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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

)
) Chapter 11
)
) Case No. 15-32450 (KLP)
)
) (Jointly Administered)
)

**DEBTORS' MOTION FOR AN ORDER (A) APPROVING THE DEBTORS'
(I) KEY EMPLOYEE INCENTIVE PLAN AND (II) NON-INSIDER
RETENTION PLAN AND (B) GRANTING RELATED RELIEF**

Patriot Coal Corporation and certain of its affiliates, as debtors and debtors in possession (collectively, the "Debtors"), file this motion (this "Motion") seeking entry of an order, substantially in the form attached hereto as Exhibit A, approving the Debtors' key employee incentive plan (the "KEIP") and non-insider employee retention plan (the "Retention Plan") and granting related relief. In support of this Motion, the Debtors submit the *Declaration of Ray Dombrowski, Chief Restructuring Officer of Patriot Coal Corporation, et al., in Support of Debtors' Motion for An Order (A) Approving the Debtors' (I) Key Employee Incentive Plan and*

(II) *Non-Insider Retention Plan And (B) Granting Related Relief*, attached as Exhibit B hereto (the “Dombrowski Declaration”), and the *Declaration of Harvey L. Benenson, Managing Director and Chief Executive Officer of Lyons, Benenson & Company Inc. in Support of Debtors’ Motion for An Order (A) Approving the Debtors’ (I) Key Employee Incentive Plan and (II) Non-Insider Retention Plan And (B) Granting Related Relief*, attached as Exhibit C hereto (the “Benenson Declaration”). In further support of this Motion, the Debtors respectfully state as follows.

I. JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are sections 363(b) and 503(c) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

II. RELIEF REQUESTED

4. By this Motion, the Debtors seek entry of an order pursuant to sections 363(b) and 503 of the Bankruptcy Code: (i) approving the KEIP, (ii) approving the Retention Plan, (iii) authorizing the Debtors to implement the KEIP and the Retention Plan for the specified participants, and (iv) allowing the Debtors’ payment obligations thereunder as administrative expenses of these estates.

III. BACKGROUND¹

5. On May 12, 2015 (the “Petition Date”), each of the Debtors filed a petition with this Court under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases. On May 21, 2015, the Office of the United States Trustee for the Eastern District of Virginia (the “U.S. Trustee”) appointed the official committee of unsecured creditors in these chapter 11 cases (the “Committee”).

IV. PRELIMINARY STATEMENT

6. As a result of severe pressures on the coal industry, Patriot’s management team and critical employees, like others in the industry, have faced a number of increasingly difficult challenges beginning in the months leading up to the Petition Date and continuing to the present date. And these challenges are likely to continue or to increase further as the Debtors progress in these chapter cases towards their ultimate goal of confirming a chapter 11 plan that maximizes value for all stakeholders. As a result of the challenges that Patriot faces, the Debtors’ management team and employees have been called upon to undertake responsibilities that significantly exceed the normal terms of their employment, often leading them to work literally around the clock.

¹ A description of the Debtors’ business operations, history, corporate and capital structures, and reasons for commencing these cases are set forth in the *Declaration of Ray Dombrowski, in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 22].

7. In addition, Patriot has lost a significant amount of its workforce over the past several months, including its former Chief Executive Officer, who resigned weeks before the Petition Date, its former Chief Financial Officer, whose resignation followed shortly thereafter, and several other critical employees—from the Debtors legal, finance, risk management, and operational departments, among others—who have left voluntarily as a result of the uncertainty and challenges that Patriot is facing. By way of illustration, as of December 31, 2013, the Debtors had 170 employees in their headquarters. They now have 101 employees in their headquarters, and the reduction is almost entirely due to voluntary resignations of employees who played significant and valuable roles in the Debtors’ business operations. And employee flight risk in these chapter 11 cases is heightened due employees having little clarity regarding their post-restructuring employment status or even who the future owners of the business will be. In short, the Debtors are thinly staffed, and the very real risk of losing additional critical employees would put the Debtors in serious jeopardy of having to liquidate and forgo the ability to confirm a chapter 11 plan for the benefit of all stakeholders.

8. Accordingly, as discussed in more detail below, the Debtors, after negotiation with major constituents in these chapter 11 cases and consultation with their own advisors, including a compensation consultant, have developed the proposed Retention Plan for 47 critical non-insider employees for a total amount of \$2.88 million and the KEIP for five senior members of the management team for a total amount of \$1.75 million (subject to increases up to a cap of \$3.5 million for overachievement of the performance targets). These plans are designed specifically to incentivize Patriot’s employees to achieve the very challenging goal of confirming a chapter 11 plan as expeditiously as possible. Significantly, no payments will be made under the KEIP if the Debtors do not confirm a chapter 11 plan, and 40% of the payments owed under

the Retention Plan will not be made if the Debtors do not confirm a chapter 11 plan. Additionally, the KEIP demands that the Debtors exceed expectations with respect to cash levels set forth in the budget put in place in connection with the Debtors postpetition financing facility (the “DIP Budget,” and such facility, the “DIP Facility,” and the lenders party to the DIP Facility, the “DIP Lenders”). In short, the Retention Plan and the KEIP align the interests of the participants in both plans with those of the Debtors’ stakeholders—to maximize the value of the Debtors’ estates.

9. The Debtors have had extensive dialogue with the Committee and the DIP Lenders in development of both plans and have made modifications to the plans at the Committee’s request. The Debtors have previewed the plans with the U.S. Trustee and provided information to the U.S. Trustee in response to questions about the plan, and the Debtors are committed to further discussing any issues with the plans with all key creditor constituencies.

V. RETENTION PLAN DESCRIPTION

10. By the Motion, the Debtors seek approval of the Retention Plan for 47 of the Debtors’ non-insider employees (out of a population of approximately 780 employees, or just over 6% of the total population of the Debtors’ employees) that the Debtors have determined are essential to the Debtors’ business operations (the “Retention Plan Participants”). The total amount potentially available for payment under the Retention Plan is \$2.88 million.

11. The Debtors and their advisors have carefully selected the Retention Plan Participants, all of whom represent “flight risks,” are critical to ongoing operations or the contemplated sale processes, and/or are in departments in which there are no greater than two critical employees remaining. The Retention Participants work across various departments within the Debtors’ business, including human resources, operations, engineering, accounting, tax, finance, and legal, and play important roles in smoothly operating the Debtors’ day-to-day

business. As part of the Debtors' changing business environment and ongoing restructuring efforts, the Retention Plan Participants have been called upon to undertake additional responsibilities and expend significantly more working hours than contemplated by the normal terms of their employment. The Retention Plan Participants' additional responsibilities include, among other things, assisting with the asset sales processes, negotiating with suppliers and vendors, participating in contract assumption and rejection analysis, reviewing sale agreements and materials, preparing business plans, cash flow projections, and related budgets required under the DIP Facility, gathering and coordinating the dissemination of due diligence information, responding to discovery requests, preparing schedules and statements, assisting with the creation of the plan and disclosure statement, and complying with the various reporting requirements for debtors operating in chapter 11.

12. Given the uncertainties that accompany the chapter 11 process, the Debtors believe the Retention Plan will aid the Debtors' retention of the Retention Plan Participants, incentivizing these employees to expend the additional efforts and time necessary to maximize the value of the Debtors' assets. Indeed, the Debtors have already lost certain employees due to the uncertainty associated with these chapter 11 cases. By way of illustration, as of December 31, 2013, the Debtors had 170 employees in their headquarters. That amount is now approximately 101 employees, and the reduction is almost entirely due to voluntary resignations. And there have been additional losses of employees in the legal, finance, risk management, and operational departments, all of which have left the Debtors thinly staffed. The Debtors simply cannot afford to lose more employees.

A. Eligible Participants

13. The Retention Plan Participants have been carefully selected by the Debtors as persons who are critical to smoothly operating the Debtors' businesses in the period leading up

to consummation of a chapter 11 plan and/or the closing of potential sale transactions. Notwithstanding the fact that certain of the Retention Plan Participants have titles including words such as “director” or “manager,” none of the Retention Plan Participants is an insider (as defined in section 101(31) of the Bankruptcy Code).²

14. The Debtors believe that each of the Retention Plan Participants plays an important role in the Debtors’ restructuring efforts and that such participants possess important experience, relationships, and familiarity with the Debtors’ operations and infrastructure that would be costly and disruptive to replace. Indeed, defections among the Retention Plan Participants would cause the Debtors to incur significant costs in recruiting and attracting similarly qualified and experienced replacements, to the extent similarly qualified and experienced replacements exist and would agree to employment with a firm undertaking a sale process. Loss of any of the Retention Plan Participants would therefore negatively impact the Debtors’ business and restructuring and sale efforts. As already noted, the Debtors have already lost critical employees as a result of the uncertainty caused by these chapter 11 cases, and they cannot afford to lose more employees, who may be tempted to leave due to future uncertainty. The Debtors believe that the Retention Plan Participants represent “flight risks,” are critical to ongoing operations or the contemplated sale processes, and/or are in departments in which there are no greater than two critical employees remaining.

