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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re **PATRIOT COAL CORPORATION, *et al.*,** **Debtors.**	**Chapter 11** **Case No. 12-51502-659** **(Jointly Administered)** **Objection Deadline:** **March 28, 2013 at 4:00 p.m.** **(prevailing Central Time)** **Hearing Date:** **April 10, 2013 at 10:00 a.m.** **(prevailing Central Time)** **Hearing Location:** **Courtroom 7 North**

MEMORANDUM OF LAW IN SUPPORT OF THE DEBTORS' MOTION TO REJECT COLLECTIVE BARGAINING AGREEMENTS AND TO MODIFY RETIREE BENEFITS PURSUANT TO 11 U.S.C. §§ 1113, 1114

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Patriot Coal Corporation and its affiliated debtors (collectively, "**Patriot**" or the "**Debtors**") respectfully move, pursuant to 11 U.S.C. §§ 1113(c) and 1114(g), for an order: (1) authorizing those Debtors (the "**Obligor Companies**") that are signatories to collective bargaining agreements with the United Mine Workers of America (the "**UMWA**") to reject such collective bargaining agreements;[1] (2) implementing the terms of the Debtors' section 1113 proposal (the "**1113 Proposal**"); (3) authorizing the Debtors to terminate retiree benefits for

[1] The following Debtors are the Obligor Companies: Apogee Coal Company, LLC; Colony Bay Coal Company; Eastern Associated Coal, LLC; Gateway Eagle Coal Company, LLC; Heritage Coal Company LLC; Highland Mining Company, LLC; Hobet Mining, LLC; Mountain View Coal Company, LLC; Pine Ridge Coal Company, LLC; and Rivers Edge Mining, Inc. For convenience, this memorandum of law uses the term "Patriot" to refer to both the Debtors and the Obligor Companies.

certain of their current retirees;[2] and (4) implementing the terms of the Debtors' section 1114 proposal (the "**1114 Proposal**" and, together with the 1113 Proposal, the "**Proposals**").[3]

PRELIMINARY STATEMENT

This motion is about Patriot's ability to survive. If the motion is granted, Patriot's active and retired employees will experience difficult and painful changes, but the enterprise will survive and jobs and healthcare benefits for thousands of families will be preserved. If cost relief is not granted, Patriot will run out of money and be forced to liquidate, and the results for all of these families will be tragic.

Patriot is one of the largest coal-producing enterprises in the United States. In recent years, the demand and price for coal has plummeted, and Patriot has been crippled by an increasing web of regulatory and environmental obligations. At the same time, Patriot's liabilities have skyrocketed, and the wages and benefits it pays to its unionized workforce have become far more generous than the coal market standard. Indeed, Patriot suffers from a unique cost disadvantage – approximately 41 percent of its workforce is unionized, while its competitors

[2] The UMWA has agreed pursuant to 11 U.S.C. § 1114(c)(1) to serve as the authorized representative for the retirees of Patriot who currently receive retiree benefits pursuant to collective bargaining agreements.

[3] As discussed in the Declaration of Gregory B. Robertson, dated March 14, 2013 ("**Robertson Decl.**"), Patriot has made four proposals. On November 15, 2012, Patriot made its original proposal to modify the CBAs pursuant to 11 U.S.C. § 1113 (the "**Original 1113 Proposal**") and its original proposal to modify retiree benefits pursuant to 11 U.S.C. § 1114, dated November 15, 2012 (the "**Original 1114 Proposal**," and together with the Original 1113 Proposal, the "**Original Proposal**"). On January 17, 2013, shortly after the UMWA made its first counterproposal, Patriot made revisions to its Original Proposal (the "**Second Proposal**"). On February 19, 2013, shortly after the UMWA made its second counterproposal, Patriot made revisions to the Second Proposal (the "**Third Proposal**"). On February 27, 2013, Patriot made further revisions to the 1114 Proposal in response to certain points raised by the UMWA (the "**Fourth Proposal**"). While Patriot demonstrated significant movement in each successive set of proposals, the UMWA rejected each of Patriot's proposals in its entirety and the UMWA's counterproposals offered Patriot only a small fraction of the needed savings.

For the sake of convenience, this memorandum refers to the Original 1113 Proposal, as modified by the Second Proposal, and the Third Proposal, as the "**1113 Proposal**," and the Original 1114 Proposal, as modified by the Second Proposal, the Third Proposal, and the Fourth Proposal, as the "**1114 Proposal**." True and correct copies of the Proposals are attached as Exhibits 1 through 5 to the Declaration of Gregory B. Robertson.

have a far higher percentage of less expensive, non-union employees who are compensated at market rates. Unfortunately, Patriot can no longer afford to provide its unionized miners with:

- substantially above-market wages and benefits, which include hourly labor costs that are up to 90 percent higher than what Patriot pays its non-union miners who perform the same jobs;

- healthcare coverage with no employee contributions to premiums, de minimis co-pays, and free mail-order prescription drugs; and

- perks such as up to 47 days of paid time off per year.

Patriot employs more than 1,200 non-union miners willing to work for market wages and benefits. If Patriot is to survive, its UMWA-represented employees must do the same.

Patriot's obligations with respect to retiree healthcare and pensions are even more unsustainable:

- Patriot pays tens of millions a year in retiree healthcare obligations and the present value of its obligations exceeds $1.6 billion;

- Patriot also pays tens of millions a year in pension obligations, and
  ;

- Patriot employs approximately 1,650 UMWA-represented employees, yet it provides retiree healthcare benefits to nearly 8,100 individuals who receive such benefits under collective bargaining agreements and another 2,300 individuals who receive such benefits pursuant to federal statute; and

- Patriot spends at least three times more on retiree healthcare and pension obligations than the vast majority of its peers.

Patriot's spending on post-retirement obligations is rising, and because Patriot cannot alter the price the market will bear, Patriot cannot simply recoup these costs from customers.

Faced with dramatically increasing costs and decreasing revenues, Patriot's losses have mounted. In 2012 alone, Patriot and its subsidiaries lost nearly three-quarters of a billion dollars, and would have liquidated had they not received emergency debtor-in-possession or "DIP" financing. Far from a temporary liquidity crisis, Patriot must permanently alter its cost structure if it is to successfully reorganize, preserve some 4,200 jobs, and provide value to retirees, who will end up with substantial unsecured claims in these cases.

Patriot has undertaken extensive efforts to address these challenges – and continues to do so. But there is no escaping the cold, hard facts. For the year ended December 31, 2012, Patriot reported a 21 percent decline in coal sale revenues, and negative free cash flow of $190.6 million. Patriot's net loss more than quintupled, from $139.1 million in 2011 to $730.6 million in 2012.

As discussed in detail below, Patriot has already identified and implemented cash savings from all areas of its business. To that end, Patriot has: streamlined its operations by closing and idling unprofitable mines; decreased planned capital expenditures; rejected or renegotiated unprofitable contracts; and reduced management and non-union wages, benefits, and headcount. These cash savings eventually will enable Patriot to save approximately in 2014, a significant amount but not nearly enough to bridge the gap.

To complicate this effort, many of Patriot's largest liabilities – including its obligations to pay benefits to certain statutorily protected groups of workers and retirees and to pay certain environmental clean-up costs – generally cannot be altered in bankruptcy. Patriot must, therefore, revise its cost structure while recognizing that certain significant liabilities cannot be modified. As a result, Patriot must turn to its unionized workforce and retirees for needed savings, which average approximately $150 million per year, and will enable Patriot to generate sufficient future cash flow to be able to refinance its debt. Although such cuts will be painful to many, the alternative would include liquidation, the loss of approximately 4,200 Patriot jobs, Patriot's inability to provide benefits to any employee or retiree, and the potential for a ripple effect across Appalachia and the Illinois Basin.

