BROWN RUDNICK LLP
Seven Times Square
New York, New York 10036
Telephone: (212) 209-4800
Facsimile: (212) 209-4801
Robert J. Stark
Steven B. Levine
Howard L. Siegel
Angelo Thalassinos

Counsel to the Ad Hoc Consortium of Senior Noteholders

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
PATRIOT COAL CORPORATION, *et al.*,[1]	Case No. 12-12900 (SCC)
Debtors.	Jointly Administered

JOINDER OF THE AD HOC CONSORTIUM OF SENIOR NOTEHOLDERS TO THE DEBTORS' OBJECTION AND THE OFFICIAL COMMITTEE'S OBJECTION TO VENUE TRANSFER MOTIONS

The Ad Hoc Consortium of Senior Noteholders (the "***Ad Hoc Consortium***"), comprised of institutions collectively holding approximately $100.6 million (or 40.2%) of the 8.25% Senior Notes due 2018 (the "***Senior Notes***") issued by Patriot Coal Corporation ("***Patriot Coal***") and guaranteed by substantially all affiliated Chapter 11 debtors (collectively, with Patriot Coal, the "***Debtors***"), hereby joins in:

[1] The Debtor names and employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

- *Debtors' Objection to (i) Motion of the United Mine Workers of America to Transfer the Case to the Southern District of West Virginia, (ii) Sureties' Motion to Transfer Jointly Administered Cases to Southern District of West Virginia, and (iii) Motion of the United States Trustee to Transfer in the Interest of Justice,* dated August 27, 2012 [Docket No. 425] (the "***Debtors' Objection***"); and

- *Objection of the Official Committee of Unsecured Creditors to the Motions of (A) the United Mine Workers of America, (B) Certain Sureties, and (C) U.S. Trustee, Pursuant to 28 U.S.C. § 1412 and Rule 1014, Fed. R. Bankr. Proc., to Transfer Jointly Administered Cases,* dated August 27, 2012 [Docket No. 424] (the "***Official Committee's Objection***").

In so doing, the Ad Hoc Consortium respectfully objects to the relief requested in the following pleadings (collectively, the "***Venue Transfer Motions***" and the movants thereunder, the "***Movants***"):

- *Corrected 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*, dated July 19, 2012 [Docket No. 127] (the "***UMWA Venue Transfer Motion***"; the movant thereunder, the "***UMWA***");

- *Sureties' Motion to Transfer Jointly Administered Cases to Southern District of West Virginia,* dated August 1, 2012 [Docket No. 287] (the "***Sureties Venue Transfer Motion***"; the movants thereunder, the "***Sureties***"); and

- *Memorandum of Law in Support of United States Trustee's Motion, Pursuant to 28 U.S.C. § 1412 and Fed. R. Bankr. P. 1014(a)(1), to Transfer Venue of these Cases in the Interest of Justice,* dated August 22, 2012 [Docket No. 406] (the "***U.S. Trustee Venue Transfer Motion***"; the movant thereunder, the "***U.S. Trustee***").

In furtherance thereof, the Ad Hoc Consortium respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Venue Transfer Motions are a matter of extreme gravity. The discretionary relief requested by the Movants courts disaster in a variety of ways, given that it would: (i) wholly unsettle myriad facets of case administration; (ii) interpose different legal principles (based on conflicting Circuit-level precedent) that, among other things, might threaten continued access to post-petition financing; (iii) lay waste to substantial management efforts to assure vendors, customers, and employees of the Debtors' "soft-landing" into bankruptcy; (iv) exchange unsecured creditor confidence in this Court's oversight of sensitive "mega"-cases and its facility for complex matters of corporate finance and enterprise valuation, for the unknown; (v) dramatically add administrative inconvenience and expense, elongating resolution of everyday contested matters and creating serious logistical challenges for emergency relief; and (vi) potentially cast a heavy cloud over plan negotiations and efforts to generate hundreds of millions in exit financing in a predictable market environment.

