table Supply.
24 The balance of the Winn-Dixie entities are
25 not here under 1408-1. They are here

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2 under 1408-2, which is a completely
3 different analysis. Let me come back to
4 that in a moment.

5 If Dixie Stores were the only
6 entity to file, do they really argue that
7 it is improper in New York when they were
8 clearly domiciled in New York by state of
9 incorporation? There is nothing in 1408-1
10 that says one individual corporation that
11 has only existed for 12 days cannot file a
12 Chapter 11 case. In fact, they couldn't
13 file anywhere else. It had to file in New
14 York given the evidence that we've heard.

15 Then we get to important
16 qualifiers that Congress clearly thought
17 about, crafted, and put in, which was
18 okay, but it had to have been the domicile
19 for 180 days prior to the petition date.
20 That doesn't apply to Dixie Stores because
21 they didn't exist for 180 days. We are in
22 the second prong, which says okay, if they
23 haven't existed for 180 days, you could
24 still file. That is important. They
25 could have said that you can't file if you

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2 only existed for 60 days. What they have
3 said is that no other district can claim
4 that they housed your domiciled residence,
5 principal assets, or place of business for
6 a longer period than the place where you
7 filed. That is also true of Dixie Stores.
8 No district has a greater claim that they
9 were in their district for longer than the
10 12 days that they were in New York.

11 So under 1408-1, in the
12 literal, plain meaning of it, Dixie Stores
13 was a proper debtor venued here in New
14 York.

15 THE COURT: What they are
16 saying is there is no reason for Dixie
17 Stores to be in bankruptcy.

18 MR. DUNNE: What I understand
19 that to mean is they would like to dismiss
20 it as a bad-faith filing because there is
21 no basis for a reorganization proceeding.
22 That, I submit, is not 1408-1 analysis.
23 That would be to dismiss Dixie Stores as a
24 debtor. That is not their request. We
25 can deal with that.

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2 What they are getting to is
3 whether a dismissed case can be the
4 predicate hook under 1408-2. They are not
5 a creditor of Dixie Stores. They don't
6 have standing if only Dixie Stores was
7 here. What they are saying is, by using
8 Dixie Stores under 1408-2, we can't bring
9 everyone else in. I believe there are
10 cases out there talking about your
11 creditor hook being dismissed, and at the
12 time of analysis for 1408-2 is the
13 petition date. Simply, was there an
14 affiliate in that location, yes or no?

15 Congress has considered on many
16 occasions putting some heft on this. This
17 is why the 180-day qualifiers that are in
18 1408-1 are so important. They didn't put
19 them in 1408-2. They could have said the
20 first to file that you are using as the
21 predicate for all your affiliates, they
22 had to have been in that district for 180
23 days or they had to have been in existence
24 for 180 days. They know how to draft
25 this. They just drafted it in 1408-1. If

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2 you go back through the legislation that
3 has been considered by Congress over the
4 past several sessions, they talked about
5 amending this section to do exactly that,
6 put some qualifications on it. They have
7 not done it.

8 What does the Supreme Court say
9 about that? We have to take the statute
10 as it is. If your Honor feels like it
11 would be wise or preferable to put those
12 qualifiers in there, that is the province
13 of Congress, not the Court. So I don't
14 believe that we are in 1408 at all. Just
15 for the record, there was no dispute that
16 if Dixie Stores was proper here under
17 1408-1, that they were affiliated with the
18 rest of the Winn-Dixie entities for 1408-2
19 purposes.

20 Moving to 1412, your Honor,
21 which is important, because that is where
22 I think the analysis should be done, is
23 that Congress didn't leave the Court or
24 the parties without a remedy for those
25 situations which scream out for a transfer

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2 because all the parties would be more
3 convenienced by moving it or in the
4 interests of justice it would favor it.
5 We suggest that both of those strongly
6 militate in favor of retaining the cases
7 in New York.

8 Let's talk about the interests
9 of justice prong first, which principally
10 refers to judicial economy, costs of
11 administration, and related issues. While
12 we believe that the Florida bench clearly
13 could handle the cases as competently as
14 this court, there is no doubt that this
15 court has more knowledge about these cases
16 and about its own rulings. This court has
17 overseen numerous hearings and ruled on
18 many motions since the petition date. As
19 a result, it has listened to testimony and
20 become familiar with the company's
21 financial condition, its structure, and
22 the legal issues facing it.

23 I want to give a couple of
24 examples of that. On some of the
25 first-day orders, your Honor directed the

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2 Committee to work with the Debtors on the
3 consignment order to make sure it is not a
4 disguised critical vendor payment. To the
5 extent we have disputes on that, it is
6 helpful to come back to the court that had
7 those oral overlays on written orders.

8 Perhaps a better example of it
9 is the DIP hearing. Your Honor heard
10 hours of testimony and oral argument. A
11 lot of it telescoped around the issue of
12 what is the effect of the assignment of
13 the prepetition secured lenders to the DIP
14 lenders on the allowability of reclamation
15 claims. Your Honor crafted again an oral
16 reservation of rights dealing with the
17 need to, perhaps if we don't settle it, to
18 talk about the scope, the extent of that
19 assignment.

20 What your Honor had in mind by
21 those words may very well be at issue in
22 this case, and I believe --

23 THE COURT: I'm sorry, isn't
24 that a reservation of rights in the order
25 now?

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MR. DUNNE: I think it

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references the oral argument in the

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transcript, your Honor. You are right, we

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added language expressly reserving the

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rights, but on the terms set forth on the

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record.

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I think the point is made, your

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Honor, that both parties -- I think it is

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important to note that the reclamation

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creditors themselves are here supporting

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retention in New York. Both parties would

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prefer to have the judge who actually

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heard the testimony and the arguments and

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made that reservation of rights statement

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interpret it, if need be.

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The other point is the location

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of the assets. We cite cases that I think

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make it clear that the location of a

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debtor's assets, while it is a factor, has

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negligible weight unless you are in a

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liquidation or you think a liquidation is

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a likely prospect. You can understand why

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it is necessary in a liquidation process

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to be near the assets. Even then I would

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2 submit we have all been in liquidating
3 Chapter 11's and selling assets under
4 Section 363 all over the country without
5 the need to be near them. But in any
6 event, the cases are clear that is a very
7 minor factor.

8 The Committee believes that the
9 cost of the cases increases. I keep
10 coming back to that because that is the
11 touchstone. If you look at all the
12 parties here, clearly New York would be
13 more convenient. That is not just
14 convenience for the professionals. That
15 convenience translates into less travel
16 time, less airfare, less time spent in
17 transit. That is dollars that will be
18 borne by the estate. We believe we are
19 the residual economic stakeholders here
20 and every incremental dollar comes out of
21 the unsecureds' pockets.

22 What is in the interests of
23 justice in this case? I think we have
24 shown that judicial economy militates in
25 favor of keeping it here. We believe that

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2 the cost of administration does as well.
3 Virtually every professional on an
4 estate-retained party is in New York or
5 has offices. Skadden, New York;
6 Crossroads, New York; Blackstone, New
7 York; Houlihan, New York; Alvarez &
8 Marsal, New York. Milbank as well.

9 Lastly, there will be
10 inevitably a learning curve for the new
11 judge in Jacksonville. There will be
12 incremental time explaining what has
13 transpired to date, what has gone on in
14 each of these rulings, and generally
15 duplicating what we have done in a
16 truncated fashion, but duplicating what
17 has gone on to date here.

18 Your Honor, on the convenience
19 of the parties, I think I've spoken about
20 where some of the key professionals are.
21 But let's talk about the other side of the
22 aisle. The principal movant here is
23 Buffalo Rock. They have a \$2 million or
24 so claim. They do not have a contract
25 with the company. There are no assumption

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2 or rejection issues on the horizon. We
3 don't know whether or not they would be
4 involved in a material dispute with the
5 company. But as evidenced by today, I
6 think that we can clearly conclude that
7 they can represent themselves effectively
8 in New York, and, again, I don't think it
9 was about venue with them, it was about a
10 vendetta for being upset by not being
11 appointed to the Creditors Committee.

12 The employees, your Honor, I'm
13 just going to make a few points. First of
14 all, the Creditors Committee is solicitous
15 of employees. We want them to be happy,
16 well-paid, and working hard. We will take
17 steps to ensure their participation,
18 whether that is by conference call or
19 otherwise. But I just want to point out
20 there has been an employee order entered.
21 All their prepetition wage claims and
22 benefit claims will be paid in the
23 ordinary course. Their vacation time,
24 etc., will be dealt with in the ordinary
25 course. To the extent there is an issue

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2 with a retirement plan under 1114, we all
3 know how many times that arises in a
4 bankruptcy case, they are likely to have a
5 representative or we will all go out of
6 our way to craft a procedure so they can
7 participate meaningfully.