To achieve the savings necessary to its survival, Patriot has negotiated for months with the UMWA in an effort to reach a consensual resolution. During these negotiations, Patriot shared an extraordinary amount of data and delivered four sets of increasingly generous proposals to the UMWA: the Original Proposal, which was rejected by the UMWA; the Second Proposal, which – although specifically tailored to address the UMWA's stated concerns – was also rejected by the UMWA; and the Third and Fourth Proposals, which – although further tailored to respond to the UMWA's concerns – were likewise rejected. The Section 1113 component of the Proposals contemplates modifications to wages, health benefits, pension benefits, and work rules so that Patriot's unionized workers receive compensation that is at least as good as compensation provided to Patriot's non-union miners (who represent approximately 43 percent of Patriot's active miners). These changes would bring Patriot closer to market compensation, and yield annual savings of approximately $75 million per year. The Section 1114 component of the Proposals would transition responsibility for retiree healthcare into a Voluntary Employee Beneficiary Association trust – or a "VEBA" – that would be funded by Patriot, by the value of a substantial unsecured claim, and with other sources. While Patriot will be terminating retiree healthcare entirely for its non-union retirees, the VEBA would continue to provide meaningful health benefits to Patriot's unionized retirees, and will allow Patriot to realize approximately $75 million in annual cash savings.

Patriot developed these Proposals in full compliance with Sections 1113 and 1114 of the Bankruptcy Code. First, the Proposals include modifications that are necessary for Patriot's survival. Absent substantial modifications that bring Patriot's collective bargaining agreements and retiree benefits in line with the market,

. More importantly, the touchstone of Section 1113 and Section 1114 relief is that a debtor should emerge from bankruptcy with the ability not only to stave off immediate liquidation, but to compete on a long-term basis. The Proposals will (somewhat) level the playing field between Patriot and its well-capitalized competitors, all of which employ a much smaller proportion of UMWA labor than Patriot.

Second, the Proposals are based on the most complete and reliable information available. That information – including internal data, a comprehensive business plan updated to reflect the most recent market developments and trends, and analyses by industry experts – supports the need for Patriot's requested cash savings.

Third, Patriot has supplied the UMWA with all data necessary to evaluate the Proposals and has bargained with the UMWA extensively and in good faith. Patriot delivered the Original Proposal on November 15, 2012, and made more than 11,000 pages of internal information available to the UMWA a month earlier. In the months that followed, Patriot responded to dozens of requests for information from the UMWA and its advisors, provided documents to the UMWA in a timely fashion, and ultimately supplied nearly 43,000 pages of information supporting its Proposals. Patriot shared this information via a continually accessible, web-based data room, which was updated on a rolling basis in response to the UMWA's requests, often mere hours after the requests were made. What makes the response time even more notable is that Patriot and its advisors often compiled data in forms that did not otherwise exist, simply to satisfy the specific requests of the UMWA and its advisors. To that end, Patriot provided a "functional" or "live" business plan model to the UMWA, which was built off of Patriot's budgeting and planning system. Patriot then offered to help the UMWA and its advisors increase their familiarity with the model and hosted conference calls and meetings about the model. Following a multi-hour training session in St. Louis, Patriot offered to provide the UMWA with open access to its budgeting and planning system, an offer the UMWA has not yet accepted. Similarly, in response to other UMWA requests, Patriot coordinated with multiple healthcare administrators and other third parties to provide the UMWA with highly detailed, complex healthcare utilization data. Finally, Patriot and its advisors have participated in twelve formal negotiating sessions, multiple informal meetings, dozens of conference calls, and hundreds of e-mail exchanges – and Patriot frequently communicated that it stands willing to meet at any time and in any location. In light of this extensive record, there can be no serious question that Patriot negotiated in good faith with the UMWA and provided the UMWA with far more information than necessary to evaluate the Proposals.

<u>Fourth</u>, the Proposals are fair and equitable. UMWA-represented employees, non-union employees, and retirees alike have been asked to make sacrifices so that Patriot can survive, and

the Proposals were made only after an exhaustive effort to identify and implement savings from other sources. As important, the Proposals are also consistent with – and even more generous than – the compensation level of Patriot's more than 1,200 non-union employees who perform exactly the same jobs as the UMWA-represented miners. Indeed, the UMWA itself recognized this reality by recently agreeing to a collective bargaining agreement with Patriot's Gateway Eagle Coal Company, LLC ("**Gateway**") that is more closely aligned with Patriot's non-union benefit scale and contains many of the changes reflected in the Proposals. There can be no better demonstration that the Proposals are fair and equitable than the fact that thousands of miners at Patriot – including hundreds of UMWA members – and tens of thousands of miners at Patriot's competitors, are willing to work for the wage and benefit levels reflected in the Proposals. Lifetime health insurance with no employee premium, free mail-order prescription drugs, and a $240 out-of-pocket maximum per family per year is simply unaffordable. Finally, Patriot has included a profit-sharing mechanism in its 1114 Proposal, which provides significant potential value for its retirees, and has accepted the UMWA's proposal for the sharing of recoveries from future litigations against third parties, which will also inure to the benefit of Patriot's retirees. These provisions further underscore the fairness of the Proposals.

Fifth, the UMWA has rejected the Proposals without good cause. The UMWA's first counterproposal rejected nearly every element of the Proposals and consisted mainly of a list of concessions for Patriot to make to the UMWA, rather than the opposite. That counterproposal offered a meager $6.4 million in savings in 2013 – less than 5 percent of Patriot's $150 million ask – with such de minimis "concessions" as an offer for UMWA-represented employees to pay $5 co-payments for certain (not all – others would be free) prescription drugs. Then, in February 2013, after three full months of extensive negotiations, the UMWA finally acknowledged that

Patriot needed to save approximately $150 million per year on labor and retiree costs. At that time, the UMWA rejected Patriot's Second Proposal and made a second counterproposal that it inaccurately asserted would provide Patriot with all of its requested savings. In reality, the UMWA's second counterproposal offered Patriot but a tiny fraction of the needed savings, and included conditions that would be impossible to satisfy. For example, while the UMWA for the first time conceded that transitioning retiree healthcare to a VEBA would be appropriate, the UMWA demanded that the VEBA be funded with $1 billion (impossible), that Patriot add $400 million in debt to its balance sheet to guarantee the $1 billion in total funding (impossible), and that the UMWA be granted effective control of the reorganized company, even if the UMWA sold its stock (impossible). Patriot responded with the Third and Fourth Proposals, which included a mechanism to promptly monetize the UMWA's claim. In connection with these proposals, Patriot, the UMWA, and their respective advisors had extensive discussions about the value of the UMWA's retiree healthcare claim, which could be worth hundreds of millions of dollars. The UMWA rejected these proposals as well and has not made a subsequent counterproposal. In short, the UMWA has rejected Patriot's four Proposals, and the UMWA's proposed alternatives are, at best, unrealistic and, at worst, draconian measures that will not afford Patriot the needed relief. That the UMWA agreed in 2011 to a CBA with Gateway that is largely consistent with the Proposals, but is now unwilling to agree to such changes in the context of this process, only confirms that the UMWA has rejected the Proposals without good cause. Given the necessity – and urgency – of the proposed savings and Patriot's compliance with the other elements of Sections 1113 and 1114, there is no reasonable basis for the UMWA to reject the Proposals.