2. The Ad Hoc Consortium respectfully submits that its views on this matter should be given substantial weight by the Court. With more than $100 million in unsecured claims (against all 99 Debtors), the Ad Hoc Consortium may be the largest organized unsecured creditor consortium in the case. Its members are located in New York, Connecticut, Wisconsin, California, Florida, and Minnesota, and its counsel is located in New York. For this creditor constituency, New York is a far more convenient forum than the Southern District of West Virginia.

3. But, there are other – more fundamental – reasons the Court should carefully consider the Ad Hoc Consortium's viewpoint. Chapter 11 is, at its core, about the rehabilitation of viable business enterprises through, predominantly, the compromise of unsecured debt (like the Senior Notes). Debtors-in-possession enjoy the benefits of plan exclusivity and, thus, lead

their restructuring efforts. For this reason, the law gives wide deference to a debtor's venue choice. In the end, however, unsecured creditors "pay" for the reorganization, given the provisions of Bankruptcy Code Sections 1129(a) and 1129(b). For this reason, the case law also gives wide deference to the views of unsecured creditors in the venue debate. Unsecured creditors here vigorously support venue resting in the Southern District of New York.

4. Moreover, assuming for the sake of discussion that venue transfer is not a value threatening proposition (which it is) and the Debtors and unsecured creditors support venue transfer (which they do not), the offered rationale for transfer still is not compelling. The Movants rely principally on an outdated judicial modality, suggesting that – even in a case of this value quantum, international scope, and energy-industry importance – fair adjudication is tied to a Judge's particular connectivity to the debtors' daily operations. The law does not, however, continue to follow the "referee" system of old, and fair adjudication under the Bankruptcy Code is not dependent on the Court's geographic proximity to or knowledge of coal mining operations in Appalachia. No more so than fair adjudication of, for example, the *Delta* and *Northwest Airlines* bankruptcies required judicial expertise in the methods of modern aviation. History proves conclusively that large corporate debtors do well reorganizing in the Southern District of New York, regardless of business location or industry, because Courts here are particularly experienced and adept at resolving the issues faced in large corporate Chapter 11 cases. *See In re Enron Corp.*, 274 B.R. 327, 347-48 (Bankr. S.D.N.Y. 2002) (for venue purposes, the location of estate assets is "not as important where the ultimate goal is rehabilitation rather than liquidation").

5. This is not to suggest that the UMWA's views are insubstantial. But, they need to be considered in proportion and scale. Unlike unsecured creditors, the UMWA enjoys powerful rights and protections under Bankruptcy Code Sections 1113 and 1114, as well as the potential

ability to call a business-crippling strike. *See, e.g., Petrusch v. Teamsters Local 317 (In re Petrusch)*, 667 F.2d 297, 300 (2d Cir. 1981) (bankruptcy court lacks jurisdiction to enjoin lawful strike); *but see Elsinore Shore Assocs. v. Local 54, Hotel Employees and Rest. Employees Int'l Union*, 820 F.2d 62, 69 (3d Cir. 1987) (damages may be due to estate if the union calls an improper or unlawful strike). Because of these rights and protections, the UMWA automatically occupies an important seat at the bargaining table; it will be heard, regardless of venue. Against that backdrop, it bears repeating the Debtors' Objection: the UMWA speaks for only a minority of employees (about 42%) and only 9 out of 99 Debtors (9%) are signatories to UMWA collective bargaining agreements, but all 99 Debtors are obligated on DIP Loan (defined below) draws used to satisfy employee and retiree benefits due by those 9 Debtors. The Venue Transfer Motions would, if granted, unfairly frustrate the interests of non-labor unsecured creditors and, in turn, further tip the imbalance.

6. Similarly, the Sureties' viewpoint should be considered in scale. The Sureties assert $70 million in exposure under outstanding performance bonds, but the DIP Loan secures repayment via letters of credit for more than $30 million of that potential exposure. The residual liability is contingent, arising only if the business fails to perform. Without any evidence of historical performance failure, there is absolutely no evidence establishing likely non-performance in the future. Moreover, as long as there is DIP Loan (and, in the days ahead, exit loan) availability, the Sureties' claims will never mature. The Sureties, therefore, are not a driving force in this bankruptcy and they should not be deemed such for purposes of this contested matter.