B. Terms of the Retention Plan

15. The Retention Plan has been tailored to incentivize the Retention Plan Participants to remain with the Debtors, and, like the KEIP, to achieve a successful restructuring

² None of the Retention Plan Participants: (a) serves as a board director of any of the Debtors, (b) is elected or appointed by a board of any of the Debtors, or (c) has a controlling interest in the Debtors or exercises sufficient authority over the Debtors so as to dictate corporate policy and the disposition of corporate assets.

pursuant to a chapter 11 plan. Specifically, 40% of the awards each Retention Plan Participant would be eligible to receive under the Retention Plan will not be payable until the effective date of the Debtors' chapter 11 plan. 15% of the awards each Retention Plan Participant would be eligible to receive under the Retention Plan will be payable at the end of each calendar month for the months of July through October, and the remaining 40% will be payable upon the effective date of the Debtors' chapter 11 plan. Importantly, payments owed to a Retention Plan Participant will be reduced by 25% in the aggregate if a Retention Plan Participant receives and accepts a job offer with a purchaser of the Debtors' assets under terms that are substantially similar to the Retention Plan Participant's then current employment with the Debtors respect to, among other things, location, level of responsibility, and compensation.

16. Additionally, to be eligible to receive 40% of the Retention Plan payment, Retention Plan Participants must be employed on the effective date of the Debtors' chapter 11 plan. However, a Retention Plan Participant who is terminated without cause and not for performance-related reasons will be eligible to receive the bonus next scheduled to be paid subsequent to their termination. Retention Plan Participants who resign voluntarily will forfeit any entitlement under the Retention Plan, and Retention Plan Participants who are terminated for cause will forfeit any entitlement under the Retention Plan and any amounts previously paid will be subject to avoidance. Amounts forfeited would be available for re-distribution to the continuing Retention Plan Participants or other employees who emerge as being worthy of receiving such payments.

17. The total aggregate payout under the Retention Plan to the Retention Plan Participants will not exceed \$2.88 million. The Retention Plan Participants have been divided into three tiers according to each participant's impact on the business of the Debtors. Tier 1

employees, which consist of three employees who are extremely vital to the Debtors' business operations, will be entitled to 70% of their base salary; Tier 2 employees, which consist of 12 of the 47 Retention Plan Participants, will be entitled to 50% of their base salary; and Tier 3 employees, which consist of the remainder of the 47 Retention Plan Participants will be entitled to 30% of their base salary. The Retention Plan will be administered by Patriot Coal Corporation's board of directors (or a committee thereof), which will make all determinations as to payments made in connection with the Retention Plan.

18. The Retention Plan is narrowly and appropriately tailored to ensure the Retention Plan Participants are properly incentivized to contribute to the Debtors' business operations and restructuring and sale efforts and maximize value for the Debtors' stakeholders free of any distraction.

VI. KEIP DESCRIPTION

19. In consultation with their advisors and negotiation with major constituents in these cases, the Debtors have identified five (5) key members of the Debtors' management team who are critical to the Debtors' efforts to confirm a chapter 11 plan successfully and expeditiously: (i) the President and Chief Executive Officer of Patriot Coal Corporation, (ii) the Executive Vice President and Chief Operating Officer of Patriot Coal Corporation, (iii) the Senior Vice President — Law & Administration and General Counsel, (iv) the Senior Vice President — Corporate Development, and (iv) the Senior Vice President and Chief Financial Officer (collectively, the "KEIP Participants"). The total amount available for payment under the KEIP is \$1.75 million, subject to certain increases for overachievement by the KEIP Participants up to a cap of \$3.5 million.

20. The Debtors' successful restructuring and confirmation of a chapter 11 plan depends upon their ability to meet numerous challenging performance goals and to negotiate

with myriad constituencies — the KEIP Participants will be at the forefront of achieving the Debtors’ successful restructuring, and the importance to the Debtors of having their commitment and undivided attention cannot be overstated.

21. To ensure these key members of the Debtors’ management team are properly incentivized to meet these significant challenges, particularly in light of the uncertainties and additional workload resulting from the Debtors’ aggressive and simultaneous efforts to market themselves for sale and seek confirmation of a chapter 11 plan, the Debtors, in consultation with their advisors (including benefits consulting firm Lyons, Benenson & Company Inc. (“LB&Co”)) and negotiation with major case constituents, have evaluated the existing compensation structure for the KEIP Participants and have determined that the total compensation for the KEIP Participants is within the range of relevant industry benchmarks. The Debtors wish to ensure the KEIP Participants are focused on achieving a successful outcome in these cases – for the benefit of all parties in interest – and wish to align the KEIP Participants’ interests with those of the Debtors’ creditors and other stakeholders during this critical period in their restructuring and sale efforts. Absent adequately incentivizing the KEIP Participants there is a real risk of the Debtors being forced to liquidate their assets. Accordingly, after consultation with their legal and financial advisors and negotiation with various constituents in these cases, and after receiving significant input from LB&Co. regarding compensation structure, the Debtors have designed and propose to implement a narrowly tailored KEIP designed to create a fair, objective, and incentive-based compensation structure for the KEIP Participants.

Terms of the KEIP

22. The KEIP is effectively self-funded by the Debtors in that amounts payable under the KEIP will only be available to the extent the Debtors use less cash than forecasted under the Debtors’ budget put in place in connection with their debtor in possession financing facility (the

“DIP Budget”). Specifically, the DIP Budget requires that the Debtors have consumed no more than \$83.885 million as of November 30, 2015 (the “Ending Operational Cash Consumed Balance”) not including fees owed to the DIP Lenders, adequate protection payments, and professional and restructuring fees. The total amount available for payment under the KEIP (the “KEIP Fund”) will be funded only with any amount of cash the Debtors have saved as of November 30, 2015³ as a result of having consumed less than the Ending Operational Cash Consumed Balance, up to a total amount of \$1.75 million. Thereafter, for performance that exceeds the Ending Operational Cash Consumed Balance by more than \$1.75 million, the KEIP Fund will be funded and increased by 10% of the amount of the overachievement, subject to a cap of a total of \$3.5 million. For example, if the Debtors consumed \$81 million as of November 30, 2015 (excluding fees owed to the DIP Lenders, adequate protection payments, and professional and restructuring fees), since the consumption would be less than the targeted \$83.885, the first dollars saved would go to fund the KEIP Fund up to \$1.75 million, which effectively, brings cash consumption to \$82.135 million. The remaining \$1.135 million is then subject to the 10% bonus amount, increasing the KEIP Fund by another \$113,500, for a total KEIP pool of \$1.8644 million. In this instance, even after the KEIP had been paid, the operational cash consumption would still be \$1 million less than anticipated.

23. The Debtors’ ability to spend less than the Ending Operational Cash Consumed Balance will be challenging. To provide the Debtors with as much time as possible to pursue all potential options, the Debtors will need to meet or exceed the requirements of the DIP Budget.

³ If the Debtors emerge before November 30, 2015, the Ending Operational Cash Consumed Balance will be adjusted accordingly by reference to the DIP Budget’s targeted cash consumption as of such date excluding fees owed to the DIP Lenders, adequate protection payments, and professional and restructuring fees.

Incentivizing the management team to preserve cash is not only helpful to the business, but an absolute necessity to a potential successful resolution of these chapter 11 cases.

24. Importantly, no payments under the KEIP will be earned or payable until the Debtors confirm a chapter 11 plan. A key element of the Debtors having the ability to confirm a chapter 11 plan will be the resolution of the Debtors' environmental and legacy liabilities, which will require the KEIP Participants to negotiate with the union and multiple state and federal agencies as well as other parties in interest. Accordingly, the KEIP will motivate the KEIP Participants in connection with those negotiations. Additionally, the KEIP Participants must be employed through the consummation date of the Debtors' chapter 11 plan to receive any payments owed under the KEIP; provided that a KEIP Participant who is terminated without cause and not for performance-related reasons will be eligible to receive a pro rata share of any award owed under the KEIP. KEIP Participants who resign voluntarily or who are terminated for cause will forfeit any entitled award under the KEIP. The KEIP will be administered by Patriot Coal Corporation's board of directors (or a committee thereof), which will make all determinations as to payments made in connection with the KEIP.

