

# **EXHIBIT 89**

## CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (the "**Agreement**") is made as of November 18, 2012 (the "**Effective Date**") between Patriot Coal Corporation and its subsidiaries that are Debtors in Possession (referred to herein as the "**Debtors**"), and the UMWA 1974 Pension Plan (referred to herein as "**Recipient**"). The parties acknowledge that Patriot Coal Corporation is a public company and the disclosure of non-public information could result in severe harm to Debtors' business. In order to facilitate the disclosure of Confidential Information (as defined below) to the Recipient while protecting the Debtors from the risk of public dissemination of such information, the parties hereby agree that the disclosure of Confidential Information by the Debtors to the Recipient shall be governed by the following terms and conditions.

1. **Confidential Information.** For purposes of this Agreement, "Confidential Information" means all non-public information the Debtors disclose to Recipient on or after the date of this Agreement in accordance with the terms of this Agreement, whether written, oral, photographic, electronic, magnetic, or otherwise, whether in the form of slides, handouts, letters, memoranda, agreements, facsimile transmissions, meetings, conference and other telephone calls, diskettes, files, tapes, and/or any other mode, that, if disclosed, could compromise the position of the Debtors relative to their competitors in the coal industry. Confidential Information includes, without limitation, information relating to the Debtors' financial and/or business operations, business ventures, strategic plans, pricing, marketing strategies and programs, ideas, concepts, business plans, financial condition and projections, identifying information about employees and retirees, distribution arrangements, trade secrets, and/or ideas. However, Confidential Information does not include information as identified below in Section 7 (Exclusions).

2. **Highly Confidential Information.** In addition, the Debtors may in good faith designate certain Confidential Information as "Highly Confidential" if it constitutes or contains non-public information pertaining to wages, benefits, work rules, or other compensation of employees of third parties, and if the Debtors reasonably believe that such designation is necessary to ensure compliance with restrictions on the Debtors' use of such information imposed by one or more third parties. Recipient agrees that it will not print, copy, or otherwise reproduce in any way information designated as Highly Confidential, and that it will otherwise treat Highly Confidential information as governed by the restrictions applicable to Confidential Information under this Agreement.

3. **Purpose for Disclosure.** Subject to the Limitations of Use contained in Section 5, Recipient may receive and use Confidential Information only to the extent that it participates in negotiations or preparation for court proceedings under 11 U.S.C. §§ 1113 and 1114 and only for the purpose of such participation (the "**Business Purpose**"). For the avoidance of doubt, the parties acknowledge that the United Mine Workers of America ("**UMWA**") is the authorized representative of the union members for purposes of 11 U.S.C. §§ 1113 and 1114. The Debtors believe they are not obligated to share information with the Recipient pursuant to 11 U.S.C. §§ 1113(b)(1)(B) or 1114(f)(1)(B),

and the Recipient believes the Debtors could be obligated to share such information. Nothing in this Agreement shall (1) obligate the Debtors to share information with the Recipient; or (2) constitute a waiver of any right or position of any party regarding the participation of the Recipient in any proceeding under 11 U.S.C. §§ 1113 or 1114.

4. **Procedure.** If the Debtors believe in good faith that information to be disclosed is Confidential Information, it may so designate that material by stamping or otherwise marking that material with the legend "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL" as appropriate, or by sending a letter designating the material as such.

5. **Limitations of Use.** Recipient shall use the Confidential Information only for the Business Purpose and shall use reasonable best efforts to hold and maintain the Confidential Information in strict confidence using the same degree of care that the Recipient uses with respect to its own comparable, highly confidential, or proprietary information. Recipient hereby agrees that Recipient and its Affiliates (as defined below) will use the Confidential Information exclusively for the purpose of the Business Purpose and, without limiting the generality of the foregoing, neither Recipient nor its Affiliates shall use any of the Confidential Information in furtherance of the business of any person or entity other than the Debtors, irrespective of whether such business competes with the Debtors, or for any other purpose whatsoever, other than as contemplated by the Business Purpose. Recipient hereby further agrees that it shall not disclose any Confidential Information to any person or entity and shall safeguard and keep secret the Confidential Information; *provided, however*, that Recipient shall be permitted to disclose Confidential Information to Recipient's trustees, employees, and attorneys (collectively "Affiliates"), but only to the extent that the Recipient reasonably determines that such Affiliates need to know such Confidential Information for the purpose of assisting Recipient in connection with the Business Purpose. For avoidance of doubt, nothing in this Agreement shall permit Recipient to disclose any Confidential Information to the Bituminous Coal Operators' Association, Inc. ("BCOA") or any of the BCOA's affiliates, employees, and/or members. Recipient further acknowledges that any Confidential Information provided to its trustees shall be used only for the Business Purpose in conjunction with the trustees' fiduciary duties owed to Recipient and that it shall not be disclosed to BCOA or any BCOA employer or representative of BCOA employers. Recipient agrees to be responsible for each reasonably foreseeable breach of this Agreement by its Affiliates, and Recipient agrees that its Affiliates will be advised, prior to any disclosure, by Recipient of the confidential nature of such information. Any person receiving Confidential Information pursuant to this Agreement shall, prior to any disclosure, execute the statement contained in Appendix A agreeing to be bound by this Agreement. Except as provided in Section 9, neither the Recipient nor any person receiving Confidential Information pursuant to this Agreement will disclose to any person or entity the existence, terms, or conditions of the Confidential Information, or any facts to the extent that such disclosure would reveal or compromise the Confidential Information.