7. The U.S. Trustee's views regarding process integrity deserve careful consideration. But, here again the Debtors' Objection bears repeating: no Movant challenges venue under 28 U.S.C. § 1408; rather, the Movants seek <u>discretionary</u> venue transfer per 28

U.S.C. § 1412, based entirely on the particular facts of this case. However, the facts of this particular case lead to the conclusion that venue should remain in this District, given that: (i) that is the conclusion advocated strongly by the Debtors, the Official Creditors' Committee, and the Debtors' major unsecured creditors; (ii) the case is far too big and far too sensitive to conclude with any confidence that venue transfer can occur without massive case dislocation and value deterioration; (iii) the Movants have not advanced one single issue likely to be addressed by the Court requiring close geographical proximity to or particular judicial knowledge of mining in Appalachia; (iv) to the contrary, the case will likely present complex issues bearing on large-company finance, enterprise valuation, and plan confirmation – matters understood by this Court quite well; and (v) in light thereof, venue transfer may unduly prejudice non-labor creditors, when labor already enjoys powerful rights and protections that ensures its views will be heard by all parties-in-interest throughout the process.

8. For these reasons, as further discussed herein, the Ad Hoc Consortium joins in the Debtors' Objection[2] and the Official Committee's Objection and respectfully requests that the Court deny the Venue Transfer Motions.

[2] The Ad Hoc Consortium further adopts the pertinent facts with respect to the instant dispute set forth in the *Declaration of Mark N. Schroeder Pursuant to Local Bankruptcy Rule 1007-2* [Docket No. 4] (the "***First Day Affidavit***") and the Declaration of Mark N. Schroeder in Opposition to *(i) Motion of the United Mine Workers of America to Transfer the Case to the Southern District of West Virginia, (ii) Sureties' Motion to Transfer Jointly Administered Cases to Southern District of West Virginia, and (iii) Motion of the United States Trustee to Transfer in the Interest of Justice* [Docket No. 426] (the "***Venue Affidavit***").

BACKGROUND

I. The Magnitude And Sensitivity Of The Debtors' Chapter 11 Cases.

9. The Debtors operate a massive business enterprise. For the twelve months ended March 31, 2012, the Debtors reported revenues of $2.33 billion and adjusted EBITDA of $164 million from the sale of approximately 29.4 million tons of coal. *See* First Day Affidavit ¶ 13. The Debtors conduct mining operations at 12 active mining complexes consisting of 19 surface and underground mines. *See* First Day Affidavit ¶ 10; Venue Affidavit ¶ 15. The Debtors sell coal throughout the United States. *See* First Day Affidavit ¶ 11; Venue Affidavit ¶ 16. Nearly 30% of the Debtors' revenues in 2011 came from sales to international customers. *See* First Day Affidavit ¶ 11; Venue Affidavit ¶ 16. Pre-petition indebtedness included: (i) $25 million in outstanding direct borrowings and $300.7 million in outstanding letters of credit under a secured facility; (ii) $51.8 million in outstanding letters of credit under an accounts receivable securitization program; (iii) $250 million in Senior Notes; and (iv) $200 million in junior unsecured notes. *See* First Day Affidavit ¶¶ 17-19. This is, bluntly stated, a very big Chapter 11 case.

10. It is also a highly sensitive Chapter 11 case. Unfavorable business shifts were recently caused by, among other factors: (i) increased competition in the coal mining industry; (ii) decreasing demand for coal in the present market environment; (iii) the availability and lower price of competing fuels, such as plentiful natural gas; (iv) increasingly stringent government regulation; and (v) substantial employee and retiree liabilities. *See generally* First Day Affidavit ¶¶ 21-39. A business turnaround is necessary here, especially given that unfavorable business developments may negatively impact future exit financing initiatives and the ability to negotiate a fully consensual plan of reorganization. In light of the size and sensitivity of the bankruptcy

estate, the Debtors' reorganization must be undertaken with skill and with care.

