Kenneth S. Ziman
Shana A. Elberg
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
4 Times Square
New York, NY 10036
Tel: (212) 735-3000
Fax: (212) 735-2000

- and -

Albert L. Hogan III
Amy L. Van Gelder
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
155 N. Wacker Drive
Chicago, IL 60606
Tel: (312) 407-0700
Fax: (312) 407-0411

Counsel to Barclays Bank PLC in its capacity as the Prepetition LC Agent under the Prepetition LC/Term Loan Agreement

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 788-8218

Local counsel to Barclays Bank PLC in its capacity as the Prepetition LC Agent under the Prepetition LC/Term Loan Agreement

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

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

MOTION OF PREPETITION LC AGENT FOR AN ORDER TERMINATING THE USE OF CASH COLLATERAL AND CONVERTING THE DEBTORS' CHAPTER 11 CASES TO CASES UNDER CHAPTER 7

Barclays Bank PLC, in its capacity as Prepetition LC Agent[1] ("LC Agent"), for itself and on behalf of the Prepetition LC Facility Issuers and the Prepetition LC Lenders (together with the LC Agent in such capacity, the "LC Parties"), submits this Motion For An Order Terminating

[1] Capitalized terms not otherwise defined herein have the meanings ascribed to them in Debtors' Third Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (Docket No. 942).

The Use Of Cash Collateral And Converting The Debtor's Chapter 11 Case To A Case Under Chapter 7 (the "Motion"). In support hereof the LC Agent, by and through its undersigned counsel, respectfully states as follows:

PRELIMINARY STATEMENT

1. From the outset of these cases, the LC Parties have expressed their deep reservation that the Debtors were pursuing a path that was ill-conceived and fraught with execution risk. While the Debtors have been apparently (and perhaps understandably) motivated by the hope of achieving a plan of reorganization that would somehow wrap up and pay for the complex issues that they face, the LC Parties have been very concerned that the Debtors have pursued this goal largely by putting the LC Parties' recovery at risk. Nonetheless, the LC Parties have not been simply intransigent naysayers, and this history is important in the context of the relief the LC Parties now seek.

2. As the Court will recall, the LC Parties did not object to the Debtors' use of interim DIP financing at the very start of the cases, but noted their concern that the Debtors had no defined path forward. (*See* Docket No. 41.) Then, the LC Parties raised a limited objection in connection with the final approval of the DIP, again based on their concern that the Debtors' path was uncertain and that allowing $100 million of priming liens in such circumstances was a direct threat to the collateral coverage that the LC Parties enjoyed at the commencement of these cases. (*See* Docket No. 180.) Rather than derail the proceedings, however, the LC Parties requested only to adjourn the final approval of the DIP to give the Debtors time to formulate and describe their plan path. (*Id.*)

3. The Debtors instead convinced the Court to allow them to go "all in." According to the Debtors, the full priming DIP was needed to support their plan process, and was the way to

a value-maximizing transaction. Thus, the Debtors asserted that the LC Parties' collateral would be adequately protected by achieving the Blackhawk transaction. And, so the story went, the LC Parties would, in any event, be granted adequate protection comprised of liens immediately junior to the DIP financing on all property of the Debtors including all otherwise unencumbered property and super-priority administrative expense claims in case something went wrong.

4. Things did go wrong. The first plan that the Debtors proposed provided inadequate treatment to the LC Parties for their secured claims. That treatment was, in general terms, to wipe out the LC Parties' existing liens, but to give them new first lien notes in a combined Blackhawk-Patriot entity, but along with hundreds of millions of dollars in other debt and supported by an uncertain collateral pool. The notes had a notional value capped at $200 million, which, at the time, was slightly less than the full value of the LC Parties' anticipated secured claims. At the same time, the balance of the LC Parties' pre-petition collateral was to be transferred to VCLF, with no consideration at all flowing to the LC Parties. In connection with the Disclosure Statement hearing, the LC Parties noted that this plan would not be confirmable over their objection. The LC Parties also objected that information about the plan remained incomplete and inadequate. At the Disclosure Statement hearing, the Court recognized that the additional information promised by the Debtors in their anticipated plan supplement would be critical to the plan process.

5. Instead of more information, the plan supplement was the next turn for the worse. Filed just 11 days after the Court approved the Disclosure Statement, the plan supplement was, in reality, a new and materially worse plan. Instead of being given first lien Combined Company notes, the LC Parties had been relegated to a second lien position, now squarely behind nearly $416 million in priority debt, and further, with a substantially reduced interest rate on those

second lien notes. The plan supplement also maintained the lien-stripping VCLF component of the plan, including the lack of any consideration to the LC Parties on account of that disposition of their collateral. Even the Debtors' own expert acknowledged that this treatment "reflects significant impairment to the LC [Parties]." (Hrg. Tr., Sept. 1, 2015 (Docket No. 1043), at 40:22-23.)

