Post-Hearing Brief Deadline: October 5, 2012 at 4:00 p.m. (prevailing Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
Patriot Coal Corporation, et al.,	:	Case No. 12-12900 (SCC)
	:	
Debtors.	:	Jointly Administered
	:	

POST-HEARING BRIEF OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN OPPOSITION TO MOTIONS TO TRANSFER VENUE

TO THE HONORABLE SHELLEY C. CHAPMAN,
UNITED STATES BANKRUPTCY JUDGE:

The Official Committee of Unsecured Creditors (the "**Creditors' Committee**") of the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**")[1] hereby files this post-hearing brief in support of its objection (the "**Objection**") to the motions to transfer venue (the "**Venue Motions**") filed by the UMWA, the Sureties and the United States Trustee (collectively, the "**Movants**"). In support of the Objection, the Committee respectfully states as follows:

[1] Patriot Coal Corporation and 98 of its affiliates are debtors in these jointly administered proceedings. The names of each Debtor are set forth in the Declaration of Mark N. Schroeder Pursuant to the Local Bankruptcy Rule 1007-2 [Dkt. No. 4]. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

The Venue Motions Should Be Denied

1. No Movant contests the propriety of venue in the Southern District of New York under 28 U.S.C. § 1408.[2] Rather, the sole issue before the Court is whether to exercise its discretion to transfer venue in these cases to the Southern District of West Virginia, or elsewhere, under 28 U.S.C. § 1412.

2. It is not disputed that, under section 1412, the Court may exercise its discretion to transfer venue where transfer is "in the interest of justice or for the convenience of the parties." Id. All parties agree that the Movants bear the burden of proof. See In re Manville Forest Prods., Inc., 896 F.2d 1384, 1390 (2d Cir. 1990).

3. The record before the Court demonstrates, however, that the Movants have failed to carry this burden. The Venue Motions should therefore be denied.

A. The Movants Failed to Carry Their Burden of Proving That Transfer Would Serve the Convenience of the Parties

4. The Movants introduced little, if any, evidence suggesting that transfer of these cases from the Southern District of New York would serve the convenience of all parties. The UMWA introduced a declaration stating that certain UMWA-represented miners and retirees live in West Virginia. Buckner Decl., ¶ 5. But the record demonstrates that UMWA employees represent only 42% of the Debtors' workforce, and only 38% of the Debtors' retirees live in West Virginia. Schroeder Venue Decl. ¶ ¶ 39, 40. Nor was it established that the location of individual employees and retirees was material to these cases. While the UMWA asserted that it would call an unspecified number of workers and retirees as witnesses in the event of a section 1113 or 1114 motion, it did not establish that such hearings would occur, or how many, if any,

[2] UMWA Motion at ¶ 17; Sureties Motion at 2; U.S. Trustee Motion at 2.

such witnesses would be called. UMWA Motion at ¶ 26. Furthermore, it offered absolutely no evidence concerning the convenience or participation of employees or retirees whom it does not represent. The remaining Movants offered scant evidence on the issue of convenience.[3]

5. In contrast, the record contains extensive evidence that transfer of the case to the Southern District of West Virginia will not be more convenient for the parties than this Court. The Committee introduced detailed evidence demonstrating that New York was a more accessible and convenient forum for creditors generally than is Charleston, West Virginia. See Kaye Decl. This evidence was buttressed by the many joinders and appearances of creditors in opposition to the Venue Motions. While the parties debated the precise number of opposing creditors and dissected the Debtors' efforts to solicit support for its opposition, there was little question that a substantial majority of secured and unsecured creditors, including the DIP Lenders, Indenture Trustees, bondholders, leaseholders, trade creditors and others, supported retaining venue in New York.

6. The record further established that the Southern District of West Virginia was not even more convenient for the Movants. The UMWA – which does not dispute that it is the exclusive representative of its members and the only party authorized to appear on their behalf in these proceedings – is not located in West Virginia, but rather just outside Washington, D.C.[4] The Sureties confirmed on the record, moreover, that they are located in Texas, Tennessee and Pennsylvania. Venue Hr'g Tr. at 49, Sept. 11, 2012. In each case, New York is at least as convenient as West Virginia.

[3] The U.S. Trustee introduced only the transcript of the 341 Hearing, which does not address the convenience of the parties. See Schwartz Decl. The Sureties' declaration addressed only the locations of assets, which while technically relevant to the issue of convenience, is of minimal importance in a reorganization case such as this one. See In re Enron Corp., 284 B.R. 376, 390-91 (Bankr. S.D.N.Y. 2002).

[4] The UMWA 1974 Pension Fund does not assert that West Virginia is more convenient for it, and has not sought to transfer venue on that basis. Like the UMWA, however, it is located outside Washington, and not in West Virginia. Venue Hr'g Tr. at 105-06, Sept. 12, 2012.

7. In sum, the evidence before the Court demonstrates that the Southern District of New York is more convenient for the great majority of creditors in these proceedings. While the Southern District of West Virginia may be more convenient for a handful of union employee and retiree witnesses, in the event that Section 1113 and 1114 issues are litigated, that marginal convenience is not sufficient to satisfy the Movants' burden of proof or warrant a transfer of venue.