Sixth, the balance of equities favors implementation of the Proposals. Patriot recognizes that the requested modifications are significant and will impose a very real hardship on unionized employees and retirees, many of whom were promised lifetime healthcare pursuant to legacy collective bargaining agreements negotiated decades ago by other companies. Sections 1113 and 1114, however, require consideration of the tragic alternative: liquidation, the loss of all jobs, and Patriot's inability to provide any benefits to its employees or retirees. Implementation of the Proposals will enable Patriot to preserve thousands of union and non-union jobs, as well as meaningful health benefits for its UMWA retirees.

As it has at the negotiating table, the UMWA will urge the Court to reject Patriot's argument that cash savings are necessary on the grounds that Patriot might obtain recoveries from third parties. In particular, the UMWA has focused on claims that have been or may be asserted against two other coal companies: Peabody Energy Corporation ("**Peabody**"), Patriot's predecessor, which transferred certain assets and liabilities to Patriot; and Arch Coal, Inc. ("**Arch**"), which sold certain mining operations to a company that was later acquired by Patriot. The UMWA has already filed a lawsuit against Peabody and Arch, and has focused much of its attention during negotiations on these potential claims. To be sure, Patriot and the Creditors' Committee have commenced an investigation of Peabody and Arch that may give rise to causes of action in the future. But Patriot's need for relief is urgent and immediate, and most assuredly cannot await the uncertain outcome of a multi-year litigation against third parties who will vigorously contest any claims. To the extent there is an eventual recovery as a result of those potential claims, Patriot has already agreed in its Proposals to the UMWA's suggestion of how those recoveries would be shared among unsecured creditors. Ultimately, the question before this Court cannot be whether recoveries will one day come from Peabody, Arch, or some other third party, but rather whether Patriot has proposed modifications that are necessary to its survival and reorganization.

Peabody is, however, relevant to the instant proceedings in one important respect. Concurrent with the filing of this motion, Patriot is filing a declaratory judgment action to prevent Peabody from exercising a purported right under the spin-off agreements to reduce its own obligations if this motion is granted. As the Court knows from the hundreds of letters it has received, many of Patriot's retirees worked for companies that were owned by Peabody prior to the spin-off, and Peabody agreed to pay for the healthcare for certain of these retirees. Notwithstanding the fact that Peabody has repeatedly and publicly trumpeted that it has "lived up to its obligations" and "continues to do so," Peabody has stated that it may seek to reduce or eliminate its retiree healthcare obligations for this group of retirees if Patriot's motion is granted. While it is imperative for Patriot's survival that these retirees do not rely on Patriot for their healthcare, it is likewise imperative for this Court to grant the declaratory judgment so that Peabody is not able to reap a windfall, and harm thousands of individuals for which it is responsible, as a result of these proceedings.

* * *

Unfortunately, the threat of liquidation is real and it could result in the loss of jobs and benefits for tens of thousands of individuals, non-union and union alike. It is a result that has materialized in similar cases, including in the bankruptcy of coal producer Horizon Natural Resources Co., where 2,500 employees lost their jobs and 4,200 retirees lost their benefits,[4] and most recently in the bankruptcy of Hostess Brands, Inc., where nearly 18,500 employees will

[4] See generally In re Horizon Natural Res. Co., 316 B.R. 268 (Bankr. E.D. Ky. 2004); In re Horizon Natural Res. Co., No. 02-14261 (JMS) (Bankr. E.D. Ky. July 15, 2004) [ECF No. 3571, 3573].

lose their jobs.[5] Thus, while Patriot reluctantly comes to the Court for relief, it does so knowing that despite months of negotiations and material concessions by Patriot, the UMWA has rejected Patriot's proposals without good cause. Further delay threatens Patriot's survival and will eliminate the possibility of reaching an acceptable middle-ground – one that is, of course, worse than the historical status quo, but far preferable to liquidation.

As in any difficult bankruptcy case, the path forward is uncertain. Patriot of course strongly prefers to continue its operations, and provide jobs and benefits to its employees and retirees. But Patriot is in a fragile financial position, is facing an impending liquidity crisis, and does not yet know if this Court will grant the motion, or whether – even if the motion is granted – the UMWA will damage the company with debilitating strikes. In light of this uncertainty, Patriot, together with its advisors, is simultaneously beginning to explore a range of options, including the sale of some or all of the company's assets. Patriot cannot assure its employees, its retirees, its creditors, or any other constituency that these alternatives will involve continued operations. For that reason, the 1113/1114 process remains the best prospect for achieving an outcome that would maximize the value of the enterprise and preserve jobs and benefits.

For all of these reasons, and for the reasons discussed in further detail below and in the accompanying declarations, Patriot's motion should be granted and the terms of the Proposals should be implemented.

[5] See generally In re Hostess Brands, Inc., No. 12-22052 (RDD); Jacqueline Palank & Rachel Feintzeig, Hostess Is Cleared for Liquidation, Wall St. J., Nov. 23, 2012, at B3.

PROCEDURAL HISTORY

On July 9, 2012 (the "**Petition Date**"), the Debtors each filed a voluntary petition under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Southern District of New York (the "**SDNY Bankruptcy Court**"). On December 19, 2012, the SDNY Bankruptcy Court entered an order transferring these chapter 11 cases to this Court (the "**Transfer Order**"). [ECF No. 1789].

Patriot delivered its Original Proposal to the UMWA on November 15, 2012, more than one month before the Transfer Order. Despite extensive efforts by Patriot to reach a negotiated resolution, the UMWA has rejected Patriot's Proposals without good cause. For that reason, Patriot has filed the instant motion (the "**Motion**").

BACKGROUND

In this Motion, Patriot seeks relief from two categories of unsustainable obligations: its obligations to approximately 1,650 active, unionized employees; and its obligations to approximately 8,100 unionized retirees and dependents.[6] Patriot's obligations to its active, unionized employees are set forth in collective bargaining agreements (the "**CBAs**"). Ten of the ninety-nine chapter 11 Debtors are signatories to these CBAs: Apogee Coal Company, LLC; Colony Bay Coal Company; Eastern Associated Coal, LLC; Gateway Eagle Coal Company, LLC; Heritage Coal Company LLC; Highland Mining Company, LLC; Hobet Mining, LLC; Mountain View Coal Company, LLC; Pine Ridge Coal Company, LLC; and Rivers Edge Mining, Inc. (together, the "**Obligor Companies**") (Declaration of Bennett K. Hatfield, dated

[6] Unless Patriot prevails in its contemporaneously filed declaratory judgment action against Peabody, this motion also seeks relief with respect to a group of individuals whose benefits are currently being paid for by Peabody, as discussed in further detail below.

March 14, 2013 ("**Hatfield Decl.**") ¶¶ 18-25; Declaration of Dale Lucha, dated March 14, 2013 ("**Lucha Decl.**") ¶ 6.)

The CBAs signed by eight of the ten Obligor Companies mirror the terms of the National Bituminous Coal Wage Agreement of 2011 (the "**NBCWA**"). Since 1950, the NBCWA and similar predecessor agreements have been negotiated by the UMWA and the Bituminous Coal Operators' Association (the "**BCOA**"), a multi-employer association that represents mining companies in certain negotiations with the UMWA. (Lucha Decl. ¶ 7.) Although the Obligor Companies are not members of the BCOA, the UMWA has historically insisted that all unionized coal companies sign a "Me-Too" agreement that binds these companies to the terms of the existing NBCWA. As a result, these eight entities are bound by the terms of the NBCWA.[7] (Lucha Decl. ¶ 7.)

