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

**In re:**

**PATRIOT COAL CORPORATION, *et al.*,**

**Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 12-[ ] (\_\_\_\_)**

**(Jointly Administered)**

**DEBTORS' MOTION FOR AN ORDER AUTHORIZING  
(i) DEBTORS TO PAY CERTAIN PREPETITION TAXES,  
GOVERNMENTAL ASSESSMENTS AND FEES AND  
(ii) FINANCIAL INSTITUTIONS TO HONOR AND  
PROCESS RELATED CHECKS AND TRANSFERS**

Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) respectfully represent:

**Relief Requested**

1. By this motion (the “**Motion**”), and pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors seek entry of an order in the form attached hereto as

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<sup>1</sup> 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.

Exhibit A (the “**Interim Order**”) (i) authorizing the Debtors, in their sole discretion, but not requiring them, to pay any Covered Taxes and Fees (as defined below), whether asserted prior to or after the Petition Date and (ii) authorizing the Banks (as defined below) to receive, process, honor and pay checks or electronic transfers used by the Debtors to pay such Covered Taxes and Fees.

2. In connection with the normal operation of their businesses, the Debtors collect, withhold and incur production taxes, excise taxes, environmental and safety fees and assessments, sales taxes, use taxes, employment taxes, franchise taxes and fees and property taxes, as well as other taxes, fees and charges described in this Motion (all such taxes, fees and charges, collectively, the “**Covered Taxes and Fees**”).<sup>2</sup> The Debtors remit Covered Taxes and Fees to various federal, state and local governments, including taxing and licensing authorities (collectively, the “**Governmental Authorities**”). Covered Taxes and Fees are remitted by the Debtors through checks and electronic transfers that are processed through their banks and other financial institutions (the “**Banks**”).

3. The Debtors believe that many of the Covered Taxes and Fees collected prepetition are not property of the Debtors’ estates and must for that reason be turned over to the Governmental Authorities. To the extent that they are not actually the property of the Governmental Authorities, they may well give rise to priority claims. Moreover, the Debtors also seek to pay prepetition Covered Taxes and Fees in order to forestall Governmental Authorities from taking actions that might interfere with the

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<sup>2</sup> The Debtors also incur taxes based on or measured by their net income (including, but not limited to, the federal corporate income tax and state income and franchise taxes), but this motion does not pertain to such taxes.

Debtors' successful reorganization, including by blocking the receipt or renewal of permits required for the Debtors' continued operations or possibly bringing personal liability actions against directors, officers and other employees in connection with non-payment of Covered Taxes and Fees. Actions against the Debtors' directors, officers and other employees would likely distract key personnel, whose full-time attention to the Debtors' reorganization efforts is required, and would likely cause potential business disruptions. Any such business disruptions would likely erode the Debtors' customer base and negatively impact these chapter 11 cases. Accordingly, the Debtors submit that the proposed relief is in the best interest of the Debtors' estates.

**Background and Jurisdiction**

4. On July 9, 2012 (the "**Petition Date**"), each Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

6. Additional information about the Debtors' businesses and the events leading up to the Petition Date can be found in the Declaration of Mark N. Schroeder, Patriot Coal Corporation's Senior Vice President and Chief Financial Officer, which is incorporated herein by reference.

7. The Court has subject matter jurisdiction to consider 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 determined by the Bankruptcy Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**Request for Authority to Pay the Debtors' Covered Taxes and Fees**

***Production Taxes***

8. The Debtors incur production taxes and fees (including severance taxes, “additional” severance taxes and reclamation taxes and fees) related to the extraction of coal (“**Production Taxes**”) pursuant to federal law and to the laws of West Virginia and Kentucky. As of May 31, 2012, the Debtors had accrued but not remitted approximately \$12,000,000 in Production Taxes due to West Virginia,<sup>3</sup> \$1,300,000 in Production Taxes due to Kentucky and \$725,000 in Production Taxes due to the federal government.<sup>4</sup> Subsequent to the approval of this Motion, the Debtors intend to pay such taxes and fees owed to the appropriate Governmental Authorities. The Debtors generally also intend to pay to the appropriate Governmental Authorities any Production Taxes that arise after the Petition Date.