6. **Ownership of Information.** Recipient acknowledges and agrees that any Confidential Information of the Debtors, in whatever form, is the sole property of the Debtors. Neither Recipient nor its Affiliates shall use any of the Confidential

Information now or hereafter received or obtained from the Debtors in furtherance of the business of anyone else whether or not in competition with the Debtors, or for any other purpose whatsoever, other than as contemplated by the Business Purpose. Recipient agrees that upon the written request of, and as directed by, the Debtors it shall either return such Confidential Information to the Debtors or shall destroy such Confidential Information as so directed; *provided*, documents prepared by Recipient using Confidential Information will be destroyed and not provided to the Debtors.

7. **Exclusions.** Recipient shall have no obligation under this Agreement as to Confidential Information which: (a) is known to Recipient at the time of disclosure, without obligation of confidentiality; (b) is independently developed by Recipient without reference to or use of the Debtors' Confidential Information (or the confidential information of another party); (c) becomes known to Recipient from another source, unless the Recipient knows or reasonably believes that such other source was subject to a confidentiality restriction at the time of disclosure to Recipient; (d) is or becomes part of the public domain through no wrongful act of Recipient; (e) is disclosed in connection with collective bargaining and is not among the items of Confidential Information specifically identified by category in Section 1 above; (f) is received by Recipient pursuant to the August 15, 2012 Confidentiality and Nondisclosure Agreement between Debtors and the Official Committee of Unsecured Creditors; (g) is received by Recipient pursuant to the October 15, 2012 side-agreement between Debtors and Recipient acknowledging that Recipient may receive confidential information under Section 1.4(d) of the August 15, 2012 Confidentiality and Nondisclosure Agreement; and/or (h) is disclosed publicly pursuant to any judicial or governmental request or order; *provided* that, unless requested not to do so by the judicial or governmental entity, Recipient takes reasonable steps to give the Debtors sufficient prior written notice so that the Debtors may seek (with the reasonable cooperation of Recipient and at the Debtors' expense) a protective order to contest or limit the scope of such request or order as much as possible.

8. **Injunctive Relief.** Money damages would not be a sufficient remedy for any breach or threatened breach of this Agreement and the Debtors shall be entitled to specific performance and injunctive or other equitable relief for any such breach or threatened breach by appropriate action in the Bankruptcy Court. .

9. **Compelled Disclosure.** If Recipient or any of its Affiliates is legally compelled (whether by regulatory request, deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any Confidential Information, Recipient shall immediately notify the Debtors in writing of such requirement so that the Debtors may seek a protective order or other appropriate remedy and/or waive compliance with the provisions hereof. Recipient will use its best efforts, at the Debtors' expense, to assist the Debtors in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, Recipient may disclose, without liability hereunder, that portion (and only that portion) of the Confidential Information that Recipient has been advised by written opinion of counsel reasonably acceptable to the Debtors that it is legally compelled to disclose; *provided, however*, that Recipient agrees to use its best efforts to obtain assurance, at no

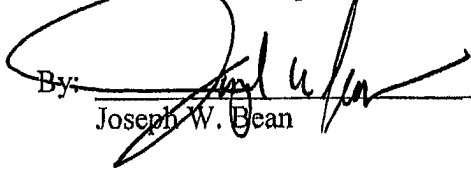
cost to Recipient, that confidential treatment will be accorded such Confidential Information by the person or persons to whom it is disclosed.

10. **Securities Law Compliance.** Recipient acknowledges and is aware that federal and many state securities laws prohibit any person who has received from an issuer material, nonpublic information from purchasing or selling securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

11. **General.** No waiver of any breach or default shall be deemed or construed to constitute a waiver of any other violation or other breach of any of the terms, provisions, and covenants contained in this Agreement, and forbearance to enforce one or more of the remedies provided on an event of default will not be deemed or construed to constitute a waiver of the default or of any other remedy provided for in this Agreement.

IN WITNESS WHEREOF, a duly authorized representative of each party hereby executes this Agreement as of the date first written above.

Patriot Coal Corporation

By:  \_\_\_\_\_  
Joseph W. Bean

Senior Vice President & General Counsel,  
Patriot Coal Corporation

UMWA 1974 Pension Plan

By:  \_\_\_\_\_  
David W. Allen

General Counsel,  
UMWA Health and Retirement Funds

**APPENDIX A**

**CERTIFICATION**

1. My name is \_\_\_\_\_.
2. My business address is \_\_\_\_\_.
3. I am employed as (state position) \_\_\_\_\_.
4. by (state name and address of employer) \_\_\_\_\_.

5. I have read the Confidentiality and Nondisclosure Agreement executed by the Debtors and the [Fund] on November \_\_, 2012 (the "Agreement"). I understand the Agreement and agree to be bound by its terms.

6. I further understand that federal and many state securities laws prohibit any person who has received from an issuer material, nonpublic information from purchasing or selling securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

7. I declare under penalty of perjury that the foregoing is true and correct.

Executed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
by \_\_\_\_\_

Signed: \_\_\_\_\_