The remaining two Obligor Companies are signatories to collective bargaining agreements with the UMWA that differ from the NBCWA. Highland Mining Company LLC and Gateway Eagle Coal Company, LLC are subject to individualized collective bargaining agreements, which provide for, among other things, wage rates, work rules, and multi-employer fund contributions that differ from those in the NBCWA (the "**Highland CBA**" and the "**Gateway CBAs**," respectively). Notably, the Gateway CBAs were negotiated in 2010 and 2011 to permit those Debtors to operate at a profit under then-existing forecasts. For that reason, the Gateway CBAs include many of the terms that Patriot has included in its Proposals. For example, under the Gateway CBAs, Patriot contributes to a company-sponsored retirement plan

[7] Apogee Coal Company, LLC, Eastern Associated Coal, LLC, Heritage Coal Company, LLC, and Hobet Mining, LLC are subject to "Me-Too" agreements, which adopt the provisions of the NBCWA. (Hatfield Decl. ¶ 23.) Colony Bay Coal Company, Mountain View Coal Company, LLC, Pine Ridge Coal Company, LLC, and Rivers Edge Mining, Inc. are also subject to "Me-Too" agreements, but these entities currently have no employees because they are not engaged in active mining operations. (Lucha Decl. ¶ 7.)

in lieu of making contributions to certain multi-employer pension plans and health plans. Additionally, employees covered by the Gateway CBAs are entitled to benefits that are generally at lower levels than their counterparts covered by "Me-Too" agreements. (Lucha Decl. ¶¶ 8-10.)

Through the CBAs, Patriot has become one of the largest employers of UMWA-represented miners in the United States, notwithstanding the fact that it is only the tenth largest coal-producing enterprise based on 2012 coal production. (Hatfield Decl. ¶¶ 14, 25.) In fact, while less than 11.4 percent of all miners currently employed in the U.S. coal industry are represented by the UMWA, at Patriot the UMWA represents five times that amount. (Hatfield Decl. ¶ 25.)

Patriot's obligations to its retirees are governed by both the CBAs and by federal statute. As discussed in further detail below, Patriot inherited many of its retiree obligations through transactions with Peabody and Magnum Coal Company ("**Magnum**") in 2007 and 2008, respectively. (Hatfield Decl. ¶¶ 26-27.) Over time, retiree healthcare obligations have swelled and now exceed $1.6 billion. (Hatfield Decl. ¶ 95.)

These costly benefits must be modified because Patriot cannot afford to pay them and will not be able to emerge from bankruptcy without a permanent overhaul of its cost structure.

A. Overview of Patriot and the Coal Markets

1. Patriot's Operations

Patriot's operations consist of both mining and selling coal. As of December 31, 2012, it operated eleven mining complexes – or groups of mines – located in Appalachia and in the Illinois Basin. (Hatfield Decl. ¶ 9; Declaration of Seth Schwartz, dated March 14, 2013 ("**Schwartz Decl.**") ¶ 12.)

Patriot employs a variety of mining methods, which include underground longwall mining, underground continuous mining, and surface mining. (Hatfield Decl. ¶ 10.)[8] Patriot mines two different types of coal: thermal coal and metallurgical coal. The type of the coal typically dictates the way in which the coal will be used and the customers who will purchase it. Thermal coal – also called steam coal – is sold primarily to electricity generators, which use the coal as fuel to produce electricity. (Hatfield Decl. ¶ 11.) Metallurgical coal is sold primarily to steel mills and producers of coke, which is a product used for the manufacture of steel. (Hatfield Decl. ¶ 11.)

After extracting the coal at the mine, Patriot crushes, sizes, and washes the coal at a preparation plant, and then sells the coal to a diverse base of domestic and international customers. (Hatfield Decl. ¶ 12.) In 2012, Patriot sold a total of 24.9 million tons of coal, down from 31.1 million tons in 2011.[9] (Hatfield Decl. ¶ 12.) Approximately three-quarters of the coal sold in 2012 was thermal coal. (Hatfield Decl. ¶ 12.) The remaining quarter was metallurgical coal, which was sold to domestic and global steel and coke producers, as well as brokers that sell coal to those same types of customers. (Hatfield Decl. ¶ 12.)

[8] In underground longwall mining, a piece of cutting equipment is moved across a wide face or "wall" of exposed coal in an underground mine. In underground continuous mining, mine workers cut directly through underground seams of coal using large machines called continuous miners. With both methods of underground mining, coal is moved to the surface with the help of various machines, such as conveyor belts or shuttle cars. In surface mining, soil and rock are removed and coal near the surface is dug or cut out of the ground. (Hatfield Decl. ¶ 10.) Patriot plans to decrease its reliance on surface mining in coming years. On November 15, 2012, Patriot and Ohio Valley Environmental Coalition, Inc., West Virginia Highlands Conservancy, Inc., and the Sierra Club entered into an agreement to settle certain environmental litigation. As part of the proposed settlement, Patriot agreed to certain restrictions on large-scale surface mining activities. (Hatfield Decl. ¶ 10 n.4.)

[9] In certain years, Patriot mines less coal than it actually sells to customers. When this occurs, Patriot typically makes up the difference by purchasing coal from other coal companies for later resale to customers. In 2011, for example, Patriot produced 28.7 million tons of coal but sold 31.1 million tons. The reason that Patriot purchases coal from other coal companies is not that it has insufficient coal reserves or an insufficient number of employees to mine the coal. To the contrary, Patriot purchases coal for resale for various reasons, including because its own production costs, which include its above-market union labor costs, make purchasing coal more economical than mining the coal. (Hatfield Decl. ¶ 12 n.5.)

Patriot operates in a highly competitive industry. (Hatfield Decl. ¶¶ 40-56; Schwartz Decl. ¶¶ 13-22, 28-40, 42-50.) The regions in which Patriot's operations are based – Appalachia and the Illinois Basin – are two of the most important coal regions in the United States and are home to many other companies with which Patriot competes, including Alpha Natural Resources, Inc., CONSOL Energy Inc., Alliance Resource Partners, L.P., and Peabody. (Hatfield Decl. ¶ 40.) Along with Patriot, these companies accounted for approximately 56 percent of production in Appalachia and the Illinois Basin in 2012. (Hatfield Decl. ¶ 40.)

2. Patriot's Origins

Patriot Coal Corporation is the direct or indirect parent of each of the other ninety-eight Debtors. (Hatfield Decl. ¶ 15.) Prior to October 31, 2007, Patriot and a number of its subsidiaries were wholly owned subsidiaries of Peabody, the world's largest private-sector coal company. On October 31, 2007, Patriot was spun off from Peabody through a dividend of all of its outstanding shares. As a result of the spin-off, Patriot became a separate, public company. (Hatfield Decl. ¶ 16.)

On July 23, 2008, the newly independent Patriot acquired Magnum. (Hatfield Decl. ¶ 17.) At the time of its acquisition by Patriot, Magnum was one of the largest coal producers in Appalachia. Prior to that acquisition, Magnum itself had acquired certain assets from Arch. (Hatfield Decl. ¶ 17.)

A large percentage of the operations that Patriot inherited had unionized employees. (Hatfield Decl. ¶ 16-17.) As a result, Patriot acquired many of its current subsidiaries – and many of its retiree obligations – through these two transactions. As discussed in further detail below, Patriot and the Creditors' Committee are investigating whether these transactions give rise to fraudulent transfer or other claims. (Hatfield Decl. ¶¶ 37-39.)

