

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)

Objection Deadline:

October 30, 2013 at 4:00 p.m.

(prevailing Central Time)

Reply Deadline: November 4, 2013 at

12:00 p.m. (prevailing Central Time)

Hearing Date:

November 6, 2013 at 10:00 a.m.

(prevailing Central Time)

**NOTICE AND MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER PURSUANT
TO 11 U.S.C. §§ 363(b) AND 105(a) AND FED. R. BANKR. P. 9019(a) APPROVING THE
SETTLEMENT WITH ARCH COAL, INC.**

PLEASE TAKE NOTICE that this motion is scheduled for hearing on November 6, 2013, at 10:00 a.m. (prevailing Central Time), in Bankruptcy Courtroom Seventh Floor North, in the Thomas F. Eagleton U.S. Courthouse, 111 South Tenth Street, St. Louis, Missouri 63102.

**WARNING: ANY RESPONSE OR OBJECTION TO THIS MOTION MUST BE
FILED WITH THE COURT BY 4:00 P.M. (PREVAILING CENTRAL TIME) ON
OCTOBER 30, 2013. A COPY MUST BE PROMPTLY SERVED UPON THE
UNDERSIGNED. FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THE
COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE.**

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

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER PURSUANT TO
11 U.S.C. §§ 363(b) AND 105(a) AND FED. R. BANKR. P. 9019(a) APPROVING THE
SETTLEMENT WITH ARCH COAL, INC.**

Patriot Coal Corporation (“**Patriot**”) and its subsidiaries that are debtors and debtors in possession in these proceedings (the “**Debtors**”), hereby submit this motion (the “**Motion**”), pursuant to sections 363(b) and 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an order (a) approving the settlement agreement (the “**Arch Settlement**”), entered into on October 4, 2013, between the Debtors and Arch Coal, Inc. and its affiliates and subsidiaries (“**Arch,**” and, together with the Debtors, the “**Parties**”) and (b) authorizing the Debtors to take and perform such actions as may be necessary or appropriate to implement and effectuate the Settlement.²

BACKGROUND AND JURISDICTION

1. On July 9, 2012 (the “**Petition Date**”), each Debtor other than Brody Mining, LLC and Patriot Ventures LLC (collectively, the “**Initial Debtors**”) commenced with the United States Bankruptcy Court for the Southern District of New York (the “**SDNY Bankruptcy Court**”) a voluntary case under chapter 11 of the Bankruptcy Code. On December 19, 2012, the SDNY Bankruptcy Court entered an order transferring the Initial Debtors’ chapter 11 cases to this Court (the “**Transfer Order**”) [ECF No. 1789].³ Subsequently, Brody Mining, LLC and Patriot Ventures LLC (together, the “**New Debtors**”) each commenced its chapter 11 case by filing a petition for voluntary relief with this Court on September 23, 2013. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession

² A copy of the proposed order granting the relief requested in the Motion (the “**Proposed Order**”) will be provided to the Core Parties (as defined below), and Arch Coal, Inc. A copy of the Proposed Order will be made available at www.patriotcaseinfo.com/orders.php.

³ Pursuant to the Transfer Order, all orders previously entered in these chapter 11 cases remain in full force and effect in accordance with their terms notwithstanding the transfer of venue.

pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Initial Debtors' cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the Joint Administration Order entered on July 10, 2012 [ECF No. 30], and the New Debtors' cases are being jointly administered with the Initial Debtors' cases pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* entered by this Court on September 27, 2013 in each of the New Debtors' chapter 11 cases.

2. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and may be heard and determined by the Bankruptcy Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

OVERVIEW

3. Together with the Peabody Settlement and the rights offerings backstopped by Knighthead (each described below), the Arch Settlement represents a seminal development in these chapter 11 cases. If approved by the Court, the Arch Settlement will provide the Debtors with critically-needed savings and credit support that will position the Debtors to emerge from bankruptcy.