8 Some Florida utilities have
9 also joined in in the venue transfer
10 motion. It is not surprising that they
11 do. No doubt being in Jacksonville would
12 cut down their travel time. The utility
13 disputes, there is a pending order that
14 deals with them. Most of them had
15 deposits for their prepetition claims.
16 Cases aren't reorganized on the backs,
17 maybe except for telecom companies, with
18 utilities.

19 At the end of the analysis,
20 your Honor, Buffalo Rock is arguing that
21 the mere creation of Dixie Stores and the
22 transfer of assets to Table Supply
23 constitutes such bad faith and
24 manipulation of the system that this court
25 per se has no choice but to move it to

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2 Jacksonville. I think a closer look at
3 the facts, the un rebutted testimony, and
4 the law shows that they are wrong. I
5 didn't hear any evidence that went to the
6 bad faith of the Debtors. I don't think
7 Buffalo Rock really argued that point.

8 On the law, look at the cases
9 they cite where there is a gloss in some
10 of these cases about bad faith and abuse
11 of the bankruptcy process. In those
12 cases, the debtors were filing in a remote
13 jurisdiction to gain a distinct legal
14 advantage over the creditors. That is not
15 the case here. In those cases, it is the
16 creditors committee and large creditors
17 who are seeking to get it back to another
18 jurisdiction to avoid the debtors getting
19 the advantage of some unique law in the
20 Second or Ninth District that favors them
21 in a two-party dispute with a landlord.
22 We don't have any of those facts here.

23 So what we are saying on
24 balance is that this court should not
25 expand that minimal gloss on the statute.

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2 Justice Scalia and the balance of the
3 Supreme Court have made it clear you
4 interpret the statute as it is written,
5 and there is a very small exception for
6 egregious bad faith of the debtors, which
7 is not present here, and there is no
8 evidence of it, and the Court should not
9 expand that exception.

10 THE COURT: The phrase
11 "interests of justice" is a pretty broad
12 phrase. I can certainly understand the
13 point that it is not just that in a
14 federal system a company be permitted to
15 so clearly create a basis for venue. What
16 is your response to that argument? I
17 mean, I've never seen this done before
18 where it has been brought to light, I've
19 never seen it before when it wasn't
20 brought to light.

21 If I rule as you want, what is
22 to keep any debtor in the future from
23 doing this and basically loading down one
24 or two corporations with every case?

25 MR. DUNNE: It comes back to

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2 the balancing of the factors, the
3 interests of justice and the convenience
4 of the parties. Are they doing it for an
5 improper purpose or bad faith? Let's
6 assume every creditor, and here we have
7 some small creditors, in terms of number
8 of dollars, arguing otherwise, but the
9 vast majority of the creditors argue that
10 yes, this will result in a more efficient
11 administration of justice so that more
12 funds are available for distribution to
13 the unsecured creditors. It depends
14 whether your Honor is going to make a per
15 se ruling that if you do this, you are
16 gone, because of macro concerns about the
17 bankruptcy system.

18 I submit, and particularly as
19 fiduciaries for unsecureds, we have to do
20 what is right and best for all the
21 constituents in this case. If there was
22 evidence of bad faith or trying to get a
23 leg up in a particular dispute, then we
24 start segueing and sliding towards those
25 cases. But clearly they are asking your

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2 Honor to expand those cases. As I said,
3 Congress could have addressed this in the
4 affiliate hook or elsewhere in 1408, and
5 they didn't.

6 One last point, because this
7 came up in some of the cross I think of
8 Mr. Appel, the trade members of the
9 Committee did not support the opposition
10 of the Committee to the venue motion. I
11 would like to point out that Piper
12 represents a majority of the large
13 creditors. I will read them off for a
14 second. It includes members of the
15 Committee. It is Clorox, Conagra,
16 Conopco, Frito-Lay, which is on the
17 Committee, General Mills, Kraft Foods,
18 which is on the Committee, Masterfoods,
19 Mars, Nestle, Pepsi, Procter & Gamble,
20 Quaker Foods, Sara Lee, and SC Johnson.

21 In sum, your Honor, there is no
22 dispute that DSI can file here properly
23 under a strict reading of 1408-1. There
24 is no dispute that the languages of the
25 relevant statutes authorize the filing in

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2 New York. There is similarly no dispute
3 that Congress has been considering
4 legislation and hasn't adopted it to
5 address these issues. We have to deal,
6 again, with the statute and the plain
7 meaning, and the Court should narrowly
8 construe any exceptions to it. The
9 Debtors have tried to stake out a path to
10 a cost-effective and convenient case.
11 Virtually all of the large creditors
12 agree, the Committee agrees, the Court
13 should retain the case in New York.

14 THE COURT: Anyone else?

15 MS. MAZER-MARINO: Jil
16 Mazer-Marino, Scarcella Rosen & Slome, for
17 Florida Power & Light, Progress Energy
18 Florida, Progress Energy Carolina. Just a
19 few words to address what the Creditors
20 Committee has said.

21 I think, although you shouldn't
22 address macro concerns in this case with
23 respect to the Bankruptcy Code, this is
24 one instance where the concerns of policy
25 in general and the interests of this case

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2 walk hand in hand. If you ignore the
3 policy, then you are inviting every
4 case -- there is going to be an issue,
5 people are deciding what is in the best
6 interests of the Debtor, whether it should
7 be venued where somebody has a sub or a
8 venue with a real nexus to a jurisdiction.
9 To try to predict what issues are going to
10 come up and what creditors will be
11 interested in attending the hearings, we
12 certainly, although I should have
13 cross-examined the Debtors' witness, but
14 we didn't ask any questions of the
15 Creditors Committee. It is too early to
16 say what creditors will want to be part of
17 the issues.

18 As far as bad faith, I don't
19 think you have to deny Buffalo Rock's
20 motion because of bad faith. I think that
21 whatever their issues are, there are
22 plenty of creditors interested in seeing
23 this case in Florida who don't have those
24 issues. I think we should focus on what
25 the parties have said before, that you

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2 have a debtor who wants to move, the
3 majority of creditors who want to move,
4 and a Creditors Committee, who although
5 they didn't put on evidence, are saying it
6 is going to be cheaper down there.

7 THE COURT: You said the
8 majority of the creditors. Where is that
9 on the record?

10 MS. MAZER-MARINO: I'm sorry, I
11 didn't mean to say that. We don't know
12 what creditors will be involved. We don't
13 know what the costs are going to be. So
14 to take those kind of issues into account
15 now just seems inappropriate. Thank you.

16 MR. CHEBOT: Good afternoon,
17 your Honor. My name is Jeffrey Chebot of
18 Whiteman, Bankes & Chebot, representing
19 Sunkist Growers, Inc. as well as some PACA
20 customers, approximately \$7 million worth
21 of PACA trust creditors. We did not
22 submit a filing here today, but we have
23 entered our appearance in the case.

24 What prompted our position here
25 today was the most recent filing by

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2 Buffalo Rock, and I respectfully request
3 permission to briefly address it.

4 THE COURT: Okay.

5 MR. CHEBOT: Your Honor, we are
6 here today to join with Wachovia, the
7 debtor-in-possession lending agent, and
8 also with the Creditors Committee in
9 opposing the motion of Buffalo Rock.

10 THE COURT: I don't think
11 Wachovia has said anything on this. Their
12 counsel is here, though.

13 MR. CHEBOT: They have taken a
14 position in the papers, your Honor, I
15 believe, and certainly the Creditors
16 Committee has, and we join in and we
17 support the reasoning in the papers that
18 were filed by the Creditors Committee.

19 From the standpoint of PACA, in
20 addition, there is also the concern of the
21 promise of PACA, which is full payment
22 promptly to the unpaid produce suppliers
23 of the Debtor, Winn-Dixie. That is
24 contained in 7 USC Section 499(B)(4),
25 prompt payment. And, also, in the context

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2 of certain of today's PACA trust
3 enforcement cases, any delays attendant
4 upon a change of venue to any jurisdiction
5 other than New York will thwart a
6 Congressional premise of prompt payment to
7 the unpaid PACA trust creditors.

8 We have no doubt that the court
9 in the Middle District of Florida,
10 probably even in the Eastern District of
11 Louisiana, could render a competent
12 decision regarding issues regarding PACA.
13 But the fact is this particular court
14 already has been exposed to the PACA issue
15 through the objections that were filed to
16 the initial motions for approval of both
17 the cash collateral order and also the
18 interim PACA trust claims procedure order.
19 Through these oppositions, the Court has
20 already gained an appreciation of the
21 primacy and immediacy of the issues
22 regarding PACA trust claims.

23 During the two and a half weeks
24 after the initial motions were filed
25 regarding PACA trust claims, PACA trust

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2 counsel, representing approximately \$27
3 million worth of claims, engaged in
4 substantial negotiations with Wachovia,
5 the Creditors Committee, and with the
6 Debtor to craft an order that was
7 satisfactory to the PACA trust creditors
8 both with respect to the PACA trust claims
9 procedure and also with respect to the
10 financing order.

11 By retaining venue in this
12 jurisdiction, your Honor, with the same
13 set of players, that would best protect
14 the PACA trust creditors, because an order
15 such as the PACA trust claims procedure
16 order which could potentially be viewed as
17 interlocutory and possibly subject to
18 attack if, as we heard some of the
19 testimony today, the Debtor engages new
20 professionals in Florida, that would
21 certainly be harmful to the interests of
22 the PACA trust creditors.

23 So, therefore, we respectfully
24 ask both from the standpoint of economies
25 and the familiarity of the Court, and also

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2 with respect to the question of potential
3 additional costs involved and delays in
4 payment to the PACA trust creditors, that
5 venue be retained in this jurisdiction,
6 and we respectfully join in the opposition
7 of the Creditors Committee to change venue
8 by Buffalo Rock.

9 Thank you, your Honor.

10 THE COURT: The 546 order and
11 the DIP order and cash collateral order
12 are all final orders.

13 MR. CHEBOT: That's correct.
14 But it could be ordered that the PACA
15 trust claim procedure -- we don't believe
16 it is. We believe the PACA trust claims
17 procedure is a final order. It states
18 final order, but it could possibly be open
19 to an attack in another forum. We want to
20 avoid any possibility of collateral
21 attack.

22 THE COURT: Thank you.

23 MR. LEHANE: Good afternoon,
24 your Honor. Robert Lehane from Kelley
25 Drye & Warren on behalf of six landlords

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2 holding 25 leases.

3 We represent Edens & Avent,
4 Weingarten Realty Investors, Palm Springs
5 Mile Associates, Villa Rica Retail
6 Properties, ALG Limited Partnership, and
7 Curry Ford LP, and we also join in the
8 Committee's objection to Buffalo Rock's
9 motion to transfer venue.

10 We are here primarily in
11 support of the convenience analysis and
12 would like to point out that 11 of our 25
13 leases are in fact located in Florida.
14 The remainder are in Alabama, Mississippi,
15 Georgia, North Carolina, South Carolina,
16 and Louisiana. Those leases are not in
17 New York. Also, our landlords' primary
18 principal places of residence are in
19 Florida, Georgia, South Carolina, and
20 Texas, not New York. Nevertheless, our
21 landlords believe that venue is
22 appropriate in New York and request that
23 the court deny Buffalo Rock's motion to
24 transfer venue.

25 This court has already invested

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2 substantial time and energy in this case,
3 and the landlords with these 25 leases
4 hold some unsecured claims at this point
5 for rejection damages, but may perhaps
6 amount to millions of dollars in unsecured
7 claims, but will also have continued
8 involvement in this case with respect to
9 motions to extend the time to assume or
10 reject potential disposition of the leases
11 and/or other asset sales and the plan
12 disclosure statement.

13 The landlords' ongoing
14 involvement in this case we believe is a
15 matter that should be taken into
16 consideration when the Court considers the
17 convenience analysis. Leases are a
18 significant asset of this estate. We
19 recognize with 25 leases we are only a
20 small voice in the total of 920 leases,
21 but nevertheless we think it is important
22 to point out that our clients do believe
23 that this court, with significant retail
24 experience, the case is properly venued in
25 this court.

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2 Thank you very much, your
3 Honor.

4 MR. CARRIGAN: Good afternoon,
5 your Honor. Daniel Carrigan, DLA Piper
6 Rudnick Gray Cary US LLP.

7 My motion to appear pro hac
8 vice is before the Court. I don't know if
9 it has been approved or not at this stage.
10 I thought I would disclose that.

11 THE COURT: It probably has
12 been approved. Anyway, you can speak.

13 MR. CARRIGAN: Thank you, your
14 Honor.

15 Mr. Dunne has stolen most of
16 our story. However, we do represent 14 of
17 the larger vendors in the case. According
18 to the Debtors' schedules, in the list of
19 the top 50 unsecured creditors, we
20 represent more than \$50 million of claims,
21 approximately half of which we think are
22 entitled to some claim of reclamation.

23 We are pleased to see in one of
24 the exhibits today that one of the
25 first-day affidavits by Mr. Nussbaum

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2 suggests that they may be valid. We were
3 also pleased to hear that someone at the
4 Debtor thinks they are solvent 90 days
5 before the bankruptcy case.

6 THE COURT: I think later he
7 said he didn't know what he was talking
8 about.

9 MR. CARRIGAN: Your Honor, two
10 things, two observations perhaps that
11 haven't really been addressed yet.

12 One is there has been a lot of
13 discussion about the negative impact of
14 the motion and the attendant publicity and
15 what the effect of a court's ruling would
16 be that the case either should or should
17 not stay here. One thing that hasn't been
18 discussed is that if the Court were to
19 rule that the case should not stay here,
20 is that publicity going to be any better
21 than the publicity they already have? It
22 will merely confirm, perhaps, the notion
23 that it was filed in bad faith or in some
24 inappropriate manner. That is somewhat
25 jesuitical in analysis, but it is

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2 nonetheless talking about practical
3 effects and perceptions.

4 The other observation is if the
5 change of venue is to be some sort of
6 prophylactic against the encouragement of
7 others to structure transactions to create
8 venue, your Honor, the interests of
9 justice is a pretty broad standard and it
10 brings in a number of different factors
11 that can be brought to the analysis and
12 brought to the reasoning to conclude that
13 notwithstanding what the circumstances
14 might be, it yet may be in the interests
15 of justice because of the interests of
16 creditors and the interests of other
17 parties to the case that it is better for
18 it to be in one location versus another
19 regardless of how it got there, as long as
20 we are not talking about, for example, the
21 bad-faith filing, which goes more to the
22 jurisdictional aspects of the case than to
23 the venue.

24 For those reasons, your Honor,
25 we struggled with this as to whether to

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2 support the motion or to take our own
3 position on it, and it occurred to us --
4 and I understood the allusion that we may
5 be one of the parties with whom there is a
6 substantial dispute with the company down
7 the road here, and it may be that in light
8 of some of the case law that is present
9 here in this jurisdiction that there was a
10 reaction by reclamation creditors that
11 ought to be anticipated anywhere but here
12 and Ohio. In our view, if we are going to
13 have that litigation about a substantial
14 amount of money in a protracted state, it
15 would be more conducive to having it
16 fought out on a level playing field than
17 perhaps anywhere else that we have a
18 choice.

19 For those reasons, your Honor,
20 we would ask the Court to take our
21 interests into consideration and to find
22 that the case should stay here. Thank
23 you, your Honor.

24 MR. RUBIN: Judge, could we
25 just respond?

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2 THE COURT: I think there may
3 be one or two more people to speak. Are
4 we done with all of the people who have
5 said their first piece and hopefully don't
6 want to say a second piece?

7 MR. RUBIN: May I respond now?

8 THE COURT: That is fine.

9 MR. RUBIN: Just a couple of
10 quick points.

11 First of all, the venue motion
12 was filed on March 14th, which was within
13 three weeks of the filing of the case. It
14 was not a late filing. It wasn't filed
15 deep into the case. It was filed early in
16 the case.

17 Second of all, it was mentioned
18 that what we were doing was attempting to
19 derail the organization process. That is
20 totally untrue. The Debtor itself
21 testified today through its witness as
22 well as through its stipulation that the
23 reorganization process can be successful
24 in Florida as well. We are not trying to
25 extract an appointment to the Committee.

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2 The Court is aware of the fact under 1102
3 and 1103 of the Code that in 1994 Congress
4 took away from the court the ability to
5 basically add members to the committee.
6 That is up to the U.S. Trustee. We are
7 here to see to it that these cases are in
8 the appropriate and proper venue.

9 Next, the courts universally
10 have held that an entrenchment of counsel
11 is not a reason to keep a case in the New
12 York venue. Of course there are New York
13 lawyers involved. The case was filed in
14 New York.

15 We take the position, Judge,
16 that the interests of justice require that
17 the Court not reward such an effort to
18 manufacture venue which has been done in
19 this case. That is what has happened
20 here. That is an opinion of the United
21 States Bankruptcy Court for the Southern
22 District of New York, cited as 255 BR 121,
23 which is the Eclair Bakery case.