25. In summary, the KEIP is tied to the Debtors' achievements with respect to their cash levels and ability to confirm a chapter 11 plan. In this regard, the KEIP incentivizes an extremely narrow group of key employees to maximize the value of the Debtors and promptly confirm and consummate a plan. Implementation of the KEIP thus fully aligns the KEIP Participants' interests with those of the Debtors' creditors and other stakeholders. Pursuing sales of substantially all of the Debtors' assets to potential buyers necessarily involves significant uncertainty for the KEIP Participants. The Debtors believe that the KEIP will ensure that the

Debtors' key management can avoid distraction and remain focused on leading this marketing process and achieving outcomes that will benefit all of the Debtors' creditors and stakeholders.

VII. BASIS FOR RELIEF

A. Applicable Legal Standard

26. The Debtors' implementation of the KEIP is authorized under section 503 of the Bankruptcy Code. See 11 U.S.C. § 503(c)(3). Section 503(c)(3) prohibits certain transfers made to officers, managers, consultants, and others that are both outside the ordinary course of business and not justified by the facts and circumstances of the case. See id. Payments characterized as "incentive plans" have received approval under section 503(c)(3) from courts even where the key employees are officers. In re Fieldstone Mortg. Co., 427 B.R. 357, 363 (Bankr. D. Md. 2010) (distinguishing incentive and retention plans). Because the KEIP is designed to incentivize the KEIP Participants to conserve cash and to confirm a chapter 11 plan and not for the purpose of inducing insiders to remain with the Debtors' business, this Motion does not implicate section 503(c)(1) of the Bankruptcy Code. Additionally, incentive pay to senior managers is not governed by the provisions in section 503(c)(1) prohibiting retentive pay to insiders. Id.

27. The Debtors' implementation of the Retention Plan is also authorized by section 503(c)(3) of the Bankruptcy Code. Because the Retention Plan applies only to non-insiders of the Debtors, the Retention Plan does not implicate sections 503(c)(1) or 503(c)(2) of the Bankruptcy Code. The Retention Plan Participants do not exercise control over the Debtors, influence general corporate policy, or perform other executive functions.

28. Section 503(c)(3) of the Bankruptcy Code provides, in relevant part, that "there shall be neither allowed nor paid . . . other transfers or obligations that are outside the ordinary

course of business and not justified by the facts and circumstances of the case...” 11 U.S.C. § 503(c)(3).

29. Courts generally agree that the requirement of section 503(c)(3) of the Bankruptcy Code that a transaction be “justified by the facts and circumstances of the case” is the same as the business judgment standard under section 363(b) of the Bankruptcy Code.. In re Dana Corp., 358 B.R. 567, 576 (Bankr. S.D.N.Y. 2006) (“[S]ection 503(c)(3) gives the court discretion as to bonus and incentive plans, which are not primarily motivated by retention or in the nature of severance.”); In re Global Home Prods., LLC, 369 B.R. 778, 783 (Bankr. D. Del. 2007) (“If [the proposed plans are] intended to incentivize management, the analysis utilizes the more liberal business judgment review under § 363.”).

30. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], 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). Under this section, a court may authorize a debtor to use property of the estate when such use has a “sound business purpose” and when the use of the property is proposed in good faith. See In re W.A. Mallory Co., 214 B.R. 834, 836 (Bankr. E. D. Va. 1997); In re WBQ P’ship, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995).

31. Courts generally require a debtor to demonstrate that a valid business purpose exists for the use of estate property in a manner that is not in the ordinary course of business. See In re Lionel Corp., 722 F.2d 1063, 1070-71 (2d Cir. 1983). Once the debtor has articulated a valid business justification, a presumption arises that the debtor’s decision was made on an informed basis, in good faith and in the honest belief the action was in the best interest of the company. See In re Integrated Res., Inc., 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992).

Furthermore, once “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.” In re Johns-Manville Corp., 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). The business judgment rule has vitality in chapter 11 cases and shields a debtor’s management from judicial second-guessing. See Integrated Res., 147 B.R. at 656; Johns-Manville, 60 B.R. at 615-616 (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions.”) Thus, if a debtor’s actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1).

32. Courts have found that a debtor’s use of reasonable performance-based payments and other incentives for employees is a valid exercise of a debtor’s business judgment. See, e.g., In re America West Airlines, Inc., 171 B.R. 674, 678 (Bankr. D. Ariz. 1994) (noting that it is the proper use of a debtor’s business judgment to propose payments for employees who helped propel the debtor successfully through the bankruptcy process); In re Interco Inc., 128 B.R. 229, 234 (Bankr. E.D. Mo. 1991) (stating that a debtor’s business judgment was controlling in the approval of a “performance/retention program”). Many courts have approved employee payment programs as valid exercises of business judgment. See, e.g., In re Nellson Nutraceutical, Inc., 369 B.R. 787, 801 (Bankr. D. Del. 2007) (Bankruptcy Code section 503(c)(1) does not restrict incentive payments to non-insider employees); Global Home Prods. LLC, 369 B.R. at 778 (approving management incentive program for benefit of nine employees of the debtors provided that such employees fulfilled their obligations to the debtors through the closing of a sale of substantially all of the Debtors’ assets). While predominantly or purely retentive payments to insiders are expressly prohibited by the terms of section 503(c)(1), incentive payments that may

have some retentive effect are permissible so long as they motivate senior management “to produce and increase the value of the estate.” Dana Corp., 358 B.R. at 571.

33. As set forth above, the Debtors have articulated valid business reasons for implementing the KEIP and Retention Plan. Among other things, the KEIP and Retention Plan will reward employees for their significant efforts and their increased responsibilities and burdens during this sale and plan processes. Moreover, the KEIP and Retention Plan are narrowly targeted to maximize value for the Debtors’ estates and creditors. Accordingly, the Debtors believe that valid business reasons exist for the implementation of the KEIP and Retention Plan, and that the programs should be approved.

34. Courts in this district have approved plans similar to the KEIP and Retention Plan. See, e.g., In re James River Coal Company, No. 14-31848 (KRH), Docket No. 376 (Bankr. E.D. Va. June 12, 2014); In re AMF Bowling Worldwide, Inc., No. 12-36495, Docket No. 394 (Bankr. E.D. Va. Jan. 18, 2013); In re Movie Gallery, Inc., No. 10-30696 (DOT), Docket No. 1811 (Bankr. E.D. Va. Sept. 21, 2010); In re Roper Bros. Lumber Co., No. 09-38215 (KRH), Docket No. 190 (Bankr. E.D. Va. Feb. 25, 2010); In re LandAmerica Fin. Grp., Inc., No. 08-35994 (KRH), Docket No. 1639 (Bankr. E.D. Va. June 22, 2009); In re Circuit City Stores, Inc., No. 08-35653 (KRH), Docket No. 2394 (Bankr. E.D. Va. Mar. 3, 2009); In re Rowe Cos., No. 06-11142 (SSM), Docket No. 339 (Bankr. E.D. Va. Nov. 9, 2006); In re US Airways, Inc., No. 04-13819 (SSM), Docket No. 2268 (Bankr. E.D. Va. June 15, 2005); In re NTELOS, Inc., No. 03-32094 (DOT), Docket No. 328 (Bankr. E.D. Va. June 9, 2003).

B. The KEIP and the Retention Plan Sound Business Purposes

35. In determining if the structure of a compensation proposal meets the “sound business judgment” test, courts consider: (i) the relationship between the plan proposed and the results to be obtained; (ii) the relative cost of the plan; (iii) the scope of the plan; (iv) whether the

plan is consistent with industry standards; (v) the due diligence in investigating the need for a plan; and (vi) whether the debtor received independent counsel. Dana Corp., 358 B.R. at 576-77.

i. Plan Results.

36. The Debtors and their advisors developed the KEIP with the goal of motivating the KEIP Participants and aligning their incentives with those of the Debtors' creditors and other stakeholders. As such, the KEIP is narrowly focused on incentivizing the KEIP Participants, five individuals who drive the high-level operations that dictate the Debtors' financial performance and marketing efforts, to confirm a chapter 11 plan while conserving cash, which will provide tangible, meaningful benefits to the Debtors and their estates. Specifically, the KEIP is tied to the Debtors' conservation of cash measured as of November 30, 2015. Additionally, no payments will be made under the KEIP prior to the effective date of the Debtors' chapter 11 plan. Accordingly, the KEIP incentivizes the KEIP Participants to confirm a chapter 11 plan while conserving cash, which benefits all stakeholders.