4. Prior to October 31, 2007, Patriot and a number of its subsidiaries were wholly-owned subsidiaries of Peabody Energy Corporation ("**Peabody**"), the world's largest private-sector coal company, and their operations were a part of Peabody's. Effective October 31, 2007, Patriot was spun off from Peabody through a dividend of all outstanding shares of Patriot (the "**Spin-Off**"). As a result of the Spin-Off, Patriot became a separate, public company, listed on the New York Stock Exchange.

5. On July 23, 2008, Patriot acquired Magnum Coal Company LLC ("**Magnum**") from affiliates of ArcLight Capital Partners, LLC ("**ArcLight**"). Prior to that acquisition, in

2005, Magnum itself had acquired all of the equity interests in certain mining operations from Arch. At the time of its acquisition by Patriot, Magnum was one of the largest coal producers in Appalachia, controlling more than 600 million tons of proven and probable coal reserves. Patriot acquired thirty-two of Magnum's former subsidiaries—including certain subsidiaries that Magnum had previously acquired from Arch. A significant percentage of the employees at these operations were represented by the United Mine Workers of America (the "UMWA").

6. As of the Petition Date, the Debtors had substantial and unsustainable legacy costs, primarily in the form of healthcare benefits and pension obligations. Among other things, as a result of the Spin-Off and the acquisition of Magnum, the Debtors became responsible for certain liabilities relating to former employees and retirees of Peabody, Magnum and subsidiaries of Arch, who had retired prior to the formation of Patriot. Specifically, Patriot acquired obligations to approximately 2,300 of Magnum's retirees, including certain individuals who had previously worked for Arch or its subsidiaries.

A. The Arch Investigation

7. In connection with the Debtors' investigation into potential estate causes of action, the Debtors and the Official Committee of Unsecured Creditors (the "**Creditors' Committee**") initiated an investigation of Arch, including with respect to the Magnum transaction (the "**Arch Investigation**").

8. In furtherance of this investigation, on September 3, 2013, the Debtors and the Creditors' Committee moved the Bankruptcy Court for leave to conduct discovery on Arch pursuant to Federal Rule of Bankruptcy Procedure 2004. The Bankruptcy Court entered stipulated orders granting Patriot leave to take such discovery on Arch on September 19, 2013.

On September 23, 2013, Patriot served a subpoena containing 30 individual requests on Arch. Production pursuant to that subpoena has yet to begin.

9. Were the Debtors and the Creditors' Committee to bring suit against Arch, they would likely pursue claims of fraudulent transfer in light of the liabilities that Arch caused to be transferred to Magnum. Among other statutory and common law defenses, Arch could argue that the claims were barred by the statute of limitations, that Magnum paid fair market value, and that intervening causes such as the collapse of the coal markets caused the Debtors' bankruptcy. The Debtors and the Creditors' Committee also considered the viability of claims against Arch under the Comprehensive Environmental Response, Compensation, and Liability Act as previous owners and/or operators of sites contaminated by selenium and other hazardous substances, but determined that the benefits of entering into a settlement with Arch outweighed the benefit of pursuing such claims.

B. The STB Override Agreement

10. On August 10, 2012, Debtor Robin Land Company, LLC ("**RLC**") commenced an adversary proceeding in the SDNY Bankruptcy Court, *Robin Land Company, LLC v. STB Ventures, Inc.*, Adv. Pro. No. 12-04355 (Bankr. E.D. Mo.) (the "**STB Adversary Proceeding**"), seeking a declaratory judgment that its Overriding Royalty Agreement dated October 31, 1994 (the "**Override Agreement**") with STB Ventures, Inc. ("**STB**") is a standalone, non-executory contract for purposes of section 365 of the Bankruptcy Code. The Override Agreement requires RLC to pay royalties to STB based on sales of coal mined from certain West Virginia coal reserves. On February 4, 2013, Arch, Ark Land Company ("**Ark Land**") and Ark Land KH, Inc. ("**ALKH**," together with Arch and Ark Land, the "**Arch Entities**") intervened as defendants in the STB Adversary Proceeding, as a result of a Guaranty (the "**Guaranty**") that Arch Mineral

Corporation (a predecessor-in-interest to Arch) and STB, among others, had executed on October 31, 1994. STB contends that the Guaranty would require Arch to indemnify STB if RLC fails to pay the Override Agreement.