24 THE COURT: You read that case,
25 I assume. That involves a gentleman who

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2 filed about 14 times in the Eastern
3 District of New York and thought he would
4 get a better break if he came over across
5 the river.

6 MR. RUBIN: It is clear both in
7 the Second Circuit and in the Eleventh
8 Circuit that the Dixie Stores case,
9 wherein there is no business, no
10 creditors, no assets, would have been a
11 case which would have been considered to
12 have been filed in bad faith under the
13 Albany Partners case in the Eleventh
14 Circuit as well as the Second Circuit
15 case, CFTC.

16 And there is no prospect of any
17 reorganization of Dixie Stores, and the
18 same holds true for the second company,
19 which was dormant as well and had no
20 business, the second to file.

21 THE COURT: What about
22 Mr. Dunne's point? Frankly, I'm not sure
23 of the answer, but he contends that once
24 venue is established, the predicate for
25 venues having its case dismissed doesn't

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2 matter, venue is established at that
3 point.

4 MR. RUBIN: Venue cannot be
5 established through fraud or bad faith or
6 bad conduct.

7 THE COURT: Let's assume for
8 the moment that that is not on the record.

9 MR. RUBIN: Well, I don't know
10 that I know the answer to that either,
11 Judge, other than the fact that I did read
12 from the same opinion that you did in
13 respect to the interests of justice, and
14 it seems to me that for the Court to
15 condone venue in the Southern District of
16 New York based on a filing of a
17 corporation 12 days before the filing of
18 the case is not in the interests of
19 justice, and these cases should be moved.

20 THE COURT: Do you have any
21 comment on the Capitol Motors versus
22 LeBlanc case that the Debtor cited, the
23 Second Circuit case?

24 MR. RUBIN: No, sir.

25 MR. MARTIN: Thank you, your

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2 Honor. Just briefly, Warren Martin again,
3 attorney for Riverdale Farms.

4 I think a lot of the arguments
5 before your Honor invoke an improper
6 statutory analysis. A lot of what we have
7 heard is essentially a 1412 analysis, that
8 convenience of the parties, interests of
9 justice, where is it better, let's count
10 heads, these five creditors would like it
11 here and these ten creditors would like it
12 there. Frankly, we don't have enough
13 fingers and toes to count all the heads.
14 There has been no systematic polling of
15 creditors. I'm not even suggesting that
16 there should be.

17 What appears to me happened
18 here, from the testimony of Mr. Appel, as
19 best I heard it, was that the Debtor had
20 essentially decided to file in Florida and
21 it heard through its advisors and whatnot
22 that there were certain creditor
23 constituencies that would have preferred
24 the case in New York. That was
25 essentially a 1412 type of analysis done

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2 prepetition. But the problem with that is
3 you've got to have 1408 first. You've got
4 to have jurisdiction and you've got to
5 have venue before you can consider a
6 motion as to whether or not you are in the
7 right place.

8 Essentially what happened is
9 that jurisdiction and venue was
10 manufactured through the device that has
11 been described in order to get the case
12 here. We've talked about interests of
13 justice, bad faith, but there is no
14 evidence whatsoever of any evil intent by
15 the Debtor. But I suggest that your Honor
16 can find that bad faith in the fact of
17 creating a corporation solely to establish
18 jurisdiction and venue, contrary to the
19 terms of the statute. The statute is
20 1408.

21 One other point, your Honor.
22 The Committee argued that the Committee
23 didn't exist on the petition date, the
24 Committee wasn't involved, we just took
25 this case as we found it. Prior to the

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2 petition date, there was an informal
3 committee of bondholders represented by
4 Milbank. From what I understand of
5 Mr. Appel's testimony, the bondholders
6 were among the group that supported the
7 New York venue. The bondholders are 4/7
8 of the Committee membership, so they
9 dominate the Committee, and the Committee
10 is represented by Milbank. I also heard
11 the Committee's counsel say that on
12 balance the Committee supports transfer of
13 venue to Florida. On balance, that sounds
14 to me significantly short of unanimity.

15 If your Honor rules that
16 1408 --

17 THE COURT: Maybe I misheard
18 him, but I thought Mr. Dunne referred to
19 Committee trade members who separately
20 joined in the motion.

21 MR. MARTIN: There are some, I
22 guess two Committee trade members, one or
23 two that joined in the motion. Maybe it
24 is one, Pepsi.

25 MR. DUNNE: Are we testifying

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2 now, your Honor? I think virtually
3 everything he said is inaccurate. I don't
4 know if this is relevant or not. I can
5 get into it if the Court wants to.

6 I just referenced the fact that
7 the two trade members had retained Piper
8 Rudnick, which filed the pleading, which
9 represents itself.

10 MR. CARRIGAN: Yes, your Honor,
11 we represent Kraft and Frito-Lay, which
12 are on the Committee.

13 MR. DUNNE: Suffice to say,
14 most of what he said is inaccurate.

15 MR. MARTIN: Finally, your
16 Honor, I hear there is a great bankruptcy
17 judge in Juneau, and if your Honor rules
18 this way, I'm going to consider filing my
19 next case up there. Thank you.

20 THE COURT: I'm going to take
21 about a ten-minute break.

22 (Recess taken.)

23 THE COURT: We are back on the
24 record in Winn-Dixie.

25 I have before me a motion by

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2 Buffalo Rock Company, a creditor of most,
3 if not all of the Debtors, to transfer
4 venue of these Chapter 11 cases to the
5 Middle District of Florida, which has been
6 joined in by several other creditors or
7 groups of creditors, including a number of
8 former employees and certain other
9 creditors holding claims that are for them
10 significant, although not necessarily
11 among the largest claims in the case.

12 Importantly, the Debtors, who
13 originally chose this forum, have, because
14 of the effect of the filing of the venue
15 transfer motion and in particular its
16 characterization in the press and among
17 its employees and various suppliers, have
18 concluded that they at this point favor
19 transfer of venue and affirmatively seek
20 transfer of venue also to the Middle
21 District of Florida. One creditor seeks
22 transfer of venue to Louisiana, but I
23 gather would equally be happy to have a
24 transfer to Florida.

25 The motion is opposed by the

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2 Official Committee of Unsecured Creditors,
3 a group of trade creditors holding
4 substantial claims, a group of landlords
5 holding substantial claims. And what I
6 took away from the U.S. Trustee's remarks
7 is that, generally speaking, although the
8 U.S. Trustee was making more of a policy
9 statement, the U.S. Trustee also would
10 oppose transfer of venue at this stage of
11 the case.

12 We held a hearing and took the
13 testimony of the Debtors' general counsel,
14 Mr. Appel, on the issue of why the Debtors
15 chose venue in New York. That testimony,
16 as well as the agreed facts as agreed to
17 between the Debtors and Buffalo Rock, made
18 it clear that but for actions taken by the
19 Debtors shortly before the Chapter 11
20 filings, there would not be a basis for
21 venue in New York, but that, as set forth
22 in the agreed stipulation of facts, Dixie
23 Stores, Inc., DSI, was formed solely to
24 establish venue in this bank, and a bank
25 account was established for an essentially

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2 defunct corporation, Table Supply Company,
3 also to sustain venue in New York.

4 I approach this issue first and
5 foremost by examining the relevant
6 statutes, as the Supreme Court has
7 instructed us to do. The relevant statute
8 here is 28 USC Section 1408(A), which
9 provides for the venue of a bankruptcy
10 case where a corporation is domiciled or
11 resided, or, in this case,
12 incorporated, in DSI's case, or for other
13 reasons not relevant here, and where its
14 assets existed for, and this is important,
15 for 180 days or for a longer portion of
16 such 180-day period than the domicile
17 residence or principal place of business
18 in the United States or principal assets
19 in the United States of such person were
20 located in any other district. That is,
21 Section 1408(A)(1) does not require that a
22 corporation be domiciled for at least 180
23 days in the district to qualify for proper
24 venue, but, rather, that it be domiciled
25 here for a longer period during that

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2 180-day period than anywhere else.

3 That interpretation was adopted
4 as to the predecessor statute by the
5 Second Circuit Court of Appeals in Capitol
6 Motor versus Leblanc Corp., 201 F.2d 536,
7 Second Circuit Court of Appeals, 1953,
8 cert. denied 345 U.S. 957, also 1953.

9 Therefore, I conclude that on
10 the face of the statute and pursuant to
11 its plain meaning, venue was technically
12 proper for DSI.

13 Venue for the other debtors is
14 obtained through 28 USC Section
15 1408(A)(2), the so-called affiliate rule,
16 that DSI is wholly controlled by the
17 parent debtor and an affiliate of all the
18 other debtors.