II. The DIP Loan; The Authorized Payment Of Certain Pre-Petition Claims.

11. To facilitate post-petition liquidity, the Court entered an order [Docket No. 275] approving $802 million in post-petition financing for the Debtors (the "***DIP Loan***"), consisting of a so-called "first out" facility (the "***First Out DIP Facility***") and a so-called "second out" facility (the "***Second Out DIP Facility***"). Under the DIP Loan, approximately $423 million is being made available for operating cash and working capital, including (i) cash needed for post-petition employee salaries, retiree benefits, and other obligations under the UMWA collective bargaining agreements and (ii) $32 million in letters of credit to back claims by Sureties. See Venue Affidavit ¶¶ 38, 54. All 99 Debtors are obligated on such borrowings, jointly and severally.

12. To ensure a "soft-landing" into Chapter 11 (and an improved credit-risk profile), the DIP Loan required the Debtors' prompt payment of certain business critical pre-petition claims, pursuant to the so-called "Doctrine of Necessity." *See* First Out DIP Facility §§ 4.01 (conditioning initial credit extension on satisfactory first day orders), 6.18 (affirmative covenant that first day orders are approved by this Court), 7.17 (negative covenant preventing modification of first day orders without lender consent); Second Out DIP Facility § 4.01 (conditioning effectiveness on satisfactory first day orders), Article 6 (expressly incorporating First Out DIP Facility affirmative and negative covenants).

13. In accordance with the DIP Loan, the Debtors asked for and received authority to satisfy pre-petition claims of: (a) critical vendors up to $25 million in the aggregate [Docket No. 257]; (b) foreign vendors up to $750,000 in the aggregate [Docket No. 256]; (c) common carriers and warehousemen up to $18 million in the aggregate [Docket No. 255]; (d) employees and

retirees up to applicable Bankruptcy Code limits [Docket No. 253]; (e) taxing authorities in excess of $43 million in the aggregate [Docket No. 260]; (f) customer obligations, without cap [Docket No. 254]; (g) goods in delivery, without cap [Docket No. 54]; (h) insurance claims, without cap [Docket No. 258]; and (i) surety bonds, without cap [Docket No. 259].

14. While certainly business shrewd and not controversial in this Circuit, orders such as these are not universally sanctioned. In fact, "Doctrine of Necessity" relief is strictly prohibited in the Southern District of West Virginia. *See Official Comm. of Equity Sec. Holders v. Mabey*, 832 F.2d 299, 302 (4th Cir. 1987). Should the Court transfer venue, previously entered "Doctrine of Necessity" orders may or may not be rescinded, at the new Court's option. *Compare Vortekx, Inc. v. IAS Commcn's, Inc.*, 72 F. Supp. 2d 638, 640-41 (N.D. W. Va. 1999) (after venue transfer, new Court may continue prior Court's orders per the inherently flexible "law of the case" doctrine), *with Degulis v. LXR Biotechnology*, 928 F. Supp. 1301, 1309 (S.D.N.Y. 1996) (after venue transfer, new Court may "modify or rescind" prior Court orders).

15. In other words, there can be no assurance that, post-transfer, the receiving Court will maintain prior orders, especially if they were entered in accordance with binding (pre-transfer) Second Circuit precedent that conflicts with binding (post-transfer) Fourth Circuit precedent. That is true even if rescission of an order would threaten business critical relationships and continued DIP Loan availability. And this is but one example of how differing Circuit-level precedent can inadvertently upset the Debtors' business turnaround and rehabilitation.