11. On February 19, 2013, STB and the Arch Entities filed answers to RLC's complaint, as well as counterclaims against RLC (i) seeking a declaratory judgment that the Override Agreement is an executory contract subject to section 365(d)(3) of the Bankruptcy Code and that RLC's obligation to pay royalties under the Override Agreement is integrated with and not severable from the Debtors' rights and obligations under certain other leases and executory contracts described in further detail below, and/or that RLC's obligation to pay such royalties remains tied to and runs with the premises to which the Override Agreement relates, (ii) claiming post-petition breach of contract, and (iii) claiming unjust enrichment and seeking to impose a constructive trust on RLC's assets. On March 4, 2013, RLC filed a motion for judgment on the pleadings and to dismiss the counterclaims pursuant to Federal Bankruptcy Rule 7012(b) and Federal Rules of Civil Procedure 12(b)(6) and 12(c), arguing that the unambiguous language of the overriding royalty agreement and related contracts entitles it as a matter of law to its requested relief. RLC also filed an answer to STB's and Arch's counterclaims on April 2, 2013. In response to RLC's motion and in a separate motion to compel, STB and the Arch Entities contended that the Override Agreement is integrated with and not severable from (1) the Combined, Amended and Restated Coal Lease dated October 31, 1994 between Ark Land and Kelly-Hatfield Land Company (as amended, the "**Kelly-Hatfield Lease**"); (2) the Combined, Amended and Restated Coal Lease dated October 31, 1994 between Ark Land and Lawson Heirs, Inc. (the "**Lawson Heirs Lease**"); (3) the Asset Purchase Agreement dated October 31, 1994 among Ark Land, Apogee Coal Company, STB, and others; and (4) the Assignment and

Assumption of Leases dated October 31, 1994 by and among STB, Eagle Minerals Company and Ark Land; and (5) the Liabilities Undertaking Agreement dated October 31, 1994 by and among STB, Eagle Minerals Company, Ark Land and others. Oral argument was held before the Bankruptcy Court on both RLC's motion for judgment on the pleadings and to dismiss counterclaims, and on STB's motion to compel, on April 23, 2013. The Court has not rendered a decision in this matter.

C. The Arch Settlement

12. Although the Debtors reached a comprehensive agreement with the UMWA that will result in approximately \$130 million of savings per year, the Debtors require additional capital if they are to attract exit financing and successfully reorganize. At the same time, the Debtors recognize that potential causes of action against Arch would likely take years to litigate, Arch would defend any claims vigorously, and the end result is uncertain. Given the Debtors' near-term needs and the possibility of liquidation if those needs are not addressed, the Debtors entered into negotiations with Arch concerning the terms of a potential settlement that would result in Arch making significant contributions to the estates in exchange for a release of the Debtors' potential claims.

13. After extensive negotiations, on October 4, 2013, the Debtors and Arch entered into a term sheet (the "**Arch Settlement Term Sheet**"), a copy of which is included as Exhibit A, which sets forth the principal terms of a settlement that resolves all disputes between the Debtors and Arch. If approved by the Bankruptcy Court, the Arch Settlement would resolve the risks and uncertainties created by the parties' ongoing litigation and would help provide the Debtors with necessary liquidity and credit support to exit chapter 11.

14. The Arch Settlement, along with the rights offerings backstopped by Knighthead Capital Management, LLC (“**Knighthead**”), one of Patriot’s largest bondholders, and a global settlement with Peabody Energy Corporation (the “**Peabody Settlement**”) that are described in separate motions filed contemporaneously herewith, is expected to position the Debtors to emerge from bankruptcy by the end of the year. The Debtors believe that these agreements represent a remarkable achievement and will provide maximum value to the estates’ stakeholders. These agreements are the product of months of hard work by the Debtors’ employees and professionals and are supported by the Creditors’ Committee and Knighthead.⁴ Indeed, as a condition of its agreement to backstop the rights offerings, Knighthead required that the Debtors enter into an acceptable agreement with Arch, further demonstrating the importance of the Arch Settlement.