B. The Movants Failed to Prove that Transfer Is in the Interests of Justice

8. The Movants also failed to demonstrate that the interests of justice require a transfer of venue. In this Circuit, the assessment of the interests of justice under section 1412 requires "consideration of whether transferring venue would promote the efficient administration of the bankruptcy estate, judicial economy, timeliness, and fairness." Manville, 896 F.2d at 1391; accord In re EB Capital Mgmt., LLC, No. 11-12646 (MG), 2011 WL 2838115 at *4 (Bankr. S.D.N.Y. July 14, 2011) (interest of justice prong requires consideration of economic and efficient administration of the bankruptcy estate, including location of creditors); In re Int'l Filter Corp., 33 B.R. 952, 956 (Bankr. S.D.N.Y. 1983) ("the interests of justice side of the equation concerns the interests of the Debtor in rehabilitating itself, the interests of creditors in receiving a fair and equitable return, the interests of the public and whether the pendency of the proceedings in the wrongful district advances or retards those interests") (internal quotation omitted).

9. Despite this clear standard, the Movants introduced no evidence that a transfer of venue would advance the efficient administration of the estates, judicial efficiency or the prompt resolution of these cases. This Court has extensive experience in complex commercial chapter 11 cases, and is deeply familiar with precisely the types of issues that are

most likely to arise in this case. The Movants did not – and frankly could not – introduce evidence that another district, no matter how capable, would handle such matters more quickly or more adeptly. While the UMWA suggested that this Court lacks expertise in coal cases, its assertion is belied by this Court's experience. See, e.g., In re Olga Coal Co., No. 94-5647 (Bankr. S.D.N.Y. 1994). Even if this were not the case, however, this Court's commercial experience will undoubtedly allow it to quickly grasp any previously unfamiliar aspects of that industry.

10. In lieu of demonstrating that a transfer of venue would materially enhance the administration of these cases, the Movants argued that transfer was necessary to preserve the fairness of this proceeding. In particular, they emphasized what they perceived to be the unfairness of the Debtors' venue planning.

11. The record, however, does not support their assertions. In fact, the record demonstrates that the Debtors chose this venue in the proper exercise of their fiduciary duty, based upon their appraisal of "the best interests of the Debtors, their creditors and other stakeholders and [the] estates" and their conclusion that "the costs and inefficiency of the administration of the estates would have been materially increased if the cases were commenced in another district." Schroeder First Day Decl. ¶ 43. This evidence was uncontradicted. No Movant presented evidence of an improper purpose. In fact, most conceded that the Debtors' decision had been made in good faith. See Venue Hr'g Tr. at 69; Sept. 11, 2012; Id. at 113-14; Venue Hr'g Tr. at 12-15, Sept. 12, 2012.

12. The Creditors' Committee, as the principal unsecured creditor fiduciary in these cases, reviewed and ratified the Debtors' venue choice. The Creditors' Committee did not exist at the time these cases were filed. It had no role in the Debtors' initial evaluation of venue

or determination to file these cases in the Southern District of New York. After the Venue Motions were filed, the Creditors' Committee carefully considered the merits of a potential transfer of venue and its impact on unsecured creditors. With the advice and participation of its advisors, the Creditors' Committee considered the impact of the competing venues on numerous issues expected to be relevant in these cases and conducted a thorough review of the strategic, legal and other consequences of supporting or opposing the Venue Motions. Based on that discussion, the Creditors' Committee concluded that the Southern District of New York was, in fact, the most advantageous of the competing venue choices from the perspective of unsecured creditors, and therefore actively opposed the Venue Motions.

13. The U.S. Trustee repeatedly argued that the Debtors' venue planning, standing alone, rendered their venue choice inconsistent with the interests of justice. This position – which does not address the efficiency of administration of the bankruptcy cases or the enhancement of creditor recoveries – is premised on the assertion that the formation of subsidiaries to assure New York venue is per se unfair and violative of Section 1412. Not only is this position inconsistent with the Second Circuit's requirement that the "interests of justice" be assessed on a "case by case" basis, Manville, 896 F.2d at 1391, but it improperly presumes that the fairness of a venue selection may be evaluated without regard for the interests of the very parties that the proceeding is designed to protect. While the U.S. Trustee's criticisms certainly are entitled to consideration in assessing the fairness of the Debtors' venue choice, they cannot foreclose consideration of other factors or, in this case, outweigh the voluminous record evidence of the interests of creditors or the substantial opposition of creditors and their fiduciaries to a transfer elsewhere.

14. Similarly, the record before the Court should satisfy the Court's concern that, as Judge Friendly stated, "[t]he conduct of bankruptcy proceedings not only should be right but must seem right." In re Ira Haupt & Co., 361 F.2d 164, 168 (2d Cir. 1966). It demonstrates the Debtors' proper exercise of their fiduciary duty to select a venue beneficial to all stakeholders, the confirmation of that decision by the other principal estate fiduciary, the substantial support of creditors large and small holding claims at every debtor, and no evidence that a transfer of venue will in any way enhance the administration of these cases. New York's distance from assets and actors in West Virginia does not connote unfairness - as the Movants suggest - but rather dispels any hint of local influence on the outcome of proceedings and assures all creditors of an impartial forum for the adjudication of their rights. It will also avoid the appearance that the preferences of a few creditors at a small minority of the Debtors may somehow dictate the venue of all of these chapter 11 proceedings. Cf. In re Innkeepers USA Trust, 442 B.R. 227, 235 (Bankr. S.D.N.Y. 2010) ("with multiple debtors," estate fiduciaries "have duties to refrain from favoring or appearing to favor one or another of their estates and its creditors over another").

CONCLUSION

15. For the foregoing reasons, the Venue Motions should be denied in all respects and the Creditors' Committee granted such other and further relief as may be just and proper.

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October 5, 2012

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