PARTICULAR POINTS ON JOINDER

I. The Relief Requested Should Be Denied Because It Is Not Supported By The Applicable Case Law.

16. A close review of the applicable case law reveals that venue transfer is warranted under 28 U.S.C. § 1412 in primarily the following four circumstances:

- The case is of relatively modest size (at least by comparison to the Debtors) and has obvious geographic rooting in another, single forum. *See, e.g., In re EB Capital Mgmt., LLC*, No. 11-12646 (MG), 2011 Bankr. LEXIS 2764, at *14 (Bankr. S.D.N.Y. Jul. 14, 2011) (small debtor's principal assets were a home in South Dakota and the furnishings therein, including artwork); *In re Dunmore Homes, Inc.*, 380 B.R. 663, 672-73 (Bankr. S.D.N.Y. 2008) (real estate developer debtor's only office, substantially all of its real estate holdings, all of its management and employees, and substantially all of its creditors were located in California); *In re B.L. of Miami, Inc.*, 294 B.R. 325, 331 (Bankr. D. Nev. 2003) (small debtor's principal asset was a nightclub located in Florida); *In re Midland Assocs.*, 121 B.R. 459, 460 (Bankr. E.D. Pa. 1990) (small debtor's "major asset" was an office building in Texas and whose remaining assets were bank accounts in Texas and California); *In re 1606 N.H. Ave. Assocs.*, 85 B.R. 298, 300 (Bankr. E.D. Pa. 1988) (small debtor's sole asset was an office building in Washington, D.C.).

- The venue selection perpetuates "serial filing" or other improperly evasive behavior. *See In re Christensen*, No. 12-10042 (SHL), 2012 Bankr. LEXIS 1619, at *7 (Bankr. S.D.N.Y. Apr. 13, 2012) (debtors had filed multiple bankruptcy petitions in the hopes of securing a more favorable outcome); *In re Qualteq, Inc.*, No. 11-12572, 2012 Bankr. LEXIS 503, at *19-20 (Bankr. D. Del. Feb. 16, 2012) (debtors conceded that the action was commenced in the district to avoid pending litigation in another district); *EB Capital Mgmt.*, 2011 Bankr. LEXIS 2764, at *13-15 (debtors had filed multiple bankruptcy petitions in the hopes of securing a more favorable outcome); *In re Eclair Bakery, Ltd.*, 255 B.R. 121, 142 (Bankr. S.D.N.Y 2000) (transfer warranted to prevent "forum shopping").

- The debtor and/or primary creditor constituencies advocate for or consent to venue transfer. *See In re Asset Resolution LLC*, No. 09-16142 (AJG), 2009 Bankr. LEXIS 3711, at *1-2 (Bankr. S.D.N.Y. Nov. 24, 2009) (most active creditors and U.S. Trustee advocated transfer); *In re Winn-Dixie Stores, Inc.*, Case No. 05-11063 (Bankr. S.D.N.Y. Apr. 12, 2005) (debtor consented to venue transfer); *In re Seton Chase Assocs., Inc.*, 141 B.R. 2, 3 (Bankr. E.D.N.Y. 1992) (largest secured creditor advocated transfer); *Midland*, 121 B.R. at 460 (secured creditor advocated transfer); *1606 N.H. Ave.*, 85 B.R. at 300 (same); *In re Landmark Capital Co.*, 19 B.R. 342 (Bankr. S.D.N.Y. 1982) (same).

- The Court is confident that venue transfer will not create substantial case dislocation and value deterioration. *See In re Houghton Mifflin Harcourt Publishing Co.*, No. 12-13171 (REG), slip op. at 2 (Bankr. S.D.N.Y. June 22, 2012) (venue transfer granted but delayed until post-confirmation to reduce prejudice to creditors, the debtors, and the debtors' employees);[3] *B.L. of Miami*, 294 B.R. at 334 (business activity and trade creditors were in Miami such that transfer to that district was not disruptive); *1606 N.H. Ave.*, 85 B.R. at 305 (competing districts were not a great distance from each other).