15. The Arch Settlement is unquestionably in the best interests of the Debtors and their estates, easily satisfies the standards for approval of a compromise and settlement under Section 363 and Bankruptcy Rule 9019, and should be approved in all respects.

Terms of the Arch Settlement

16. The following summarizes the key terms of the Arch Settlement:⁵
- (a) Arch will pay \$5 million in cash to the Debtors on the effective date of a plan of reorganization that is not inconsistent with the terms of the Arch Settlement Term Sheet (the “**Effective Date**”).
 - (b) As of the Effective Date, the Surety Agreement, dated November 27, 2012, by and among Arch Coal, Inc., Magnum Coal Company LLC and Patriot Coal Corporation, shall be amended to eliminate the Debtors’ obligation to maintain or arrange for the posting of any letters of credit

⁴ The UMWA has not reached a settlement of its own potential causes of action against Arch.

⁵ Any description contained in this Motion regarding the Parties’ obligations under the Arch Settlement is merely a summary and is qualified in its entirety by the actual terms and conditions of the Arch Settlement. In the event any such description conflicts with or varies from the Arch Settlement, the Arch Settlement shall control.

thereunder until December 31, 2015, at which time the Debtors shall be required to post \$8 million of letters of credit thereunder.

- (c) As of and subsequent to the Effective Date, Arch will (i) make all payments required to be paid under the Override Agreement, including all past due prepetition and post-petition amounts, pursuant to and in accordance with the Guaranty dated October 31, 1994, between Arch Mineral Corporation (predecessor in interest to Arch) and STB, (ii) not request or seek any reimbursement or indemnification from Patriot for any such payments and (iii) not object to the rejection of the Override Agreement or assert that the Override Agreement is integrated with any other contract, agreement or understanding, whether written or oral, by and between Arch, STB and/or any of the Debtors.
- (d) As of the Effective Date, (i) the Debtors will amend and assume the Kelly-Hatfield Lease, which shall be amended to waive any minimum royalty payments due thereunder from and after January 1, 2014, (ii) Ark Land KH and RLC will enter into a new lease to become effective as of January 1, 2015 for the premises currently subject to the Kelly-Hatfield Lease, under terms and conditions customary for mineral leases in the industry that are not economically adverse to the Debtors, to include, without limitation: (a) a base royalty rate of 6%, with total advance minimum annual royalty payments of \$500,000 each, waived through December 31, 2016 (through calendar year 2016), with a five-year rolling recoupment period and (b) a term of ten years with two five-year renewal or extension periods and then renewable or extendable annually thereafter for so long as mineable and merchantable coal remains on the premises, and (iii) Arch will withdraw its objection to any of the Debtors' currently pending motions to assume the Kelly-Hatfield Lease or any other of the Debtors' leases and will not object to the such assumptions or assert that any of the leases are integrated with or not severable from any other agreement.
- (e) As of the Effective Date, the Debtors will reject and assume certain contracts identified in the Arch Settlement Term Sheet and reject the Magnum PSA.
- (f) Arch will receive (i) an administrative claim against RLC in the amount of \$1,131,398.45 in respect of the assumption of the Kelly-Hatfield Lease and (ii) a general unsecured claim against Magnum Coal Company LLC in the amount of \$80.5 million and an general unsecured claim against RLC in the amount of \$14.5 million, in each case, in respect of damages claims for rejection of contracts.
- (g) On the Effective Date, the Debtors will sell and convey to Arch, and Arch will purchase and receive from the Debtors, free and clear of all liens, claims, encumbrances and other interests, all of the Debtors'

interests of whatever kind, nature and extent in and to the property and estates referred to as the “South Guffey Reserve” for (i) \$16 million in cash and (ii) Arch’s agreement to pay the Debtors a royalty of 6% on any coal recovered from such property in excess of 6.5 million tons.

