

**IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA**

**MARY BOWLES, individually, and  
as Parent and Guardian of  
DUSTIN WADE COOPER, a minor,**

**Plaintiffs,**

v.

**MASSEY ENERGY COMPANY, et al.,**

**Consol. Civ. Action No. 09-C-212  
Judge William S. Thompson**

**Defendants,**

v.

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

**Third-Party Plaintiffs,**

v.

**ACE AMERICAN INSURANCE COMPANY, et al.,**

**Third-Party Defendants.**

**CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE**

This Confidential Settlement Agreement and Release (“Agreement”) is made and entered into, by and between Third-Party Plaintiffs Patriot Coal Corporation, Heritage Coal Company, LLC and Pine Ridge Coal Company, LLC and Third-Party Defendants ACE American Insurance Company, Pacific Employers Insurance Company, Century Indemnity Company (as successor to CCI Company, successor to Insurance Company of North America) and Indemnity Insurance Company. The foregoing are sometimes collectively referred to herein as the “Parties.”

**RECITALS**

**WHEREAS**, the ACE Companies (defined below) or their predecessors issued or allegedly issued various insurance policies (“the Policies”) to Patriot (defined below) and/or its predecessors, including but not limited to those policies identified in Appendix A attached hereto; and

**WHEREAS**, beginning in 2008, 362 plaintiffs brought actions against Patriot in the Circuit Court of Boone County, West Virginia, each making substantially similar allegations and claims (collectively, the “Boone County Well Water Litigation”); and

**WHEREAS**, the Court consolidated the Boone County Well Water Litigation cases for pretrial purposes under the caption *Bowles v. Massey Energy Company*, Civil Action No. 09-C-212; and

**WHEREAS**, Patriot made a demand upon the ACE Companies for defense and indemnity under the Policies with respect to the Boone County Well Water Litigation; and

**WHEREAS**, Patriot filed a third-party Complaint against the ACE Companies and Patriot's other insurers seeking coverage for the Boone County Well Water Litigation ("Boone County Insurance Coverage Action"); and

**WHEREAS**, the underlying Boone County Well Water Litigation was settled as between underlying plaintiffs and Patriot, such settlement being approved on November 17, 2011; and

**WHEREAS**, Patriot and the ACE Companies reached a settlement of the Boone County Insurance Coverage Action during mediation on June 11, 2013.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual promises contained herein, the Parties agree as follows:

**1. Purpose and Scope**

The purpose of this Agreement is to resolve forever all Claims by Patriot against the ACE Companies for insurance coverage arising out of, in connection with, or relating in any way to the Boone County Well Litigation and all counterclaims and cross claims asserted by the ACE Companies therein.

**2. Definitions**

**2.01** "*Patriot*" means i) Patriot Coal Corporation, Heritage Coal Company, LLC and Pine Ridge Coal Company, LLC each as Debtor in Possession in its respective Chapter 11 bankruptcy case currently pending in the Bankruptcy Court (defined below); and ii) each of their respective present and future, direct and indirect parents, subsidiaries, partners, joint ventures and affiliates; iii) the past, direct and indirect parents, subsidiaries, partners, joint ventures and affiliates; iv) the past, present and future officers, directors, employees, representatives, agents, members, principals, attorneys and shareholders of any of the foregoing but only in their capacity as such; and v) the predecessors, successors and assigns of any of the foregoing.

**2.02** "*The ACE Companies*" means i) ACE American Insurance Company, Pacific Employers Insurance Company, Century Indemnity Company (as successor to CCI Company, successor to Insurance Company of North America) and Indemnity Insurance Company; and ii) each of their respective present and future, direct and indirect

parents, subsidiaries, partners, joint ventures and affiliates; iii) the past, direct and indirect parents, subsidiaries, partners, joint ventures and affiliates; iv) the past, present and future officers, directors, employees, representatives, agents, members, principals, attorneys and shareholders of any of the foregoing but only in their capacity as such; and v) the predecessors, successors and assigns of any of the foregoing.

**2.03** “*Claim*” means any past, present, or future claim, action, count, cross-claim, counter-claim, right, obligation, demand, request, suit, lawsuit, administrative proceeding, government claims or government orders, arbitration, mediation, cause of action, order and any other assertion of liability of any kind, whether legal or equitable, and whether currently known or unknown, fixed or contingent, matured or unmatured, liquidated or unliquidated, direct or consequential, or foreseen or unforeseen.

**2.04** “*Policies*” means liability insurance policies the ACE Companies sold to Patriot, its affiliates, and/or its predecessors, including but not limited to those policies identified in Appendix A attached hereto.