***Excise Taxes***

9. The Debtors incur excise taxes pursuant to Section 4121 of the Internal Revenue Code (“**Coal Excise Taxes**”). The Debtors are required to remit these taxes on a semi-monthly basis. As of May 31, 2012, approximately \$410,000 in Coal Excise

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<sup>3</sup> This amount reflects the Debtors’ tax liability for two months because West Virginia draws its payments on the second or third day of the following month.

<sup>4</sup> Production Taxes due to the federal government comprise reclamation fees payable pursuant to the *Surface Mining Control and Reclamation Act of 1977*, 30 U.S.C. § 1201 *et seq.*

Taxes had been incurred by the Debtors and not yet remitted to the relevant Governmental Authority. Subsequent to the approval of this Motion, the Debtors intend to pay such Coal Excise Taxes to the appropriate Governmental Authority. The Debtors generally also intend to pay to the appropriate Governmental Authority any Coal Excise Taxes that arise after the Petition Date.

***Environmental and Safety Fees and Assessments***

10. The Debtors incur various fees, penalties and assessments to comply with environmental, health and safety laws and regulations (“**Environmental and Safety Fees and Assessments**”). The Debtors are required to remit these Environmental and Safety Fees and Assessments to the relevant Governmental Authorities on a periodic basis and generally intend to pay to the appropriate Governmental Authorities such Environmental and Safety Fees and Assessments as the Debtors, in their sole discretion, deem reasonably appropriate to ensure their continued receipt and renewal of permits and other authorizations necessary for the continuation of their businesses and pursuant to any applicable law or regulation, including without limitation the Surface Mining Control and Reclamation Act and corresponding state and local laws. The Debtors believe that on an annual basis they have historically incurred approximately \$900,000 in permitting fees, in addition to periodic application fees incurred on an as-needed basis. In addition, the Debtors have incurred Environmental and Safety Fees and Assessments in the form of assessments for alleged violations of environmental, health and safety laws before the Petition Date, which have not yet been remitted to the relevant Governmental Authorities. While some of these assessments are being contested, the aggregate amount assessed is estimated to be less than \$12,800,000. Based on prior experience, the Debtors believe

that the amount of such assessments they will ultimately owe will be materially lower than this amount.

***Sales and Use and Other Taxes***

11. The Debtors collect or incur various general sales and use taxes (“**Sales and Use Taxes**”). The Debtors are required to remit these Sales and Use Taxes to the applicable Governmental Authorities on a periodic basis. As of May 31, 2012, approximately \$200,000 in Sales and Use Taxes had been incurred or collected by the Debtors and not yet remitted to the relevant Governmental Authorities. Subsequent to the approval of this Motion, the Debtors intend to pay any Sales and Use Taxes to the appropriate Governmental Authorities. The Debtors generally also intend to pay to the appropriate Governmental Authorities any Sales and Use Taxes that arise after the Petition Date.

12. The Debtors also collect, withhold or incur state and local taxes imposed on overall gross receipts, commercial activity taxes, explosive taxes, utility taxes, business license fees and various other federal, state or local taxes, charges, fines, penalties and fees (including, without limitation, any amounts required to be withheld, incurred or collected under applicable law) (“**Other Taxes**”). The Debtors are required to remit these Other Taxes to the relevant Governmental Authorities on a periodic basis. The Debtors believe that the amount of Other Taxes that have been incurred, withheld or collected by the Debtors before the Petition Date, but have not yet been remitted to the relevant Governmental Authorities, does not exceed \$150,000 (including approximately \$50,000 in utility taxes, approximately \$40,000 in explosive taxes, and certain other taxes described above).

***Employment and Wage-Related Taxes***

13. The Debtors are required by law to withhold from domestic employees' wages or pay directly various amounts related to federal, state and local taxes. These taxes include, but are not limited to, income taxes, FICA Taxes (as defined below), unemployment taxes and similar state, local and federal taxes that accrue on wages, benefits, disability and workers' compensation paid to the Debtors' employees ("Employment and Wage-Related Taxes"). The Debtors pay these Employment and Wage-Related Taxes to various Governmental Authorities in accordance with the Internal Revenue Code and applicable state and local laws. Although it is difficult to assess precisely the amount of the Employment and Wage-Related Taxes that have been withheld on account of prepetition services, the Debtors' next obligation to remit such taxes will be in the amount of approximately \$5,200,000. Subsequent to the approval of this Motion, the Debtors intend to pay all withheld Employment and Wage-Related Taxes as they come due.