- (h) No payment or other obligation of Arch set forth herein shall be delayed, reduced, offset, recouped or withheld based on any claim, allegation or contract between the Debtors and Arch, other than as expressly set forth in the Settlement Documents.
- (i) Subject to the terms and conditions of the Settlement Documents, mutual releases of Causes of Action by the Debtors and Arch, and withdrawal of Arch’s Claims in these Chapter 11 Cases.
- (j) The Debtors agree that they will not propose or support any plan of reorganization that would breach the Arch Settlement Term Sheet or Settlement Documents or otherwise have an adverse impact on Arch in any material respect. Any provision of the plan that adversely affects Arch shall be in form and substance acceptable to Arch.

BASIS FOR RELIEF

I. Entry into the Arch Settlement Meets the Legal Standard Established Pursuant to Bankruptcy Rule 9019(a) and is in the Best Interests of the Debtors’ Estates

17. The Arch Settlement is in the best interests of the Debtors and their stakeholders, and should be approved pursuant to Bankruptcy Rule 9019. A debtor in possession’s settlement is governed by Bankruptcy Rule 9019(a), which provides, in relevant part, that “[o]n motion by the [debtor in possession] and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). This Rule empowers Bankruptcy Courts to approve settlements “if they are in the best interests of the estate.” *Vaughn v. Drexel Burnham Lambert Grp., Inc. (In re Drexel Burnham Lambert Grp., Inc.)*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). A decision to accept or reject a compromise or settlement is within the sound discretion of the Court. *Tri-State Financial, LLC v. Lovald*, 525 F.3d 649, 654 (8th Cir. 2008) (citing *In re New Concept Housing, Inc.*, 951 F.2d 932, 939 (8th Cir. 1991) (“A bankruptcy court’s approval of a settlement will not be set aside unless there is plain error or abuse of discretion”)); *see also*

10 *Collier on Bankruptcy* ¶ 9019.02 (15th ed. rev. 2009). The proposed settlement need not result in the best possible outcome for the debtor, but must not “fall below the lowest point in the range of reasonableness.” *Tri-State Financial*, 525 F.3d at 654 (citing *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)); *see also Drexel Burnham Lambert Grp.*, 134 B.R. at 505 (citing *In re W.T. Grant & Co.*, 699 F.2d 599, 608 (2d Cir. 1983)).

18. Relying on the guiding language of *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968), courts in this circuit have set forth the following factors regarding the reasonableness of settlements:

- (a) the probability of success in the litigation;
- (b) the difficulties associated with collection;
- (c) the complexity of the litigation, and the attendant expense, inconvenience, and delay; and
- (d) the paramount interests of the creditors.

Tri-State Financial, 525 F.3d at 654, *Martin v. Cox (In re Martin)*, 212 B.R. 316, 319, (B.A.P. 8th Cir. 1997), *In re Apex Oil Co.*, 92 B.R. 847, 866 (Bankr. E.D. Mo. 1988); *see also Sec. Exch. Comm’n v. Drexel Burnham Lambert Grp., Inc. (In re Drexel Burnham Lambert Grp., Inc.)*, 960 F.2d 285, 292 (2d Cir. 1992). The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. *In re New Concept Housing, Inc. v. Arl W. Poindexter (In re New Concept Housing, Inc.)*, 951 F.2d 932, 939 (8th Cir. 1991); *see also Mach. Terminals, Inc. v. Woodward (In re Albert-Harris, Inc.)*, 313 F.2d 447 (6th Cir. 1963). It is the responsibility of the bankruptcy court to examine a settlement and determine whether it “falls below the lowest point in the range of reasonableness.” *Tri-State Financial*, 525 F.3d at 654. Moreover, the form of consideration provided in the settlement is only one of the factors to be

considered when determining whether a settlement is reasonable. *See In re Tower Auto., Inc.*, 342 B.R. 158, 162 (Bankr. S.D.N.Y.) *aff'd*, 241 F.R.D. 162 (S.D.N.Y. 2006).