**2.05.** “*Bankruptcy Court*” means the United States Bankruptcy Court for the Eastern District of Missouri or other Court with jurisdiction over the Chapter 11 bankruptcy case of Patriot and its affiliated debtors.

**2.06** “*Approval Order*” means an order entered by the Bankruptcy Court in a form acceptable to the ACE Companies: (a) approving this Agreement and finding it to be fair, reasonable and equitable; (b) finding that the releases in the Agreement comply with the applicable provisions of the Bankruptcy Code; and (c) issuing an injunction under section 363 of the Bankruptcy Code enjoining third parties from asserting any rights or claims released pursuant to this agreement which order has become final either because (i) any appeal from such order has resulted in the affirmance such order and no further appeal(s) from such order may be taken; or (ii) the time for taking any appeals from such order has passed and no such appeal has been taken.

### **3. Payment of Settlement**

**3.01** Subject to all of the terms and conditions contained in this Agreement, the ACE Companies agree that they shall deliver a check in the amount of One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00) (the “Settlement Payment”) to Patriot, in full and final settlement and satisfaction of any and all past, present and future Claims and liability under the Policies in connection with, arising out of, or relating in any way to the Boone County Insurance Coverage Action, and any and all past, present and future Claims arising out of the Boone County Well Water Litigation (“the Released Claims”). The Settlement Payment shall be made payable to Patriot Coal Corporation, and delivered to Patriot at the address below within five (5) days of the date on which the ACE Companies receive notice that the Approval Order has become final and unappealable.

Patriot Coal Corporation  
12312 Olive Boulevard, Suite 400  
St. Louis, MO 63141

**3.02** Payment of the Settlement Payment, and all other obligations set forth in this Agreement, are contingent upon the Approval Order becoming final and unappealable.

**3.03** Upon payment of the Settlement Payment, the ACE Companies shall have no further obligation to Patriot or any other person with respect to the Released Claims.

#### **4. Releases**

**4.01** In consideration of the payment of the Settlement Payment, Patriot releases, acquits and forever discharges the ACE Companies from any and all past, present and future Claims and liability under the Policies in connection with, arising out of, or relating in any way to the Boone County Insurance Coverage Action, and for any and all past, present and future Claims arising out of the Boone County Well Water Litigation.

**4.02** Without limiting the foregoing, and in further consideration of the payment of the Settlement Payment, Patriot further releases, acquits and forever discharges the ACE Companies from any and all Claims and liability arising out of any alleged bad faith, breach of contract, unfair claims handling, or other misconduct or alleged wrongdoing of any kind by the ACE Companies under the Policies or under statutory or common law in connection with the handling or disposition of Patriot's Claim for coverage arising out of or in connection with the Boone County Well Water Litigation.

#### **5. Dismissal of Boone County Insurance Coverage Action**

Upon payment of the Settlement Payment by the ACE Companies as set forth in Paragraph 3.01, Patriot will dismiss with prejudice all of its claims against the ACE Companies in the Boone County Insurance Coverage Action, including dismissal with prejudice and release of any bad faith, improper claims handling, and similar claims, and all claims for past, present and future defense costs and attorneys' fees.

#### **6. Waiver and Dismissal of Claims for Contribution, Subrogation and Set Off**

The ACE Companies agree to waive and dismiss any past, present and future claims for contribution, subrogation, set off and similar relief against Patriot, Patriot's other insurers, or any other entities that were parties to the Boone County Insurance Coverage Action or the Boone County Well Water Litigation. Notwithstanding the foregoing, the ACE Companies reserve the right to assert claims for contribution, subrogation, set off and similar relief in response to any claim for contribution filed

against it by any other insurer that was or is a party to the Boone County Insurance Coverage Action. This provision does not waive any rights of the ACE Companies against a reinsurer, retrocessionaire, or similar entity.

## **7. Confidentiality and Non-Use as Evidence**

**7.01** This Agreement, including all of its terms, and all communications or exchanges of information between the Parties or their representatives that took place during the negotiations relating to the Agreement, shall be maintained as confidential and proprietary. Except as permitted by Paragraph 7.02, the Parties agree not to disseminate this Agreement or disclose any of its terms, or other information exchanged or otherwise produced during negotiations.

**7.02** This Agreement and its terms may be disclosed only under the following circumstances: (i) in order to obtain Bankruptcy Court approval of this Agreement; (ii) as required by court order; (iii) to any insurance regulator, reinsurer, retrocessionaire or reinsurance or retrocessionaire intermediary of the ACE Companies in connection with reinsurance obligations; (iv) to the Parties identified in Paragraphs 2.01 and 2.02; (v) to a Party's auditors, accountants, and attorneys; (vi) in any action or proceeding where the existence or terms of this Agreement are at issue; and (vii) by written agreement of the Parties.

**7.03** This Agreement shall be deemed to fall within the protection afforded compromises and offers to compromise by Rule 408 of the West Virginia Rules of Evidence.

**7.04** No part of this Agreement may be used in any proceeding as evidence of the respective rights, duties or obligations of Patriot or the ACE Companies under the Policies; however, this restriction shall not apply to any proceeding in which the effect of this Agreement is put at issue.

## **8. Representations and Warranties**

Each of the Parties represents and warrants that: (i) the individual executing this Agreement on its behalf has the authority to enter into a settlement and release containing all of the terms and conditions set forth in this Agreement and to bind that Party, subject to the approval of the Bankruptcy Court; (ii) they approve the making and performance of this Agreement and no further corporate or other internal approval is necessary; and (iii) the making and performance of this Agreement will not violate any provision of law or of their respective articles of incorporation, charter or by-laws. Patriot further represents and warrants that it will promptly take all necessary actions to obtain approval of this Agreement by the Bankruptcy Court.

**9. No Admission**

By this settlement, the ACE Companies are making no admissions of any kind. The Parties agree that none of the terms of this Agreement, nor any aspect of its negotiation or performance, shall be used in any future action or proceeding as evidence of the rights, duties or obligations of the Parties, except that this restriction shall not apply to any proceeding in connection with any Claims or action in which the effect of this Agreement is put at issue.

**10. Dispute Resolution**

To the extent any dispute between the Parties arises under this Agreement, the Parties agree that they will submit their dispute to the Boone County Circuit Court, which will retain jurisdiction to resolve any dispute arising under this Agreement.

**11. Governing Law**

This Agreement shall be enforced, construed and interpreted in accordance with the laws of the state of West Virginia.

**12. Execution**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original. Facsimiles or scanned versions of signatures by the Parties shall be treated as originals.

**IN WITNESS WHEREOF**, the Parties, by their duly authorized representatives, have executed this Agreement as of the date here shown.

**Patriot Coal Corporation**

By:  \_\_\_\_\_

Name: Robert L. Mead

Title: Vice President and Treasurer

Date: 9/10/2013

**Heritage Coal Company LLC**

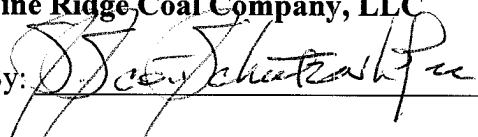
By:  \_\_\_\_\_

Name: Scott S. Schutzenhofer

Title: Vice President and Treasurer

Date: 9/10/2013

**Pine Ridge Coal Company, LLC**

By:  \_\_\_\_\_

Name: Scott S. Schutzenhofer

Title: Vice President and Treasurer

Date: 9/10/2013

**ACE American Insurance Company,  
Pacific Employers Insurance Company,  
Century Indemnity Company (as  
successor to CCI Company, successor to  
Insurance Company of North America)  
and Indemnity Insurance Company**

By: 

Name: JOHN F. GLOWACKI, JR

Title: AVP- Direct Claims

Date: 9/10/2013

*[Signature page to Patriot – ACE settlement agreement]*



## APPENDIX A

<u>Company</u>	<u>Policy Number</u>	<u>Policy Period</u>
Insurance Company of North America	CGOG1658513-0	10/01/93-10/01/94
Insurance Company of North America	CGOG1658779-5	10/01/94-10/01/95
Indemnity Insurance Company	CGOG1423000-2	10/01/95-10/01/96
Indemnity Insurance Company	HDOG1896537-9	10/01/96-10/01/97
Indemnity Insurance Company	HDOG19316105	10/01/97-10/01/98
Pacific Employers Insurance Company	HDOG19653043	10/01/98-10/01/99
Pacific Employers Insurance Company	HDOG19898891	10/01/99-10/01/00
Pacific Employers Insurance Company	HDOG20576650	10/01/00-10/01/01
Pacific Employers Insurance Company	HDOG20297475	10/01/01-10/01/03
ACE American Insurance Company	HDOG19906735	10/01/03-10/01/04
ACE American Insurance Company	HDOG19906000	10/01/04-10/01/05
ACE American Insurance Company	HDOG21713661	10/01/05-10/01/06
ACE American Insurance Company	HDOG23717773	10/01/06-10/01/07