37. Implementing the KEIP will limit distraction and uncertainty for the KEIP Participants and incentivize the KEIP Participants to ensure the Debtors achieve near-term operating performance and restructuring goals while simultaneously pursuing sale transactions. In leading the Debtors' restructuring efforts, the KEIP Participants have shouldered responsibilities well beyond their ordinary duties, without seeing a corresponding increase in compensation. The KEIP thus rewards the KEIP Participants for achieving strong business performance and for guiding the Debtors to a favorable outcome in the chapter 11 restructuring.

38. The Debtors also respectfully submit that implementing the Retention Plan is a valid exercise of their business judgment. The Retention Plan is aimed at retaining the Retention Plan Participants by providing them with job security and appropriate compensation, thus (a) preventing attrition before the consummation of the Debtors' restructuring and (b) aligning the

Retention Plan Participants' interests with those of the Debtors' stakeholders. Without the Retention Plan, many of the Retention Plan Participants may seek alternative career opportunities, which would impede the Debtors' ability to execute critical business and restructuring initiatives. Indeed, the Debtors have already lost certain valuable employees, and they cannot afford to lose more. Put simply, the Debtors cannot afford to lose their most talented and valuable management-level corporate employees, who each possess unique and vital institutional knowledge that is critical to executing day-to-day business operations during this crucial time. If the Retention Plan Participants were to resign, the value and benefits of these employees' experience would be lost and would cause the Debtors to incur significant costs in recruiting and attracting similarly qualified replacements (if qualified replacements even exist). The Debtors' ability to find replacements for these employees would be extremely challenging, if not impossible, since a new employee would have to agree to employment with a firm undertaking a sale process. And relying on newly hired employees to perform the Retention Plan Participants' crucial functions would severely hinder the Debtors' operations and training. Utilizing new employees would also come at a large expense, both in terms of actual cost and unquantifiable damage to the Debtors' business.

ii. Cost.

39. Courts take a holistic view of compensation packages and their relative costs. Dana Corp., 358 B.R. at 571. Factors for consideration include the cost of the plan relative to revenue, and relative to other plans in the relevant industry. See In re Borders Group, Inc., 453 B.R. 459, 476 (Bankr. S.D.N.Y. 2011).

40. Here, the maximum possible aggregate payout under the proposed Retention Plan is \$2.88 million, 40% of which will only be earned if the Debtors achieve the challenging goal of confirming a chapter 11 plan. As set forth in the Dombrowski Declaration and the Benenson

Declaration, the Debtors have determined that the costs associated with such compensation are more than justified by the benefits that the Debtors will realize by creating appropriate incentives for the KEIP Participants and Retention Plan Participants.

iii. Scope.

41. The scope of an incentive plan under section 503(c)(3) of the Bankruptcy Code may be limited to a small group of key management, particularly where they are the group “that will effectively guide the [Debtor] through bankruptcy.” Borders Group, Inc., 453 B.R. at 475-6. Here, the Debtors identified a narrow group of individuals who are critical to ensuring the Debtors achieve a successful outcome in these cases. The KEIP and the Retention Plan will motivate and reward the KEIP Participants and Retention Plan Participants for their significant efforts and the increased demands placed upon them in connection with their pursuit of plan confirmation and potential sale transactions. Additionally, the KEIP is designed to maximize value for the Debtor’s estates and stakeholders, and payments will only be made if the Debtors confirm a chapter 11 plan. The KEIP is fair and reasonable. Moreover, the total potential payout the Debtors may award pursuant to the KEIP and the Retention Plan is reasonable in the context of the Debtors’ cases, as well as the value the Debtors anticipate preserving and obtaining as a result of the KEIP Participants’ and Retention Plan Participants’ efforts.

42. In addition, the scope of the Retention Plan is reasonable and appropriate as it applies only to those non-insider employees considered vital to performing a wide range of business functions on a day-to-day basis. Furthermore, the Retention Plan’s modest expense is reasonable in light of the size of the Debtors’ business and the Retention Plan Participants’ base salaries.

43. For the foregoing reasons, in consideration of the facts and circumstances of these cases, implementation of the Retention Plan is an exercise of the Debtors’ sound business

judgment and would be in the best interests of the Debtors, their estates, employees, and stakeholders.

iv. Consistent with Industry.

44. As discussed in the Benenson Declaration, the Debtors have taken great care to institute a KEIP and the Retention Plan in line with industry standards. The Debtors retained LB&Co. to assist the Debtors with the design and scope of a management incentive plan that would appropriately align the interests of the KEIP Participants with the Debtors' restructuring and operational goals.

45. To evaluate an appropriate compensation structure for the KEIP Participants, LB&Co. gathered external market compensation data from several survey sources, encompassing a representative database of compensation information for the Debtors' industry and labor market of executives. LB&Co. determined that existing overall compensation for the KEIP Participants fell below applicable benchmarks. LB&Co. determined, however, that base salaries plus the potential KEIP payout for the KEIP Participants would be within the appropriate range of total compensation for the Debtors' industry, particularly considering the additional duties and uncertainties faced by the KEIP Participants and the challenging goals necessary to achieve the KEIP award. Accordingly, the KEIP provides for compensation commensurate with the KEIP Participants' positions, while also appropriately incentivizing the KEIP Participants to confirm a chapter 11 plan that will benefit the Debtors' creditors and other stakeholders. The Retention Plan is also consistent with industry compensation standards.

v. Due Diligence.

46. Because of the milestones imposed by the DIP Facility and the Bidding Procedures (the “Bidding Procedures”),⁴ the Debtors believe there is an urgent need to act quickly to align the interests of the Debtors, the KEIP Participants, the Retention Plan Participants, and the Debtors’ creditors and other stakeholders. The Debtors have proposed the KEIP and the Retention Plan after consultation with LB&Co. and after careful consideration and discussion. In addition, the KEIP relies upon significant input from the Debtors’ legal and financial advisors, as well as targets established under the DIP Facility. Prior to filing this Motion, the Debtors consulted with their advisors and negotiated with the Committee, the DIP Lenders, and the U.S. Trustee. The Debtors are continuing to discuss the plans with the Committee, the DIP Lenders, and the U.S. Trustee. In sum, both the KEIP and the Retention Plan properly incentivize management to perform in the interests of the Debtors and their estates, including creditors and other stakeholders.

vi. Independent Counsel.

47. The involvement of independent professional advice in the formulation of a key employee incentive program weighs in favor of the program being approved. See, e.g., In re Velo Holdings, Inc., 472 B.R. 201, 213 (Bankr. S.D.N.Y. 2012) (approving an incentive program developed by independent financial advisors); In re Dewey & Leboeuf LLP, 2012 Bankr. LEXIS 3484, *16-17 (Bankr. S.D.N.Y. July 30, 2012) (approving an incentive program developed by debtor’s counsel and CRO). In this case, the Debtors employed the benefits consulting firm LB&Co. in order to evaluate a potential incentive program. The Debtors’ legal counsel and

⁴ On June 25, 2015, the Court entered the *Order (A) Approving Bidding Procedures and Bid Protections In Connection with the Sales of Certain of the Debtors’ Assets, (B) Approving the Form and Manner of Notice, (C) Scheduling Auctions and a Sale Hearing, (D) Approving Procedures for the Assumption and Assignment of Contracts, and (E) Granting Related Relief* [Docket No. 406].

financial advisors played a significant role in developing the KEIP. The active involvement of the Debtors' advisors and the selection of objective targets in developing the KEIP serves to ensure it appropriately and fairly incentivizes the KEIP Participants.

C. The KEIP is Consistent with Previously Approved Key Employee Incentive Plans

48. The KEIP is consistent with other programs of its type that have been approved by courts in cases following the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Many courts have approved of incentive programs that reward payments based on achieving performance thresholds and restructuring milestones. See, e.g., Dana Corp., 358 B.R. at 583 (approving an incentive program based on cutting costs and maximizing EBITDAR, despite not reaching past years' EBITDAR levels); Borders Group, Inc., 453 B.R. at 472 (approving an incentive program based on cost reductions, increases in the distribution to unsecured creditors, and speed in exiting bankruptcy); In re Mesa Air Group, Inc., 2010 Bankr. LEXIS 3334, 2-3 (Bankr. S.D.N.Y. Sept. 24, 2010) (approving an incentive program based on maintaining flight schedules and improving financial performance).