3. Patriot's Active Workforce

Patriot collectively employs approximately 4,200 employees and contractors. These individuals include miners, engineers, administrative support staff, managers, directors, and executives. (Hatfield Decl. ¶ 18.)

Patriot employs both unionized and non-unionized workers. At present, approximately 41 percent of active employees, and approximately 57 percent of active miners, are unionized and are represented by the UMWA under collective bargaining agreements. (Hatfield Decl. ¶¶ 19-20.) These unionized employees receive a costly package of wages and benefits, including pension benefits, healthcare benefits, and other economic benefits. (Hatfield Decl. ¶ 21.) The benefits provided to UMWA-represented employees are discussed in further detail in Section C-3 below.

4. Patriot's Retirees

Patriot has far more retirees than active employees. As of February 28, 2013, Patriot paid for or administered retiree healthcare benefits to approximately 21,000 individuals. Of that total, Patriot paid the healthcare benefits for: approximately 8,100 retirees and dependents who receive benefits pursuant to the NBCWA; more than 2,300 retirees and dependents who receive benefits pursuant to the Coal Industry Retiree Health Benefit Act of 1992 (the "**Coal Act**"); and approximately 1,200 non-union retirees and dependents. Patriot also administered benefits to approximately 9,200 additional retirees and dependents, although Peabody has a contractual obligation to pay for the healthcare benefits of this group (the "**Peabody-Assumed Group**"). (Hatfield Decl. ¶ 26; Lucha Decl. ¶¶ 12-15.)

Patriot's healthcare obligations are comprised of the following categories:

Number of Individuals Covered by Patriot Healthcare Plans (Estimate as of February 28, 2013)			
	Employment Type	**Group (Primaries and Dependents)**	**Total**
Patriot	Represented	Active	4,450
		NBCWA	8,100
		Coal Act	2,300
		Other (Layoff, Extended)	400
		Represented subtotal	*15,250*
	Non-Represented	Active	6,600
		Retiree	1,200
		Other (Layoff, Extended)	400
		Non-represented subtotal	*8,200*
Peabody-Assumed	Represented	NBCWA	3,100
		Coal Act	5,000
	Non-Represented	Salaried	1,100
		Peabody-Assumed subtotal	*9,200*
Grand Total			**32,650**
Subtotal: Retiree Healthcare Paid for by Patriot (NBCWA, Coal Act, Non-Rep)			**11,600**
Subtotal: Retiree Healthcare Administered by Patriot			**9,200**
Subtotal: Active and Other Healthcare			**11,850**

(Hatfield Decl. ¶¶ 26-27; Lucha Decl. ¶¶ 12-15.[10])

Like Patriot's UMWA-represented employees, Patriot's UMWA retirees receive extremely generous and costly healthcare benefits. Although the precise benefits package differs across groups of retirees, retirees typically pay no co-insurance, receive free mail-order

[10] In addition to the categories set forth above, Patriot makes contributions to the UMWA 1993 Benefit Trust and Plan (the "**1993 Benefit Plan**"). The 1993 Benefit Plan provides health and other non-pension benefits to approximately 9,000 retirees and dependents who are unaffiliated with Patriot. (Hatfield Decl. ¶ 95(c).)

prescription drugs, make small co-payments for visits to physicians, and are responsible for a maximum out-of-pocket cost of $240 per family per year (including co-payments). (Hatfield Decl. ¶ 95(a).) These benefits are discussed in further detail in Section C-3(a) below.

Although Patriot administers healthcare benefits to many retirees who worked for companies once owned by Peabody, it does not pay all such costs outright. As part of the spin-off, Peabody agreed to pay for the healthcare benefits of certain categories of employees who had retired prior to the spin-off. (Hatfield Decl. ¶ 94.) Pursuant to a series of agreements, Peabody agreed to pay retiree healthcare costs for the Peabody-Assumed Group, which includes approximately 6,000 retirees and approximately 3,200 of their dependents. (Hatfield Decl. ¶ 32.) Despite this arrangement, Patriot paid approximately $83 million for retiree healthcare in 2012 and remains obligated to pay benefits to the Peabody-Assumed Group should Peabody fail to comply with its contractual obligations. (Hatfield Decl. ¶ 96.)

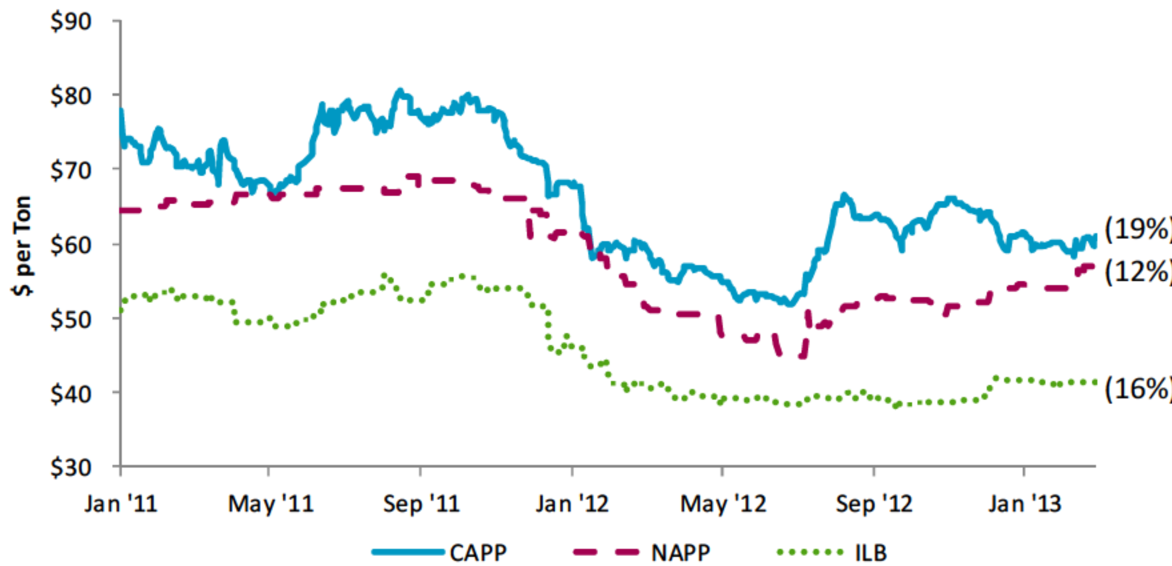
As discussed in further detail in Section D-2, Patriot expects that Peabody will try to exercise a purported right under the spin-off agreements to reduce its obligations to approximately 3,100 individuals in the Peabody-Assumed Group who receive benefits under legacy collective bargaining agreements. If Patriot failed to address this issue in its Proposals, it could be responsible for paying for additional healthcare costs that it cannot afford.

5. The Challenging Coal Market Conditions

In recent years, Patriot has had to contend with long-term changes to the market for U.S. coal. The demand for both thermal coal and metallurgical coal has sharply declined and prices have plummeted. These factors have further weakened Patriot's financial condition.