6. Before the Debtors could seek confirmation of this new plan, things deteriorated even more dramatically. The Debtors postponed the September 16 Confirmation Hearing, and instead have now filed a term sheet outlining the latest plan. (*See* Docket No. 1283.)[2] The LC Parties have gone from a second lien position in the new company to a third lien position. The face amount of their notes has been cut by twenty percent to $155 million. The interest rate has been slashed further. A $50 million rights offering, which previously was new money coming in junior to the LC Parties in the Combined Company capital structure, is now senior with substantial fees and interest. All in all, the consideration now being proposed for the LC Parties' nearly $200 million secured claim has a notional amount of only 80% of the LC Parties' allowed claims and a fair value approximately measured in pennies on the dollar.[3]

7. The Debtors' chances of achieving confirmation of the currently proposed plan—or any other plan of reorganization, for that matter—are vanishingly small. The Debtors' plan process, starting with a $100+ million priming of the LC Parties' liens, has turned out to be a

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[2] Having encouraged the Court to establish an expedited schedule over a chorus of objections regarding a lack of information and time, the new Fourth Amended Joint Plan of Reorganization (Docket No. 1332) (the "Fourth Amended Plan") that the Debtors filed on the evening of September 18, 2015 is inadequate and anticipates a further "plan supplement" as late as September 25, 2015.

[3] Attached as Exhibit A is a chart reflecting the deterioration in the LC Parties' proposed treatment under the various iterations of the Debtors' Plan.

disaster for the LC Parties' proposed recoveries. Nonetheless, the Debtors continue to use the LC Parties' cash collateral. Plainly, the LC Parties are not adequately protected, and it is no longer appropriate for the Debtors to continue to burn through cash collateral in pursuit of a patently unconfirmable plan. Indeed, the Court's order authorizing use of cash collateral expressly provides that authorization shall terminate in the circumstances here: where the Debtors have sought confirmation of a plan that will not pay the LC Parties in full. (*See* Docket No. 230, ¶ 15(c).) While the LC Parties could support use of this collateral to fund an orderly liquidation or other value-preserving alternative, use of cash to pursue a dead-end plan defies both logic and the law. This value must be preserved for the benefit of the Estate's creditors. Accordingly, by this Motion, the LC Parties respectfully request that the Court terminate the Debtors' authorization to use cash collateral.

8. Additionally, the Court should convert these chapter 11 cases to cases under chapter 7 of the Bankruptcy Code. The requirements for conversion are easily met here. First, since the outset of this case, the Debtors consistently have experienced negative cash flow, which alone is sufficient to establish "continuing loss to or diminution of the estate." 11 U.S.C. § 1112(b)(4)(A). Moreover, there is no reasonable prospect of rehabilitation, *see id.*, and, indeed, the Debtors have never sought to maintain or reestablish their business operations. Theirs has been a liquidating plan from the start. In such circumstances, especially where the proposed liquidating plan is fatally flawed, conversion is required.

9. The time has come for the Debtors to face reality: no confirmable plan is in sight. Each day that the Debtors ignore this hard truth, they bleed cash that could be used to satisfy senior claims. And, as the Debtors have conceded, the well is running dry. (Hrg. Tr., Sept. 11, 2015 (Docket No. 1273), at 8:20-22.) The Debtors claim they will run out of cash by no later

than the end of October—a mere six weeks from now. (*Id.*) There is no reasonable prospect of devising a confirmable plan of reorganization during that time. Indeed, with each passing day, the value of the Estate diminishes and the terms of the Debtors' proposed plan worsen, dramatically increasing the odds that the LC Parties will be unable to realize the full value of their secured claims. Accordingly, in order to conserve what little value may remain for the benefit of the Debtors' creditors, these chapter 11 cases should be converted to cases under chapter 7 of the Bankruptcy Code.

RELEVANT BACKGROUND

I. The Prepetition LC Facility.

10. On December 18, 2013, in connection with the consummation of the chapter 11 plan for these Debtors in their prior bankruptcy cases, Patriot Coal Corporation (the "Company") and certain of its subsidiaries, each of which is a Debtor, entered into a Credit Agreement (L/C Facility and Term Facility) (as amended, modified, supplemented or restated from time to time, the "Prepetition LC/Term Loan Agreement") providing for a letter of credit facility (the "Prepetition LC Facility") and a term loan facility with Barclays, in its capacity as the Prepetition LC Agent, Cortland Capital Market Services LLC, in its capacity as successor Prepetition Term Agent, Wilmington Trust, National Association, in its capacity as Prepetition LC/Term Collateral Agent, the other LC Parties, and the term lenders thereunder. As of the Petition Date, there were issued and undrawn letters of credit outstanding under the Prepetition LC Facility with an aggregate face amount of approximately $198,420,869.55 plus accrued and unpaid letter of credit fees and other unpaid interest, fees, costs, charges and expenses.