19 As the Supreme Court in the
20 Lamie case that came down towards the end
21 of last year noted, and I guess repeatedly
22 noted I guess since Ron Pair, if the
23 statute is not ambiguous, it must be
24 applied according to its plain terms
25 unless an absurd result would apply, an

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2 illogical result would apply by doing so.
3 Based on my reading of the Lamie case,
4 which is at 540 U.S. 526, 2004, and the
5 Court's analysis of the absurd result
6 exception, that exception would not apply
7 here on the theory that Congress says what
8 it means and means what it says.

9 Consequently, we are not left
10 with considering whether 28 USC Section
11 1412 is applicable where venue is
12 improper. Contrast In Re Sorrels, 218 BR
13 580, Tenth Circuit, 1998, with In Re
14 Lazaro, 128 BR 168, Bankruptcy, Western
15 District of Texas, 1991. But, rather,
16 turn immediately to the applicability of
17 28 USC Section 1412 where venue will be
18 transferred if the movant sustains its
19 burden, which is established by a
20 preponderance of the evidence, that such
21 transfer is in the interests of justice or
22 for the convenience of the parties.

23 The standard applying Section
24 1412 is generally well-understood. The
25 court shall weigh a number of factors in

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2 the exercise of its reasonable discretion
3 and in particular in determining whether
4 the transfer is established by a
5 preponderance of the evidence, and should
6 consider the following: These are in no
7 particular order of priority, but simply
8 factors that the court should consider.

9 First, proximity of the court
10 to the assets, the creditors, the debtor,
11 its principals, evidence that may be
12 adduced. Second, the parties' own
13 preferences. Third, the economical and
14 efficient administration of the estate.
15 Fourth, in some instances, the necessity
16 for ancillary administration if
17 liquidation should result, although
18 numerous courts state that that factor
19 should be given little weight unless it
20 appears likely or reasonable to assume
21 that liquidation should result, which none
22 of the evidence suggests. Fifth, a local
23 interest in having localized controversies
24 decided at home and the applicability of
25 state law to the case, and in particular

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2 adversary proceedings. Sixth, the ease of
3 compelling unwilling witnesses to appear.
4 Seventh, the Debtors' original choice of
5 forum, which some courts, including Judge
6 Gonzalez in his first venue ruling in the
7 Enron case, accords significant weight to.
8 I do to some extent as well.

9 Those factors are set forth in
10 a number of cases, including In Re Bent,
11 93 BR 329-331, Bankruptcy Court, District
12 of Vermont, 1988, by Judge Conrad, as well
13 as by Judge Gonzalez in In Re Enron
14 Corporation, including to the Debtors'
15 initial choice of forum, at 284 BR
16 376-386, Bankruptcy, SDNY, 2002.

17 Of course, here the Debtor has
18 changed its mind and there is an issue as
19 to whether the Court should continue to
20 place emphasis on the Debtors' choice of
21 venue when it has changed its mind. Here
22 the parties disagree to some extent. The
23 objectants point out that once the Debtor
24 has chosen venue, it has effectively
25 waived the right to make another decision

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2 on the topic, citing In Re Fishman, 205 BR
3 147-149, Bankruptcy, ED Arkansas, 1997.
4 And ironically the movants have also
5 stated that the Debtors' decision is not
6 as important if there is a significant
7 opposition to the venue change.

8 I believe that the Debtors'
9 views here are important, and in
10 particular are important with respect to
11 the important factor of the economic and
12 efficient administration of the estate,
13 because essentially they have said that
14 they are making a business decision that
15 the adverse impact of the venue transfer
16 motion on their business requires them to
17 take a tangible step through their
18 observable conduct to move the venue to
19 try to correct some, if not all, of the
20 adverse effects of the venue motion. I
21 will consider the Debtors' views in that
22 context.

23 In weighing the following
24 factors, I find this to be a fairly close
25 question, at least the factors as to the

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2 convenience of the parties. In terms of
3 dollar amount, it appears clear to me that
4 the dollar amount of creditors involved in
5 the case prefer to have the case stay
6 here. On the other hand, it is perfectly
7 obvious that the business and the assets
8 and the personnel have very little
9 connection to New York other than through
10 the working out of the bankruptcy case
11 itself. Operationally, the company is
12 clearly centered in Florida and the rest
13 of the southeast.

14 Because, however, I believe the
15 primary focus of the restructuring is
16 centered in New York where the larger
17 creditors are, the issue of convenience to
18 the parties is a fairly close question
19 with regard to travel cost and the like.
20 I note that at this point, however, this
21 court, and I assume also the court in
22 Jacksonville, is fairly adept at handling
23 telephonic hearings and facilitating
24 electronic filing. Of course, that
25 technology was in operation outside of the

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2 court in the business environment long
3 before that.

4 There is, however, somewhat of
5 a disadvantage, in some cases perhaps a
6 significant one, for smaller creditors who
7 are not as actively involved in the case
8 as those larger ones who have already
9 appeared in the case and oppose the
10 transfer of venue. I believe that in
11 particular those parties will be
12 disadvantaged in the context of lease
13 rejections, claim objections, and any sort
14 of preference avoidance actions. Without
15 characterizing whether there are
16 preference claims or not, the petitions or
17 schedules indicate there are potentially a
18 great number of preference avoidance
19 claims.

20 The harm, at least in terms of
21 adversary proceedings and any actual
22 contested matters, to creditors in those
23 contexts could be ameliorated by venue
24 transfer with regard to those types of
25 proceedings in contested matters.

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2 Although, frankly, the law in that area is
3 somewhat against transfer, it would seem
4 to me in a case like this it would be more
5 called for.

6 In a couple of the cases cited
7 by the Committee, the Pick 'N Pay and
8 American Film Technologies cases attached
9 to its pleading, or the transcripts by the
10 Delaware courts were attached to the
11 pleadings, there was a reference of the
12 difficulty of switching the venue.
13 Mechanically, I believe that no longer
14 exists. I believe with the implementation
15 of the electronic filing system, the
16 mechanical switch of these cases would be
17 a matter of a day or two at most. So that
18 is not a factor that I think calls for
19 keeping venue here.

20 It has been argued with more
21 force, however, that retaining venue here
22 is appropriate because of this court's
23 familiarity with the case, and in
24 particular with regard to at least a
25 couple of the issues that have already

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2 come up in a meaningful way regarding
3 reclamation claims and PACA claims, and to
4 some extent with regard to the DIP order.

5 I would accord some weight to
6 that point. But note, on the other hand,
7 that I view there having been really only
8 one meaningful hearing in this case at
9 this time. It was a lengthy hearing and a
10 lot was accomplished at it. But I have no
11 doubt that a court sitting in
12 Jacksonville, or, frankly, anywhere else
13 in the country, would be able to come up
14 to speed very quickly on that issue and
15 certainly on any other issue in this case.
16 On that issue in particular, I believe the
17 orders were reasonably clear. Hopefully
18 the transcript is clear as well. So I,
19 again, do not believe that that is a
20 significant reason for either transferring
21 the case or keeping it here.

22 It is noted that many, if not
23 most of the professionals, if not all of
24 the professionals in the case, are based
25 in New York. That will obviously increase

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2 the cost of the case if the case is
3 transferred. However, it is quite
4 possible that with the transfer, the
5 Debtor will be able to, for itself, use
6 local counsel efficiently and may be able
7 to persuade other constituents to use
8 local counsel efficiently to somewhat
9 offset the travel cost for the New York
10 professionals.

11 In addition to that, while I
12 believe that a debtor and a committee and
13 other parties in interest are allowed
14 leeway in choosing the professionals that
15 they do, it is not a significant reason to
16 keep venue in a particular venue that
17 those professionals come from one location
18 or another. I should say from my own
19 personal experience before I went on the
20 bench, I spent so much time on a couple of
21 cases in the Middle District of Florida
22 that my partners accused me of having a
23 second family down there. So I'm
24 convinced that the case could be conducted
25 efficiently in Florida.

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2 That leaves the point of local
3 interest, which I do not want to give
4 short shrift at all. However, it appears
5 to me that the record is clear that local
6 interest was a factor that the Debtor
7 originally considered in favor of the case
8 being in Jacksonville, given the long
9 history of the Debtors there and the long
10 history of good corporate citizenship
11 there. On the other hand, there is no
12 evidence whatsoever of any attempt to
13 avoid any responsibilities or any
14 unfavorable law by the Debtors' initial
15 choice to have venue be here.

16 One could ask, in any event, if
17 a debtor believed that a particular
18 venue's substantive law is more likely to
19 enhance its reorganization prospects,
20 whether in that case it should file in
21 that venue. But that issue is not really
22 germane here based on the record in any
23 event.