19. Based on these factors, the Arch Settlement should be approved for several reasons. *First*, the factors “probability of success in the litigation” and “the complexity of the litigation, and the attendant expense, inconvenience, and delay” weigh heavily in favor of approval of the Arch Settlement. The Debtors have undertaken an analysis of the disputed claims and have concluded that, given the likelihood of success of those claims and the costs of litigating these actions, the benefits of the Arch Settlement outweigh its costs. Proceeding with the Arch Investigation and STB Adversary Proceeding would require costly and time-consuming preparations, including review of hundreds of thousands (perhaps millions) of pages of documents, depositions, briefing and hearing preparation. Moreover, although the Debtors believe they have strong arguments, the merits of the claims under investigation and underlying the STB Adversary Proceeding are strongly disputed by Arch, and there is a considerable risk that the Debtors would not succeed in litigation. Finally, the Arch Investigation is only in the beginning stages and would take considerable time to complete—time the Debtors do not have. The Debtors’ debtor-in-possession financing will provide liquidity only through the end of the year, and the Debtors need additional capital in the short-term to avoid liquidation. Accordingly, approval of the Arch Settlement will allow the Debtors to avoid further expense, uncertainty and delay associated with the Arch Investigation and STB Adversary Proceeding.

20. The “paramount interests of the creditors” factor also weighs heavily in favor of the Arch Settlement. Pursuant to the Arch Settlement, the Debtors will receive a payment of \$5 million for the benefit of the Debtors’ estates, \$16 million in cash plus certain royalties on account of the sale of the South Guffey reserves and relief of the obligation to post \$16 million in

letters of credit,⁶ all while avoiding the risk and expense of further proceedings in the Arch Investigation and STB Adversary Proceeding. The Arch Settlement will provide the Debtors with significant payments and credit support that will strengthen the Debtors' liquidity and permit the Debtors to obtain exit and other financing. Without the Arch Settlement, the Debtors would likely be unable to raise capital and would likely liquidate before the end of the year, with devastating consequences for the Debtors' creditors, employees, and retirees.

21. Moreover, the Arch Settlement is the product of arm's length, protracted, and hard-fought negotiations between the Debtors and Arch. All of the Parties were represented by experienced counsel, and the Arch Settlement is the product of their judgment and negotiation. The Debtors believe the Arch Settlement represents a fair and balanced resolution of extremely difficult issues.

22. There is no doubt that the savings the Debtors will receive from the Arch Settlement are critical to the Debtors' successful reorganization under chapter 11. The Arch Settlement is, therefore, a significant step toward confirmation and resolution of these chapter 11 cases. *See In re Drexel Burnham Lambert Grp.*, 130 B.R. 910, 926-27 (S.D.N.Y. 1991), *aff'd*, 960 F.2d 285 (2d Cir. 1992) (approving pre-plan settlement of multi-billion dollar class action security fraud claim).

23. The Arch Settlement satisfies all of the requirements of Bankruptcy Rule 9019 and the applicable authority in this Circuit. The terms of the Arch Settlement are reasonable, resolve complex issues, will promote the successful administration of these cases, strike a fair balance between the parties to the dispute, and will serve to maximize value for all of the Debtors' stakeholders. Under these circumstances the Arch Settlement and all of its terms should be approved.

⁶ Patriot is required to provide \$8 million of credit support after 24 months.

II. The Debtors' Entry into the Arch Settlement Should be Approved Pursuant to Sections 363(b) and 105(a) of the Bankruptcy Code

24. Ample authority also exists for approval of the Arch Settlement under sections 363(b) and 105(a)⁷ of the Bankruptcy Code. Section 363(b) provides, in relevant part, “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although section 363(b) of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale, disposition or other use of a debtor’s assets, courts in the Eighth Circuit and others, in applying this section, have required that such an action be based upon the sound business judgment of the debtor. *See In re Farmland Indus. Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (approving an amendment to the debtors’ post-petition financing credit agreement as an exercise of sound and reasonable business judgment); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n.16 (8th Cir. 1997) (“[w]here the [debtor’s] request is not manifestly unreasonable or made in bad faith, the court should normally grant approval ‘as long as the proposed action appears to enhance the debtor’s estate’” (citing *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985))); *In re Farmland Indus. Inc.*, 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003) (approving the rejection of employment agreements and noting that “[u]nder the business judgment standard, the question is whether the [proposed action] is in the Debtors’ best economic interests, based on the Debtors’ best business judgment in those circumstances” (citations omitted)); *see also Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141 (2d Cir. 1992) (holding that a court reviewing a section 363(b) application must find from the evidence presented a good

