UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

	:	**Chapter 11**
In re:	:	**Case No. 12-51502-659**
	:	**(Jointly Administered)**
PATRIOT COAL CORPORATION, *et al.*,	:	
	:	**Objection Deadline:**
Debtors.	:	**March 29, 2013 at 4:00 p.m. (CST)**
	:	
	:	**Hearing Date:**
	:	**April 23, 2013 at 10:00 a.m. (CST)**
	:	

OBJECTION OF WILMINGTON TRUST COMPANY, AS INDENTURE TRUSTEE, TO MOTION OF CERTAIN INTERESTED SHAREHOLDERS FOR ENTRY OF AN ORDER DIRECTING THE APPOINTMENT OF AN OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS PURSUANT TO BANKRUPTCY CODE § 1102(a)(2)

Wilmington Trust Company ("Wilmington"), in its capacity as indenture trustee for $250 million principal amount of 8.25% Senior Notes due 2018 (the "Senior Notes") issued by Patriot Coal Corporation ("Patriot" or the "Corporate Parent") and unconditionally guaranteed by each of the other above-captioned debtors and debtors in possession (together with Patriot, the "Debtors"),[1] for its Objection to the Motion of Certain Interested Shareholders for Entry of an

[1] In addition to Patriot Coal Corporation, the Debtors are as follows: (1) Affinity Mining Company; (2) Apogee Coal Company, LLC; (3) Appalachia Mine Services, LLC; (4) Beaver Dam Coal Company, LLC; (5) Big Eagle, LLC; (6) Big Eagle Rail, LLC; (7) Black Stallion Coal Company, LLC; (8) Black Walnut Coal Company; (9) Bluegrass Mine Services, LLC; (10) Brook Trout Coal, LLC; (11) Catenary Coal Company, LLC; (12) Central States Coal Reserves of Kentucky, LLC; (13) Charles Coal Company, LLC; (14) Cleaton Coal Company; (15) Coal Clean LLC; (16) Coal Properties, LLC; (17) Coal Reserve Holding Limited Liability Company No. 2; (18) Colony Bay Coal Company; (19) Cook Mountain Coal Company, LLC; (20) Corydon Resources LLC; (21) Coventry Mining Services, LLC; (22) Coyote Coal Company LLC; (23) Cub Branch Coal Company LLC; (24) Dakota LLC; (25) Day LLC; (26) Dixon Mining Company, LLC; (27) Dodge Hill Holding JV, LLC; (28) Dodge Hill Mining Company, LLC; (29) Dodge Hill of Kentucky, LLC; (30) EACC Camps, Inc.; (31) Eastern Associated Coal, LLC; (32) Eastern Coal Company, LLC; (33) Eastern Royalty, LLC; (34) Emerald Processing, LLC; (35) Gateway Eagle Coal Company, LLC; (36) Grand Eagle Mining, LLC; (37) Heritage Coal Company LLC; (38) Highland Mining Company, LLC; (39) Hillside Mining Company; (40) Hobet Mining, LLC; (41) Indian Hill Company LLC; (42) Infinity Coal Sales, LLC; (43) Interior Holdings, LLC; (44) IO Coal LLC; (45) Jarrell's Branch Coal Company; (46) Jupiter Holdings LLC; (47) Kanawha Eagle Coal, LLC; (48) Kanawha River Ventures I, LLC; (49) Kanawha

Order Directing the Appointment of an Official Committee of Equity Security Holders Pursuant to Bankruptcy Code § 1102(a)(2) [Docket No. 417] (the "Equity Committee Motion"), respectfully represents:

INTRODUCTION

1. The so-called Interested Shareholders seek the extraordinary and rare relief of appointing an official equity committee pursuant to section 1102(a)(2) of the Bankruptcy Code. The United States Trustee has twice denied such requests. This is unsurprising, as the Interested Shareholders cannot establish that (i) Patriot's equity holders are likely to receive a meaningful distribution on account of their common stock in Patriot, the Debtors' Corporate Parent, or (ii) Patriot's equity holders are not adequately represented in these cases. The Equity Committee Motion should likewise be denied by this Court.