11. Obligations under the Prepetition LC Facility are secured by substantially all assets of the Debtors, with a first priority lien on, among other things, the Debtors' fixed assets,

including owned and certain leased real property (such assets subject to a first priority lien, collectively, the "L/C Priority Collateral"), and a second priority lien on all minerals that have been extracted from real property, accounts receivable, inventory, and deposit, security, and commodity accounts (together with the L/C Priority Collateral, the "L/C Collateral").

II. The Bankruptcy Proceedings.

12. On May 12, 2015, the Debtors each filed with the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court") a voluntary petition for relief under chapter 11 of title 11 of the Unites States Code (the "Bankruptcy Code").

13. On the same date, the Debtors filed a Motion for Entry of Interim and Final Orders (A) Authorizing The Debtors To Obtain Postpetition Financing, (B) Authorizing Use Of Cash Collateral, (C) Granting Liens And Superpriority Claims, (D) Granting Adequate Protection, (E) Modifying The Automatic Stay, (F) Scheduling Final Hearing, And (G) Granting Related Relief (the "DIP Motion") (Docket No. 30). In the DIP Motion, the Debtors sought authorization, pursuant to section 363(c)(2) of the Bankruptcy Code, to use cash collateral. The Debtors maintained that such authorization was proper because the prepetition lenders' interests in the prepetition collateral—including the interests of the LC Parties—were adequately protected from any diminution in value. (*See* DIP Mot. ¶ 44.)

14. On June 4, 2015, the Court entered a Final Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing Use of Cash Collateral, (C) Granting Liens and Superpriority Claims, (D) Granting Adequate Protection, (E) Modifying the Automatic Stay and (G) Granting Related Relief (Docket No. 230) (the "Final DIP Order"). In order to protect the LC Parties from diminution of their prepetition security interests, whether or not resulting from the use of Cash Collateral (as defined in the Final DIP Order), the Court granted "adequate protection" to the LC Parties in the form of "a security interest and lien on all assets of the

Debtors (now or hereafter acquired and all proceeds thereof)" and "superpriority administrative expense claims ('LC Superpriority Claims')" (together with other adequate protection, as set forth in the Final DIP Order, the "LC Adequate Protection Obligations"). (*Id.* ¶ 25(b).) As the Final DIP Order makes clear, this relief protects the LC Parties from any diminution of their secured interests, including diminution resulting from the $100+ million priming of their liens. The Final DIP Order further provides:

> Unless all . . . Prepetition LC Obligations shall have been Paid in Full, . . . the right of the Debtors to use Cash Collateral shall terminate seven days after any of the Debtors seeking . . . an order approving a plan of reorganization . . . that does not provide for the Payment in Full of …the Prepetition LC Obligations upon the consummation thereof . . . .

(*Id.* ¶ 15(c) (emphasis added).)

15. Since July 13, 2015, the Debtors have filed five versions of their plan of reorganization and related disclosure statement. The Debtors filed the Third Amended Plan (the "Third Amended Plan") and the Third Amended Disclosure Statement for the Plan (the "Disclosure Statement") on August 25, 2015. (Docket Nos. 941 & 942). The Third Amended Plan classified the LC Parties' Prepetition LC Facility Claims as Class 5 Claims, specifying that these Claims "shall be Allowed as Secured Claims in an aggregate amount with respect to drawn and undrawn amounts under the Prepetition LC Facility not to exceed $200,000,000." (Plan at 27.) The Third Amended Plan provided the following treatment for Class 5 Claims:

> Except to the extent that a Holder of a Prepetition LC Facility Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Prepetition LC Facility Claim, each such Holder thereof shall receive:
>
> (i) with respect to Prepetition LC Facility Claims consisting of drawn amounts under the Prepetition LC Facility, such Holder's Pro Rata share of Combined Company First Lien Term Loans; and
>
> (ii) with respect to Prepetition LC Facility Claims consisting of undrawn amounts under the Prepetition LC Facility, letters of credit issued (or deemed issued) under

> the Combined Company First Lien L/C Facility or other credit support from the Combined Company First Lien Term Loan Facility;
>
> provided, however, the sum of consideration provided pursuant to clauses (i) and (ii) . . . shall not exceed an aggregate $200,000,000 in Combined Company First Lien Term Loans and letters of credit issued under the Combined Company Frist [sic] Lien L/C Facility, as applicable.

(*Id.*) The LC Adequate Protection Obligations are included as part of the LC Parties' Prepetition LC Facility Claims. (*Id.* at 13.)

16. As set forth more fully in the LC Agent's previously filed Objection to the Disclosure Statement for Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (Docket No. 787), the Third Amended Plan's treatment of the LC Parties was inadequate as a matter of law because it proposed to strip the LC Parties of the benefit of their existing liens on significant assets of the Debtors and did not otherwise provide the Class 5 Holders with the indubitable equivalent of their Claims. The treatment of Class 5 also rendered the Third Amended Plan unconfirmable as a matter of law because it did not pay the LC Parties' adequate protection claims in cash as required by sections 507(b) and 1129(a)(9) of the Bankruptcy Code.

