

Hearing date: August 2, 2012 at 10:00 a.m.
Objection deadline: July 25, 2012 at 4:00 p.m.

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

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In re:

PATRIOT COAL CORPORATION, *et al.*,

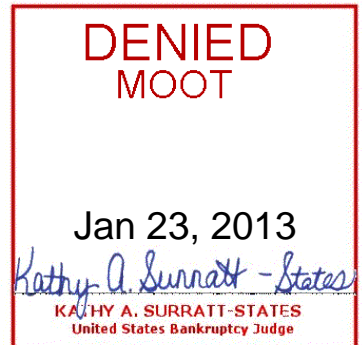
Debtors.

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Chapter 11

Case No. 12-12900 (SCC)

(Jointly Administered)



**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**

1. The United Mine Workers of America (“UMWA”), the only union representing employees of the Patriot Coal Corporation and its subsidiaries, (collectively, “the Debtors”), makes this motion pursuant to 28 U.S.C. § 1412 and Rule 1014, Fed. R. Bankr. Proc., to transfer the cases to the Bankruptcy Court for the Southern District of West Virginia (“SDWV”) in the interests of justice and for the convenience of the parties.

2. The Debtors’ facilities, employees, retirees and creditors are largely located in the SDWV, a district in which the Debtors have often litigated. In contrast, Debtors’ assertion that venue is proper in the Southern District of New York (“SDNY”) is based on its two recently created subsidiary corporations with unidentified assets which were apparently created for the sole and express purpose of achieving venue for these cases in SDNY.

RELIEF REQUESTED

3. By this motion, the UMWA requests entry of an order, in the form of the attached Exhibit A, transferring these bankruptcy cases to the SDWV Bankruptcy Court in the interests of justice and for the convenience of the parties, pursuant to 28 U.S.C. § 1412 and Rule 1014, Fed. R. Bankr. Proc. Pursuant to the Case Management Order entered in this case, the relief requested may be granted without a hearing if no Objection is timely filed and served in accordance with the Case Management Order. (No. 84, ¶ 26.)

BACKGROUND INFORMATION

4. On July 9, 2012, Debtors voluntarily filed 99 petitions for bankruptcy under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). All of those cases have been consolidated and are being jointly administered. (No. 30.) Of Debtors’ 99 subsidiaries, only two are domiciled in New York and those two were created only recently: Patriot Beaver Dam Holdings, LLC (“Patriot Beaver Dam”) was created on June 14, 2012 and PCX Enterprises, Inc. (“PCX”) was created on June 1, 2012. (*See* Exhibits B and C.)

5. The Voluntary Petitions filed by Patriot Beaver Dam and by PCX both give Patriot Coal Corporation’s offices in St. Louis, MO as their street address and list their mailing address as: c/o CT Corporation System, 111 8th Avenue, New York, NY 10011. (Case No. 12-12898, No. 1; and 12-899, No. 1.) CT Corporation System is the Registered Agent for service of process for both Patriot Beaver Dam and PCX, a service that CT Corporation System provides for its clients. (*See* <http://ct.wolterskluwer.com/ctcorporation/products-services/representation-services> (last visited, July 17, 2012).) The location of the principal assets of Patriot Beaver Dam, PCX and Patriot Coal Corp. is listed as New York, NY, 10019, with no street address. (Case No. 12-12898, No. 1; 12-899, No. 1; Case No. 12-12900, No. 1.) In fact, the principal assets of the

Debtors are the mines that they operate, and related equipment, the vast majority of which are located in West Virginia, as described below.

6. Of the remaining 97 filing entities of the Debtors, the states of residence listed on the Voluntary Petitions are as follows: West Virginia (where 54 entities are located), Missouri (40 entities), and Kentucky (3 entities). (Case Nos. 12-12901-12999, No. 1.)

7. On July 9, 2012, Debtors filed a Declaration of Mark N. Schroeder, Patriot Coal Corporation's Senior Vice President and Chief Financial Officer ("Schroeder Decl.") (No. 4), stating as follows:

Two of the Debtors are organized under the laws of the State of New York. The principal assets of those two Debtors, along with those of Patriot Coal, are located in New York. The other of the affiliated Debtors' assets are located in each of the many locations from which they operate their businesses. The Debtors own, lease or hold under other arrangement coal reserves, surface property and other real estate interests in various counties in many states, including Illinois, Indiana, Kentucky, Missouri, Ohio, Pennsylvania and West Virginia.