2. One of the principal "themes" in these cases is the need of certain, but far from all, of the Debtors to restructure their UMWA labor costs (and associated retiree and related liabilities).[2] This issue has recently come to the forefront as a result of the Debtors' motion for relief under sections 1113 and 1114 of the Bankruptcy Code [Docket Nos. 3214, 3219]. In that

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River Ventures II, LLC; (50) Kanawha River Ventures III, LLC; (51) KE Ventures, LLC; (52) Little Creek LLC; (53) Logan Fork Coal Company; (54) Magnum Coal Company LLC; (55) Magnum Coal Sales LLC; (56) Martinka Coal Company, LLC; (57) Midland Trail Energy LLC; (58) Midwest Coal Resources II, LLC; (59) Mountain View Coal Company, LLC; (60) New Trout Coal Holdings II, LLC; (61) Newtown Energy, Inc. (62) North Page Coal Corp.; (63) Ohio County Coal Company, LLC; (64) Panther LLC; (65) Patriot Beaver Dam Holdings, LLC; (66) Patriot Coal Company, LP; (67) Patriot Coal Sales LLC; (68) Patriot Coal Services LLC; (69) Patriot Leasing Company LLC; (70) Patriot Midwest Holdings, LLC; (71) Patriot Reserve Holdings, LLC; (72) Patriot Trading LLC; (73) PCX Enterprises, Inc.; (74) Pine Ridge Coal Company, LLC; (75) Pond Creek Land Resources, LLC; (76) Pond Fork Processing LLC; (77) Remington Holdings LLC; (78) Remington II LLC; (79) Remington LLC; (80) Rivers Edge Mining, Inc.; (81) Robin Land Company, LLC; (82) Sentry Mining, LLC; (83) Snowberry Land Company; (84) Speed Mining LLC; (85) Sterling Smokeless Coal Company, LLC; (86) TC Sales Company, LLC; (87) The Presidents Energy Company LLC; (88) Thunderhill Coal LLC; (89) Trout Coal Holdings, LLC; (90) Union County Coal Co., LLC; (91) Viper LLC; (92) Weatherby Processing LLC; (93) Wildcat Energy LLC; (94) Wildcat, LLC; (95) Will Scarlet Properties LLC; (96) Winchester LLC; (97) Winifrede Dock Limited Liability Company; and (98) Yankeetown Dock, LLC. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

[2] *See* Declaration of Mark N. Schroeder Pursuant to Local Bankruptcy Rule 1007-2 [Docket No. 4] (the "First Day Declaration") at ¶33.

motion, the Debtors assert that union labor costs must be reduced by at least $150 million annually. The Debtor entities which are subject to collective bargaining agreements with the UMWA or are otherwise liable for such union employee and retiree claims apparently face liquidation without such concessions. In that context, how conceivably could there be equity value at Patriot, the corporate parent of the Debtors?

3. Significantly, a review of market data, which is generally viewed as the most "real world" or best indication of value in chapter 11 cases,[3] suggests strongly that there exists no likelihood of value for stockholders of the Corporate Parent here. The Debtors' publicly traded bonds have traded at significant discounts from par since before the Debtors' chapter 11 filings and continue to trade at such levels. The Senior Notes, which are guaranteed by all of the Debtors, and for which Wilmington serves as indenture trustee, presently trade at approximately 47.5 cents on the dollar (a discount of $131.25 million).[4] The fact that the Debtors' 3.25% Convertible Notes (the "Convertible Notes"), which are only obligations of Patriot, the Corporate Parent and the entity that issued the common stock held by the Interested Shareholders, presently trade at approximately 10.5 cents on the dollar (a discount of $179 million)[5] should be the end of the inquiry. The trading price of the Senior Notes compared to the trading price of the

[3] *See VFB LLC v. Campbell Soup Co.*, 482 F.3d 624, 633 (3rd Cir. 2007) (noting, among other things, that market price is a better method for determining value than expert opinions); *Basic Inc. v. Levinson*, 485 U.S. 224, 244 (U.S. 1988); *Peltz v. Hatten*, 279 B.R. 710, 738 (D. Del. 2002); *Statutory Comm. of Unsecured Creditors of Iridium Operating LLC v. Motorola, Inc. (In re Iridium Operating LLC)*, 373 B.R. 283, 293 (Bankr. S.D.N.Y. 2007) ("the public trading market constitutes an impartial gauge of investor confidence and remains the best and most unbiased measure of fair market value."); *Metlyn Realty Corp. v. Esmark, Inc.*, 763 F.2d 826, 835 (7th Cir.) ("The price at which people actually buy and sell, *putting their money where their mouths are*, is apt to be more accurate than the conclusions of any one analyst." (emphasis added)).