49. Courts regularly approve of incentive programs with graduated cash rewards. See, e.g., Velo Holdings, Inc., 472 B.R. at 210-211 (approving an incentive program for insiders based on meeting the terms of a DIP loan and selling businesses to third parties); In re Nobex Corp., 2006 Bankr. LEXIS 417 (Bankr. D. Del. Jan. 19, 2006) (approving sale-related incentive pay for insiders); Dewey & Leboeuf LLP, 2012 Bankr. LEXIS 3484 at *16-17 (approving an incentive plan linking payments to collection on receivables). The distinguishing characteristic of an appropriate KEIP is motivation: "when a plan is designed to motivate employees to achieve specified performance goals, it is primarily incentivizing, and thus not subject to section 503(c)(1)." In re Residential Capital, LLC, 478 B.R. 154, 172 (Bankr. S.D.N.Y. 2012).

50. In this case, the Debtors' proposed KEIP has no guaranteed payments to the KEIP Participants. The KEIP Participants are eligible only if the Debtors confirm a chapter 11 plan, and funds will only be available for the KEIP Fund to the extent the Debtors exceed the Ending Operational Cash Consumed Balance. Accordingly, the Debtors have a "sound business purpose" for, and have properly exercised their business judgment in developing, the KEIP. In so doing, they have satisfied the standards of section 363(b) and the "facts and circumstances" test set forth in section 503(c)(3) of the Bankruptcy Code.

NOTICE

51. The Debtors will provide notice of this Motion to: (a) the U.S. Trustee; (b) the administrative agents for the Debtors' prepetition credit facilities; (c) the indenture trustee for the Debtors' prepetition notes; (d) counsel for each of the foregoing referenced in clauses (b) and (c); (e) counsel to lenders for the debtor in possession facility; (f) those creditors holding the 30 largest unsecured claims against the Debtors' estates on a consolidated basis; (g) the Internal Revenue Service; (h) the United States Environmental Protection Agency, (i) the state attorneys general for states in which the Debtors conduct business; (j) the Office of the United States Attorney for the Eastern District of Virginia; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other of further notice need be given.

WAIVER OF BANKRUPTCY RULE 6004(H)

52. To implement the foregoing successfully, the Debtors seek a waiver of the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

NO PRIOR REQUEST

53. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A, (a) approving and authorizing the KEIP and the Retention Plan, (b) authorizing the Debtors to make payments to the participating employees under the KEIP and the Retention Plan, (c) granting administrative expense priority status to all payment obligations of the Debtors under the KEIP and the Retention Plan, and (d) granting such other relief as is just and proper.

Dated: July 3, 2015
Richmond, Virginia

/s/ Michael A. Condyles

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*Counsel for the
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EXHIBIT A

Proposed Order

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*Counsel for the Debtors and
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:)
) Chapter 11
)
PATRIOT COAL CORPORATION, <i>et al.</i> ,) Case No. 15-32450 (KLP)
)
Debtors.) (Jointly Administered)
)

**ORDER (A) APPROVING THE DEBTORS' (I) KEY
EMPLOYEE INCENTIVE PLAN AND (II) NON-INSIDER
RETENTION PLAN AND (B) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")¹ of Patriot Coal Corporation and certain of its affiliates, as debtors and debtors in possession (collectively, the "Debtors"), for the entry of an order (this "Order"), under sections 363(b) and 503(c)(3) of the Bankruptcy Code, (a) approving and authorizing the Debtors' proposed key employee incentive plan (the "KEIP") and non-insider employee retention plan ("Retention Plan") (b) authorizing the Debtors to make payments to certain management employees under the KEIP and to certain non-insider employees under the

¹ Capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.

Retention Plan, (c) granting administrative expense priority status to all payment obligations of the Debtors under the KEIP and the Retention Plan, and (d) granting related relief; all as more fully set forth in the Motion; and the Court having considered the Dombrowski Declaration and the Benenson Declaration and the Court having jurisdiction to consider this Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and a hearing having been held to consider the relief requested in the Motion (the “Hearing”); and upon consideration of the record of the Hearing, and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest, and that the legal and factual bases set forth in the Motion and the Dombrowski Declaration and the Benenson Declaration and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted.
2. The KEIP and the Retention Plan are approved in their entirety.
3. The Debtors are authorized to take all actions necessary to implement the KEIP and the Retention Plan on the terms and conditions set forth in the Motion.
4. Any and all payment obligations of the Debtors under the KEIP and the Retention Plan shall constitute administrative expenses of the estates.

5. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules for the Eastern District of Virginia are satisfied by such notice.

6. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated:
Richmond, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ Michael A. Condyles

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Debtors in Possession

CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/Michael A. Condyles

EXHIBIT B

Dombrowski Declaration

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*Counsel for the Debtors and
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

_____)	
In re:)	Chapter 11
)	
PATRIOT COAL CORPORATION, <i>et al.</i> ,)	Case No. 15-32450 (KLP)
)	
Debtors.)	Jointly Administered
_____)	

**DECLARATION OF RAY DOMBROWSKI IN SUPPORT
OF THE DEBTORS' MOTION FOR ENTRY OF AN
ORDER (A) APPROVING THE DEBTORS' (I) KEY EMPLOYEE
INCENTIVE PLAN AND (II) NON-INSIDER RETENTION
PLAN AND (B) GRANTING RELATED RELIEF**

I, Ray Dombrowski, declare as follows under penalty of perjury under 28 U.S.C. § 1746:

1. I serve as the Chief Restructuring Officer of Patriot Coal Corporation and certain of its affiliates, as debtors and debtors in possession (collectively, the "Debtors"). I am

intimately familiar with the day-to-day operations, business affairs, financial performance, and restructuring efforts of the Debtors.

2. I submit this declaration to support the relief requested in the *Debtors' Motion for Entry of an Order (A) Approving the Debtors' (I) Key Employee Incentive Plan and (II) Key Employee Retention Plan and (B) Granting Related Relief* (the "Motion").² Unless otherwise indicated, all facts set forth in this declaration are based upon (a) my personal knowledge of the Debtors' current operations and financial performance, (b) information learned from my review of relevant documents and (c) information I have received from members of the Debtors' management or advisors. I am not a participant in either the Debtors' key employee incentive plan (the "KEIP") or the Debtors' non-insider employee retention plan (the "Retention Plan"), and I will receive no payments under either plan.

3. I am authorized to submit this declaration on behalf of the Debtors, and, if I were called upon to testify, I could and would testify competently to the facts set forth herein.

Importance of the KEIP Participants and the Retention Plan Participants

4. I believe the Debtors' senior management team—and specifically, the five KEIP Participants—play an indispensable role in the performance of the business and will drive the overall outcome of the potential sale transactions and whether and when the Debtors will confirm a chapter 11 plan. I also believe it is essential that the Debtors retain approximately 47 non-insider employees (the "Retention Plan Participants") that the Debtors have determined are vital to the Debtors' business and restructuring efforts. I believe that absent adequately incentivizing the KEIP Participants and the Retention Plan Participants there is a significant risk of the Debtors being forced to liquidate their assets. Accordingly, I believe the Debtors have an

² I have reviewed the Motion. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Motion.

immediate need to (a) implement the KEIP and provide incentive opportunities that will enable the Debtors to achieve their near-term business and restructuring goals and (b) implement the Retention Plan to retain the Retention Plan Participants by providing them with job security and appropriate compensation.

Overview and Necessity of the KEIP

5. The KEIP Participants have worked around the clock (sometimes literally), shouldering responsibilities that are well above and beyond their day-to-day duties outside of chapter 11. On an extremely short timeline, the KEIP Participants have, among other things, been called upon to respond to myriad complex issues to ensure the continued viability of their businesses, including negotiating the debtor in possession financing facility and the cash flow projections and required budgets related thereto, responding to and communicating with their numerous creditors including the Debtors' valuable trade partners, expending significant time and resources complying with bankruptcy-related reporting obligations, responding to discovery requests, and formulating and negotiating an asset purchase agreement with their stalking horse bidder. In addition, the KEIP Participants, with the assistance of their advisors, are in the process of conducting an extensive marketing process in an effort to determine whether an alternative transaction may provide more value to their estates than the transaction contemplated with the stalking horse bidder.

6. At the same time, the KEIP Participants, consisting of those employees that have the greatest ability to influence the Debtors' financial performance, have little clarity regarding their post-restructuring employment status or even who the future owners of the business will be. These employees have already experienced dramatically increased workloads as a result of operating in chapter 11 and the Debtors' related restructuring efforts. As a result, I believe there

is an urgent need to act now to appropriately align the interests of the Debtors, the KEIP Participants, and the Debtors' stakeholders.