17. In direct juxtaposition with each of the above four categories, Courts have refused to transfer venue in the following four circumstances:

- The debtor has a large business enterprise, crossing state or national boundaries. *See Commonwealth of P.R. v. Commonwealth Oil Ref. Co. (In re Commonwealth Oil Refining Co.)*, 596 F.2d 1239, 1249 (5th Cir. 1979) (transfer denial not an abuse of discretion where debtor's operations crossed domestic and international boundaries); *In re Enron Corp.*, 284 B.R. 376, 380 (Bankr. S.D.N.Y. 2002) (transfer denied where debtor was a national and international corporation with operations across the United States and the world); *Enron*, 274 B.R. at 334 (same); *In re PWS Holding Corp.*, Nos. 98-212-SLR through 98-223-SLR, 1998 Bankr. LEXIS 549, at *13 (Bankr. D. Del. Apr. 28, 1998) ("***Bruno's***") (transfer denied where business was "truly interstate" in practice and national in character).

- The case issues are not parochial to any particular geographical locus, but rather deal with general bankruptcy issues, like corporate finance, enterprise valuation, and Section 1129 standards. *See Enron*, 284 B.R. at 395 (transfer from New York denied because New York is a world financial center and had the resources to address the debtors' financial issues); *Enron*, 274 B.R. at 349 (same); *Bruno's*, 1998 Bankr. LEXIS 549, at *14-15 (transfer denied where debtor's business activities were not primarily local in nature).

- Primary creditor constituencies support the debtor's venue choice. *See Enron*, 284 B.R. at 399 (transfer denied where creditor's committee supported debtor's venue choice); *Enron*, 274 B.R. at 345-46 (same); *In re Land Stewards*, 293 B.R. 364, 370 (Bankr. E.D. Va. 2002) (denying transfer where "no creditor other than [one] has expressed a concern over the [current] Virginia venue").

[3] It should be noted that *Houghton Mifflin* is not a 28 U.S.C. § 1412 case at all. There, the Court found that venue was not supportable under 28 U.S.C. § 1408. *See Houghton Mifflin*, slip op. at 26. However, the opinion also stated that the showing made by the debtors and creditors in the case that a transfer "would be destructive to credit interests, to the great expense and inconvenience of the parties (especially creditors), and the exact opposite of interest of justice" was "overwhelming." *Id.* slip op. at 22-23.

- The movant fails to prove that venue can be transferred without significant case disruption and/or value deterioration. *See Gulf States Exploration Co. v. Manville Forest Prods. Corp. (In re Manville Forest Prods. Corp.)*, 896 F.2d 1384, 1391 (2d Cir. 1990) (district court did not abuse discretion by refusing to transfer venue where doing so would have delayed final resolution of the bankruptcy case); *Enron*, 284 B.R. at 405 (jurisdiction retained where movants had not shown that transfer would not serve interests of judicial economy, efficiency, or timeliness); *Enron*, 274 B.R. at 351 (same).

18. The Debtors' case does not fit into any of the first four categories (where courts saw fit to transfer venue). To the contrary, the Debtors' case fits squarely into all of the second four categories (where courts have found it inappropriate to transfer venue). The Movants cannot carry their burdens of proof and persuasion under the case law. The relief requested should be denied.

II. The Relief Requested Should Be Denied Because The Offered Rationale For Venue Transfer Is Not Compelling Under The Law.

19. The Debtors' Objection effectively (i) tallies up the list of parties actually expected to play a meaningful role in Courtroom proceedings and (ii) recites the horrific travel options available for them to appear before the Bankruptcy Judge in the Southern District of West Virginia. The Ad Hoc Consortium suspects that, by now, it is axiomatic that venue transfer to that forum is not "for the convenience of the parties." 28 U.S.C. § 1412. Once past that point of analysis, the question turns to whether venue transfer is otherwise "in the interest of justice." *Id.* The Venue Transfer Motions labor hard to connect "justice" with particular judicial connection to coal mining in Appalachia. The pleadings do not pass muster, at least under today's modality for bankruptcy adjudication.

