

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 12-51502-659

(Jointly Administered)

Re: ECF No. 3503

**ORDER AUTHORIZING THE MODIFICATION AND TERMINATION OF CERTAIN
NON-VESTED BENEFITS FOR NON-UNION RETIREE BENEFIT PARTICIPANTS
PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b)**

Upon the motion (the “**Motion**”)² of the Debtors³ for entry of an order (this “**Order**”) authorizing, but not directing, the Debtors to modify the Non-Union Retiree Life Insurance Benefits and terminate the Non-Union Retiree Medical Benefits; and upon consideration of the Luna Declaration; and upon consideration of The Salaried Retiree Committee’s Reply to the Motion of the Debtors and Debtors in Possession for an Order, Pursuant to 11 U.S.C. § 363, Authorizing Debtors to Terminate Benefits of Non-Union Retirees [ECF No. 3681]; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these Chapter 11 cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core

¹ 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.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

³ As used herein, the term “Debtors” shall refer to, as applicable, the specific Debtors that are obligors under the Relevant Plan.

proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, in part, as set forth herein.
2. Without addressing the merits of whether the welfare benefit plans at issue in the Motion are vested or otherwise subject to Section 1114 of the Bankruptcy Code, the modification of the Non-Union Retiree Life Insurance Benefits and termination of the Non-Union Retiree Medical Benefits as set forth in the Motion constitute sound exercises of the Debtors' business judgment under Section 363(b) of the Bankruptcy Code.
3. Effective as of July 31, 2013, the Debtors are hereby authorized, but not directed, to (i) modify the Relevant Plans that provide Non-Union Retiree Life Insurance Benefits in order to cap the maximum benefit associated with the Non-Union Retiree Life Insurance Benefits at \$30,000.00 for the Non-Union Retirees and terminate the Non-Union Retiree Life Insurance Benefits for the current active non-union employees and (ii) terminate the Non-Union Retiree Medical Benefits, as described in the Motion, and to take all actions necessary to implement the relief granted herein; *provided, however*, that the Debtors shall remain responsible for the payment of claims for Non-Union Retiree Benefits that are (i) incurred by Non-Union Retirees through July 31, 2013 and (ii) presented for payment no later than the last date for submitting such claims under the terms of the Relevant Plans.

4. As soon as practicable after entry of this Order, the Non-Union Retiree Committee shall establish a voluntary employees' beneficiary association within the meaning of Section 501(c)(9) of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), for and on behalf of all Non-Union Retirees⁴ (the "**Non-Union Retiree VEBA**"), with the Debtors paying up to the first ten thousand dollars (\$10,000.00) incurred by the Non-Union Retiree Committee for same but with all costs, fees and expenses of the Non-Union Retiree VEBA thereafter to be borne by the Non-Union Retiree VEBA. Nothing in this Order is intended to mandate or provide for the type, nature or duration of benefits or payments that may be offered or provided by the Non-Union Retiree VEBA; all decisions with respect thereto shall be made within the sole discretion of the trustees of the Non-Union Retiree VEBA. The Non-Union Retiree VEBA shall benefit only those Non-Union Retirees that were expressly anticipated as having been subject to losing Non-Union Retiree Benefits by and through the Motion. For the avoidance of doubt, the Non-Union Retiree VEBA shall benefit only the Non-Union Retirees whose Non-Union Retiree Benefits are modified or terminated pursuant to this Order.

5. The Non-Union Retiree Committee shall be responsible for electing or appointing any trustee or trustees of the Non-Union Retiree VEBA, and the Debtors shall have no obligations regarding the establishment or administration of the Non-Union Retiree VEBA.

6. Within ten (10) business days of having received written notice, including the Non-Union Retiree VEBA trust documents, which documents shall be reasonably acceptable to the Debtors, from the Non-Union Retiree Committee that (i) the Non-Union Retiree VEBA has

⁴ As used herein, the term "Non-Union Retirees" shall include only those Non-Union Retirees that retired from the Debtors on or before April 23, 2013 (including any and all surviving spouses and eligible dependents).

been established and (ii) the Non-Union Retiree VEBA can accept contributions made as instructed in such written notice, the Debtors shall cause the sum of two hundred and fifty thousand dollars (\$250,000.00) in cash to be contributed to the Non-Union Retiree VEBA by wire transfer as instructed in such written notice. With respect to the Non-Union Retiree VEBA, the remaining obligations of the Non Union Retiree Committee with respect to the Non-Union Retirees and the Non-Union Retiree Committee's efforts to set up and equitably administer the Non-Union Retiree VEBA, the Debtors shall timely provide to the Non-Union Retiree Committee such participant and/or plan cost information relating to the Non-Union Retiree Benefits as the Non-Union Retiree Committee reasonably requests. The Debtors will further continue to allow for and pay for the reasonable use of the Debtors' claims and noticing agent, GCG, Inc., to provide a means for the Non-Union Retiree Committee to adequately communicate to the Non-Union Retirees about this Order and subsequent case developments, including but not limited to the manner and form in which the Non-Union Retiree VEBA will be created; *provided, however*, that such communications shall be limited to two (2) mailings to the Non-Union Retirees.

7. Upon the effective date of a plan of reorganization for the Debtors, the Debtors shall cause shares of the equity of the reorganized Debtors that equal three million and seven hundred and fifty thousand dollars (\$3,750,000.00), as determined using the valuation in the Debtors' disclosure statement, or, in the Debtors' sole discretion (upon consulting with the UCC), the sum of three million and seven hundred and fifty thousand dollars (\$3,750,000.00) in cash, to be contributed to the Non-Union Retiree VEBA by the applicable Debtors.