Demand for thermal coal decreased in 2012. (Hatfield Decl. ¶ 42.) A number of factors have led to this reduction in demand. Large increases in natural gas production have occurred as a result of the discovery of shale gas deposits and technological advancements in drilling, causing the price of natural gas in the United States to fall to a ten-year low in 2012. (Hatfield Decl. ¶ 42; Schwartz Decl. ¶ 16; Declaration of Paul P. Huffard, dated March 14, 2013 ("**Huffard Decl.**") ¶ 12.) In addition, electricity generators increasingly rely on renewable sources of energy – in particular, wind – rather than coal. (Schwartz Decl. ¶¶ 14-16.) Moreover, the mild winter of 2011-2012 resulted in lower coal consumption for electricity generation, a trend that has continued in the winter of 2012-2013. (Hatfield Decl. ¶ 42; Schwartz Decl. ¶¶ 28, 34.) As illustrated in Graph 4 in the Declaration of Paul P. Huffard, these factors have resulted in price decreases for thermal coal:

Graph 4: Eastern U.S. Thermal Coal Historical Pricing

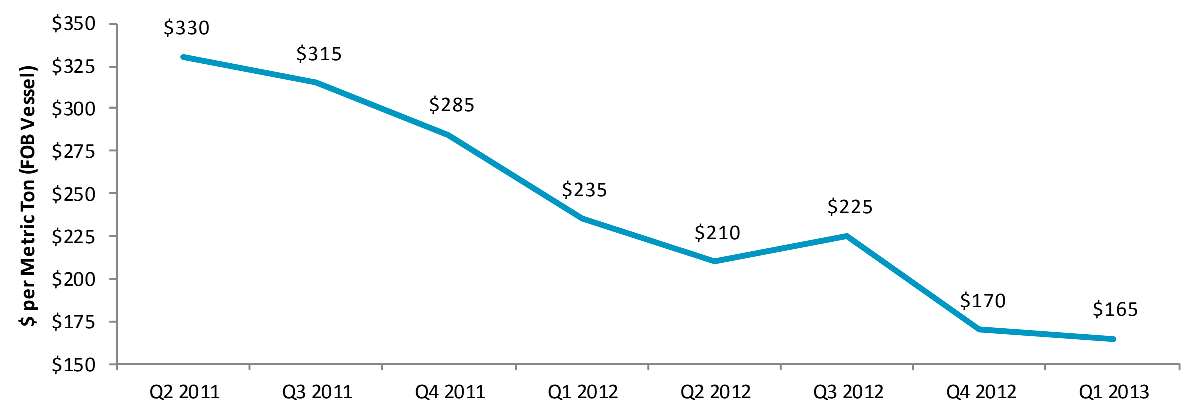


Source: ICAP. Pricing for prompt month delivery.

In short, these factors have led to a 19 percent decline in the price of Central Appalachian thermal coal, a 12 percent decline in the price of Northern Appalachian thermal coal, and a 16 percent decline in Illinois Basin thermal coal between late 2010 and March 2013. (Huffard Decl. ¶ 17.)

Demand for metallurgical coal also decreased in 2012. The continuing global economic slowdown and distressed financial markets are widely viewed as driving the reduction in the demand for metallurgical coal. (Hatfield Decl. ¶ 43; Huffard Decl. ¶ 21.) In addition, declining steel production growth in China, India, and the United States, as well as reduced production in Europe and Brazil, has decreased demand for metallurgical coal. (Hatfield Decl. ¶ 43; Schwartz Decl. ¶ 29; Huffard Decl. ¶ 22.) Other factors are also at work, including a trend among steel producers, which are beginning to use electric furnaces, rather than coke-fueled ovens, to produce steel. (Schwartz Decl. ¶ 20.) These factors have resulted in significant price declines over the past 24 months. As illustrated in Graph 6 in the Declaration of Paul P. Huffard, the Australian Hard Coking Coal Index, which is used by international and domestic buyers to determine pricing for metallurgical coal, plummeted 50 percent, from $330 per metric ton FOB vessel during Q2 2011 to $165 per metric ton FOB vessel during Q1 2013:

Graph 6: Met Coal Benchmark Pricing



Source: News and equity research reports.

Indeed, based on recent benchmarks, the market price for metallurgical coal is less than the cost of producing metallurgical coal at some of Patriot's mines. This price decline appears to represent a regression of metallurgical coal prices to historical norms, rather than temporary volatility. (Huffard Decl. ¶¶ 24-25.)

The increased regulation of coal customers has also reduced demand for coal and has contributed to Patriot's financial distress. Electricity generators are now highly regulated, which has made it increasingly difficult for those companies to use coal as an energy source. Specifically, as federal and state agencies more rigorously regulate greenhouse gases and other air emissions, electricity generators find it difficult to obtain permits to build and operate coal-fueled power plants and costly to comply with any permits received. (Hatfield Decl. ¶¶ 46-51; Schwartz Decl. ¶¶ 23-25; Huffard Decl. ¶¶ 13-15.)

Over the past two years, the United States Environmental Protection Agency has promulgated rules that curtail air emissions of various pollutants from power plants. The agency also has proposed performance standards for new power plants that include significant restrictions on the emission of coal-fired emissions. The effect of these rules is to require the installation of costly compliance equipment by both existing and future power plants that utilize coal. (Hatfield Decl. ¶¶ 47-48; Schwartz Decl. ¶¶ 23-27; Huffard Decl. ¶¶ 13-14.) In addition, federal and state agencies have developed financial incentives that discourage the use and development of coal-fueled generators and actively encourage the use of fuels other than coal. (Hatfield Decl. ¶¶ 49-50.) The combination of these factors has caused electricity generators to close existing coal-fueled facilities, reduce construction of new facilities, and switch from coal to alternative fuels like natural gas and government-subsidized renewables, a trend that is likely to continue in coming years. (Hatfield Decl. ¶ 51; Huffard Decl. ¶¶ 15, 18-19; Schwartz Decl. ¶ 16.)

In light of the decreased demand and pricing for both thermal and metallurgical coal, it has become uneconomical to operate certain of Patriot's mines. As discussed in further detail in Section C-2 below, Patriot has taken steps to reduce coal production to match expected sales volumes, including closing multiple mines, decreasing production by approximately 6 million tons in 2012 and , and laying off nearly 1,200 employees and contractors.[11] (Hatfield Decl. ¶¶ 83-85.)

These downward market trends are some of the very forces that caused Patriot to seek chapter 11 protection in July 2012. In its first-day filings, Patriot stated that it filed for bankruptcy because: demand for U.S. coal had declined, decreasing its revenues; governmental regulation had increased, which adversely affected demand and increased its costs; and its obligations to pay benefits to retirees and unionized employees continued to mount, which became unsustainable in the challenging market environment. (Declaration of Mark N. Schroeder Pursuant to Local Rule 1007-2, dated July 9, 2012 [ECF No. 4] at 8-16.)

These market trends have continued through the second half of 2012 and into 2013. Thermal coal prices continued to fall due to the historically low prices for natural gas and the glut of thermal coal on the market following the warm winter of 2011-2012. Metallurgical coal prices plummeted unexpectedly due to an economic slowdown in China and Europe and increased supply from producers in Australia, Canada, Mongolia, and Mozambique, as well as in the United States. (Huffard Decl. ¶¶ 15-17, 21-23; Schwartz Decl. ¶¶ 5, 18-22, 38-39.) The

[11] For this reason, the UMWA's proposal to increase coal production would provide no relief to Patriot and would in fact result in a net cost, at least for the next several years. <u>See</u> Section E infra.

prospect for the recovery of coal prices in 2013 and 2014 is grim, in light of natural gas futures markets (which show that natural gas prices will remain low), ongoing regulation by federal and state agencies (which have reduced customer demand), and the contraction of world export markets. (Schwartz Decl. ¶¶ 16-20.) As a result, Patriot expects further declines in its revenues and additional depletion of available cash.[12] (Huffard Decl. ¶¶ 43-44.)