20. It is true that, under the prior Bankruptcy Act, case oversight was entrusted to a bankruptcy "referee" whose job was part administrative, part judicial. Referees often had day-

to-day involvement in the debtor's business. *See, e.g.*, Hon. Prudence Carty Beatty, "Judging at the End of the Millennium," Amer. Bankr. Inst. J. (Nov. 1999) ("[R]eferees had a vested interest in seeing that cases with the potential for asset recoveries were actively pursued. There is anecdotal evidence that bankruptcy referees personally went out to investigate and pursue estate assets on at least some occasions.").

21. In passing the Bankruptcy Code, Congress expressed its clear intent to sever all administrative and judicial functions, vesting only the latter with Bankruptcy Courts of elevated stature. *See* App. C *Collier on Bankruptcy* at App. Pt. 4(d)(i) ("H.R. 8200 proposes to establish a new United States Bankruptcy Court, patterned after the district courts. The current referee system would be abolished."); App. B. *Collier on Bankruptcy* at App. Pt. 4(c) (Bankruptcy Courts were to "have no significant administrative functions in the absence of a litigable controversy."). Such "litigable controversies" are delineated in the Bankruptcy Code, regardless of a debtor's geographical location or industry. Stated differently, this Court is directed by Congress only to try disputes as they arise and are brought before the Court by parties-in-interest. *See* 28 U.S.C. § 157(a).

22. The Venue Transfer Motions are fundamentally inconsistent with Congress' vision of adjudication under the Bankruptcy Code. The Movants contend that another court (predominantly, the Southern District of West Virginia) is better suited to oversee this bankruptcy because: (i) of its close proximity to certain of the Debtors' mining operations, executives, and employees; (ii) another State (predominantly, West Virginia) purportedly has greater connectivity to the business, employees, and retirees; and (iii) another State (predominantly, West Virginia) has greater regulatory and tax interest in the Debtors' day-to-day operations. This contention fails to appreciate that, under the Bankruptcy Code, the Court is not intended to have day-to-day involvement in the Debtors' business functions, does not meet or

otherwise interface with rank and file employees or retirees on business matters (unless they testify under oath), and is not responsible for the Debtors' regulatory, tax and other State-related legal compliance.

23. All "litigable controversies" under the Bankruptcy Code – like matters of corporate finance, enterprise valuation, and Bankruptcy Code Section 1129 sufficiency – can be fully and fairly adjudicated here, just as they were in other New York cases of comparable size. *See, e.g., In re Hostess Brands, Inc.*, Case No. 12-22052 (Bankr. S.D.N.Y.) (RDD); *In re AMR Corp.*, Case No. 11-15463 (Bankr. S.D.N.Y.) (SHL); *In re General Motors Corp.*, Case No. 09-50026 (Bankr. S.D.N.Y.) (REG); *In re Chrysler LLC*, Case No. 09-50002 (Bankr. S.D.N.Y.) (AJG); *In re Lear Corp.*, Case No. 09-14326 (Bankr. S.D.N.Y.) (ALG); *In re Lyondell Chemical Co.*, Case No. 09-10023 (Bankr. S.D.N.Y.) (REG); *In re Delphi Corp.*, Case No. 05-44481 (Bankr. S.D.N.Y.) (RDD); *In re Northwest Airlines Corp.*, Case No. 05-17930 (Bankr. S.D.N.Y.) (ALG); *In re Delta Airlines, Inc.*, Case No. 05-17923 (Bankr. S.D.N.Y.) (PCB); and *In re Bethlehem Steel Corp.*, Case No. 01-15288 (Bankr. S.D.N.Y.) (BRL).