24 On that point, I should say as
25 clearly as I can that the evidentiary

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2 record and the record of this hearing
3 shows that the Debtors made their choice
4 of venue entirely in good faith, not to
5 hide anything or to obtain any sort of
6 improper advantage or edge on any
7 particular creditor. Specifically there
8 is no evidence whatsoever that the Debtors
9 filed in New York to obtain a
10 debtor-friendly or a management-friendly
11 forum. In fact, the evidence is to the
12 contrary, that they filed in New York in
13 the belief that that is where the center
14 of their reorganization, their financial
15 reorganization, would be.

16 It is unfortunate that remarks
17 to the contrary that were not proven and
18 not even alleged in the hearing today,
19 with one exception, and I will get to
20 that, or in the papers, has made its way
21 into the press and into the public
22 knowledge to the detriment of the Debtors.
23 It is an unfortunate aspect of the venue
24 debate or venue context that all of the
25 courts operate under. Frankly, I believe

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2 these types of allegations not only by the
3 movants, but by purportedly learned
4 professors and members of Congress, do no
5 good to the bankruptcy system and impugn
6 and malign the courts.

7 Given the foregoing, as I said
8 earlier, and weighing all of the foregoing
9 considerations, I would normally say that
10 this was a close question whether to keep
11 the case here or not, particularly with
12 appropriate safeguards, including not only
13 telephonic access to the court, but, more
14 importantly, greater willingness to
15 transfer venue in contested matters
16 involving creditors in the southeast,
17 particularly smaller creditors. Based on
18 my weighing of all of the factors, I would
19 probably keep the cases.

20 However, there is one factor
21 that I have not discussed because I do not
22 view it as falling within the convenience
23 of the parties element of Section 1412.
24 It is clear that that statute is phrased
25 in the disjunctive and that the interests

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2 of justice prong of it will not always
3 serve the convenience of the parties, as
4 so found or so stated by Judge Geotz in
5 Port Jeff Corporation, 118 BR 184 at 192,
6 Bankruptcy, EDNY, 1990. Frankly, the
7 interpretation of the phrase "in the
8 interests of justice" as applied by the
9 courts is not particularly helpful here
10 except that it is applied very broadly as
11 the Second Circuit said in Exploration
12 Company versus Manville Forest Products
13 Corp., 894 F.2d 1384-1391, Second Circuit,
14 1990. The interests of justice component
15 is a broad and flexible standard that must
16 be applied on a case-by-case basis and
17 contemplates, among other things,
18 considerations of fairness.

19 Given the circumstances here,
20 first and foremost, and really solely the
21 following factor, that DSI was formed
22 solely to establish venue in New York, I
23 conclude that the transfer of venue here
24 would be in the interests of justice under
25 Section 1412 and therefore will order the

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2 transfer of the cases to the Middle
3 District of Florida.

4 Although the case law itself is
5 not particularly on point when it
6 interprets the interests of justice, I
7 need to say why I believe that is the case
8 here. I do not believe it is an
9 unacceptable judicial intrusion on the
10 statute, on Section 1408, to find that the
11 interests of justice require transfer here
12 and to close a loophole in the statute
13 that would otherwise, according to the
14 statute's plain terms, permit venue to be
15 properly established here on the eve of
16 filing.

17 I do this, again, not because
18 venue was established here in bad faith or
19 wrongfully, but simply because I don't
20 believe it is just to exploit the loophole
21 of the statute to obtain venue here. I do
22 that mindful of the Second Circuit's
23 ruling in Capitol Motors versus LeBlanc,
24 which I cited earlier, where the Second
25 Circuit did not seem to have any problem

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2 in finding a proper basis for jurisdiction
3 at, least, in the Second Circuit, although
4 the corporation that served as the basis
5 for jurisdiction was incorporated just a
6 matter of weeks before the filing.

7 I distinguish that case because
8 it appears to me, based on reading the
9 case, that that corporation, although
10 recently formed, had a separate and valid
11 reason for existing. That is, real
12 buyers, different owners, if you will,
13 purchased the debtor shortly before the
14 filing. They were located in New York and
15 they created the corporation in New York
16 because that is where they were. So I
17 view that as distinguishable.

18 I note that Judge Feinberg in
19 the district court similarly distinguished
20 that case in In Re Popell Company, Inc.,
21 221 F Supp. 534, SDNY, 1963, which was
22 later affirmed by the Second Circuit, when
23 he transferred venue of a case where all
24 of the actions seemed to be outside of New
25 York.

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2 Of course, this raises the
3 issue how close to a Chapter 11 filing is
4 too close for establishing a basis for
5 venue. I will not answer that question
6 except to say under these facts where
7 there appears to be no economic substance
8 to DSI, we are too close.

9 I should note, since there has
10 been a lot of loose talk here as well as
11 in the press about forum shopping, that my
12 decision makes a critical distinction
13 between creating the facts to fit the
14 statute, which I believe is undeniable
15 here, as opposed to applying the statute
16 to fit the facts. Again, in the context
17 of forum shopping, this is a very big
18 distinction.

19 The forum shopping that is
20 properly decried in cases like Eclair
21 Bakery and Abacus Broadcasting
22 Corporation, 154 BR 682, Bankruptcy,
23 Western District of Texas, 1993, and In Re
24 Maruki USA, Inc., 97 BR 166, Bankruptcy,
25 Southern District of New York, 1988, all

170

1
2 involve efforts by debtors who were
3 already in trouble in one forum trying to
4 evade that forum to get a better result
5 somewhere else. In my mind, that is
6 improper forum shopping. I do not believe
7 it is otherwise improper to file within a
8 district that Congress has expressly
9 created for one. In fact, it may well be
10 a duty to do so based on one's analysis of
11 all the facts at hand.

12 On the other hand, I think that
13 the interests of justice require transfer
14 of venue where, again, the facts were
15 created to fit the statute. In that
16 sense, you are building the shop that you
17 choose to act in as opposed to going to
18 it.

19 On that sole basis, and none
20 other, I will grant the motion.

21 Let me just say again, in
22 closing, if it isn't clear already, I
23 believe that it is plain and simple, the
24 case here, that there is no evidence of
25 bad faith and no evidence of the type of

171

1
2 forum shopping that the cases properly
3 punish, and that this is not a punishment
4 of the Debtor. There is no evidence and I
5 believe there could be no evidence that
6 the Debtor is trying to obtain any sort of
7 leg up on any creditor by filing here, and
8 that any suggestions to the contrary,
9 whether made in the papers or in the
10 press, are unfounded. If offered up in a
11 law school course, they would get an F,
12 and if generally offered up in a
13 courtroom, they would be subject to Rule
14 11.

15 On that score, I note that in
16 its response Buffalo Rock attached remarks
17 made by the junior senator from Texas
18 about various bankruptcy cases and what he
19 viewed as incidents of improper forum
20 shopping. I will only comment on the two
21 that I personally know the facts of, in
22 which the senator implied that in Enron
23 and WorldCom managers received lenient
24 treatment and trustees were not appointed
25 notwithstanding the obvious evidence of

172

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2 fraud.

3

4 Plain and simple, that is a
5 lie. Anyone who know those cases would
6 understand management did not evade any
7 exposure. Management was replaced in the
8 Enron case by Stephen Cooper (let alone to
9 examiners) and in the WorldCom case not
10 only by Michael Capellas, but also by a
11 court-appointed monitor, former chairman
12 of the SEC, Richard Breeden, who proposed
13 what has been described as a gold standard
14 of corporate governance and which WorldCom
15 subsequently adopted.

16 Consequently, those remarks are
17 either woefully misguided or slander on
18 the court, and, more importantly, mislead
19 the public, including employees, who I've
20 already stated should have a right to the
21 best information in these cases, not
22 information that plays upon their worst
23 fears.

24 Mr. Rubin, you can submit an
25 order directing transfer of venue to the
Middle District of Florida.

173

1

2 C E R T I F I C A T I O N

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4

5

6 I, TODD DeSIMONE, a Registered
7 Professional Reporter and a Notary Public,
8 do hereby certify that the foregoing is a
9 true and accurate transcription of my
10 stenographic notes.

11 I further certify that I am not
12 employed by nor related to any party to
13 this action.

14

15

16

17

18 TODD DeSIMONE, RPR

19

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25

E R R A T A S H E E T

DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

In re: WINN-DIXIE STORES, INC.