7. Recognizing that achieving a successful restructuring would require appropriately incentivizing the Debtors' senior management, the Debtors retained LB&Co. to assist the Debtors' management and the board of directors of Patriot Coal Corporation in designing a management incentive plan to provide employees instrumental to the success of the Debtors' restructuring efforts and operational performance with appropriate compensation.

8. I am not a participant in the KEIP, and I played a pivotal role in formulating and negotiating its terms on behalf of the Debtors. I believe that the development of an effective management incentive plan is essential under the circumstances to improve the Debtors' financial and operational performance and achieve a value-maximizing restructuring on an accelerated timeline, and I believe that the KEIP is an effective plan in this regard.

9. The Debtors, in consultation with LB&Co. and the Debtors' other advisers, carefully considered compensation components that would appropriately incentivize and reward employees for maximizing value while ensuring that the terms of any proposed incentive plan were competitive and market-driven. Specifically, the Debtors, in consultation with LB&Co. and the Debtors' other advisers, and through discussions with the DIP Lenders and the Committee, structured the KEIP to reward the Debtors only to the extent they have cash levels that exceed the Ending Operational Cash Consumed Balance and only to the extent the Debtors confirm a chapter 11 plan.

10. The Debtors have had extensive dialogue with the Committee and the DIP Lenders in development of both plans and have made modifications to the plans at the request of the Committee. The Debtors have also previewed the plans with the U.S. Trustee and provided

information to the U.S. Trustee in response to questions about the plans. The Debtors are committed to further discussing any issues with the plans with all key creditor constituencies.

11. The KEIP is effectively self-funded by the Debtors in that amounts payable under the KEIP will only be available to the extent the Debtors use less cash than forecasted under the Debtors' budget put in place in connection with their debtor in possession financing facility (the "DIP Budget"). Specifically, the DIP Budget requires that the Debtors have consumed no more than \$83.885 million as of November 30, 2015 (the "Ending Operational Cash Consumed Balance") not including fees owed to the DIP Lenders, adequate protection payments, and professional and restructuring fees. The total amount available for payment under the KEIP (the "KEIP Fund") will be funded only with any amount of cash the Debtors have saved as of November 30, 2015³ as a result of having consumed less than the Ending Operational Cash Consumed Balance, up to a total amount of \$1.75 million. Thereafter, for performance that exceeds the Ending Operational Cash Consumed Balance by more than \$1.75 million, the KEIP Fund will be funded and increased by 10% of the amount of the overachievement, subject to a cap of a total of \$3.5 million. For example, if the Debtors consumed \$81 million as of November 30, 2015 (excluding fees owed to the DIP Lenders, adequate protection payments, and professional and restructuring fees), since the consumption would be less than the targeted \$83.885, the first dollars saved would go to fund the KEIP Fund up to \$1.75 million, which effectively, brings cash consumption to \$82.135 million. The remaining \$1.135 million is then subject to the 10% bonus amount, increasing the KEIP Fund by another \$113,500, for a total

³ If the Debtors emerge before November 30, 2015, the Ending Operational Cash Consumed Balance will be adjusted accordingly by reference to the DIP Budget's targeted cash consumption as of such date excluding fees owed to the DIP Lenders, adequate protection payments, and professional and restructuring fees.

KEIP pool of \$1.8644 million. In this instance, even after the KEIP had been paid, the operational cash consumption would still be \$1 million less than anticipated.

12. The Debtors' ability to spend less than the Ending Operational Cash Consumed Balance will be challenging. To provide the Debtors with as much time as possible to pursue all potential options, the Debtors will need to meet or exceed the DIP Budget. Incentivizing the management team to preserve cash is not only helpful to the business, but an absolute necessity to a potential successful resolution of these chapter 11 cases.

13. Importantly, no payments under the KEIP will be earned or payable until the Debtors confirm a chapter 11 plan. A key element of the Debtors having the ability to confirm a chapter 11 plan will be the resolution of the Debtors' environmental and legacy liabilities, which will require the KEIP Participants to negotiate with the union and multiple state and federal agencies as well as other parties in interest. Accordingly, the KEIP will incentivize the KEIP Participants in connection with those negotiations. In light of the complexities associated with these chapter 11 cases, the challenging environment for coal companies, and the variety and at times diverging interests of the Debtors' stakeholders, confirming a chapter 11 plan will be a challenge for the Debtors. Additionally, the KEIP Participants must be employed through the consummation date of the Debtors' chapter 11 plan to receive any payments owed under the KEIP; provided that a KEIP Participant who is terminated without cause and not for performance-related reasons will be eligible to receive a pro rata share of any award owed under the KEIP. KEIP Participants who resign voluntarily or who are terminated for cause will forfeit any entitled award under the KEIP.

14. Accordingly, I believe the KEIP recognizes the value-preserving benefits of an expeditious and coordinated trip through chapter 11. The aggressive plan consummation targets

are consistent with, and directly support the achievement of, the Debtors' goal to consummate a value-maximizing restructuring transaction. I also believe providing such targeted incentives helps maximize the likelihood that the Debtors will adhere to their desired accelerated timeline for the chapter 11 cases. In addition, I believe consummating a plan within the short timeframe provided by the KEIP is critical to the Debtors' financial restructuring and important to their maintaining a competitive, successful business. Indeed, I believe the Debtors' timely consummation of a plan will allow their creditors to more quickly realize value and receive recoveries accorded them under such plan.

15. Because of the milestones imposed by the DIP Facility and the Bidding Procedures, I believe there is an urgent need to act quickly to align the interests of the Debtors, the KEIP Participants, the Retention Plan Participants, and the Debtors' creditors and other stakeholders. Tying the KEIP to the Debtors' cash levels aligns those interests. I also believe the targets set forth in the KEIP are reasonable, appropriate and necessary to incentivize the KEIP Participants to achieve targeted cash levels and to confirm a chapter 11 plan expeditiously for the benefit of all stakeholders.

16. In summary, I believe that the payments contemplated under the KEIP are reasonable and will adequately and fairly incentivize the KEIP Participants. The Debtors, in consultation with LB&Co. and their other advisors, conducted extensive due diligence and invested a great deal of thought into the best way to structure the KEIP to ensure that it is competitive, market-based, and, above all, effective.

Overview and Necessity of the Retention Plan

17. As part of the Debtors' changing business environment and ongoing restructuring efforts, the Retention Plan Participants, which consist of 47 of the Debtors' non-insider employees who are vital to the Debtors' business and restructuring, have been called upon to

undertake additional responsibilities and expend significantly more working-hours than contemplated by the normal terms of their employment. The Retention Plan Participants' additional responsibilities include, among other things, assisting with the asset sales processes, negotiating with suppliers and vendors, participating in contract assumption and rejection analysis, reviewing sale solicitation materials, preparing business plans, cash flow projections, and related budgets required under the DIP Facility, gathering and coordinating the dissemination of due diligence information, responding to discovery requests, preparing schedules and statements, assisting with the creation of the plan and disclosure statement, and complying with the various reporting requirements for debtors operating in chapter 11.

18. The Retention Plan Participants have been carefully selected by certain members of the KEIP Participants as persons who are critical to maximizing the value of the Debtors' assets leading up to consummation of the Debtors' restructuring. The Retention Plan Participants work across various departments within the Debtors' business, including human resources, operations, engineering, accounting, tax, finance, and legal, and play important roles in smoothly operating the Debtors' day-to-day business. Though work performed by the Retention Plan Participants is integral to the Debtors' businesses, none of the Retention Plan Participants have a degree of control over the Debtors such that they can be considered a "person in control." Moreover, none of the Participants are insiders as defined in section 101(31) of the Bankruptcy Code; no Retention Plan Participant falls into any of the categories defined therein.

19. I believe that each of the Retention Plan Participants is necessary to the Debtors' restructuring efforts and that such participants possess important experience, relationships, and familiarity with the Debtors' operations and infrastructure that would be incredibly costly to replace. The risk of attrition is very real as evidenced by the fact that the Debtors have already

lost valuable employees as a result of the uncertainty caused by these chapter 11 cases. As of December 31, 2013, the Debtors had 170 employees in their headquarters. That amount is now approximately 101 employees, and the reduction is almost entirely due to voluntary resignations. There have been additional losses of employees in the legal, finance, risk management, and operational departments, leaving the Debtors thinly staffed. Employee flight risk in these chapter 11 cases is heightened due to the uncertainty of future employment as a result of the Debtors' contemplated sales. The Debtors simply cannot afford to lose more employees. Indeed, defections among the Retention Plan Participants would cause the Debtors to incur significant costs in recruiting and attracting similarly qualified replacements, and there is a real risk that similarly qualified replacements may not exist, especially since a new employee would be agreeing to join a firm undertaking a sale process. The Retention Plan Participants represent "flight risks," are critical to ongoing operations or the contemplated sale processes, and/or are in departments in which there are no greater than two critical employees remaining. Loss of any of the Retention Plan Participants would therefore likely negatively impact the value of the Debtors' assets. Because the Retention Plan Participants provide essential services to the Debtors that are necessary both during and after the Debtors' restructuring, I believe the Retention Plan is necessary and appropriate to improve morale, prevent attrition and maximize enterprise value.

20. The total aggregate payout under the Retention Plan to the Retention Plan Participants will be no more than \$2.88 million. The Retention Plan Participants have been divided into three "tiers" according to the impact the Retention Participants have on the Debtors' business. Tier 1 employees, which consist of three of the most vital Retention Plan Participants, will be entitled to 70% of their base salary; Tier 2 employees, which consist of 12 of the 47

Retention Plan Participants, will be entitled to 50% of their base salary; and Tier 3 employees, which consist of the remainder of the 47 Retention Plan Participants will be entitled to 30% of their base salary. 15% of the awards each Retention Plan Participant would be eligible to receive under the Retention Plan will be payable at the end of each calendar month for the months of July through October, and the remaining 40% will be payable upon the effective date of the Debtors' chapter 11 plan. Importantly, payments owed to a Retention Plan Participant will be reduced by 25% in the aggregate if a Retention Plan Participant receives and accepts a job offer with a purchaser of the Debtors' assets under terms that are substantially similar to the Retention Plan Participant's then current employment with the Debtors respect to, among other things, location, level of responsibility, and compensation.

21. I believe the Retention Plan is necessary to maintain employee focus and morale and complete a successful restructuring. The Retention Plan Participants possess indispensable institutional knowledge, experience and relationships and have been identified as critical to the Debtors' operations and a successful restructuring. I also believe that the Retention Plan payments are reasonable, fully warranted and necessary to the success of these chapter 11 cases. The payments contemplated by the Retention Plan will be key to preserving and bolstering employee morale and loyalty at a time when employee support is critical and certain employees may seek alternative employment, perhaps with the Debtors' competitors. The loss of valuable employees, with the resulting loss of institutional knowledge and the need to identify and recruit new employees, would be distracting and costly at this critical juncture.

22. Furthermore, the amount of the payments under the Retention Plan is, in the aggregate, modest in comparison to the expected benefits making these payments will afford the

Debtors. Indeed, the bonus payments on an individual basis are relatively de minimis, but are significant to the Retention Plan Participants.

23. For all of these reasons, I believe that approving the Retention Plan and the payments thereunder will benefit the Debtors' estates and their creditors by allowing the Debtors' business operations to continue without interruption and encouraging their continued participation in the Debtors' restructuring efforts.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated this 3rd of July 2015

By: /s/ Ray Dombrowski

Raymond Edward Dombrowski, Jr.
Chief Restructuring Officer

EXHIBIT C

Benenson Declaration

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

_____)	
In re:)	Chapter 11
)	
PATRIOT COAL CORPORATION, <i>et al.</i> ,)	Case No. 15-32450 (KLP)
)	
Debtors.)	Jointly Administered
_____)	

**DECLARATION OF HARVEY L. BENENSON IN SUPPORT
OF THE DEBTORS' MOTION FOR ENTRY OF AN
ORDER (A) APPROVING THE DEBTORS' (I) KEY
EMPLOYEE INCENTIVE PLAN AND (II) NON-INSIDER
RETENTION PLAN AND (B) GRANTING RELATED RELIEF**

I, Harvey L. Benenson, declare as follows under penalty of perjury under 28 U.S.C.
§ 1746:

1. I submit this declaration (this "Declaration") to support the relief requested in the
Debtors' Motion for Entry of an Order (A) Approving the Debtors' (I) Key Employee Incentive

Plan and (II) Key Employee Retention Plan and (B) Granting Related Relief (the “Motion”).²

Unless otherwise indicated, all facts set forth in this Declaration are based upon (a) my personal knowledge, (b) information learned from my review of relevant documents, (c) information learned from my research into market practices for similar companies and for companies in chapter 11, and (d) information I have received from members of the Debtors’ management and the Debtors’ other advisors. I am authorized to submit this declaration on behalf of the Debtors, and, if I were called upon to testify, I could and would testify competently to the facts set forth herein.

Qualifications

1. From January 1, 1988 through the present, I have been, and continue as, a Managing Director and Chief Executive Officer of Lyons, Benenson & Company Inc. (“LB&Co.”), which is located at 777 Third Avenue, New York, New York 10017. LB&Co. was formed in 1988 by alumni of Cresap, McCormick and Paget Inc., the distinguished management consulting firm that merged into Towers Perrin. LB&Co.’s practice today is largely in the areas of executive compensation, corporate governance, human resources management and organization planning. The firm’s work is aimed at assisting clients in achieving and sustaining significant improvements in performance through enhancing their ability to attract, retain, motivate and reward the executives and professionals who are needed to implement and execute strategic and operational plans and achieve exemplary results.

2. As compensation consultants, the firm provides advice and counsel to directors and compensation committee members in evaluating, analyzing and structuring compensation programs for executives and directors, ensuring that the all such programs are properly aligned

² I have reviewed the Motion. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Motion.

with the business strategies and that each compensation element is reasonable, competitive, equitable, performance-oriented, and in the best interests of shareholders. LB&Co. provides similar assistance to compensation committees in their deliberations on new or revised proposals put forward by management. The firm also counsels directors and compensation committee members on the absolute levels of compensation for each of the top executives and assists committees as they consider adjustments to incentive plan goals, performance measures and, ultimately, performance results. We also assist companies in designing compensation arrangements for independent directors.

3. LB&Co.'s consulting in executive compensation and governance is typically undertaken on behalf of each client's board of directors, steering committee or its compensation committee. In order to maintain the firm's standing as an independent consultant, once engaged by a client, LB&Co. will not conduct any other consulting assignments for that client without authorization by the board of directors or the compensation committee, thus effectively eliminating any potential conflicts of interest. While engaged by boards of directors, steering committees and compensation committees, LB&Co. works collaboratively with management to ensure a commonality of purpose and direction on all projects

4. I have worked in executive compensation consulting for 41 years. I hold an A.B. degree from the University of Illinois at Urbana-Champaign, an M.P.A. degree from New York University, an M.B.A. degree from Cornell University and am pursuing a Master of Legal Studies degree at Washington University in St. Louis School of Law. Since entering the field of management consulting in 1974, I have consulted a wide variety of companies on matters related to base salaries, annual and long-term incentive compensation design, planning and administration, director compensation, incentive plan performance criteria, equity ownership

guidelines and holding requirements, among other matters related to compensation and the disclosure thereof. As consultant to boards of directors, compensation committees and steering committees, I regularly advise and assist clients in negotiating employment and separation agreements and in setting compensation and governance related policies.

5. Before founding LB&Co. in 1988, I was a Director and Chief Operating Partner of Ayers, Whitmore & Company Inc., a general management consulting firm where I also headed the Organization and Human Resources practice, from June 1983 through December 1987. From January 2, 1983 through May 31, 1983, I was a Principal of Towers Perrin, predecessor to Towers Watson, a worldwide compensation and benefits consulting firm. From September 30, 1974 through December 31, 1983, I was a Senior Associate and then Principal of Cresap, McCormick and Paget Inc., then an international management consulting firm. I have served as compensation consultant on several restructurings in and out of Chapter 11 including, Altegrity Inc., Blockbuster Inc., C&D Technologies, Cengage Learning, Contech Engineered Solutions, Edmentum, Hayes Lemmerz International, Houghton Mifflin Harcourt, MGM Holdings, OSG Shipping, and Select Staffing.

Development of the KEIP and KEIP Overview

6. From January 2014 through July 2014, LB&Co. and I served as compensation consultants to the Compensation Committee of the Board of Directors of Patriot Coal Corporation immediately following its emergence from its previous chapter 11 filing. The principal elements of the key executive compensation program at that time comprised base salaries, annual incentive compensation and long-term incentives in the form of restricted notes and warrants. The estimated total direct compensation (base salaries plus target annual and long-term incentives) for the key executives fell within the range of competitive practice.