14. Contemporaneously herewith, the Debtors have filed a motion seeking, among other things, authorization to continue to pay prepetition wages, salaries and other compensation to employees. The postpetition payment of prepetition wages, salaries and other compensation will result in additional withholding of and direct payment obligations for various Employment and Wage-Related Taxes as described above, for which authorization for remittance to the appropriate Governmental Authorities is also requested by this Motion.

15. Pursuant to section 3402 of the Internal Revenue Code and under various state and local laws, all employers generally are required to withhold income taxes on wages paid to employees.

16. The Federal Insurance Contributions Act (“**FICA**”) requires employers to pay an old-age, survivors and disability tax and a hospital insurance tax on wages paid to employees and to withhold from such wages a separate old-age, survivors and disability tax and hospital insurance tax (“**FICA Taxes**”). *See I.R.C. §§ 3102 and 3111.* The employer portion of FICA Taxes and the separate employee portion of FICA Taxes generally arise when employee wages are paid, and employers, such as the Debtors, are obligated to pay such taxes to the applicable Governmental Authorities promptly thereafter. *See I.R.C. §§ 3101 and 3111.*

17. The Debtors are also required to fund certain unemployment benefits for their employees and may hold certain amounts in respect of unemployment-related fees. The Debtors are required to remit these fees to the relevant Governmental Authorities on a periodic basis.

#### ***Franchise Taxes and Fees***

18. The Debtors are required to pay various state franchise taxes, annual report fees and privilege fees (the “**Franchise Taxes and Fees**”) in order to continue conducting their businesses. In 2012, the Debtors are required to pay Franchise Taxes and Fees for the business conducted in 2011. As of May 31, 2012, the Debtors paid Franchise Taxes and Fees in Delaware, Kentucky, New York, West Virginia, Indiana, Illinois, Virginia and Missouri of approximately \$5,000, and expect to pay approximately

an additional \$555,000 in 2012. Failure to pay these taxes and fees will cause the Debtors to lose their ability to conduct their businesses.

***Property Taxes***

19. The Debtors have property tax obligations to Governmental Authorities for their real and personal property holdings, including without limitation unmined minerals tax obligations (the “**Property Taxes**”). It is critical that the Debtors be able to pay any Property Taxes where under applicable law the failure to pay gives rise to a secured state law lien. The Debtors expect to be liable for Property Taxes in the amount of approximately \$10,000,000 in 2012. The Debtors’ current practice generally is to pay such amounts to the appropriate Governmental Authorities on various dates during the year, and no later than when they become due. Interest and penalties accrue if such Property Taxes are not timely paid. Paying these Property Taxes, therefore will reduce costs by minimizing interest and penalty charges.

**Cause Exists to Authorize  
the Debtors to Pay Covered Taxes and Fees**

20. Section 105(a) of the Bankruptcy Code empowers the Court to “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). A bankruptcy court’s use of its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). “Under Section 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177).

21. In a long line of well-established cases, federal courts have consistently permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor's estate for the benefit of all creditors. *See, e.g.*, *Miltenberger v. Logansport Ry. Co.*, 106 U.S. 286, 312 (1882) (permitting payment of pre-receivership claim prior to reorganization to prevent "stoppage of [crucial] business relations"); *Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285–86 (S.D.N.Y. 1987) (affirming order authorizing payment of prepetition wages, salaries, expenses and benefits).

22. This doctrine of "necessity" functions in a chapter 11 reorganization as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing existence of judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to debtors' continued operation). The doctrine is frequently invoked early in a reorganization, particularly in connection with those chapter 11 sections that relate to payment of prepetition claims. The court in *In re Structurlite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), indicated its accord with "the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of pre-petition claims where such payment is necessary to 'permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.'" The court stated that "a *per se* rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the [Bankruptcy] Code." *Id.* at 932. Accordingly, pursuant to

section 105(a) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

***Many of the Covered Taxes and Fees Are Not Property of the Debtors' Estates***

23. Many of the Covered Taxes and Fees are collected or withheld by the Debtors on behalf of the applicable Governmental Authorities and are held in trust by the Debtors. *See, e.g.*, I.R.C. § 7501 (stating that certain Covered Taxes and Fees are held in trust). As such, these Covered Taxes and Fees are not property of the Debtors' estates under section 541 of the Bankruptcy Code. *See, e.g.*, *Begier, Jr. v. IRS*, 496 U.S. 53 (1990) (stating that withholding taxes are property held by debtor in trust for another and, as such, are not property of debtor's estate); *DeChiara v. N.Y. State Tax Comm'n*, 760 F.2d 432, 433–34 (2d Cir. 1985) (concluding that sales taxes are “trust fund” taxes); *Al Copeland Enter., Inc. v. Texas (In re Al Copeland Enter., Inc.)*, 991 F.2d 233, 235–37 (5th Cir. 1993) (holding that debtors' prepetition collection of sales taxes and interest thereon were held subject to trust and were not property of the estate); *Texas Comptroller of Pub. Accounts v. Megafoods Stores, Inc. (In re Megafood Stores, Inc.)*, 163 F.3d 1063, 1067–69 (9th Cir. 1998) (determining that under Texas law, state sales taxes collected created statutory trust fund, if traceable, and were not property of the estate); *Shank v. Wash. State Dept. of Revenue, Excise Tax Div. (In re Shank)*, 792 F.2d 829, 830 (9th Cir. 1986) (concluding that sales taxes required by state law to be collected by sellers from their customers are “trust fund” taxes); *In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (holding that excise and withholding taxes are “trust fund” taxes); *Shipley Co. v. Darr (In re Tap, Inc.)*, 52 B.R. 271, 277 (Bankr. D. Mass. 1985) (finding that withholding taxes are “trust fund” taxes). *See generally Official Comm. of*

*Unsecured Creditors of the Columbia Gas Transmission Corp. v. Columbia Gas Sys. Inc.*

(*In re Columbia Gas Sys. Inc.*), 997 F.2d 1039, 1060 (3d Cir. 1993) (indicating that even if the statute does not establish an express trust, a constructive trust may be found).

Because many of these Covered Taxes and Fees are not property of the Debtors' estates, these funds are not available for the satisfaction of creditors' claims and are the property of the relevant Governmental Authorities.

***Certain of the Covered Taxes and Fees Are Priority Claims***

24. To the extent any amounts in respect of Covered Taxes and Fees are property of the estates under section 541 of the Bankruptcy Code, many claims in respect of those amounts would likely be afforded priority status under section 507(a)(8) of the Bankruptcy Code. As priority claims, those portions of Covered Taxes and Fees must be paid in full before any general unsecured obligations of the Debtors can be satisfied. The Debtors believe that sufficient assets will exist to pay all priority Covered Taxes and Fees in full under any plan of reorganization that may ultimately be proposed and confirmed by this Court. Accordingly, to the extent the collected taxes are property of the Debtors and give rise to priority claims, the relief requested will only affect the timing of the payment of these priority Covered Taxes and Fees and will not prejudice the rights of general unsecured creditors.

25. In this respect, it should be noted that obligations labeled as "fees" or "charges" may also be entitled to priority status as taxes. *See* 11 U.S.C. § 507(a)(8). A fee or charge is a tax if it is an involuntary pecuniary burden: (i) laid upon the individual or their property, (ii) imposed by or under authority of a legislative body, (iii) assumed for public purposes, including the purposes of defraying expenses of government or

undertakings authorized by it and (iv) assessed under the police or taxing power of the state. *See LTV Steel Co. v. Shalala (In re Chateaugay Corp.)*, 53 F.3d 478, 498 (2d Cir. 1995). Substantially all of the Covered Taxes and Fees are involuntary pecuniary burdens imposed by the authority of a federal, state or local legislature under its police or taxing power. Regardless of their statutory characterization as “fees” or “charges,” many of the claims in respect of Covered Taxes and Fees may well qualify for priority under section 507(a)(8) of the Bankruptcy Code and, as such, must be paid in full before any general unsecured obligations of a debtor may be satisfied. Thus, payment of these Covered Taxes and Fees will only affect the timing of the payment and will not prejudice the rights of the general unsecured creditors of these estates.

***Non-Payment of Certain Covered Taxes and Fees Would Cause Immediate and Irreparable Harm to the Debtors’ Estates***

26. Some federal and state statutes prevent the issuance of certain mining permits to an entity if it or certain related entities have outstanding delinquent penalties or assessments for violations of certain environmental or other laws or regulations. Non-payment of such penalties or assessments could preclude the receipt or renewal of permits required for the Debtors’ continued operations and thus could interfere with their successful reorganization.

27. Many federal and state statutes hold certain directors, officers and other employees of entities responsible for collecting or withholding taxes, or remitting certain taxes, personally liable for these types of taxes. *See, e.g., I.R.C. § 6672* (imposing personal liability in connection with non-payment of employment taxes described above). To the extent such Covered Taxes and Fees were incurred by the Debtors before the Petition Date and are not remitted or paid by the Debtors, certain of the Debtors’ directors,

officers and other employees may be subject to lawsuits during the pendency of these chapter 11 cases. Payment of the Covered Taxes and Fees will avoid director and employee loss of focus and morale resulting from the risk of personal liability. A lawsuit and any ensuing liability would distract personnel from important tasks, to the detriment of all parties in interest in these chapter 11 cases. The dedicated and active participation of the Debtors' directors, officers and other employees is not only integral to the Debtors' continued, uninterrupted operations, but is also essential to their successful reorganization.

28. Payment of certain of the prepetition Covered Taxes and Fees is critical to the Debtors' continued, uninterrupted operations and to avoid immediate and irreparable harm to the Debtors' estates. Non-payment of the Covered Taxes and Fees may cause certain Governmental Authorities to take precipitous action, including but not limited to conducting audits, filing liens, pursuing payment of Covered Taxes and Fees from the Debtors' directors, officers and other employees, and seeking to lift the automatic stay, any of which would disrupt the Debtors' day-to-day operations and could potentially impose significant costs and burdens on the Debtors' estates. Prompt payment of the Covered Taxes and Fees will avoid these unnecessary and potentially costly governmental actions. *See In re FCC*, 217 F.3d 125, 137 (2d Cir. 2000). Accordingly, to the extent the relief requested herein involves the use of property of the estate and Bankruptcy Rule 6003 is applicable, the requested relief is consistent with such Rule because failure to pay the Covered Taxes and Fees would cause immediate and irreparable harm to the Debtors.

***Substantial Precedent Exists for Authorizing Payment of Prepetition Taxes***

29. In numerous chapter 11 cases in this and other districts, courts have authorized debtors to pay similar prepetition tax obligations. *See, e.g., In re Pinnacle Airlines Corp.*, Case No. 12-11343 (REG) (Bankr. S.D.N.Y. Apr. 23, 2012); *In re AMR Corp.*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Nov. 30, 2011); *In re The Great Atl. & Pac. Tea Co.*, Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Dec. 15, 2010); *In re Mesa Air Group, Inc.*, Case No. 10-10018 (MG) (Bankr. S.D.N.Y. Jan. 5, 2010); *In re Star Tribune Holdings Corp.*, Case No. 09-10244 (RDD) (Bankr. S.D.N.Y. Jan. 16, 2009); *In re Lyondell Chemical Co.*, Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Jan. 8, 2009); *In re Frontier Airlines Holdings, Inc.*, Case No. 08-11298 (RDD) (Bankr. S.D.N.Y. Apr. 14, 2008); *In re PLVTZ, Inc.*, Case No. 07-13532 (REG) (Bankr. S.D.N.Y. Nov. 9, 2007); *In re Dana Corp.*, Case No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 6, 2006); *In re Calpine Corp.*, Case No. 05-60200 (BRL) (Bankr. S.D.N.Y. Dec. 27, 2005); *In re Delphi Corp.*, Case No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 14, 2005); *In re Delta Air Lines, Inc.*, Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Sept. 16, 2005); *In re US Airways Group, Inc.*, Case No. 04-13819 (SSM) (Bankr. E.D. Va. Sept. 12, 2004); *In re Global Crossing Ltd.*, Case No. 02-40188 (REG) (Bankr. S.D.N.Y. 2002); *In re WorldCom, Inc.*, Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. 2002); *In re Enron Corp.*, Case No. 01-16034 (AJG) (Bankr. S.D.N.Y. 2001); *In re Ames Dep't Stores, Inc.*, Case No. 01-42217 (REG) (Bankr. S.D.N.Y. 2001). The Debtors submit that the circumstances described herein warrant similar relief.

30. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow the debtor to “use, sell, or lease, other than in the ordinary course of business, property of

the estate.” 11 U.S.C. § 363(b)(1). Debtors’ decisions to use, sell or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge deciding a section 363(b) application must find from the evidence presented before him or her a good business reason to grant such application); *see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting the standard for determining a section 363(b) motion is “a good business reason”).

31. The business judgment rule is satisfied “when the following elements are present: (1) a business decision, (2) disinterestedness, (3) due care, (4) good faith, and (5) according to some courts and commentators, no abuse of discretion or waste of corporate assets.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993) (internal quotations omitted). In fact, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this district have consistently and appropriately been loath to interfere with corporate decisions absent a showing of bad faith, self-interest or gross negligence, and will uphold a board’s decisions as long as they are attributable to any “rational business purpose.” *In re Integrated Res. Inc.*, 147 B.R. at 656.

32. The Debtors submit that to the extent the use of property of the estate is implicated here, the actions for which relief is requested represent a sound exercise of the Debtors' business judgment and are justified under section 363(b), as well as under section 105(a), of the Bankruptcy Code. As noted above, if the Covered Taxes and Fees are not paid, Governmental Authorities could take actions that could be costly and distracting to the Debtors and interfere with the Debtors' ability to successfully reorganize, which would negatively affect all of the creditors, employees and other affected parties. Moreover, because most of the Covered Taxes and Fees either (i) are "trust fund" taxes, and are therefore not property of the Debtors' estates, or (ii) would be afforded priority status under section 507(a)(8) of the Bankruptcy Code, the Debtors' general unsecured creditors would not be prejudiced by the Court's granting of the relief requested herein.

**Request for Authority for Financial Institutions  
to Honor and Process Related Checks and Transfers**

33. The Debtors also request that all applicable banks and other financial institutions be authorized to receive, process, honor and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, the claims that the Debtors request authority to pay in this motion, regardless of whether the checks were presented or fund transfer requests were submitted before or after the Petition Date, *provided* that: (a) funds are available in the Debtors' accounts to cover the checks and fund transfers and (b) all the banks and other financial institutions are authorized to rely on the Debtors' designation of any particular check as approved by the attached proposed order.

34. Nothing in this Motion should be construed as impairing the Debtors' rights to contest the validity or amount of Covered Taxes and Fees assessed by the Governmental Authorities, and the Debtors expressly reserve all of their rights with respect thereto.

35. For the avoidance of doubt, the Debtors are not seeking to prepay any Covered Taxes and Fees.

36. Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate and in the best interest of the Debtors' estates and creditors. Absent this relief, the value of the Debtors' estates will suffer, possibly precipitously. Consequently, all of the Debtors' creditors will benefit if the requested relief is granted.

#### **Request for Waiver of Stay**

37. In addition, by this Motion, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As discussed above, the Debtors require immediate relief to continue ordinary business operations for the benefit of all parties in interest. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

#### **Interim Order**

38. The Debtors seek the relief requested in this Motion in the form of the Interim Order attached hereto as Exhibit A. Within three business days of the entry of

the Interim Order, the Debtors shall serve a copy of the Interim Order and this Motion on (a) the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”), (b) those creditors holding the five largest secured claims against the Debtors’ estates on a consolidated basis, (c) those creditors holding the 50 largest unsecured claims against the Debtors’ estates on a consolidated basis, (d) attorneys for the administrative agents for the Debtors’ proposed postpetition lenders, (e) the Internal Revenue Service, (f) the Securities and Exchange Commission, (g) the United States Environmental Protection Agency and (h) the United States Attorney’s Office for the Southern District of New York.

39. The Debtors request that the deadline to file an objection (“**Objection**”) to the Motion shall be 4:00 p.m. (prevailing Eastern Time) on a date established by the Court that is at least seven calendar days prior to any hearing scheduled by the Court with respect to the relief sought herein on a final basis (the “**Objection Deadline**”). An Objection shall be considered timely only if, on or prior to the Objection Deadline, it is (a) filed with the Court and (b) served upon and actually received by (i) the U.S. Trustee, 33 Whitehall Street, 21<sup>st</sup> Floor, New York, New York 10004, Attn: Elisabetta G. Gasparini and Paul K. Schwartzberg, (ii) proposed counsel for the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick, (iii) attorneys for the administrative agents for the Debtors’ proposed postpetition lenders, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Margot B. Schonholtz

and Ana Alfonso and (iv) attorneys for any official committee of unsecured creditors then appointed in these cases.

40. Unless otherwise ordered by the Court, a reply to an Objection may be filed with the Court and served on or before 12:00 p.m. (prevailing Eastern Time) on the day that is two days before the date of the applicable hearing.

41. If no Objections are timely filed and served as set forth herein, the Debtors shall, on or after the Objection Deadline, submit to the Court a final order granting the relief requested herein, which order shall be submitted and may be entered with no hearing and no further notice or opportunity to be heard afforded to any party. If an Objection is timely filed, a hearing will be held at a date and time to be established by the Court.

42. The foregoing notice procedures satisfy Bankruptcy Rule 9014 by providing the counterparties with notice and an opportunity to object and be heard at a hearing. *See, e.g., In re Drexel Burnham Lambert*, 160 B.R. 729, 734 (S.D.N.Y. 1993) (an opportunity to present objections satisfies due process); *In re Colorado Mountain Cellars, Inc.*, 226 B.R. 244, 246 (D. Colo. 1998) (a hearing is not required to satisfy Bankruptcy Rule 9014). Furthermore, the proposed notice procedures protect the due process rights of the parties in interest without unnecessarily exposing the Debtors' estates to unwarranted administrative expenses.

### **Notice**

43. No trustee, examiner or creditors' committee has been appointed in these chapter 11 cases. The Debtors have served notice of this Motion on (a) the U.S. Trustee, (b) those creditors holding the five largest secured claims against the Debtors' estates on

a consolidated basis, (c) those creditors holding the 50 largest unsecured claims against the Debtors' estates on a consolidated basis, (d) attorneys for the administrative agents for the Debtors' proposed postpetition lenders, (e) the Internal Revenue Service, (f) the Securities and Exchange Commission, (g) the United States Environmental Protection Agency and (h) the United States Attorney's Office for the Southern District of New York.

**No Previous Request**

44. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just and proper.

Dated: New York, New York  
July 9, 2012

By: /s/ Damian S. Schaible  
Marshall S. Huebner  
Damian S. Schaible  
Brian M. Resnick  
Michelle M. McGreal

DAVIS POLK & WARDWELL LLP  
450 Lexington Avenue  
New York, New York 10017  
Telephone: (212) 450-4000  
Facsimile: (212) 607-7983

*Proposed Counsel to the Debtors  
and Debtors in Possession*

**SCHEDULE 1**  
(Debtor Entities)

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

**EXHIBIT A**

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

**In re:**

**PATRIOT COAL CORPORATION, *et al.*,**

**Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 12-[ ](\_\_\_\_)**

**(Jointly Administered)**

**INTERIM ORDER AUTHORIZING (i) DEBTORS TO PAY CERTAIN  
PREPETITION TAXES, GOVERNMENTAL ASSESSMENTS AND  
FEES AND (ii) FINANCIAL INSTITUTIONS TO HONOR  
AND PROCESS RELATED CHECKS AND TRANSFERS**

Upon the motion (the “**Motion**”)<sup>2</sup> of Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”), for an order pursuant to Bankruptcy Rule 1015(b) directing the joint administration of the Debtors’ chapter 11 cases for procedural purposes only, as more fully described in the Motion; and upon consideration of the Declaration of Mark N. Schroeder, Patriot Coal Corporation’s Senior Vice President and Chief Financial Officer, filed in support of the Debtors’ first-day pleadings; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward,

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

<sup>2</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.

Acting C.J.) as amended by Standing Order M-431, dated February 1, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion having been provided to (a) the Office of the United States Trustee for the Southern District of New York, (b) those creditors holding the five largest secured claims against the Debtors' estates on a consolidated basis, (c) those creditors holding the 50 largest unsecured claims against the Debtors' estates on a consolidated basis, (d) attorneys for the administrative agents for the Debtors' proposed postpetition lenders, (e) the Internal Revenue Service, (f) the Securities and Exchange Commission, (g) the United States Environmental Protection Agency and (h) the United States Attorney's Office for the Southern District of New York; and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion and having held a hearing with appearances of parties in interest noted in the transcript thereof (the "**Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein and the Court having determined that immediate relief is necessary to avoid irreparable harm; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor; it is

ORDERED that, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the relief requested in the Motion is hereby granted as set forth herein; and it is further

ORDERED that the Debtors are authorized, but not required, in their sole discretion to pay Covered Taxes and Fees, including but not limited to all of those Covered Taxes and Fees subsequently determined upon audit, or otherwise, to be owed for periods before the Petition Date, to the Governmental Authorities; *provided* that, prior to entry of an order granting the relief requested in the Motion on a final basis, the Debtors will not pay any prepetition Covered Taxes and Fees before the applicable due date; and it is further

ORDERED that all applicable banks and other financial institutions are hereby authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests or automated clearing house transfers evidencing amounts paid by the Debtors under this Interim Order whether presented prior to or after the Petition Date to the extent the Debtors have good funds standing to their credit with such bank or other financial institution. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions; and it is further

ORDERED that nothing in this Interim Order shall be construed as impairing the Debtors' rights to contest the validity or amount of Covered Taxes and Fees assessed by the Governmental Authorities, and all of the Debtors' rights with respect thereto are hereby reserved; and it is further

ORDERED that notwithstanding the possible applicability of Bankruptcy Rules 6003 and 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that nothing in this Interim Order authorizes the Debtors to prepay any Covered Taxes and Fees; and it is further

ORDERED that to the extent that there may be any inconsistency between the terms of the interim or final order approving the proposed debtor in possession financing, if and when entered, and this Interim Order, the terms of the interim or final order approving the proposed debtor in possession financing, as applicable, shall govern; and it is further

ORDERED that within three business days of the entry of this Interim Order, the Debtors shall serve a copy of this Interim Order and the Motion on (a) the U.S. Trustee, (b) those creditors holding the five largest secured claims against the Debtors' estates on a consolidated basis, (c) those creditors holding the 50 largest unsecured claims against the Debtors' estates on a consolidated basis, (d) attorneys for the administrative agents for the Debtors' proposed postpetition lenders, (e) the Internal Revenue Service, (f) the Securities and Exchange Commission, (g) the United States Environmental Protection Agency and (h) the United States Attorney's Office for the Southern District of New York; and it is further

ORDERED that any objection to the relief requested in the Motion on a permanent basis must, by 4:00 p.m. (prevailing Eastern Time) on \_\_\_\_\_ (the "**Objection Deadline**"), be: (a) filed with the Court and (b) actually received by (i) the U.S. Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Elisabetta G. Gasparini and Paul K. Schwartzberg, (ii) proposed counsel for the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick, (iii) attorneys for the administrative

agents for the Debtors' proposed postpetition lenders, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Margot B. Schonholtz and Ana Alfonso and (iv) attorneys for any official committee of unsecured creditors then appointed in these cases; and it is further

ORDERED that a reply to an Objection may be filed with the Court and served on or before 12:00 p.m. (prevailing Eastern Time) on the day that is at least two days before the date of the applicable hearing; and it is further

ORDERED that if timely objections are received there shall be a hearing held on \_\_\_\_\_, 2012, at \_\_\_\_\_ (prevailing Eastern Time) to consider the timely objections to the Motion; and it is further

ORDERED that if no Objections are timely filed and served as set forth herein, the Debtors shall, on or after the Objection Deadline, submit to the Court a final order substantially in the form of this Interim Order, which order shall be submitted and may be entered with no further notice or opportunity to be heard afforded any party, and the Motion shall be approved *nunc pro tunc* to the date of the commencement of these chapter 11 cases; and it is further

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

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

Dated: New York, New York

\_\_\_\_\_, 2012

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UNITED STATES BANKRUPTCY JUDGE