Motion to Transfer Venue of the Debtors' Bankruptcy Cases to the United States Bankruptcy Court for the Middle District Of Florida, Jacksonville Division or Such Other District Where Venue Would Be Appropriate filed by Buffalo Rock Company, 4/12/05

PAGE NO.	LINE NO.	CHANGE
8	5	Attorneys for Beaver Street Fisheries, Inc. and Ja-Ru, Inc. (REASON: Ja-Ru, Inc. omitted from original transcript)
43	15	"behalf of Beaver Street Fisheries and Ja-Ru, Inc." (REASON: Ja-Ru, Inc. omitted from original transcript)
70	18	Change "MR. McFARLIN" to "MR. HELD" (REASON: wrong attorney identified)
70	21	Change "MR. McFARLIN" to "MR. HELD" (REASON: wrong attorney identified)

Under penalties of perjury, I declare that I have read the original transcript of the proceedings described herein and that it is true and correct, subject to any changes in form or substance entered here.

April 15, 2005
DATE

Edwin W. Held, Jr.
Edwin W. Held, Jr.

EXHIBIT I

sjennik@kjmllabor.com

NYC to charleston WV flights

Web
 Flights
 More

Round trip To
 Depart Return
 Price Duration

Any no. of stops
 Nonstop
 Up to 1 stop

Any airline
 Oneworld
 SkyTeam
 Star Alliance
 Specific airlines...

Any connection
 Connect via...

Any outbound
 Specific time...

Any return
 Specific time...

Reset tools

Outbound flight	New York to Charleston				Efficient flights (45)	All (101)
Up to 1 stop	Takeoff	Dur.	Arrival	Airline	Route	Round trip
	6:15 am	4h	10:40 am	US Airways	from JFK via Charlotte	from \$238
	8:25 am	4h	12:36 pm	US Airways	from JFK via Charlotte	from \$238
	10:15 am	5h	3:30 pm	US Airways	from JFK via Charlotte	from \$238
	6:30 am	4h	10:40 am	US Airways	from LGA via Charlotte	from \$240
	7:59 am	5h	12:36 pm	US Airways	from LGA via Charlotte	from \$240
	8:45 am	7h	3:30 pm	US Airways	from LGA via Charlotte	from \$240
	7:00 am	3h	10:16 am	US Airways / United	from LGA via Washington	from \$241
	1:00 pm	3h	4:25 pm	US Airways	from LGA via Washington	from \$241
	8:00 am	4h	9:45 am	United	from JFK via Washington	from \$242
	2:27 pm	4h	6:19 pm	United	from JFK via Washington	from \$242
	6:01 am	4h	9:45 am	United	from LGA via Washington	from \$243
	10:00 am	4h	1:58 pm	United	from LGA via Washington	from \$243
	6:00 am	5h	10:40 am	Delta	from LGA via Atlanta	from \$245
	6:15 am	4h	10:40 am	Delta	from JFK via Atlanta	from \$245
	8:00 am	5h	1:24 pm	Delta	from LGA via Atlanta	from \$245
	11:05 am	4h	3:04 pm	Delta	from LGA via Detroit	from \$245
	12:59 pm	5h	5:55 pm	Delta	from LGA via Atlanta	from \$245
	2:29 pm	4h	6:19 pm	United	from LGA via Washington	from \$245
	10:04 am	4h	1:58 pm	United	from JFK via Washington	from \$262
	11:29 am	4h	3:30 pm	US Airways	from LGA via Charlotte	from \$262
	8:15 am	5h	1:24 pm	Delta	from JFK via Atlanta	from \$302
	11:35 am	4h	3:30 pm	US Airways	from LGA via Charlotte	from \$302
	3:30 pm	4h	7:43 pm	US Airways	from LGA via Charlotte	from \$362

Ads

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12:15 pm	4h	4:25 pm	 American, US Airway	from JFK via Washington	from \$421
8:10 am	6h	1:58 pm	 Delta, United	from JFK via Washington	from \$451
12:10 pm	6h	6:19 pm	 Delta, United	from LGA via Washington	from \$454
6:20 am	4h	10:40 am	 Delta, US Airways	from LGA via Charlotte	from \$529
3:30 pm	4h	7:43 pm	 American, US Airway	from LGA via Charlotte	from \$564
6:25 am	4h	10:40 am	 American, US Airway	from LGA via Charlotte	from \$594
6:06 am	4h	9:45 am	 United / US Airways	from EWR via Washington	from \$596
6:30 am	4h	10:40 am	 US Airways	from EWR via Charlotte	from \$600
8:15 am	4h	12:36 pm	 US Airways	from EWR via Charlotte	from \$600
10:15 am	5h	3:30 pm	 US Airways	from EWR via Charlotte	from \$600
6:10 am	5h	10:40 am	 Delta	from EWR via Atlanta	from \$602
9:00 am	4h	1:24 pm	 Delta	from EWR via Atlanta	from \$602
10:30 am	3h	1:58 pm	 United	from EWR via Washington	from \$602
10:30 am	5h	3:04 pm	 Delta	from EWR via Detroit	from \$602
11:45 am	5h	4:20 pm	 Delta	from EWR via Atlanta	from \$602
1:00 pm	5h	5:55 pm	 Delta	from EWR via Atlanta	from \$602
2:39 pm	4h	6:19 pm	 United	from EWR via Washington	from \$602
6:00 am	5h	10:40 am	 American, Delta	from LGA via Atlanta	from \$754
9:10 am	6h	3:30 pm	 American, US Airway	from LGA via Charlotte	from \$773
6:35 am	4h	10:16 am	 United, US Airways	from EWR via Washington	from \$934
12:11 pm	6h	5:55 pm	 United, Delta	from EWR via Atlanta	from \$1,093
10:15 am	5h	3:41 pm	 American, United	from EWR via Chicago	from \$1,699

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sjennik@kjmlabor.com

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Oneworld
SkyTeam
Star Alliance
Specific airlines...

Round trip To
 Depart Return
 Price Duration

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1 stop
No connection
Connect via...

Any outbound
Specific time...

Outbound flight St. Louis to Charleston

Any return
Specific time...

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Takeoff	Dur.	Arrival	Airline	Route	Round trip
5:55 am	4h	10:40 am	US Airways / United	via Charlotte	from \$600
7:45 am	4h	12:36 pm	US Airways	via Charlotte	from \$600
9:15 am	5h	3:30 pm	US Airways	via Charlotte	from \$600
6:00 am	4h	10:40 am	Delta	via Atlanta	from \$602
7:10 am	5h	1:24 pm	Delta	via Atlanta	from \$602
8:31 am	4h	1:58 pm	United	via Washington	from \$602
10:15 am	4h	3:04 pm	Delta	via Detroit	from \$602
10:54 am	4h	3:41 pm	United	via Chicago	from \$603
11:10 am	4h	4:20 pm	Delta	via Atlanta	from \$603
11:27 am	6h	6:19 pm	United	via Washington	from \$603
1:00 pm	4h	5:55 pm	Delta	via Atlanta	from \$603
12:50 pm	6h	7:43 pm	US Airways	via Charlotte	from \$852
10:40 am	4h	3:41 pm	American, United	via Chicago	from \$862

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EXHIBIT K



Fairfield Inn by Marriott > Hotel > Reservation

Fairfield Inn Charleston

1000 Washington Street East · Charleston, WV 25301 USA

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- 1 Choose dates, rooms & rates 2 Enter guest information 3 Review & complete reservation 4 Receive confirmation

Please Note – All rates at this hotel include complimentary breakfast and in-room high speed internet access

STANDARD RATES	ROOM PACKAGES	MARRIOTT REWARDS OFFERS
From 119.00 (USD) per night	None available for your dates	None available for your dates

Show: **By Rate Type** | [By Room Type](#) | [By Price](#)

Regular rate Starting From **119.00 (USD)**

119.00 (USD) per night [Rate rules](#) Guest room, 2 Double, City view [Room details](#)

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Fairfield Inn & Suites New York Manhattan/Times Square

330 West 40th Street · New York, NY 10018 USA

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Please Note – All rates at this hotel include complimentary breakfast - Rollaway beds are not available at this hotel

STANDARD RATES

From 479.00 (USD) per night

ROOM PACKAGES

From 519.00 (USD) per night

MARRIOTT REWARDS OFFERS

None available for your dates

Show: [By Rate Type](#) | [By Room Type](#) | [By Price](#)

Regular rate

Starting From **479.00**

- | | |
|--|---|
| <input type="radio"/> 479.00 (USD) per night Rate rules | Guest room, 1 King Room details |
| <input type="radio"/> 479.00 (USD) per night Rate rules | Guest room, 2 Double Room details |
| <input type="radio"/> 499.00 (USD) per night Rate rules | Guest room, 1 King, City view Room details |
| <input type="radio"/> 499.00 (USD) per night Rate rules | Guest room, 2 Double, City view Room details |
| <input type="radio"/> 679.00 (USD) per night Rate rules | Penthouse Guest room, 1 King, City view, Top floor Room details |

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Hampton Inn Charleston-Downtown
1 Virginia Street West, Charleston, West Virginia, 25302, USA
1-304-343-9300

Reservation Summary

11 Sep 2012 - 12 Sep 2012, 1 room for 1 adult

Change currency USD - American Dollars

Submit

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2 DOUBLE BEDS NONSMOKING

This spacious non-smoking room features two double beds, 25" ...