8. Other than with respect to compliance with the terms and conditions of this Order, the Debtors, their estates, the Non-Union Retiree Benefit Plans and the Non-Union Retiree

Benefit Plan administrators, and each of their respective past and present parents, subsidiaries, affiliates, general partners, limited partners, shareholders, administrators, liquidators, directors, officers, employees, managers, agents, attorneys, solicitors, trustees, fiduciaries, accountants and advisors, and each of the predecessors, successors (including the reorganized Debtors) and assigns of the foregoing shall neither have, nor incur any liability for any obligation or claim arising under or relating to the Non-Union Retiree Benefit Plans, or the provision of Non-Union Retiree Benefits thereunder, to any Non-Union Retiree Benefit Participant or any of his or her respective spouses, dependents, heirs, distributees, executors, administrators, officers, directors, agents, representatives, successors and assigns; such that from and after the date of entry of this Order, the Non-Union Retiree Committee and all Non-Union Retiree Benefit Participants shall be forever estopped and barred from seeking further relief, pursuant to Sections 105(a), 363(b) and 1114 of the Bankruptcy Code or otherwise under any other statute or regulation, relating to the Non-Union Retiree Benefit Plans or the provision of Non-Union Retiree Benefits thereunder. Notwithstanding the foregoing, the Debtors will comply with Section 4980B of the Code of 1986, Part 6 of Title I of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and the regulations issued respectively thereunder, with regard to making available to the Non-Union Retiree Benefit Participants continuation coverage as described by Section 4980B of the Code and Section 602 of ERISA (or any successor provisions thereto) under the Non-Union Retiree Benefit Plans (but not the Medical Premium Reimbursement Allowances and the Retiree Choice Accounts), which shall be at any such Non-Union Retiree Benefit Participant’s own expense (calculated in accordance with Section 4980B(f)(4) of the Code or any successor provision thereto); *provided, however*, that the foregoing shall not apply if: (i) it is otherwise not required by, inconsistent with or contrary to applicable law, (ii) the Debtors cease

to provide any group health plan to their employees, (iii) a Non-Union Retiree Benefit Participant fails to pay a COBRA premium or (iv) a Non-Union Retiree Benefit Participant becomes covered under any other group health plan; it being understood that a Non-Union Retiree Benefit Participant's eligibility for coverage under a group health plan offered or funded directly or indirectly by the Non-Union Retiree VEBA shall not, by itself, in the absence of such Non-Union Retiree Benefit Participant's electing coverage under such plan constitute a waiver of such Non-Union Retiree's entitlement, if any, to such continuation coverage under the Non-Union Retiree Benefit Plans in accordance with the preceding sentence.

9. Subject to the limitations and restrictions set forth in the Committee Order, the cap on the Non-Union Retiree Committee's counsel fees and expenses set forth in paragraph 2(c) thereof shall be increased to \$300,000.00.

10. The Debtors and the Non-Union Retiree Representative agree to engage in good faith discussions and negotiation to (i) modify, transmute or replace some or all of the Non-Union Retiree Life Insurance Benefits for the Non-Union Retirees that are not modified pursuant to this Order with other retiree benefits (including retiree life insurance benefits) that are economically neutral or more advantageous to the Debtors, including, but not limited to, being of equal or lesser cash cost to the Debtors and/or (ii) consider accelerating the payment or provision of any such existing or replacement benefits if economically beneficial to the Debtors, and are hereby authorized to implement such replacement benefits without further order of this Court; *provided*, that the Debtors agree not to terminate the Non-Union Retiree Life Insurance Benefits for the Non-Union Retirees that are not modified pursuant to this Order except to the extent that such benefits are modified, transmuted or replaced pursuant to this paragraph. For purposes of this paragraph, the "Non-Union Retiree Representative" shall refer to the Non-Union Retiree

Committee until its dissolution, and thereafter to the trustee(s) of the Non-Union Retiree VEBA, who are hereby authorized to reach an agreement with the Debtors consistent with this paragraph that is binding on all of the Non-Union Retirees and without any liability to such Non-Union Retiree Representative for entering into such agreement.

11. The Non-Union Retiree Committee hereby agrees to support any Chapter 11 plan of reorganization filed by the Debtors, provided that such plan is not inconsistent with the terms of this Order.

12. Notwithstanding the Committee Order, the modification or termination of the Non-Union Retiree Benefits as set forth herein shall not give rise to any claim against any of the Debtors, and neither the Debtors nor the Non-Union Retiree Committee, nor the Debtors' or the Non-Union Retiree Committee's affiliates, successors (including the reorganized Debtors), directors, officers, employees, agents, representatives, retained professionals, attorneys, actuaries, financial advisors and assigns, shall have or incur any liability to any person (as "person" is defined in Section 101(41) of the Bankruptcy Code) or entity for any pre- or post-petition act taken or omitted to be taken in connection with, or related to formulating, negotiating, preparing, disseminating, implementing or administering this Order; or any contract, instrument, release or other agreement or document created or entered into in connection with this Order, or any other pre- or post-petition act taken or omitted to be taken in connection with or in contemplation of this Order; *provided, however*, that any plan of reorganization for the Debtors shall reflect continuation of the obligations in paragraph 10 hereof as obligations of the reorganized Debtors (unless otherwise resolved with the Non-Union Retiree Representative).


13. Nothing in the Motion or this Order shall be deemed or construed as an approval or assumption of any agreement or contract pursuant to Section 365 of the Bankruptcy Code or a waiver of the right of the Debtors.

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

15. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

16. This Order shall be immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h).

17. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order.


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: April 26, 2013
St. Louis, Missouri
jjh

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