[4] *See* Houlihan Lokey Response to the Declaration of Christopher K. Wu (the "Houlihan Report"), attached as Exhibit 1 to Declaration of Matthew A. Mazzucchi in Support of the Objection of the Official Committee Of Unsecured Creditors to the Motion of Certain Interested Shareholders for Entry of an Order Directing the Appointment of an Official Committee of Equity Security Holders Pursuant to Bankruptcy Code § 1102(A)(2) (the "Mazzucchi Declaration").

[5] *Id.*

Convertible Notes reflects that many Debtor entities obligated on the Senior Notes are not subject to union contracts and/or not liable on union labor and retiree claims.

4. The Interested Shareholders' Motion also improperly and, without foundation or rationale, assumes that the Debtors' estates can be valued as a single consolidated enterprise for purposes of determining whether there is equity value. These cases involve ninety-nine (99) separate and distinct debtors, each of which has discrete assets and liabilities. Certain Debtor entities are liable for union claims. Many of the Debtors, however, have no such liabilities or obligations. There is no factual or legal basis for "substantively consolidating" the Debtors' estates, for purposes of equity valuation or otherwise.

BACKGROUND

I. COMPANY OVERVIEW

5. The Debtors consist of ninety-nine (99) separate and distinct entities. The Debtors each have an organized, distinct capital and corporate structure. Individual Debtor entities own particular assets. The Debtors maintain separate books and records, observe corporate formalities when transferring assets and liabilities to each other, do not commingle such individual assets and liabilities, and operate as separate and distinct legal entities.[6] The Debtors collectively own, operate and conduct mining operations at twelve (12) active mining complexes consisting of nineteen (19) surface and underground mines in the Northern and Central Appalachia and Illinois Basin coal regions.

[6] Prior to October 31, 2007, many of the Debtors were wholly-owned subsidiaries of Peabody Energy Corporation ("Peabody"). On October 31, 2007, Patriot was spun off from Peabody through a dividend of all outstanding shares of Patriot and, as a result of the spin-off, Patriot became a separate, public company, listed on the New York Stock Exchange. On July 23, 2008, Patriot acquired Magnum Coal Company ("Magnum"). At the time of its acquisition by Patriot, Magnum (which had previously acquired substantial assets and liabilities from Arch Coal, Inc. ("Arch")) was one of the largest coal producers in Appalachia, controlling more than 600 million tons of coal reserves.

6. The Debtors collectively employ approximately 4,200 employees and contractors. Approximately forty percent of the Debtors' active employees and over fifty percent of the Debtors' active miners are members of the UMWA. The Debtors' union employees and retirees are concentrated within a handful of the Debtors. Only ten (10) of the ninety-nine (99) debtors are party to the UMWA CBAs with the UMWA.[7] Only four (4) of the Debtors have employees and active mining operations that are subject to the UMWA CBA wage rates, rules and funding contribution requirements. The majority of the Debtors have no obligations to the UMWA or its unionized employees and retirees.

II. THE EQUITY COMMITTEE REQUEST AND THE 1113/1114 MOTION

7. By letter, dated July 18, 2012, the Interested Shareholders requested that the U.S. Trustee appoint an official committee of equity security holders (the "Equity Committee Request"). On August 24, 2012, the U.S. Trustee declined the Interested Shareholders' request for the appointment of an official committee. After the U.S. Trustee's denial of their request, on August 24, 2012, the Interested Shareholders filed the Equity Committee Motion. On December 20, 2012, the Interested Shareholders sent an additional request for an appointment of an official equity committee to the U.S. Trustee. The Interested Shareholders' second request was denied on January 15, 2013.

