

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

In re:

PATRIOT COAL CORPORATION, et al.,

Debtors.¹

Chapter 11

Case No. 12-12900 (SCC)

Jointly Administered

**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION
OF ERNST & YOUNG LLP AS INDEPENDENT AUDITOR
TO THE DEBTORS
NUNC PRO TUNC TO THE PETITION DATE**

Upon the application (the “**Application**”)² of Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”), pursuant to section 327(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a) for authorization to employ and retain Ernst & Young LLP (“**EY LLP**”), as independent auditor; and upon the Declaration of Michael W. Hickenbotham, a partner of EY LLP, filed in support of the Application and annexed to the Application as Exhibit B thereto (the “**Hickenbotham Declaration**”); and the Court being satisfied, based on the representations made in the Application and the Hickenbotham Declaration, that EY LLP is a “disinterested person” as defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and, as required by section 327(a) and referenced by section 328(c) of the Bankruptcy Code, neither holds nor represents

¹ The Debtors are the entities listed on Schedule 1 attached to the Application. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

² Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Application.

any interest adverse to the Debtors and their estates and otherwise meets the standards for employment under the Bankruptcy Code; and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. § 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.) as amended by Standing Order M-431, dated February 1, 2012 (Preska, C.J.); and consideration of the Application and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Application having been provided, and it appearing that no other or further notice need be provided; and the relief requested in the Application being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Application and having held a hearing with appearances of parties in interest noted in the transcript thereof (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Application is approved; and it is further

ORDERED that the Debtors are hereby authorized to employ and retain EY LLP in the Debtors’ chapter 11 cases, *nunc pro tunc* to the Petition Date, on the terms provided in the Engagement Letters, which are hereby approved as modified herein; and it is further

ORDERED that the Audit Services under the Audit Engagement Letter consist of the following services:

- (i) Auditing and reporting on the consolidated financial statements of Patriot for the year ended December 31, 2012;
- (ii) Auditing and reporting on the effectiveness of Patriot's internal control over financial reporting as of December 31, 2012; and
- (iii) Reviewing Patriot's unaudited interim financial information before Patriot files each of its Form 10-Q's for 2012, and issuing a report to the Audit Committee that provides negative assurance as to conformity with U.S. generally accepted accounting principles; and it is further

ORDERED that the Carve-Out Audit Services under the Carve-Out Audit

Engagement Letter consist of the following services:

- (i) Auditing and reporting on the financial statements of Patriot's Illinois Basin operating segment as of December 31, 2008, 2009, 2010, and 2011, and for the years ended, December 31, 2009, 2010, and 2011.

ORDERED that the Tax Advisory Services under the Tax Advisory SOW consist of the following services:

- (i) Advising the Debtors in developing an understanding of the tax implications of their bankruptcy restructuring alternatives and post-bankruptcy operations, including research and analysis of the Internal Revenue Code, Treasury regulations, case law and other relevant US federal, state, and non-US tax authorities, as applicable;
- (ii) Understanding reorganization and/or restructuring alternatives the Debtors are evaluating with existing bondholders and other creditors that may result in a change in the equity, capitalization and/or ownership of the shares of the Debtors or their assets;
- (iii) Advising with respect to the calculations ("Section 382 calculations") related to historic changes in ownership of the Debtors' stock, including a determination of whether the shifts in stock ownership may have caused an ownership change that will restrict the use of tax attributes (such as net operating loss, capital loss and credit carry forwards and built-in losses) and the amount of any such limitation;
- (iv) Advising with respect to the determination of the amount of the Debtors' tax attributes, section 382 limitation (if any), discharge of indebtedness income, attribute reduction and net unrealized built-in loss

and an estimate of the built-in loss to be recognized during the five-year, post-ownership change recognition period based on Notice 2003-65. EY LLP will confirm whether section 382(l)(5) may be applied to the plan of reorganization and, if so, review modeling to determine whether it is more advantageous to apply section 382(l)(5) or elect section 382(l)(6);

(v) Advising with respect to the analysis related to availability, limitations and preservation of tax attributes such as net operating losses, tax credits, stock and asset basis as a result of the application of the federal and state (or non-US local country if applicable) cancellation of indebtedness provisions, including the review of calculations to determine the amount of tax attributes reduction related to debt cancellation income. EY LLP will also assist with the analysis with respect to the benefits or detriments of making other related elections, such as the election under section 108(b)(5);

(vi) Advising with respect to tax analysis associated with planned or contemplated acquisitions and divestitures, including tax return disclosure and presentation;