17. On August 21, 2015, the Court entered an Order (I) Approving the Third Amended Disclosure Statement; (II) Approving Solicitation and Notice Materials; (III) Approving Forms of Ballots; (IV) Establishing Solicitation and Voting Procedures; (V) Establishing Procedures for Allowing and Estimating Certain Claims for Voting Purposes; (VI) Scheduling a Confirmation Hearing and (VII) Establishing Notice and Objection Procedures (Docket No. 916) (the "Approval Order"). Pursuant to the Approval Order, the Court approved the Disclosure Statement and Third Amended Plan based on an understanding that the Debtors would file a supplement to the Third Amended Plan setting forth greater detail about the Third Amended Plan's proposed treatment of the LC Parties.

18. On September 1, 2015, the Debtors filed the plan supplement contemplated by the Approval Order (Docket No. 1034), and on September 2, 2015, the Debtors filed a revised plan supplement (Docket No. 1047) (the "Plan Supplement"). The Plan Supplement, however, was in reality an attempt to materially and adversely amend the Third Amended Plan, outside of the disclosure statement and solicitation process. In particular, unlike the Third Amended Plan and Disclosure Statement, which provided that Holders of Class 5 Claims would receive a pro rata share of the Combined Company First Lien Term Loans secured by a first lien on Blackhawk's equity interests and assets, the Plan Supplement described a new plan, in which Class 5 Claims would receive debt in the Combined Company in a second lien position, junior to a $416.0 million first lien term loan. In addition, the Plan Supplement slashed the LC Parties' interest rate from 10% per annum to either 5% per annum in cash or 2% cash and 4% PIK, at the borrower's election, while at the same time increasing the first lien interest rate to 12% cash.

19. On September 10, 2015, the Debtors filed a Notice of Adjournment of Auction, which necessitated the adjournment of the Confirmation Hearing previously scheduled for September 16, 2015. (*See* Docket No. 1243.) The Court held a status hearing on September 11, 2015, during which the Debtors claimed that, despite over 40 objections to their Third Amended Plan having been filed, they are "making progress" toward resolution. The Debtors further represented that they will file a fourth amended plan and disclosure statement in the near future.

20. In support of their motion to adjourn the confirmation schedule, on September 15, 2015, the Debtors filed a term sheet (the "Transaction Term Sheet"), which sets forth, among other things, the materially revised consideration that will be provided to the LC Parties under the Fourth Amended Plan. (*See* Docket No. 1283.) As summarized in Exhibit A to this Motion, attached hereto, the Transaction Term Sheet demonstrates that the assets of the Estate—and the

L/C Collateral—are, according to the Debtors, vanishing. Up until recently, the LC Parties' plan consideration was up to $200 million of first lien debt in the Combined Company, with a $50 million cash infusion, backstopped by *de facto* plan proponents, junior to the LC Parties in the capital structure. Now, the LC Parties' consideration has been slashed to $155 million of third lien debt in the Combined Company—a principal amount that does not even cover the outstanding amount of their Claims. What's more, the $50 million cash infusion has jumped to a position senior to the LC Parties. Recoveries for secured creditors junior to the LC Parties have been wholly eliminated. In these circumstances—where the LC Parties will not receive payment in full—the Final DIP Order automatically terminates the Debtors' authorization to use Cash Collateral. More fundamentally, the drastic changes to the Combined Company's proposed capital structure reflect an apparent shift in the Debtors' view of the world: while they apparently believed the LC Parties were fully secured at the outset of this case (when they asked this Court to prime their liens), the Debtors now are signaling that they believe the LC Parties are under-secured. Specifically, the leapfrogging of the $50 million of new capital and wholesale elimination of junior secured creditor recoveries plainly evidences diminution in value of the collateral and enterprise over the course of these cases. This diminution in value leads to the inescapable conclusion that the LC Parties' are no longer adequately protected, which, in turn, requires termination of the use of Cash Collateral.

JURISDICTION AND VENUE

21. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

22. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

23. By this Motion, the LC Agent seeks entry of an order substantially in the form of order attached hereto as Exhibit B (the "Order") terminating the Debtors' authorization to use Cash Collateral and converting these chapter 11 cases to cases under chapter 7 of the Bankruptcy Code.

BASIS FOR RELIEF

I. Termination of the Debtors' Authorization to Use Cash Collateral Is Required Because the LC Parties' Secured Claims Are Not Adequately Protected.

24. This Court should revoke its authorization for the Debtors to utilize Cash Collateral because such relief is required by both the Final DIP Order and the Bankruptcy Code. The Final DIP Order provides that the Debtors' right to use Cash Collateral "shall terminate seven days after any of the Debtors" seek an order approving a plan that does not repay the Prepetition LC Obligations in full. (Final DIP Order ¶ 15(c).) The Transaction Term Sheet and recently filed Fourth Amended Plan make clear that the Debtors will seek such an order and, by the time this Motion is heard, the seven-day period will have passed. Thus, Debtors' authorization to use Cash Collateral automatically terminates by previous order of this Court.

25. Termination is also required because it has become apparent that the LC Parties' interests are not adequately protected. Section 363(e) of the Bankruptcy Code provides that a creditor holding an interest in cash collateral may "at any time" request that the court prohibit or condition the debtor's use of cash collateral to the extent necessary to provide "adequate protection" to the creditor. 11 U.S.C. § 363(e). The Court's "authority to permit the use of cash collateral is governed by § 363(c) which requires a finding of 'adequate protection' under § 363(e)." *In re JKJ Chevrolet, Inc.*, 190 B.R. 542, 544 (Bankr. E.D. Va. 1995); *see also*

Principal Mut. Life Ins. Co. v. Atrium Dev. Co. (In re Atrium Dev. Co.), 159 B.R. 464, 471 (Bankr. E.D. Va. 1993).

26. The "adequate protection" requirement is intended to safeguard a secured creditor's constitutional right to have the value of its secured claim, as it existed on the petition date, preserved. *See United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 370 (1988); *see also Collier on Bankruptcy* ¶ 361.02 (16th ed. 2011) ("The right of a secured creditor to the value of its collateral is a property right protected by the Fifth Amendment. Before the plan is confirmed, that property right is protected by the requirement of Code section 361." (citing *In re Townley*, 256 B.R. 697, 700 (Bankr. D.N.J. 2000))); *In re Broomall Printing Corp.*, 131 B.R. 32, 34 (Bankr. D. Md. 1991) ("[T]he purpose of adequate protection is to assure the secured creditor that it will ultimately realize the value of its [interest in] collateral.").

27. Although this Court, in the Final DIP Order, previously authorized the Debtors' use of Cash Collateral and found that the LC Parties would be adequately protected by the treatment proposed to be provided to the LC Parties under the Blackhawk transaction and the adequate protection claims provided in the DIP Order, circumstances have materially and adversely changed. It is now abundantly clear that the LC Parties will not realize the value of their interest in the L/C Collateral under the plan currently proposed. At the outset of this case, the LC Parties held a first priority lien on substantially all of the Debtors' assets. Those interests first were primed by the DIP Lenders. Then, the first iteration of the plan capped the LC Parties' Claims and stripped a substantial portion of their liens, proposing to provide them with significantly diluted value in the form of first lien debt in the Combined Company. As the Debtors have hurtled toward an aspirational confirmation, the LC Parties' secured claims have

only become further impaired: as of the most recent Transaction Term Sheet and Fourth Amended Plan filed with the Court, the consideration proposed for the LC Parties is third lien debt in the Combined Company, with a 20% discount to face value. And, given the interest rates and more than $500 million senior debt with a *de minimis* market value, the LC Parties' collateral has not been protected during this case, and is not protected further going forward.

28. Under these circumstances, the Fourth Amended Plan will fail as a matter of law. Meanwhile, as the Debtors pursue this ever-worsening and ultimately unconfirmable plan, they are bleeding cash that could be used to satisfy the claims of their creditors, including the LC Parties. The Court should not allow the Debtors to continue to burn through cash—by their own estimates, at least $148 million more through the now-adjourned confirmation hearing date—in pursuit of the unattainable. Instead, the Court should terminate the Debtors' authorization to use Cash Collateral, thereby assuring that at least this value will be preserved for the benefit of existing creditors.

II. The Court Should Convert This Case to a Case Under Chapter 7 of the Bankruptcy Code.

29. Pursuant to section 1112(b) of the Bankruptcy Code, upon the motion of a party interest, a court "shall convert a case under [chapter 11] to a case under chapter 7 . . . for cause." 11 U.S.C. § 1112(b)(1). The 2005 amendments to this provision—which added the word "shall" in place of the word "may"—make clear that conversion is mandatory when cause can be established. *In re Broad Creek Edgewater, LP*, 371 B.R. 752, 758 (Bankr. D.S.C. 2007); *see* 11 U.S.C. § 1112(b)(1) (1994) (prior version of statute providing that "the court may convert a case under [chapter 11] to a case under chapter 7 . . . or may dismiss a case under [chapter 11], whichever is in the best interest of creditors and the estate, for cause").

30. Section 1112(b)(4) lists a number of non-exclusive circumstances that may constitute "cause" for mandatory conversion of a chapter 11 case to a chapter 7 case. Among them, pursuant to section 1112(b)(4)(A), cause exists to order mandatory conversion to chapter 7 if the movant establishes (1) "substantial or continuing loss to or diminution of the estate" post-petition, and (2) the "absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A).

31. Typically, if a basis for conversion or dismissal is demonstrated, the request can be denied only if "the court finds and specifically identifies unusual circumstances establishing that converting . . . the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that there is a reasonable likelihood that a plan will be confirmed . . . within a reasonable period of time[,] and . . . the grounds for converting . . . the case include an act or omission of the debtor . . . for which there exists a reasonable justification" and which "will be cured within a reasonable period of time." 11 U.S.C. § 1112(b)(2)(B)(ii). However, even "this limited latitude does not apply . . . if the basis for conversion or dismissal is . . . substantial or continuing loss to or diminution of the estate, coupled with the absence of a reasonable likelihood of rehabilitation." *In re Avis*, No. 07-13483-SSM, 2008 WL 5786807, at *2 (Bankr. E.D. Va. Nov. 13, 2008) (emphasis added) (citing 11 U.S.C. § 1112(b)(2)(B)); *cf. In re Paterno*, 511 B.R. 62, 66 (Bankr. M.D.N.C. 2014) (court may only deny motion to convert or dismiss if the movant fails to satisfy one of the two prongs of section 1112(b)(4)(A)).

32. Here, conversion is mandatory because the LC Parties satisfy both of these prongs.

A. Continuing Loss to or Diminution of the Estate Exists.

33. The first prong of section 1112(b)(4)(A) requires the Court to determine whether, post-petition, there has been a substantial or continuing loss to or diminution of the Estate. 11

U.S.C. § 1112(b)(4)(A). "To determine whether there is a continuing loss to or diminution of the estate, a court must make a full evaluation of the present condition of the estate." *In re AdBrite Corp.*, 290 B.R. 209, 215 (Bankr. S.D.N.Y. 2003) (internal citations omitted).

34. Bankruptcy courts consistently hold that negative cash flow alone is sufficient to establish "continuing loss to or diminution of the estate." *See, e.g.*, *In re Paterno*, 511 B.R. at 66 (section 1112(b)(4)(A) standard "is often met by showing that the debtor suffered or has continued to experience a negative cash flow or declining asset values following the entry of the order for relief"); *In re Tolco Props., Inc.*, 6 B.R. 482, 487 (Bankr. E.D. Va. 1980) ("Obviously, if the debtor has a negative cash flow after entry of the order for relief in the chapter 11 case, the first of the two elements . . . is satisfied." (quoting 5 *Collier on Bankruptcy* ¶ 1112.03(2)(c)(i) (15th ed. 1979)); *see also* 7 *Collier on Bankruptcy* ¶ 11112.04[5][a][i] (Alan N. Resnick & Henry Sommers, eds. 15th ed. 2004) ("If . . . the debtor is operating with a sustained negative cash flow . . . this fact is sufficient to support a finding that the debtor is experiencing a 'continuing loss to . . . the estate.'").

35. Here, it is undisputed that the Debtors continue to experience mounting losses and negative cash flow. The Debtors have consumed nearly the full $100 million DIP so far in these cases, and have conceded that they will require millions more in the next few weeks just to take them to a hoped-for emergence. Indeed, the Debtors' self-described "liquidity crisis" has apparently forced them into a situation where they must emerge before the end of October (a present impossibility in the LC Parties' view) or they will be forced liquidate. What few resources remain should be redirected to a realistic path forward.

B. There is No Reasonable Likelihood of Rehabilitation.

36. The second prong of section 1112(b)(4) requires a showing that there is no reasonable likelihood of rehabilitation on the debtor's part. 11 U.S.C. § 1112(b)(4)(A). For

purposes of this provision, "'[r]ehabilitate' has been defined to mean 'to put back in good condition; re-establish on a firm, sound basis.'" *In re Tolco Props., Inc.*, 6 B.R. at 488 (quoting 5 *Collier on Bankruptcy* ¶ 1112.03(2)(c)(i) (15th ed. 1979)). Rehabilitation under section 1112(b)(4)(A) does "not mean the same thing as reorganization for purposes of Chapter 11 because a reorganization may include an orderly or complete liquidation," whereas, to demonstrate a reasonable likelihood of rehabilitation, a debtor must show that it "will be reestablished on a secured financial basis, which implies establishing a cash flow from which its current obligations can be met." *In re AdBrite Corp.*, 290 B.R. at 216. In other words, "'[r]ehabilitation' is not 'reorganization,' and the ability to confirm a liquidating plan does not demonstrate a likelihood of rehabilitation." *In re E. 81st, LLC*, No. 13-13685 (SMB), 2014 WL 4548551, at *6 (Bankr. S.D.N.Y. Mar. 17, 2014) (emphasis added) (citing 7 *Collier on Bankruptcy* ¶ 1112.04[6][a][ii], at 1112-28 to 29); *see also, e.g.*, *In re Wen-Kev Mgmt., Inc.*, No. 13-36463 GD, 2014 WL 7370050, at *4 (D.N.J. Dec. 29, 2014) (finding bankruptcy court correctly found cause to convert case where debtor expected to file liquidating plan and there was no hope for rehabilitation); *In re Sterling Bluff Investors, LLC*, 515 B.R. 902, 920 (Bankr. S.D. Ga. 2014) ("Rehabilitation 'contemplates the successful maintenance or reestablishment of the debtor's business operations.'").

37. Here, the only Plan ever proposed by the Debtors was a liquidating plan. They have never sought to maintain or reestablish their business operations and, surely, even the Debtors would concede that there is no reasonable prospect that they will do so. Under these circumstances there is no hope for rehabilitation. Combined with the continuing losses unquestionably being experienced by the Estate, there is only one conclusion to be drawn: it no

longer makes legal or economic sense for the Debtors to remain in chapter 11. This Court must convert these cases to cases under chapter 7 of the Bankruptcy Code.

NOTICE

38. Notice of the Motion has been provided in accordance with the *Notice, Case Management and Administrative Procedures* (Docket No. 79) approved by this Court on May 14, 2015. The LC Agent submits that no other or further notice need be provided.

NO PREVIOUS REQUEST

39. No previous request for the relief sought herein has been made by the LC Agent to this or any other court.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the LC Agent respectfully requests that this Court enter an order (i) terminating the Debtors' authorization to use cash collateral, (ii) converting these chapter 11 cases to cases under chapter 7 of the Bankruptcy Code, and (iii) granting such other and further relief as is just and proper.

Dated: September 19, 2015
Richmond, Virginia

/s/ Henry P. (Toby) Long, III
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 788-8218

-and-

Kenneth S. Ziman
Shana A. Elberg
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
4 Times Square
New York, NY 10036
Tel: (212) 735-3000
Fax: (212) 735-2000

- and -

Albert L. Hogan III
Amy L. Van Gelder
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
155 N. Wacker Drive
Chicago, IL 60606
Tel: (312) 407-0700
Fax: (312) 407-0411

Counsel to Barclays Bank PLC in its capacity as the Prepetition LC Agent under the Prepetition LC/Term Loan Agreement

EXHIBIT A

Debtors' Plan of Reorganization

Serial Degradation of LC Lender Treatment (Summary)

September 19, 2015

($ in M)	Plan of Reorganization Filed as of: 7/13/2015 Balance $	Avg. Interest (Cash / PIK) %	Plan Supplement 9/1/2015 Balance $	Avg. Interest (Cash / PIK) %	Term Sheet 9/15/2015 Balance $	Avg. Interest (Cash / PIK) %
1st Out LCs	$200.0		-		-	
Other	415.9		$415.9		$444.5	
Total Top Tranche Debt	**615.9**	**10.0%**	**415.9**	**12.5%**	**444.5**	**13.5%**
1st Out LCs	-		198.0		-	
Rights Offering	*N/A*		*N/A*		50.0	
Other	-		-		65.0	
Total Middle Tranche Debt	**-**	***N/A***	**198.0**	**5.0%**	**115.0**	**5.0% / 7.0%**
1st Out LCs	-		-		155.0	
Other	297.0		297.0		37.0	
Total Bottom Tranche Debt	**297.0**	**6.8% / 7.5%**	**297.0**	**6.0% / 6.0%**	**192.0**	**3.7% / 7.0%**
Total Debt	**$912.9**		**$910.9**		**$751.5**	
Equity Transaction						
Rights Offering	$50.0		$50.0			
Equity Consideration	30%		30%		35%	

Debtors' Plan of Reorganization

Serial Degradation of LC Lender Treatment (Detailed Schedule)

September 19, 2015

($ in M)	Filed as of:	Plan of Reorganization 7/13/2015 Balance $	Plan of Reorganization 7/13/2015 Avg. Interest (Cash / PIK) %	Plan Supplement 9/1/2015 Balance $	Plan Supplement 9/1/2015 Avg. Interest (Cash / PIK) %	Term Sheet 9/15/2015 Balance $	Term Sheet 9/15/2015 Avg. Interest (Cash / PIK) %
Patriot ABL LCs		$44.0		$44.0		$44.0	
DIP Outstanding[2]		109.0		109.0		109.0	
DIP Outstanding OID[2]		-		-		5.7	
Incremental DIP		- [3]		- [3]		-	
Blackhawk 1st Lien Debt[2]		165.1		165.1		165.1	
Blackhawk 1st Lien Debt OID[2]		-		-		8.7	
JRA Debt[4]		61.8		61.8		61.8	
JRA Debt OID[4]		-		-		14.2	
Other Blackhawk Debt		36.0		36.0		36.0	
1st Out LCs		200.0		-		-	
Other		-		-		-	
Total Top Tranche Debt		**615.9**	**10.0%**	**415.9**	**12.5%**	**444.5** [5]	**13.5%**
1st Out LCs		-		198.0		-	
Incremental DIP		-		-		30.0	
Incremental DIP OID		-		-		13.1	
Rights Offering		-		-		50.0	
Rights Offering OID		-		-		21.9	
Total Middle Tranche Debt		**-**	***N/A***	**198.0**	**5.0%**	**115.0**	**5.0% / 7.0%**
2nd Out Term Loan / PIK Notes (Includes Rights Offering)[6]		297.0		297.0		-	
Rights Offering Incentive		-		-		37.0	
1st Out LCs		-		-		155.0	
Total Bottom Tranche Debt		**297.0**	**6.8% / 7.5%**	**297.0**	**6.0% / 6.0%**	**192.0**	**3.7% / 7.0%**
Total Debt		**$912.9**		**$910.9**		**$751.5**	
Equity Transaction[7]							
Rights Offering		$50.0		$50.0			
Equity Consideration		30%		30%		35%	

(1) Net interest margin for ABL LCs has not been provided.

(2) The 9/15/2015 Term Sheet Blackhawk 1st Lien and DIP balances include a 95% OID.

(3) Incremental DIP was always assumed to receive Top Tranche consideration. This treatment is not reflected in the original documents although, the Debtor had always maintained that a DIP of more than $100M was a necessity.

(4) The 9/15/2015 Term Sheet JRA Debt balance includes a 80% OID.

(5) The 9/15/2015 Term Sheet includes a $401.2M balance for the resulting Top Tranche facility. The 9/15/2015 Term Sheet does not include enough specificity to identify necessary balance adjustments. Every component above, except 'Other Blackhawk Debt' includes some OID. The total includes $28.7M of new OID.

(6) The 2nd Out Term Loan / PIK Note holders were to receive $297M in subordinated secured debt and the opportunity to participate in a $50M Rights Offering backstopped by the DIP

(7) Until the latest version of the term sheet and revised disclosure statement and plan, the $50M infusion (from either the Backstop Parties, the 2nd Out Term Loan holders and/or the PIK Note holders) was made in exchange for an equity ownership in New Blackhawk. Now, the $50M results in: an equity ownership (a 35% ownership as opposed 30%); a new Middle Tranche note of $50M; and, $21.9M in OID. In addition, the Middle Tranche will also include incremental DIP of $30M that now receives $13.1M in OID.

EXHIBIT B

Kenneth S. Ziman
Shana A. Elberg
SKADDEN, ARPS, SLATE, MEAGHER & FLOM
4 Times Square
New York, NY 10036
Tel: (212) 735-3000
Fax: (212) 735-2000

- and -

Albert L. Hogan III
Amy L. Van Gelder
SKADDEN, ARPS, SLATE, MEAGHER & FLOM
155 N. Wacker Drive
Chicago, IL 60606
Tel: (312) 407-0700
Fax: (312) 407-0411

Counsel to Barclays Bank PLC in its capacity as the Prepetition LC Agent under the Prepetition LC/Term Loan Agreement

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 788-8218

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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, *et al.*,	)	Case No. 15-32450 (KLP)
Debtors.	)	(Jointly Administered)

ORDER GRANTING MOTION OF THE PREPETITION LC AGENT FOR AN ORDER TERMINATING THE USE OF CASH COLLATERAL AND CONVERTING THE DEBTORS' CHAPTER 11 CASES TO CASES UNDER CHAPTER 7

Upon the motion (the "Motion")[1] of the Prepetition LC Agent for the Prepetition LC Facility Issuers and the Prepetition LC Lenders (together with the Prepetition LC Agent, in such capacity, the "LC Parties"), for an order terminating the Debtors' authorization to use Cash Collateral and converting these chapter 11 cases to cases under chapter 7 of the Bankruptcy

[1] Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.

Code, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding under 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with the Case Management Procedures; and no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors, their estates, their creditors and other parties in interest; and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby GRANTED.

2. The Debtors' right to use cash collateral has terminated.

3. Pursuant to section 1112(b) of the Bankruptcy Code, the Debtors' chapter 11 cases are hereby converted to cases under chapter 7 of the Bankruptcy Code, effective as of the date hereof (the "Conversion Date").

4. The United States Trustee shall appoint a Chapter 7 trustee to serve as trustee of the Debtors' estate.

5. The Debtors shall:

a. Within five (5) days of the Conversion Date, turn over to the appointed chapter 7 trustee all records and property of the estates under their custody and control as required by Federal Rule of Bankruptcy Procedure 1019(4);

b. Within fourteen (14) days of the Conversion Date, file a schedule of unpaid debts incurred after commencement of the superseded cases through the Conversion Date, including the name and address of each creditor, as required by Federal Rule of Bankruptcy Procedure 1019(5)(A)(i); and

c. Within thirty (30) days of the Conversion Date, file and transmit to the Office of the United States Trustee a final report and account as required by Federal Rule of Bankruptcy Procedure 1019(5)(A)(ii).

6. To the extent not already done so, all professionals retained by the Debtors or the Creditors' Committee in these chapter 11 cases shall file, within forty-five (45) days of the Conversion Date, a final fee application for approval of all fees and expenses incurred through the Conversion Date.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice.

8. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation of this Order.

Richmond, Virginia

Dated:_____, 2015

KEITH L. PHILLIPS
UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: _____

WE ASK FOR THIS:

/s/ Henry P. (Toby) Long, III
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
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Kenneth S. Ziman
Shana A. Elberg
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155 N. Wacker Drive
Chicago, IL 60606
Tel: (312) 407-0700
Fax: (312) 407-0411

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CERTIFICATION OF ENDORSEMENT
UNDER 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/ Henry P. (Toby) Long, III