6. Patriot's Poor Financial Results

In recent years, Patriot has suffered dismal financial results. For the year ended December 31, 2012, Patriot reported a 21 percent decline in coal sale revenues, a net loss of $730.6 million, and negative free cash flow of $190.6 million. Patriot's net loss has more than quintupled over the past year, from $139.1 million in 2011 to $730.6 million in 2012. (Hatfield Decl. ¶ 57; Huffard Decl. ¶¶ 73.)

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[12] The turmoil in the coal industry is widespread. In February 2013, Utah-based coal producer America West Resources Inc. filed for bankruptcy with a plan to sell its assets. See In re Am. West Res. Inc., No. 3:13-bk:50201 (Bankr. D. Nev.); Stephanie Gleason, "America West Files for Chapter 11," Dow Jones News Service, Feb. 4, 2013. Also in February 2013, creditors of Trinity Coal Corp. filed an involuntary bankruptcy petition under Chapter 11. See In re Trinity Coal Corp., No. 13-50364 (Bankr. E.D. Ky.).

(Hatfield Decl. ¶¶ 57-59; see also Huffard Decl. ¶¶ 73-77.) In addition, Patriot's DIP financing requires minimum liquidity of $100 million throughout 2013. Falling below that liquidity threshold would breach the covenant and could accelerate Patriot's repayment obligations under the loan, subjecting Patriot to substantial risk of having to shut down its operations.

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(Huffard Decl. ¶ 75.)

Finally, without significant cash savings, Patriot will not be able to raise exit financing that will allow it to emerge from bankruptcy. Patriot's advisors believe that prospective exit facility lenders will not lend into a reorganized Patriot that continues to burn cash and is

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projected to run out of money shortly, as it would present too much risk that Patriot is not "fixed" and that the loans would not be repaid or refinanced in full. (Huffard Decl. ¶¶ 78-80.)

B. Patriot's Plan to Emerge from Bankruptcy Despite Difficult Market Conditions

As they have done for many distressed companies, Patriot's advisors, Blackstone Advisory Partners L.P. ("**Blackstone**") and AP Services, LLC ("**Alix**"), have assisted Patriot in developing a comprehensive, five-year business plan that will help Patriot remain viable in this challenging and volatile market environment. (Huffard Decl. ¶ 34.)

Patriot and its advisors developed a detailed, long-term financial forecast for Patriot's operations in July 2012, in connection with Patriot's efforts to secure DIP financing. The forecast contained high level assumptions regarding potential savings from all areas of Patriot's business, including savings with respect to active employee labor and retiree healthcare. During the second half of 2012, Patriot and its advisers recognized that coal market fundamentals had significantly worsened. As a result, Patriot prepared a comprehensive update of its five-year business plan in October 2012 to reflect weaker price expectations for both metallurgical and thermal coal (the "**Five-Year Business Plan**"). The Five-Year Business Plan reflects the more granular, detailed wage and benefit reductions contained in the Proposals. Over the ensuing months, Patriot's advisors have thoroughly reviewed the Five-Year Business Plan for long-term sustainability. (Huffard Decl. ¶¶ 34-35.)

Patriot's Five-Year Business Plan is intended to guide Patriot's efforts to restructure successfully. It focuses on two basic components: revenue and cost. The vast majority of Patriot's anticipated revenue is the amount it expects to receive through the sale of coal. As set forth in the Five-Year Business Plan, Patriot expects revenues of approximately in

2013, in 2014, in 2015, and in 2016. (Huffard Decl. ¶¶ 43-44.) The vast majority of Patriot's anticipated costs are production costs, labor costs, retiree costs, and compliance costs. (Huffard Decl. ¶ 44.) The Five-Year Business Plan reflects that Patriot's operating expenses will generally increase from in 2013 to in 2016. These projections incorporate Patriot's extensive efforts to implement cash savings, as described in further detail below. (Huffard Decl. ¶¶ 36-41.) Other cash uses, which total hundreds of millions of dollars, and which comprise a significant percentage of Patriot's projected revenues, are capital expenditures, asset retirement obligations, and past mining obligations, such as retiree healthcare and workers' compensation. (Huffard Decl. ¶ 44.)

Beginning in the spring of 2012, Patriot and its advisors undertook an exhaustive analysis of Patriot's business, which continues to this day. The purpose of this analysis was to evaluate every component of Patriot's business plan for potential cash savings, other than reduction to wages and benefits for UMWA-represented employees or retirees. The net effect of the Five-Year Business Plan, after taking into account the numerous savings initiatives, .[14] To obtain exit financing and emerge from bankruptcy, Patriot's advisors concluded that Patriot must secure $150 million of additional savings

. This incremental cash flow is necessary to demonstrate an ability to repay and refinance the exit financing facility and provide contract counterparties with assurances that Patriot is on sound financial footing. (Huffard Decl. ¶¶ 78-80.)

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.[15] (Hatfield Decl. ¶ 59.)

C. Modifications to Patriot's Cost Structure

Patriot and its advisors evaluated three categories of costs for potential cash savings: (1) costs that typically cannot be modified in a chapter 11 bankruptcy; (2) costs that can be modified in a chapter 11 bankruptcy; and (3) costs that can be modified in bankruptcy only if Patriot complies with Sections 1113 and 1114 of the Bankruptcy Code.

1. Patriot's Costs that Generally Cannot Be Modified in a Chapter 11 Bankruptcy

Patriot and its advisors identified hundreds of millions in costs that generally cannot be modified in a chapter 11 bankruptcy. This category of costs includes certain healthcare benefits that must be provided under federal law, certain workers' compensation obligations, and certain environmental obligations.

[15] As is appropriate, Patriot continues to update its liquidity outlook and continues to measure its performance in comparison to the benchmarks established in the Five-Year Business Plan. These analyses are not revisions to the Five-Year Business Plan, which remains the most comprehensive model of Patriot's projected performance through 2016.

First, Patriot spent approximately $14 million in 2012 on obligations under the Coal Act. The Coal Act requires employers to provide health benefits, and in some cases death benefits, to retirees who were age and service eligible as of February 1, 1993 and who retired by September 30, 1994. Patriot's liabilities under the Coal Act also include required payments to two multi-employer funds, the United Mine Workers of America Combined Fund and the 1992 Benefit Plan, which provide certain healthcare and death benefits to eligible retirees. As of December 31, 2012, Patriot estimates the present value of its Coal Act liabilities to be approximately $134.7 million. These Coal Act liabilities generally cannot be modified through Section 1114 and Patriot expects to continue to pay them. (Hatfield Decl. ¶¶ 62-66.)

Second, Patriot spent approximately $25.5 million in 2012 on obligations under the Federal Coal Mine Health and Safety Act of 1969 (the "**Black Lung Act**") and related workers' compensation laws. The Black Lung Act provides monthly payments to, and medical treatment for, coal miners disabled from black lung disease arising from employment in or around the nation's coal mines. As of December 31, 2012, the present value of Patriot's Black Lung Act liabilities was approximately $204.6 million, a total that may increase as a result of the Patient Protection and Affordable Care Act ("**PPACA**"), which was enacted in 2010 and amended the Black Lung Act. In addition to its liabilities under the Black Lung Act, Patriot must pay for certain traumatic injury claims under various state workers' compensation laws. As of December 31, 2012, the present value of the traumatic injury claims was approximately $74.5 million. Like Patriot's Coal Act liabilities, these liabilities generally are not modifiable in a chapter 11 bankruptcy. (Hatfield Decl. ¶¶ 67-72.)