⁷ Section 105 of the Bankruptcy Code provides, in relevant part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

business reason to grant such application); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983) (same); *In re Chrysler LLC*, 405 B.R. 84 (Bankr. S.D.N.Y. 2009), *aff'd Ind. State Police Pension Trust v. Chrysler LLC (In re Chrysler LLC)*, 576 F.3d 108 (2d Cir. 2009) (same); *In re Gen. Motors Corp.*, 407 B.R. 463 (Bankr. S.D.N.Y. 2009) (same).

25. Moreover, a strong presumption attaches to a debtor's business decision that the debtor "acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Official Comm. of Sub. Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (holding that the Delaware business judgment rule has "vitality by analogy" in chapter 11); *see also In re Pilgrim's Pride Corp.*, 401 B.R. 229, 237 (Bankr. N.D. Tex. 2009) ("[I]f a valid business reason is shown for the transaction, the transaction is presumed appropriate."). The business judgment rule is "a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company." *Integrated Res., Inc.*, 147 B.R. at 656 (citations omitted). Courts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence. *Id.*

26. The Arch Settlement clearly meets the requirements of section 363(b) of the Bankruptcy Code. For all of the reasons set forth above, the Debtors' decision to enter into the Arch Settlement is in the best interests of the Debtors and all of their economic stakeholders. The decision plainly reflects the sound business judgment of the Debtors. The Arch Settlement will result in a payment of \$5 million into the Debtors' estates, a payment of \$16 million in cash plus certain royalties in the future from the sale of the South Guffey reserves, and relief of the

Debtors' obligation to post \$16 million in letters of credit, and will avoid the expense and uncertainty of future litigation.

27. Accordingly, the Debtors submit that the Arch Settlement should be approved under section 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019(a), as a sound exercise of the Debtors' reasonable business judgment and as being in the best interest of the Debtors' estates and all parties in interest.

Waiver of Bankruptcy Rules 6004(a) and (h)

28. To implement the foregoing immediately and to the extent applicable, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

No Prior Request

29. No prior motion for the relief requested herein has been made to this Court or any other court.

Notice

30. Consistent with the Order Establishing Certain Notice, Case Management and Administrative Procedures entered on March 22, 2013 [ECF No. 3361] (the "**Case Management Order**") the Debtors will serve notice of this Motion on the Core Parties (as defined in the Case Management Order) and Arch. All parties who have requested electronic notice of filings in these cases through the Court's ECF system will automatically receive notice of this motion through the ECF system no later than the day after its filing with the Court. A copy of this Motion and any order approving it will also be made available on the Debtors' Case Information Website (located at www.patriotcaseinfo.com). A copy of the Proposed Order is available at www.patriotcaseinfo.com/orders.php (the "**Patriot Orders Website**"). The Proposed Order may be modified or withdrawn at any time without further notice. If any significant modifications are

made to the Proposed Order, an amended Proposed Order will be made available on the Patriot Orders Website, and no further notice will be provided. In light of the relief requested, the Debtors submit that no further notice is necessary. Pursuant to paragraph 14 of the Case Management Order, if no objections are timely filed and served in accordance therewith, the relief requested herein may be entered without a hearing.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court enter an order granting the relief requested herein and such other and further relief as is just and proper.

Dated: October 16, 2013
New York, New York

Respectfully submitted,

DAVIS POLK & WARDWELL LLP

/s/ Elliot Moskowitz

Marshall S. Huebner

Elliot Moskowitz

Brian M. Resnick

Michelle M. McGreal

450 Lexington Avenue

New York, New York 10017

Telephone: (212) 450-4000

Facsimile: (212) 607-7983

*Counsel to the Debtors
and Debtors in Possession*

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re
PATRIOT COAL CORPORATION, et al.,
Debtors.