8. On March 14, 2013, the Debtors filed their *Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 of the Bankrupcy Code* [Docket No. 3214] and their Memorandum of Law in support thereof [Docket No. 3219] (collectively, the "1113/1114 Motion"). In the 1113/1114 Motion, among

[7] The Debtors that are parties to the UMWA CBAs are: (i) Apogee Coal Company, LLC; (ii) Colony Bay Coal Company; (iii) Eastern Associated Coal, LLC; (iv) Gateway Eagle Coal Company, LLC; (v) Heritage Coal Company LLC; (vi) Highland Mining Company, LLC; (vii) Hobet Mining, LLC; (viii) Mountain View Coal Company, LLC; (ix) Pine Ridge Coal Company, LLC; and (x) Rivers Edge Mining, Inc.

other things, the Debtors seek an Order from this Court implementing the terms of the Debtors' section 1113 and 1114 proposal (the "Proposal"). In the 1113/1114 Motion, among other things, the Debtors repeatedly state that the Debtors will be forced to liquidate if the Debtors are not able to reduce their union related costs by approximately $150 million per year. While Wilmington understands that the Debtors' unionized operations need relief from union labor and retiree obligations, the Debtors' non-union mines and operations should not be affected by the 1113/1114 Motion despite the Debtors' suggestions to the contrary. Assets or value from such non-unionized Debtor operations cannot be used to "subsidize" recoveries on the UMWA's claims against those Debtors that have liability therefor.

ARGUMENT AND AUTHORITY

I. APPOINTMENT OF AN EQUITY COMMITTEE IS AN EXTRAORDINARY REMEDY AND IS NOT APPROPRIATE IN THESE CASES

A. Section 1102(a)(2) of the Bankruptcy Code

9. Sections 1102(a)(1) and (a)(2) of the Bankruptcy Code provide, in pertinent part:

> (1) Except as provided in paragraph (3), as soon as practicable after the order for relief under chapter 11 of this title, the United States trustee shall appoint a committee of creditors holding unsecured claims and may appoint additional committees of creditors or of equity security holders as the United States trustee deems appropriate.
>
> (2) On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States trustee shall appoint any such committee.

10. Courts have consistently maintained that "the appointment of an equity committee is an extraordinary remedy" that should be the "rare exception." *In re Nat'l R.V. Holdings, Inc.*, 390 B.R. 690, 695 (Bankr. C.D. Cal. 2008); *In re Williams Comm'ns Grp., Inc.*, 281 B.R. 216,

223 (Bankr. S.D.N.Y. 2002); *Kodak*, 2012 Bankr. LEXIS 2944, at *4; *In re Spansion, Inc.*, 421 B.R. 151, 156 (Bankr. D. Del. 2009) (citing *In re Dana Corp.*, 344 B.R. 35, 38 (Bankr. S.D.N.Y. 2006); *Exide Techs. v. State of Wisconsin Inv. Bd.*, 2002 U.S. Dist. LEXIS 27210 (D. Del. Dec. 23, 2002)). If the United States Trustee does not appoint an official equity committee under section 1102(a)(1) of the Bankruptcy Code, a court should generally defer to the United States Trustee's determination. *See In re Enron Corp.*, 279 B.R. 671, 685 (Bankr. S.D.N.Y. 2002) ("ordering the appointment of additional committees, particularly given that the matter is often first reviewed and addressed by the U.S. Trustee, is an extraordinary remedy") (citations omitted); 7 Collier on Bankruptcy § 1102.07[1] (16th ed. 2012) ("While the court is empowered to overrule the decision of the United States trustee not to appoint an additional committee, the court should afford some deference to that decision.").

11. An equity committee should only be appointed when it is "necessary to assure adequate representation of equity holders." *In re Wang Laboratories, Inc.*, 149 B.R. 1, 2 (Bankr. D. Mass. 1992); *see Williams*, 281 B.R. at 222. Further, an equity committee may only be appointed if "(i) there is a substantial likelihood that [equity] will receive a meaningful distribution in the case under a strict application of the absolute priority rule, and (ii) [equity holders] are unable to represent their interests in the bankruptcy cases without an official committee." *Williams*, 281 B.R. at 223; *Spansion*, 421 B.R. at 156 (citations omitted); *In re Northwestern Corp.*, 2004 Bankr. LEXIS 635, at *5 (Bankr. D. Del. May 13, 2004) (citations omitted). Courts have also recognized that a motion to appoint an equity committee should not cause the imposition of a costly valuation exercise on the estate. *See Kodak*, 2012 Bankr. LEXIS 2944, at *9-10 (denying shareholders' request for a valuation trial); *Northwestern*, 2004 Bankr. LEXIS 635, at *7 (denying shareholders' request for estate to fund valuation battle).

12. In determining the proper valuation of a debtor, including for purposes of whether equity is likely to receive a meaningful distribution in a case, many courts have recognized that market prices are valid and significant gauges of a debtor's value. *In re Leap Wireless*, 295 B.R. 135, 139 (Bankr. S.D. Cal. 2003) (denying an equity committee based on bonds trading at "steep discount"); *See Williams*, 281 B.R. at 231-22; s*ee also In re Boston Generating, LLC*, 440 B.R. 302, 325 (Bankr. S.D.N.Y. 2010) ("behavior in the marketplace is the best indicator of enterprise value"); *Iridium IP LLC v. Motorola, Inc. (In re Iridium Operating LLC)*, 373 B.R. 283, 293 (Bankr. S.D.N.Y. 2007) ("the public trading market constitutes an impartial gauge of investor confidence and remains the best and most unbiased measure of fair market value and, when available to the Court, is the preferred standard of valuation") (citing *VFB LLC v. Campbell Soup Co.*, 482 F.3d 624 (3d Cir. 2007)). As discussed herein, the "market" is very clear that Patriot's stockholders are out of the money here.

B. <u>An Official Equity Committee Should Not Be Appointed in These Cases</u>

13. For the Interested Shareholders to succeed on their Motion, they must establish that "(i) there is a substantial likelihood that [equity] will receive a meaningful distribution in the case under a strict application of the absolute priority rule, and (ii) [equity holders] are unable to represent their interests in the bankruptcy cases without an official committee." *Williams*, 281 B.R. at 223; *Spansion*, 421 B.R. at 156 (citations omitted); *In re Northwestern Corp.*, 2004 Bankr. LEXIS 635, at *5 (Bankr. D. Del. May 13, 2004) (citations omitted). The Interested Shareholders cannot satisfy such heavy burden.

14. From the outset of these cases, it has been clear that one of the Debtors' principal reasons for filing chapter 11 was the need to restructure its union and related retiree cost structure and liabilities as to the Debtors affected thereby. In this context, the Interested

Shareholders' claim that Patriot - - the Corporate Parent - - has equity value strains comprehension and credulity.

15. Available market information shows that there is no equity value at the Corporate Parent. As of March 27, 2013, the $250 million principal amount of the Debtors' Senior Notes, which are guaranteed by all of the Debtors, and, significantly, the various non-union Debtors, were trading at approximately 47.5% of face value.[8] The $200 million principal amount of the Corporate Parent's Convertible Notes (which were issued by the entity that issued the common stock purportedly held by the Interested Shareholders) were trading at 10.5% of face value.[9] The "market" does not expect the Convertible Notes to be paid in full. Because, under the absolute priority rule, unsecured claims at the Corporate Parent must be paid in full prior to any distribution to the Corporate Parent's stockholders, the market clearly does not anticipate that the Corporate Parent's stockholders will receive any distribution in this case, let alone a meaningful one.[10]

16. Notwithstanding that the Interested Shareholders' "expert witnesses"[11] are unable to give competent testimony here because they are working on what, essentially, is a contingent fee arrangement and have a direct financial interest in the outcome of this matter, the Interested

[8] *See* Houlihan Report.

[9] *Id.*

[10] The Equity Committee Motion should also fail as a consequence of the Interested Shareholders' implicit assumption that the Debtors' estates can be valued as a "unified" or "single" enterprise for purposes of determining whether there is equity value at Patriot. These cases involve ninety-nine (99) separate and distinct debtors, each of which has discrete assets and liabilities. By means of example, and as indicated above, some of the Debtors have obligations to the UMWA, most do not. The Interested Shareholders' Motion seems to assume that the Debtors' estates may be substantively consolidated for valuation purposes. That is not the case, as no factual or legal basis exists for such relief.

[11] Wilmington disputes that the Interested Shareholders' "valuation" witnesses are qualified "expert witnesses."

Shareholders (i.e., the Corporate Parents' stockholders) are adequately represented in these cases by competent counsel. The Equity Committee Motion likewise fails for this reason.

WHEREFORE, Wilmington respectfully requests that the Court (i) deny the Equity Committee Motion and, and (ii) grant such other and further relief as may be just and proper.

Dated: March 29, 2013

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was served this 29th day of March, 2013, on all persons on the Court's CM/ECF notice list, and, in addition, on the following via the United States Postal Service, postage fully prepaid:

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