24. Moreover, the Court's sophistication and predictability on commercial matters is crucial to those that will be negotiating a plan of reorganization and pursuing hundreds of millions in exit financing. *See, e.g., In re Adelphia Commcn's Corp.*, 359 B.R. 65, 72 n.13 (Bankr. S.D.N.Y. 2007) (REG) (The "Court has been on record for many years as having held that the interests of predictability in this District are of great importance"). The Movants' proposed venue, in marked contrast to this Court, does not have a footprint that parties can study as part of their negotiations towards business rehabilitation. *See* Lynn M. LoPucki, "Bankruptcy Research Database," available at http://lopucki.law.ucla.edu (of the 953 large, public company bankruptcies since 1979, only one case was adjudicated in the Southern District of West Virginia, and that case concluded in 1989). The relief requested should be denied.

III. The Relief Requested Should Be Denied Because Venue Transfer Would Be Inequitable Under The Circumstances.

A. The UMWA And Sureties Venue Transfer Motions Further Tips The Scale Imbalance.

25. Again, as noted above, the balance of equities does not tip in favor of the UMWA and the Sureties. Unsecured indebtedness is, under the law, in a far more tenuous position than labor-related benefits covered by Bankruptcy Code Sections 1113 and 1114, and the UMWA potentially has the right to threaten a lawful strike post-petition. And, unlike unsecured creditors, the Sureties enjoy substantial financial support under the DIP Loan and, regardless, face low probability that their claims will ever mature. The Senior Noteholders, with claims ($250 million face amount) at all 99 Debtors, are now "paying" for DIP Loan draws benefitting only a small handful of Debtors with UMWA-negotiated or Surety exposure. And, the Senior Noteholders will likely "pay" for the Debtors' restructuring through the presumptive compromise of their debt under a plan of reorganization. They may even need to "pay" for the Debtors' exit from Chapter 11 through a rights-offering or other creditor-related capital raise. Based on the nature of the UMWA and Sureties, there can be no expectation that either will provide any meaningful funding support for the reorganizing Debtors. The balance of equities does not favor transferring the case to a "home town" venue to further advance the UMWA and Sureties' parochial case agenda. The relief requested should be denied.

B. The U.S. Trustee Venue Transfer Motion Inequitably Imposes Penalty For The Sake Of Principle.

26. As noted above, no Movant challenges venue under 28 USC § 1408. Nor could they complain that the means by which venue was rooted in the Southern District of New York was improper, given clear Second Circuit support. *See Capital Motors Courts v. LeBlanc Corp.*, 201 F.2d 356 (2d Cir. 1953) (venue not transferred even though events on which venue were based occurred only one day before the bankruptcy filing).

27. The U.S. Trustee Venue Transfer Motion seeks discretionary relief for policy reasons, regardless of the resulting harm to creditors. But, to be sure, a wooden application of policy, regardless of resulting damage, is not justice. *See Knapp v. Seligson (In re Ira Haupt & Co.)*, 361 F.2d 164, 168 (2d Cir. 1966) ("The conduct of bankruptcy proceedings not only should be right but must seem right."). The advocated approach also is not consistent with the equitable nature of bankruptcy proceedings. *See Granfinanciera v. Nordberg*, 492 U.S. 33, 81 (1989) ("bankruptcy courts are inherently proceedings in equity."); *see also Enron*, 284 B.R. at 387 (the "interest of justice" prong of 28 U.S.C. § 1408 should not be applied in a vacuum but, rather, in a broad and flexible manner with regard to what will best promote efficient administrative and optimum resolution of the case and be least disruptive). The relief requested should be denied.

CONCLUSION

WHEREFORE, for the reasons discussed herein, the Ad Hoc Consortium respectfully requests that the Court: (i) sustain the Debtors' Objection and the Official Committee's Objection; (ii) deny with prejudice the relief requested in the Venue Transfer Motions; and (iii) grant the Ad Hoc Consortium such other and further relief as is just and proper.

Dated: August 31, 2012
New York, New York

BROWN RUDNICK LLP

By: /s/ Robert J. Stark
Robert J. Stark
Steven B. Levine
Howard L. Siegel
Angelo Thalassinos

Seven Times Square
New York, NY 10036
Telephone: (212) 209-4800
Facsimile: (212) 209-4801

Counsel to the Ad Hoc Consortium of Senior Noteholders