(Schroeder Decl., ¶ 7.) The assets of Patriot Coal allegedly located in New York, are undefined but are apparently bank accounts. (Schroeder Decl., ¶ 42.) Schroeder does not state the percentage of Debtors' combined assets which are held by Patriot Beaver Dam and PCX, or the amount of any such assets located in New York.

8. Debtors assert the following regarding the basis for venue in SDNY:

The Debtors determined that the Southern District of New York (the "SDNY") is the optimal venue for the Debtors' chapter 11 cases and in the best interests of the Debtors, their creditors and other stakeholders. The Debtors' legal and financial advisors are all located in New York, and the Debtors' significant financial creditors, along with their professional advisors, are also located in New York. Moreover, along with their advisors, the agent under the proposed 'first out' DIP financing facility and two of the three arrangers under the proposed DIP financing facilities are New York-based institutions, and the DIP financing contemplates that the Debtors' cases be venued in the SDNY. I believe that had we filed in one of the other jurisdictions that were also available to us (i) most of our domestic and foreign creditors would have been inconvenienced and (ii) the costs and inefficiency of administration of the estates would have materially increased.

(Schroeder Decl., ¶ 43.)

9. Contrary to this statement, the proposed financial advisor, Alix Partners is located in Michigan, not New York. (See <http://www.patriotcaseinfo.com/info.php> (last visited July 17, 2012).) Even more significantly, recent filings by Debtors show that none of the 50 largest unsecured creditors of the Debtors are located in New York while 20% of the 50 largest unsecured creditors are located in West Virginia, more than in any other state. (No. 98.) The top five secured creditors are located in five different states; surety bond holders are located in four different states; letters of credit and security deposits are located in three different states. None of these creditors are located in New York. (Schroeder Decl., Ex. A, Sched. 2 and 5; Ex. D.)

10. Debtors' President and Chief Operating Officer, Ben Hatfield lives and works in West Virginia and is a board member of the West Virginia Coal Association. (See <http://wvgazette.com/News/201109152243> (last visited July 17, 2012).) Debtors' headquarters is in St. Louis, MO, where the Chief Executive Officer and Chairman of the Board of Directors, Irl Englehardt, and Senior Vice President and Chief Financial Officer, Mark Schroeder live and work. (No. 1.) It does not appear that any of Debtors' employees are employed or reside in New York.

11. According to the Debtors' website, it operates 12 mines: eight in southern West Virginia; one in northern West Virginia; and three in western 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).)

12. The UMWA represents approximately 2,000 active employees, most of whom live and work in West Virginia. In addition, over 10,000 retirees receive health and pension benefits paid for by Debtors. Many of those retirees also live in West Virginia. It will be much more inconvenient and expensive for these employees or retirees, or their union, the UMWA, to participate in this case in New York as compared to SDWV.

13. Coal mining is essentially non-existent in New York but is a significant and important industry in West Virginia. According to *Coal Facts, West Virginia Coal: Fueling an American Renaissance 2011* (“*Coal Facts*”), a publication of the West Virginia Coal Association (attached as Exhibit E):

- West Virginia is ranked second in the country among the 24 coal producing states; New York has no coal production. (*Coal Facts*, p. 7);
- West Virginia produced 143 million tons of coal in 2010. (*Id.* at 8);
- Patriot Coal Group was the third largest West Virginia coal producer, operating four of the top 20 producing mines. (*Id.* at 10);
- In 2010, 22,599 employees worked in “direct” mining jobs in West Virginia; 29,512 employees worked for mining contractors. (*Id.* at 14);
- West Virginia imposes a 5% severance tax on coal, which generated more than \$400 million for the state, of which \$30 million was distributed to counties and municipalities. (*Id.* at 15);
- The coal industry and the coal burning electric generating industry together represent nearly 60% of the business taxes paid to the State of West Virginia. (*Id.* at 20);
- West Virginia’s coal industry pays for nearly \$3.4 billion in annual direct wages. (*Id.*);
- Coal is responsible for more than 12% of West Virginia’s gross state product. (*Id.*).

14. The SDWV has heard and decided numerous cases in which one of the Debtors—Patriot Coal Corporation and its related entities—was a plaintiff or defendant.¹ In contrast, research revealed that the SDNY has been the forum for only two cases in which one of the Debtors' entities was a party.² Indeed, as described in the Schroeder Decl., ¶ 25, Debtors filed actions for breach of contract against two customers, Bridgehouse Commodities Trading Limited and Keystone Industries, LLC, for defaulting on their contractual obligations to purchase coal from Debtors. Those actions, which are a significant part of this case were both filed by Debtors in West Virginia: *Patriot Coal Sales, LLC v. Keystone Industries, LLC*, 2:12-CV-01808 (S.D.W.V.), filed on June 1, 2012; *Patriot Coal Sales LLC v. Bridgehouse Commodities Trading Limited, et al.* (Circuit Court of Kanawha Co. W. Va.), filed on April 3, 2012. (No. 39 at 134.)

15. This case has just started, having been filed on July 9, 2012 and the first day motions having been heard on July 16, 2012. The Creditors Committee is scheduled to be appointed on July 18, 2012.

¹ See e.g., *Young v. Apogee Coal Co.*, 2:12-CV-01324 (S.D.W.Va.); *Ohio Valley Environmental Coalition, Inc. v. Patriot Coal Corp.*, 3:11-CV-00115 (S.D.W.Va.); *Bailey v. Eastern Associated Coal, LLC*, 2:11-CV-00470 (S.D.W.Va.); *Grounds v. Burgess*, 12:10-CV-01333 (S.D.W.Va.); *Davis v. Murdock*, 2:10-CV-01332 (S.D.W.Va.); *Nash v. Patriot Coal Corp.*, 2:10-CV-01031 (S.D.W.Va.); *Jenkins v. Patriot Coal Corp.*, 2:10-CV-1032 (S.D.W.Va.); *Huddleston v. Patriot Coal Corp.*, 2:10-CV-1033 (S.D.W.Va.); *Hubbard v. Speed Mining, LLC*, 2:10-CV-00359 (S.D.W.Va.); *Bird v. Metropolitan Life Insurance Co.*, 1:10-CV-00161 (S.D.W.Va.); *McClanahan v. Eastern Associated Coal, LLC*, 2:09-CV-01068 (S.D.W.Va.); *Deavers v. Patriot Coal Corp.*, 2:09-CV-01031 (S.D.W.Va.); *U.S. v. Patriot Coal Corp.*, No. 2:09-CV-00099 (S.D.W.Va.); *Rowland Land Co. v. Peachtree Ridge Mining Co., Inc.*, 3:08-CV-00318 and 00319 (S.D.W.Va.); *Ohio Valley Environmental Coalition, Inc. v. Apogee Coal Co., LLC*, 3:07-0413 (S.D.W.Va.); *Ohio Valley Environmental Coalition, Inc. v. Hobet Mining, LLC*, 3:08-0088 and 3:09-1167 (S.D.W.Va.); *O'Neal v. Speed Mining LLC*, 5:10-CV-00446 (S.D.W.Va.); *Rollins v. Monsanto Co.*, 3:09-CV-01459 (S.D.W.Va.); *Agee v. Monsanto Co.*, 3:09-CV-1336 (S.D.W.Va.); *Campbell v. Brook Trout Coal, LLC*, 2:07-0651 (S.D.W.Va.); *McNeal v. Nelson Bros., LLC*, 2:09-0306 (S.D.W.Va.); *Ohio Valley Environmental Coalition, Inc. v. U.S. Army Corps of Engineers*, 3:05-0784 (S.D.W.Va.); and *Hudson v. Pine Ridge Coal Co.*, 2:11-00248 (S.D.W.Va.).

² *Klein v. Citigroup, Inc.*, 1:11-CV-06853 (LBS) (S.D.N.Y.); *Donoghue v. Patriot Coal Corp.*, 1:10-CV-03343 (LTS) (S.D.N.Y.).

16. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C.C. § 157(b) and may be determined by the Bankruptcy Court.

ARGUMENT

17. Contrary to Debtors' assertion that SDNY is the most convenient forum for creditors and other parties to this action, SDWV has many more ties to the Debtors' business and operations. The mines, which are Debtors' operations and where its employees work, are primarily located in SDWV, a district which has a great economic interest in the outcome of this case. More of the largest 50 unsecured creditors are located in West Virginia than in any other state, while none of the 50 largest unsecured creditors are located in New York. The UMWA respectfully submits that the Bankruptcy Code venue provisions were not intended to be manipulated by the creation of shell corporations in New York to permit administration of these bankruptcy cases in SDNY.

I. STANDARDS FOR VENUE TRANSFER

18. Change of venue of a case or proceeding under title 11 of the Bankruptcy Code is governed by 28 U.S.C. § 1412, which provides: "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." Similarly, Rule 1014, Fed. R. Bankr. Proc., provides as follows:

If a petition is filed in the proper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may transfer the case to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties.

19. The transfer of venue of a case lies in the discretion of the court according to an “individualized, case-by-case consideration of convenience and fairness.” *Steward Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)); *Gulf States Exploration Co. v. Manville Forest Prod. Corp. (In re Manville Forest Prod. Corp.)*, 896 F.2d 1384, 1391 (2d Cir. 1990).

20. The two tests, “interest of justice” and “convenience of the parties” are stated in the disjunctive, and therefore, transfer of the proceeding can be compelled by satisfaction of either standard. *Enron Corp. v. Arora (In re Enron Corp.)*, 317 B.R. 629, 637 (Bankr. S.D.N.Y. 2004). According to the Second Circuit:

The “interest of justice” component of § 1412 is a broad and flexible standard which must be applied on a case-by-case basis. It contemplates a consideration of whether transferring venue would promote the efficient administration of the bankruptcy estate, judicial economy, timeliness, and fairness ...

In re Manville Forest Products Corp., 896 F.2d 1384, 1391 (2d Cir. 1990). The factors have also been described as follows:

To assist in gauging ‘convenience of witnesses’ and ‘interests of justice,’ some relatively objective factors have been considered: (1) proximity of creditors; (2) proximity of the debtor; (3) proximity of witnesses necessary to the administration of the estate; (4) location of assets; (5) economic administration of the estate ...

In re Eclair Bakery Ltd., 255 B.R. 121, 141 (Bankr. S.D.N.Y. 2000). *Accord Landmark Capital Co.*, 19 B.R. 342, 347-48 (Bankr. S.D.N.Y. 1982). Some courts have delineated the “interests of justice” standard as follows:

The court considers whether (i) transfer would promote the economic and efficient administration of the bankruptcy estate; (ii) the interests of judicial economy would be served by the transfer; (iii) the parties would be able to receive a fair trial in each of the possible venues; (iv) either forum has an interest in having the controversy decided within its borders; (v) the enforceability of any judgment would be affected by the transfer; and (vi) the plaintiff’s original choice of forum should be disturbed.

In re Dunmore Homes, Inc., 380 B.R. 663, 671-72 (Bankr. S.D.N.Y. 2008.) Examination of each of these factors establishes that the case should be transferred to SDWV.

21. The burden is on the movant to show by a preponderance of the evidence that transfer of venue is warranted. See *In re Manville Forest Products Corporation*, 896 F.2d 1384, 1390 (2d Cir.1990) (in context of transfer of adversary proceeding); *In re Enron Corp. (Enron Corp v. Dynegy, Inc.)*, No. 01-16034 (AJG) 2002 WL 32153911, at *3 (Bankr. S.D.N.Y. Apr. 12, 2012); *In re Vienna Park Properties*, 125 B.R. 84, 87 (S.D.N.Y.1991) (in context of transfer of case).

I. THE CASE SHOULD BE TRANSFERRED TO SDWV FOR THE CONVENIENCE OF THE PARTIES

A. More of the 50 Largest Unsecured Creditors Are Located in West Virginia Than in Any Other State; None of the 50 Largest Unsecured Creditors or the Secured Creditors Are Located in New York

22. According to the Debtors, 20% of the 50 largest unsecured creditors are located in West Virginia, more than in any other state, while none of the 50 largest unsecured creditors or secured creditors are located in New York. Bankruptcy cases have been transferred to a district in which more of the creditors were located than the district in which the petition was filed. *In re EB Capital Management LLC*, No. 11-12646 (MG), 2011 WL 2838115, at *4 (Bankr. July 14, 2011) (case transferred to South Dakota where four of the seven creditors were located); *In re Dunmore Homes, Inc.*, 380 B.R. 663, 676 (Bankr. S.D.N.Y. 2008) (case transferred to California where most creditors were located); *In re B.L. of Miami, Inc.*, 294 B.R. 325, 330-31 (Bankr. D. Nev. 2003) (case transferred to Miami where the vast majority of unsecured creditors were located); *Landmark Capital*, 19 B.R. at 348 (case transferred to Arizona where three of four creditors were located).

23. While the majority of the 50 largest unsecured creditors are not located in any one state, West Virginia is the state with more of those creditors than any other state. More importantly, none of the 50 largest unsecured creditors or the secured creditors are located in New York. SDWV is more convenient for more of the creditors than any other state.

B. The Majority of the Debtors Are Located in West Virginia; Only Two of the Debtors Are Located in New York

24. The Voluntary Petitions in this case show that 54 of the 99 filing entities are located in West Virginia, where Debtors maintain an office. The two entities which are located in New York were only recently created and the address used by those entities is that of a corporation providing registered agent services. The Debtors do not have any physical presence in New York.

25. In *B.L. of Miami*, 294 B.R. at 331, the court transferred the case from Nevada to Florida, stating: “Although Debtor was incorporated in Nevada on September 3, 1997, and thus may technically ‘reside’ in Nevada, its primary place of business and its assets are in Florida.” Similarly, in *Dunmore Homes*, 380 B.R. at 676, the court transferred the case from SDNY to California, stating: “While the Debtor is incorporated in New York, all of its remaining employees, sole shareholder, and the majority of its professionals are located in California.” In the instant case, the majority of the Debtors’ employees are located in West Virginia and it appears that none of them are located in New York. The mere recent incorporation of two of its 99 filing entities in New York does not make the Debtors proximate to New York.

C. The Witnesses Necessary to the Administration of the Estate Are Located in Various States

26. Some of the witnesses who are likely to testify in this case are spread throughout the country: the Debtors’ CEO and CFO are located in Missouri; the President and COO is

located in West Virginia; the proposed financial advisors are located in Michigan; the investment banker is located in New York, as are certain of the lenders. However, the employees and the retirees, those who are least able to bear the expense and inconvenience of travel, and who may very well be called to testify in any motion pursuant to §§ 1113 or 1114 of the Bankruptcy Code, are located mainly in West Virginia.

D. Most of Debtors' Assets Are Located in West Virginia

27. Debtors seek to establish venue in New York by maintaining certain bank accounts in this state. However, the business of the Debtors is coal mining and it is the mines which are the valuable assets of the Debtors. Nine of the 12 mines operated by the Debtors are in West Virginia, along with the employees, equipment and offices needed to run the business.

28. The location of a debtor's assets is most important where those assets constitute the value of the debtor's business. *Compare Dunmore Homes*, 380 B.R. at 677 (real estate assets were relevant in transferring case) *with In re Enron*, 274 B.R. at 347-48 (physical location of assets is not significant in a "financial" case where their location is less important); *see also B.L. of Miami*, 294 B.R. at 332 (case transferred to district where debtor's principal asset was located); *Landmark Capital*, 19 B.R. at 345, 348 (same). The principal assets of the Debtors here are their operating coal mines, the majority of which are located in West Virginia.

E. The Debtors' Estate Can Be Most Economically Administered in West Virginia

29. In effect, this factor combines all of the other factors regarding the convenience of the parties. The location of the creditors, the debtors, the expected witnesses, and the debtors' assets are all considered by the courts. Here, more of the creditors are located in West Virginia than in any other state and none are located in New York. A majority of the Debtors' entities are located in West Virginia and only two of the 99 Debtors are located in New York. A majority of

the Debtors' assets used in their businesses are located in West Virginia and only bank accounts are located in New York. Employee and retiree witnesses are largely located in West Virginia while professionals who have the means and the ability to travel are located throughout the country. On balance, it would be most economical for the case to be transferred to SDWV.

II. THE CASE SHOULD BE TRANSFERRED TO SDWV IN THE INTERESTS OF JUSTICE

A. The Interests of Judicial Economy Would Be Served by Transferring the Case to SDWV

30. An element of judicial economy is whether either court has an advantage on the "learning curve" relevant to the case. *Enron Corp. v. Arora (In re Enron Corp.*, 317 B.R. 629, 638-39 (Bankr. S.D.N.Y. 2004). As this case is in its earliest stages, SDNY has not had the opportunity to develop a substantial learning curve. Here, the Bankruptcy Court in the SDWV, located in a coal producing region, has heard numerous cases involving the coal industry, while the SDNY has limited knowledge of that industry. "It 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.'" *B.L. of Miami, Inc.*, 294 B.R. at 332 (quoting *In re Abacus Broad. Corp.*, 154 B.R. 682, 683 (Bankr., W.D. Tex. 1993). The SDWV has managed numerous bankruptcy and other cases involving the coal industry.³ Moreover, the Debtors themselves filed two actions relevant to this case in West Virginia. The existence of related litigation in another district supports the transfer of a case to that district. *In*

³ See, e.g., *Point Service Corp. v. Pritchard Min. Co., Inc.*, 2010 WL 1410673 (S.D.W.Va. 2010); *Caperton v. A.T. Massey Coal Co., Inc.*, 270 B.R. 654 (S.D.W.Va. 2001); *In re Lady H Coal Co., Inc.*, 199 B.R. 595 (S.D.W.Va. 1996); *UMWA 1992 Ben. Plan v. Leckie Smokeless Coal Co.*, 201 B.R. 163 (S.D.W.Va.1996); *International Union v. First Big Mountain Coal Co.*, 1993 WL 133309 (S.D.W.Va. 1993); *In re Queen*, 148 B.R. 256 (S.D.W.Va. 1992); *In re Concord Coal Corp.*, 81 B.R. 863 (S.D.W.Va. 1988); *In re Cherry Pond Coal Co.*, 21 B.R. 592 (S.D.W.Va. 1982); *Matter of Appalachian Pocahontas Coal Co., Inc.*, 31 B.R. 579 (S.D.W.Va. 1983); *In re Tom B. Coals, Inc.*, 46 B.R. 245 (S.D.W.Va. 1985); *In re Federal Coal Co.*, 335 F.Supp. 1183 (S.D.W.Va. 1971); and *In re Hawley Coal Mining Corp.*, 47 B.R. 392 (S.D.W.Va. 1984).

re Asset Resolution LLC, No. 09-16142 (AJG), 2009 WL 4505944, *3 (Bankr. Nov. 24, 2009);
In re Eclair Bakery Ltd., 255 B.R. 121, 142 (Bankr. S.D.N.Y. 2000).

B. The Parties Would Be Able to Receive a Fair Trial in Either District

31. This factor does not appear to favor one forum over another.

C. West Virginia Has an Interest in Having the Controversy Decided within Its Borders, New York Has No Such Interest

32. Most of the Debtors' mines and employees are located in West Virginia. Nobody mines coal in New York. As demonstrated above, the coal mining industry is essential to the economy of West Virginia but has little or no impact on the economy of New York. The people of West Virginia are familiar with and dependent on the coal mining industry. Significant issues in this case—whether mines are shut, whether employee wages and benefits are reduced, whether pension benefits are decreased, whether retiree health benefits are cut – will all directly affect the West Virginia economy while having no such effect in New York. *Landmark Capital*, 19 B.R. at 348 (“[T]here is a local interest in having localized controversies decided at home.”)

C. Judgments Are More Likely to Be Enforceable in West Virginia Than New York

33. Since most of the Debtors' mines are located in West Virginia, any judgments which may arise in this case are more likely to require enforcement in West Virginia than in New York. It is not clear what assets of Debtors', if any, are located in New York but the bulk of the Debtors' real property, and value, is located in West Virginia.

D. The Debtors' Original Choice of Forum Should Be Disturbed Because It Appears to Have Been Manufactured

34. Debtors established venue in New York by creating two corporations shortly before the bankruptcy filing. On June 1, 2012, PCX was created; on June 14, 2012, Patriot Beaver Dam was created. The bankruptcy petition was filed in the next month. Debtors

apparently created these two corporations for the purpose of establishing venue in SDNY. The extensive contacts with West Virginia and the minimal contacts with New York justify disturbing Debtors' choice of forum. *Dunmore Homes*, 380 B.R. at 673 ("Dunmore lacks any ties to New York, other than its recent incorporation in the state and its efforts to secure financing here.")

NOTICE

35. No trustee, examiner or creditors committee has been appointed in these chapter 11 cases. Notice of this motion has been served as indicated on the following: (a) the chambers of Judge Shelley C. Chapman, by hand; (b) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Marshall S. Huebner and Brian M. Resnick, by electronic mail; (c) Curtis Mallet-Prevost, Colt & Mosle, LLP, 101 Park Avenue, New York, NY 10178, Attn: Steven J. Reisman and Michael A. Cohen, by electronic mail; (d) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, Suite 2100, New York, NY 10004, Attn: Elisabetta G. Gasparini and Paul K. Schwartzberg, by hand; (e) Patriot Coal Corporation, c/o GCG, Inc. P.O. Box 9898, Dublin, OH 43017-5798, by electronic mail; (f) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Marcia Goldstein and Joseph Smolinsky, by electronic mail; and (g) Wilkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Margot B. Schonholtz and Ana Alfonso, by electronic mail.

NO PREVIOUS REQUEST

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