7. In May 2015, the Debtor re-engaged LB&Co. to assist in the development of an incentive plan to motivate the key management team to continue to perform and to achieve a timely restructuring. In connection with this process, I have consulted with the Debtors and their advisors regarding the executive compensation structure and the implementation of the Debtor's proposed Key Executive Incentive Plan ("KEIP"). With the assistance of members of my firm and other advisors to the Debtors, I have also collected and analyzed data on incentive plans of comparable companies in comparable bankruptcy situations to gain a clear understanding of the typical market practice.

8. In developing the KEIP, I worked with the Debtors and other advisors to provide counsel regarding typical incentive plan design. In designing the KEIP, we focused on the most critical factors to facilitate a smooth and speedy Chapter 11 restructuring. I sought to create a KEIP design that would motivate five key participating executives to (a) achieve the requirements of the DIP cash budget exclusive of items beyond their control plus additional cash sufficient to fund the KEIP, and (b) achieve confirmation of a chapter 11 plan. The KEIP has been structured such that payments will not be made until the Debtors confirm a chapter 11 plan.

9. The KEIP is effectively self-funded by the Debtors in that amounts payable under the KEIP will only be available to the extent the Debtors use less cash than forecasted under the Debtors' budget put in place in connection with their debtor in possession financing facility (the "DIP Budget"). Specifically, the DIP Budget requires that the Debtors have consumed no more than \$83.885 million as of November 30, 2015 (the "Ending Operational Cash Consumed Balance") not including fees owed to the DIP Lenders, adequate protection payments, and professional and restructuring fees. The total amount available for payment under the KEIP (the "KEIP Fund") will be funded only with any amount of cash the Debtors have saved as of

November 30, 2015³ as a result of having consumed less than the Ending Operational Cash Consumed Balance, up to a total amount of \$1.75 million. Thereafter, for performance that exceeds the Ending Operational Cash Consumed Balance by more than \$1.75 million, the KEIP Fund will be funded and increased by 10% of the amount of the overachievement, subject to a cap of a total of \$3.5 million. For example, if the Debtors consumed \$81 million as of November 30, 2015 (excluding fees owed to the DIP Lenders, adequate protection payments, and professional and restructuring fees), since the consumption would be less than the targeted \$83.885, the first dollars saved would go to fund the KEIP Fund up to \$1.75 million, which effectively, brings cash consumption to \$82.135 million. The remaining \$1.135 million is then subject to the 10% bonus amount, increasing the KEIP Fund by another \$113,500, for a total KEIP pool of \$1.8644 million. In this instance, even after the KEIP had been paid, the operational cash consumption would still be \$1 million less than anticipated.

LB&Co.'s Independent Review of the Reasonableness of the KEIP

10. LB&Co. has discussed the Debtor's operational history and challenges with the Debtors and their advisors. We have a full understanding of the Debtors' key executive compensation arrangements and their recent performance. We are aware that regular annual incentives have not been earned recently and there is currently highly uncertain value in the restricted notes and warrants held by the key executives that represented their long-term incentive opportunities.

11. While the estimated total direct compensation of each of the key executive participants fell within a range of competitive practice for comparable positions, the absence of

³ If the Debtors emerge before November 30, 2015, the Ending Operational Cash Consumed Balance will be adjusted accordingly by reference to the DIP Budget's targeted cash consumption as of such date excluding fees owed to the DIP Lenders, adequate protection payments, and professional and restructuring fees.

actual annual incentive payments and long-term incentive value place the actual total direct compensation of each key executive well below the competitive medians. The KEIP as structured creates the incentive for the key executives to perform and achieve the desired goals and also works to close the gap between the executives' total compensation and the competitive medians.

12. To evaluate the competitiveness and reasonableness of the KEIP, data were drawn from the KEIPs of 12 companies similar to the Debtor. The data set forth in Exhibit 1 attached hereto indicate that the proposed KEIP falls with the range of reasonable market practice.

13. I have reviewed the overall structure of the KEIP, its cash and performance goals, the participants and the target payout levels upon the effective date of a Chapter 11 plan. Based on my review and analysis, I believe the overall design and structure of the KEIP, along with the proposed target incentive opportunities, are consistent with market practice and appropriately align the key executives' incentives with the Debtors' operating and financial goals and their desire to achieve a successful and expedited plan consummation.

14. It is my opinion that the proposed KEIP is designed to be consistent with market practice, the prospective payouts are reasonable given the facts and circumstances of the Debtors' cases, the KEIP provides anticipated value that is appropriate to motivate the key executives and is required to bring the case to a timely closure.

Retention Plan Overview

15. The Debtors also seek approval of a non-insider employee retention plan (the "Retention Plan") for 47 of the Debtors' 780 salaried employees that I understand are vital to the Debtors' business. The total aggregate payout under the Retention Plan to the Retention Plan Participants will be \$2.88 million. The Retention Plan Participants have been divided into three tiers according to each participant's impact on the business of the Debtors. Tier I participants

have target awards equal to 70 percent of base salary; Tier II participants have target awards equal to 50 percent of base salary; and Tier III participants have target awards of 30 percent of base salary. Fifteen percent of the awards each Retention Plan Participant would be eligible to receive under the Retention Plan will be payable at the end of each calendar month for the months of July through October, and the remaining 40% will be payable upon the effective date of the Debtors' chapter 11 plan. To be eligible to receive a Retention Plan payment, Retention Plan Participants must be employed on the date of payment unless a Retention Plan Participant is terminated without cause or resigns for good reason prior to payment. Payments owed to a Retention Plan Participant will be reduced by 25% in the aggregate if a Retention Plan Participant receives and accepts a job offer with a purchaser of the Debtors' assets under terms that are substantially similar to the Retention Plan Participant's then current employment with the Debtors respect to, among other things, location, level of responsibility, and compensation.

LB&Co's Independent Review of the Reasonableness of the Retention Plan

16. I have been informed by the Debtors and their advisors that the proposed Retention Plan Participants have assumed greater responsibilities stemming from the reductions in staff that have already taken place. Further, in many instances, the Retention Plan Participants represent the last one or two managerial or professional employees within their departments and that their loss would be particularly burdensome for the Debtors. The Retention Plan Participants have been called upon to undertake additional responsibilities and expend significantly more working-hours than contemplated by the normal terms of their employment. I believe that the Retention Plan will greatly aid the Debtors' retention of the Retention Plan Participants and will motivate them to expend the additional efforts and time necessary for the Debtors to confirm a chapter 11 plan.

Based upon my experience and the work I have done in this case, it is my opinion that the overall design and structure of the Retention Plan, along with the proposed award opportunities, are generally consistent with market practice, and properly align the Retention Plan Participants' prospective awards with Debtors' restructuring goals. Therefore, I believe that the Retention Plan is both reasonable and appropriate and will aid the Debtors in retaining employees who are essential to enabling the Debtors to restructure pursuant to a chapter 11 plan.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct.

Dated this 3rd day of July 2015

By: /s/ Harvey L. Benenson
Harvey L. Benenson
Chief Executive Officer
Lyons, Benenson & Company Inc.

Exhibit 1

• **Companies evaluated:**

- A123 Systems, Inc.
- BearingPoint, Inc.
- Crusader Energy Group Inc.
- Eddie Bauer Holdings, Inc.
- Fleetwood Enterprises, Inc.
- Furniture Brands International, Inc.
- James River Coal Company
- Magna Entertainment Corp.
- Orchard Supply Hardware Stores Corporation
- Pacific Energy Resources Ltd.
- Pope & Talbot, Inc
- Revel AC, Inc.

Summary Statistics	Aggregate Payout		Average Payout Per-Participant		Payout as % of Pre-Petition Assets	
	Target	Maximum	Target	Maximum	Target	Maximum
25th Percentile	\$693,946	\$1,004,337	\$118,158	\$126,181	0.08%	0.12%
50th Percentile	\$887,500	\$1,775,000	\$167,724	\$331,250	0.11%	0.17%
75th Percentile	\$1,592,866	\$2,827,111	\$185,984	\$371,967	0.24%	0.46%
90th Percentile	\$2,190,189	\$3,467,500	\$390,679	\$490,787	0.45%	0.64%
Patriot - Proposed	\$1,791,538	\$2,906,441	\$298,590	\$484,407	0.11%	0.17%
Percentile Rank	78.0%	76.5%	85.9%	89.3%	43.8%	50.3%