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

SUMMARY OF EXHIBITS

The following exhibit (the “**Exhibit**”) referenced in the *Debtors’ Motion (the “Rule 9019 Motion”)*⁸ for Entry of an Order Pursuant to 11 U.S.C. §§ 363(b) and 105(a) and Fed. R. Bankr. P. 9019(a) Approving the Settlement with Arch Coal, Inc. will be provided to the Core Parties and Arch. Copies of the Exhibit will also be made available at www.patriotcaseinformation.com/exhibits.php and will be made available for inspection at the hearing.

Exhibit A: Arch Settlement Term Sheet

⁸ Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Rule 9019 Motion.

SCHEDULE 1
(Debtor Entities)

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. Brody Mining, LLC
11. Brook Trout Coal, LLC
12. Catenary Coal Company, LLC
13. Central States Coal Reserves of Kentucky, LLC
14. Charles Coal Company, LLC
15. Cleaton Coal Company
16. Coal Clean LLC
17. Coal Properties, LLC
18. Coal Reserve Holding Limited Liability Company No. 2
19. Colony Bay Coal Company
20. Cook Mountain Coal Company, LLC
21. Corydon Resources LLC
22. Coventry Mining Services, LLC
23. Coyote Coal Company LLC
24. Cub Branch Coal Company LLC
25. Dakota LLC
26. Day LLC
27. Dixon Mining Company, LLC
28. Dodge Hill Holding JV, LLC
29. Dodge Hill Mining Company, LLC
30. Dodge Hill of Kentucky, LLC
31. EACC Camps, Inc.
32. Eastern Associated Coal, LLC
33. Eastern Coal Company, LLC
34. Eastern Royalty, LLC
35. Emerald Processing, L.L.C.
36. Gateway Eagle Coal Company, LLC
37. Grand Eagle Mining, LLC
38. Heritage Coal Company LLC
39. Highland Mining Company, LLC
40. Hillside Mining Company
41. Hobet Mining, LLC
42. Indian Hill Company LLC
43. Infinity Coal Sales, LLC
44. Interior Holdings, LLC
45. IO Coal LLC
46. Jarrell's Branch Coal Company
47. Jupiter Holdings LLC
48. Kanawha Eagle Coal, LLC
49. Kanawha River Ventures I, LLC
50. Kanawha River Ventures II, LLC
51. Kanawha River Ventures III, LLC
52. KE Ventures LLC
53. Little Creek LLC
54. Logan Fork Coal Company
55. Magnum Coal Company LLC
56. Magnum Coal Sales LLC
57. Martinka Coal Company, LLC
58. Midland Trail Energy LLC
59. Midwest Coal Resources II, LLC
60. Mountain View Coal Company, LLC
61. New Trout Coal Holdings II, LLC
62. Newtown Energy, Inc.
63. North Page Coal Corp.
64. Ohio County Coal Company, LLC
65. Panther LLC
66. Patriot Beaver Dam Holdings, LLC
67. Patriot Coal Company, L.P.
68. Patriot Coal Corporation
69. Patriot Coal Sales LLC
70. Patriot Coal Services LLC
71. Patriot Leasing Company LLC
72. Patriot Midwest Holdings, LLC
73. Patriot Reserve Holdings, LLC
74. Patriot Trading LLC
75. Patriot Ventures LLC
76. PCX Enterprises, Inc.
77. Pine Ridge Coal Company, LLC
78. Pond Creek Land Resources, LLC
79. Pond Fork Processing LLC
80. Remington Holdings LLC
81. Remington II LLC
82. Remington LLC
83. Rivers Edge Mining, Inc.
84. Robin Land Company, LLC
85. Sentry Mining, LLC
86. Snowberry Land Company
87. Speed Mining LLC
88. Sterling Smokeless Coal Company, LLC
89. TC Sales Company, LLC
90. The Presidents Energy Company LLC
91. Thunderhill Coal LLC
92. Trout Coal Holdings, LLC
93. Union County Coal Co., LLC
94. Viper LLC
95. Weatherby Processing LLC
96. Wildcat Energy LLC
97. Wildcat, LLC
98. Will Scarlet Properties LLC
99. Winchester LLC
100. Winifrede Dock Limited Liability Company
101. Yankeetown Dock, LLC