RATE PLAN

Best Available Rate
Commissionable

PRICE PER NIGHT (USD)

\$119 [Select](#)

1 KING BED STUDY WITH SOFABED NONSMOKING

This spacious non-smoking room features a king-sized bed, a ...



RATE PLAN

Best Available Rate
Commissionable

PRICE PER NIGHT (USD)

\$125 [Select](#)

2 DBL BEDS W/REFRIGERATOR/MICROWAVE



Hampton Inn Manhattan-Times Square North
851 Eighth Avenue, New York, New York, 10019, USA
1-212-581-4100

Reservation Summary

11 Sep 2012 - 12 Sep 2012, 1 room for 1 adult

Change currency **USD - American Dollars**

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1 KING BED NONSMOKING

This spacious non-smoking room features a king-sized bed, ...



RATE PLAN

Best Available Rate
Commissionable

PRICE PER NIGHT (USD)

\$499 [Select](#)

DBL HHONORS POINTS Special offer

\$509 [Select](#)

DBL HHONORS POINTS HHONORS CARD REQD AT CHECK IN Commissionable

2 QUEEN BEDS NONSMOKING

This spacious non-smoking room features two queen beds, 25" color...



RATE PLAN

Best Available Rate
Commissionable

PRICE PER NIGHT (USD)

\$539 [Select](#)

DBL HHONORS POINTS Special offer

\$549 [Select](#)

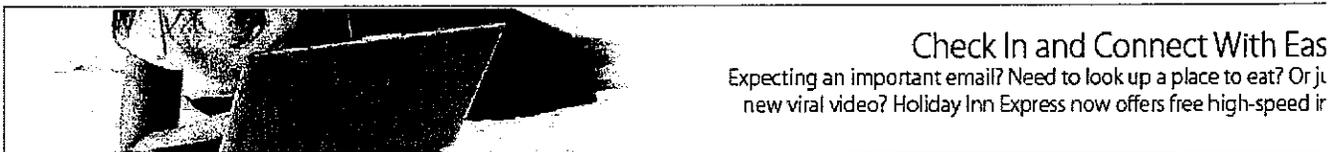


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Charleston-Civic Center
100 Civic Center Drive,
Charleston, West Virginia
United States 25301

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1 Adult, 1 Room
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- Best Available**
- AAA/CAA Rate *
- Entertainment Card *
- Government Canada *
- Government Rate *
- Reward Nights *
- Senior Discount *
- State Government-US *

Corporate ID

IATA

Group Code

Narrow Your Search By

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 Non-Smoking Hotel

Special Needs
 Accessible Room

Currency:

Rates reflect average nightly r

1 KING BED W MICRO FRIDGE NONSMOKING	4	From \$ 110³⁵ <small>USD</small>
2 DOUBLE BEDS NONSMOKING	4	From \$ 110³⁵ <small>USD</small>
1 KING BED LEISURE NONSMOKING	4	From \$ 110³⁵ <small>USD</small>
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Your Stay

New York City Times Square
343 West 39th Street,
New York City, New York
United States 10018

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 Sep-11-2012 to Sep-12-2012
1 Adult, 1 Room
[Edit](#)

Your Rate

Rate Preference

- Best Available**
- AAA/CAA Rate *
- Entertainment Card *
- Government Canada *
- Government Rate *
- Reward Nights *
- Senior Discount *
- State Government-US *

Corporate ID

IATA #

Group Code

Narrow Your Search By

Smoking Preference

Non-Smoking Hotel

Special Needs

Accessible Room

Currency: Rates reflect average nightly rate

1 KING BED LEISURE NONSMOKING	↓ ²	From \$ 399⁰⁰ <small>USD</small>
1 DOUBLE BED NONSMOKING	↓ ²	From \$ 399⁰⁰ <small>USD</small>
STANDARD ROOM	↓ ²	From \$ 399⁰⁰ <small>USD</small>
KING ROOM WITH A CITY VIEW NONSMOKING	↓ ²	From \$ 409⁰⁰ <small>USD</small>
2 DOUBLE BEDS NONSMOKING	↓ ⁴	From \$ 419⁰⁰ <small>USD</small>
2 DOUBLE BEDS WITH CITY VIEW NONSMOKING	↓ ⁴	From \$ 449⁰⁰ <small>USD</small>



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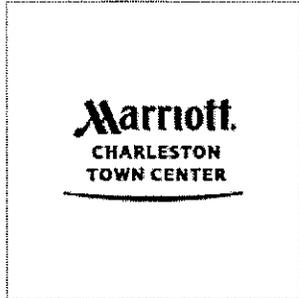
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Charleston Marriott Town Center

200 Lee Street East · Charleston, WV 25301 USA

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Renovation Information – Front desk and lobby renovation during day hours August 8, 2012-October 31, 2012. All hotel services remain available. Some alternate foot traffic patterns in effect.

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From 249.00 (USD) per night

ROOM PACKAGES

None available for your dates

MARRIOTT REWARDS OFFERS

None available for your dates

Show: [By Rate Type](#) | [By Room Type](#) | [By Price](#)

Regular rate

Starting From **249.00 (USD)**

249.00 (USD) per night [Rate rules](#)

Guest room, 1 King or 2 Double [Room details](#)

284.00 (USD) per night [Rate rules](#)

Concierge level, Guest room, 1 King or 2 Double, High floor [Room details](#)

Deluxe Room, see Rate Rules

Starting From **254.00 (USD)**

254.00 (USD) per night [Rate rules](#)

Larger Guest room, 1 King [Room details](#)

My dates are flexible

Check-in date (mm/dd/yy)

9/10/12

Check-out date (mm/dd/yy)

9/11/12

No. of rooms Guests/room

1

1

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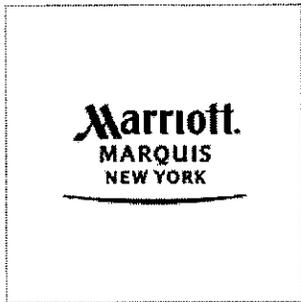
New York Marriott Marquis

1535 Broadway · New York, NY 10036 USA

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- Enter guest information
- Review & complete reservation
- Receive confirmation



STANDARD RATES From 619.00 (USD) per night	ROOM PACKAGES From 674.00 (USD) per night	MARRIOTT REWARDS OFFERS None available for your dates
--	---	---

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Best Available rate Starting From **619.00 (USD)**

- 619.00 (USD)** per night [Rate rules](#) Executive King, Larger Guest room, 1 King, Sofabed, Corner room [Room details](#)
- 649.00 (USD)** per night [Rate rules](#) Times Square, Guest room, 1 King or 2 Double, Sofabed, Time Square view [Room details](#)
- 649.00 (USD)** per night [Rate rules](#) Concierge level, Guest room, 1 King or 2 Double, Sofabed, High floor [Room details](#)
- 949.00 (USD)** per night [Rate rules](#) Deluxe Suite, 1 Bedroom Suite, 1 King or 2 Double, Sofabed, High floor [Room details](#)
- 999.00 (USD)** per night [Rate rules](#) Executive Suite, 1 Bedroom Executive Suite, 1 King, Sofabed [Room details](#)

Breakfast and Wired for Biz included, includes buffet breakfast for 1 guest daily at Crossroads - 8th Floor, local and long distance calls, wired high-speed Internet, wireless Internet, see Rate Rules Starting From **704.00 (USD)**

- 704.00 (USD)** per night [Rate rules](#) Times Square, Guest room, 1 King or 2 Double, Sofabed, Time Square view [Room details](#)

My dates are flexible

Check-in date (mm/dd/yy)
9/10/12

Check-out date (mm/dd/yy)
9/11/12

No. of rooms Guests/room
1 1

Marriott Rewards number

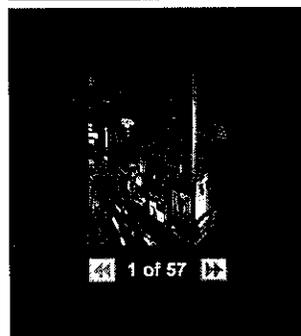
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