(vii) Advising with respect to tax analysis and research related to tax-efficient domestic restructurings, including review of stock basis computations, non-income tax consequences, and verifying tax basis of assets and tax basis of subsidiary balance sheets for purposes of evaluating transactions;

(viii) Advising with respect to the analysis of historic returns, tax positions and Debtor records for the application of relevant consolidated tax return rules to the current transaction, including but not limited to, deferred inter-company transactions, excess loss accounts and other consolidated return issues for each legal entity in the Debtors' US tax group;

(ix) Advising with respect to the federal, state and local tax treatment (including tax return disclosure and presentation) governing the timing and deductibility of expenses incurred before and during the bankruptcy period, including but not limited to, bankruptcy costs, severance costs, interest and financing costs, legal and professional fees, and other costs incurred as the Debtors rationalize their operations;

(x) Advising with respect to the federal, state and local country tax consequences of internal restructurings and rationalization of inter-company accounts;

(xi) Advising with respect to the federal, state and local tax consequences of potential material bad debt and worthless stock deductions, including tax return disclosure and presentation; and

(xii) Providing documentation, as appropriate or necessary, of tax analysis, opinions, recommendations, conclusions and correspondence for any proposed restructuring alternative, bankruptcy tax issue, or other tax matter described above; and

(xiii) Advising with respect to taxing jurisdiction correspondence and post-petition return disclosure considerations (including requests for prompt tax liability determinations) for the Debtors' review and finalization with counsel, and overview of related tax considerations to be considered by the Debtors and counsel in the development of bankruptcy workplan; and it is further

ORDERED that EY LLP shall be compensated in accordance with, and will file interim and final fee applications for the allowance of compensation for services rendered and reimbursement of expenses incurred in accordance with sections 330 and 331 of the Bankruptcy Code, applicable Bankruptcy Rules, Local Bankruptcy Rules, the Standing Order Establishing Procedures For Monthly Compensation and Reimbursement of Expenses of Professionals [M-412] (Dec. 21, 2010), the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases [M-389] (Nov. 25, 2009), and the U.S. Trustee Guidelines (collectively, the "**Fee Guidelines**"), and any applicable orders of this Court; and it is further

ORDERED that EY LLP shall keep reasonably detailed time records in one-tenth of an hour increments and will submit, with any interim or final fee application, together with the time records, a narrative summary, by project category, of services rendered and will identify each professional rendering services, the category of services rendered and the amount of compensation requested; and it is further

ORDERED, that prior to any increases in the hourly rates, EY LLP shall file a supplemental affidavit with the Court and give ten business days' notice to the Debtors, the United States Trustee and any official committee, which supplemental affidavit shall explain the basis for the requested rate increase in accordance with section 330(a)(3)(F) of the Bankruptcy Code and indicate whether the client has received notice of and approved the proposed rate increase; and it is further

ORDERED that the limitation of liability in paragraph 16 of the terms and conditions attached to the MSA shall not apply to the extent the relevant claims are judicially determined by a court of competent jurisdiction to have arisen from the gross negligence, willful misconduct or breach of fiduciary duty, if any, of EY LLP; and it is further

ORDERED that the Debtors shall indemnify EY LLP under the terms of the Tax Engagement Letter; and it is further

ORDERED that all requests of EY LLP for payment of indemnity pursuant to the Tax Engagement Letter shall be made by means of an application (interim or final, as applicable) and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Tax Engagement Letter and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought, provided however, that in no event shall EY LLP be indemnified in the case of its own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct; and it is further

ORDERED, that in the event that EY LLP seeks reimbursement from the Debtors' for attorneys' fees and expenses in connection with the payment of an

indemnity claim pursuant to the Tax Engagement Letter, the invoices and supporting time records for the attorneys' fees and expenses shall be included in EY LLP's own applications, both interim and final, but determined by this Court after notice and a hearing; and it is further

ORDERED that the Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order; and it is further

ORDERED that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that the relief granted herein shall be binding upon any chapter 11 trustee appointed in these chapter 11 cases, or upon any chapter 7 trustee appointed in the event of a subsequent conversion of these chapter 11 cases to cases under chapter 7; and it is further

ORDERED that the notice procedures set forth in the Motion are good and sufficient notice and satisfy Bankruptcy Rule 9014 by providing the counterparties with a notice and an opportunity to object and be heard at a hearing; and it is further

Dated: August 2, 2012
New York, New York

/s/ Shelley C. Chapman
HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE