

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11
Case No. 12-51502-659
(Jointly Administered)

Re: ECF No. 3494

**ORDER GRANTING IN PART MOTION OF THE DEBTORS AND THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS
FOR LEAVE TO CONDUCT DISCOVERY OF
PEABODY ENERGY CORPORATION PURSUANT TO RULE 2004**

Upon the motion dated April 2, 2013 (the “**Motion**”) of Patriot Coal Corporation and its subsidiaries, as debtors and debtors in possession (collectively, the “**Debtors**”) and the Official Committee of Unsecured Creditors of Patriot Coal Corporation (the “**Committee**” and, together with the Debtors, the “**Movants**”), for entry of an order pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 2004, and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding that the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion having been provided in accordance with the Order Establishing Certain Notice, Case Management and Administrative Procedures entered on March 22, 2013 [ECF No. 3361]; and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion, the objection of

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

Peabody Energy Corporation (“**Peabody**”) and Movants’ reply; and having held a hearing on April 23, 2013, with appearances of parties in interest noted on the record thereof; and having identified and addressed the issues concerning how many backup tapes Peabody will restore, whether a custodian based search is sufficient, and the inclusion of Committee member the United Mine Workers of America (the “**UMWA**”) in the 2004 examination in light of a litigation against Peabody captioned Lowe v. Peabody Holding Co. LLC, No. 12-cv-06925 (the “**West Virginia Action**”); and the relief granted herein being in the best interests of the Debtors and their respective estates and creditors; and the Court having determined that the legal and factual bases set forth in the Motion, the Opposition, the Reply, and at the Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED that, without prejudice to the agreements that the Movants and Peabody have reached in the course of meet and confer discussions and may reach in future meet and confer discussions (“**Agreements**”), the Motion is hereby granted, in part, as set forth herein; and it is further

ORDERED that the Movants are hereby granted leave to propound discovery upon Peabody pursuant to Bankruptcy Rule 2004, in the form of a subpoena duces tecum substantially in the form of Appendix A attached to the Motion, and both the subpoena and Peabody’s response, search and production are subject to the Agreements and to the specific rulings made elsewhere in this Order;

ORDERED that (a) Peabody shall (1) object or otherwise respond to the Movants’ subpoena duces tecum pursuant to Bankruptcy Rule 9016, and (2) notwithstanding any objection to the Movants’ subpoena duces tecum, begin production of responsive, non-

privileged documents within 10 days after service of that subpoena upon Peabody, but in no event earlier than three business days after entry by the Court of the Stipulated Confidentiality Protective Order generally applicable to the production, and shall continue the production thereafter on a rolling basis until completed; and (b) the Court will hear any disputes arising hereunder on an expedited basis, subject to the Court's schedule, and the parties are directed to contact the courtroom deputy after they have met and conferred to schedule a telephonic or in-person hearing, as needed;

ORDERED that, as requested by Movants and agreed by Peabody, Peabody shall (a) search for responsive documents from nine custodians who transitioned to Patriot; and (b) search for responsive documents for the time period from and including January 1, 2005 through and including May 1, 2008;

ORDERED that as to non-e-mail electronic documents, Peabody shall search for responsive documents (a) that were prepared by any of the 23 custodians requested by Movants and agreed by Peabody (the "**Agreed Custodians**"), or (b) to which any of the Agreed Custodians had access;

ORDERED that as to e-mail, Peabody shall search for responsive e-mail documents from both (a) the available live e-mail mailboxes for the Agreed Custodians; and (b) restored e-mail mailboxes for the Agreed Custodians from back-up tapes for fifteen (15) dates to be chosen by Movants;

ORDERED that documents or information produced by Peabody in any proceedings in this Court relating to these chapter 11 cases, including, but not limited to, any request or motion made pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, litigation, mediation, dispute, contested matter or adversary proceeding

(collectively, the “**Proceedings**”) and documents and information relating to Peabody and its affiliates produced by third parties in the Proceedings (collectively, “**Peabody Material**”), may be disclosed to the UMWA for use in furtherance of its fiduciary duties as a Committee member only as follows: to (a) Frederick Perillo, outside counsel for the UMWA, and his law firm, and any successor outside counsel for the UMWA in this case and his or her law firm, which successor outside counsel and successor outside counsel’s law firm shall not have had any previous involvement in the West Virginia Action; (b) the UMWA’s outside financial advisors in this case; and (c) Grant Crandall, general counsel of the UMWA (collectively, the “**UMWA Recipients**”);

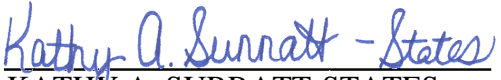
ORDERED that (a) the UMWA Recipients shall not share or use Peabody Material with (1) any members, employees or board members of the UMWA, (2) any person or entity, including, without limitation, any UMWA counsel and advisors, participating in the West Virginia Action, and (3) any other person or entity who is not entitled to receive Peabody Material pursuant to the terms of this Order and the separately-entered Stipulated Confidentiality Protective Order; and (b) the UMWA shall not use Peabody Material outside the Proceedings, including, without limitation, in connection with the West Virginia Action; provided, however, that this paragraph shall not apply to Peabody Material which (1) is lawfully known to the UMWA at the time of disclosure, without obligation of confidentiality, (2) is independently developed by the UMWA without reference to or use of the Peabody Material, (3) becomes known to the UMWA on a non-confidential basis from another source, unless (A) the UMWA knows or reasonably believes that such other source was subject to a confidentiality restriction at that time or (B) that source acquired such Peabody Materials through discovery in the

Proceedings, (4) is or becomes part of the public domain through no wrongful act of the UMWA or the UMWA Recipients, or (5) is disclosed publicly pursuant to any judicial request or order, subpoena of any kind, or formal regulatory request;

ORDERED that, as a condition to receipt of Peabody Material, the UMWA Recipients shall not (a) work on, participate in, or otherwise be involved in the West Virginia Action, including without limitation counseling or advising the UMWA, or (b) be party to or involved with discussions or other communications about the West Virginia Action with or among persons with any involvement in the West Virginia Action on behalf of the UMWA;

ORDERED that proper, timely, adequate, and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the Motion or the entry of this Order shall be required; and

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: June 7, 2013
St. Louis, Missouri
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