Third, Patriot spent approximately $90.4 million in 2012 on environmental obligations, which was comprised of: (i) approximately $43.6 million in spending on selenium treatment and related activities; and (ii) approximately $46.8 million in spending on reclamation (which involves the restoration of surface land to conditions equal to or greater than pre-mining conditions), water treatment (excluding selenium water treatment), and mine closures.

Patriot is facing dramatically increasing costs to comply with environmental laws and other governmental regulations. Federal and state regulatory authorities impose obligations on the coal mining industry in a wide variety of areas, including employee health and safety, permitting and licensing requirements, and environmental protection. Over the past several years, new regulations, new interpretations of existing laws and regulations, and citizen lawsuits brought by non-governmental organizations have also stressed Patriot's financial condition. (Hatfield Decl. ¶¶ 73-81; Schwartz Decl. ¶¶ 23-27.)

Although compliance costs take multiple forms, they have been starkest with respect to regulatory agencies' increased focus on the effects of surface mining on the environment in general and on water quality in particular. (Hatfield Decl. ¶¶ 73-79.) Both state and federal agencies have implemented ever-more rigorous permitting requirements, and have stepped up their efforts to enforce the regulation of surface mining, particularly in Central Appalachia. In addition, these agencies recently turned their attention to the levels of chemical constituents in water and may impose even more stringent permitting requirements to address that issue. (Hatfield Decl. ¶¶ 73-79.)

Patriot also faces frequent and prolonged litigation concerning environmental issues. As a result of these lawsuits – and related court orders and consent decrees – Patriot has recorded $443.0 million in asset retirement obligations on selenium water treatment projects as of December 31, 2012. (Hatfield Decl. ¶ 77.) Patriot also recorded $288.6 million in additional asset retirement obligations associated with reclamation, water treatment (excluding selenium), and mine closures. These environmental obligations generally cannot be discharged in chapter 11. (Hatfield Decl. ¶¶ 78-79.)

2. Patriot's Extensive Cost Reductions Outside the 1113/1114 Process

As noted above, Patriot and its advisors identified and implemented many changes to secure cash savings. (Hatfield Decl. ¶¶ 82-92.) These cash savings, which amount to approximately in 2014, include substantial reductions in non-labor costs, efforts to avoid losses, and efforts to increase profitability:

- **Reduction of Thermal Coal Production**: When Patriot is unable to sell coal at a profit, it must decrease production in order to improve cash flow. During 2012, Patriot reduced its thermal coal production by approximately 3.9 million tons. This reduction was accomplished by closing or idling multiple mines, including at the Big Mountain complex, the Bluegrass complex, and the Kanawha Eagle complex. At projected thermal coal prices, these operations had negative margins and/or were projected to have negative margins. (Hatfield Decl. ¶ 84.)

- **Reduction of Metallurgical Coal Production**: During 2012, Patriot decreased production from unprofitable metallurgical mines and delayed expansion of its program to increase the production of higher-margin metallurgical coal. In total, Patriot reduced its projected metallurgical coal production by approximately 1.9 million tons. This reduction was accomplished by closing or idling multiple mines, including at the Rocklick complex and at the Wells complex. These reductions were implemented to align production with market demand. (Hatfield Decl. ¶ 85.)

- **Decrease in Planned Capital Expenditures**: To conduct its operations, Patriot must make capital expenditures. These expenditures include payments for machinery and equipment, such as: continuous miner machines, which are used in underground mining to remove coal from coal seams; earth-moving machinery, which is used in surface mining to remove the layers of earth and rock that cover a coal seam; shearing machines, which are used in underground longwall mining to remove coal from the coal face; and shuttle cars and conveyors, which are used to deliver coal from underground mines to the surface. Capital expenditures amounted to $121.9 million in 2010 and $163.0 million in 2011. Patriot decreased capital spending by $144 million for 2012 and planned capital spending by approximately between 2013 and 2016. (Hatfield Decl. ¶ 87.)

- **Discontinuation of Contractors**: During 2012, Patriot lowered its cost of production by taking over operations at several mines and facilities formerly operated by contractors. These included the Kanawha Eagle complex, the Black Stallion Mine at the Wells Complex, and other mines at the Wells and Rocklick complexes. The savings generated by assuming operations from contractors totaled $9.5 million in 2012 and Patriot projects that such efforts will result in savings of approximately between 2013 and 2016. (Hatfield Decl. ¶ 89(a).)

- **Elimination of Unprofitable Contracts**: Patriot is a party to numerous burdensome agreements, including agreements that it acquired from Peabody and Magnum. For example, the spin-off from Peabody left Patriot with certain coal supply agreements that contained price terms that locked Patriot into supplying coal to customers at significantly below-market prices and in many cases prices that were below the cost of production. These agreements had cumulative below-market pricing of from 2007 to present. Additionally, the acquisition of Magnum left Patriot with certain coal supply agreements that had cumulative below-market pricing of from 2008 to present. In total, these supply agreements have cost Patriot more than in lost revenue. Patriot also has other unfavorable agreements, such as equipment leases, property leases, and royalty leases. During the second half of 2012, Patriot rejected and renegotiated unprofitable commercial agreements. The elimination or renegotiation of these contracts resulted in savings of $32.1 million in 2012, and Patriot projects that such rejections will result in savings of approximately between 2013 and 2016. (Hatfield Decl. ¶ 89(b).)

- **Sale of Surplus Assets**: For the year ended December 31, 2012, Patriot realized $3.1 million in gains from the sale of surplus assets.

  (Hatfield Decl. ¶ 89(c).)

- **Reduction of Overhead Expenses**: Patriot has cut its overhead expenses, including by eliminating charitable contributions, by reducing the cost for leasing Patriot's St. Louis headquarters , and by reducing the cost of Patriot's information systems outsourcing. The reduction of overhead expenses will result in savings of . (Hatfield Decl. ¶ 89(d).)

- **Reduction of Pre-Petition Unsecured Debt**: Following the commencement of these chapter 11 cases, Patriot did not have to make certain interest and principal payments on its pre-petition unsecured debt. These savings will total approximately between 2013 and 2016. (Hatfield Decl. ¶ 89(e).)

Patriot's efforts to reduce costs also include wage, benefit, and headcount reductions from Patriot's non-union employees and retirees. Such efforts, which have taken place both prior to and after the Petition Date or are scheduled to be implemented in the future, include:

- **Modifications to Non-Union Medical Benefits**: Patriot made changes to the medical benefits available to its non-unionized employees. These changes include: introducing employee premium contributions at 10 percent of monthly premium cost; increasing the annual out-of-pocket maximum from $1,200 per person to $2,000 per person and from $3,600 per family to $4,000 per family; introducing working spouse coverage requirements; adopting a more restrictive formulary for covered drugs; implementing traditional step therapy programs to all available drug classifications; and eliminating coverage for PPI (ulcer) drug classification. Patriot projects that the changes will result in total cash savings of approximately between 2013 and 2016. (Hatfield Decl. ¶ 91(a).)

- (Hatfield Decl. ¶ 91(b).)

- **Elimination of Non-Union Retiree Medical Benefits**: Patriot recently announced its intention to reject or modify the benefits it pays to its non-union retiree population. In connection with these steps, Patriot agreed to the formation of a retiree committee pursuant to Section 1114(d) for the purpose of determining whether any such benefits are not amendable. If the Court ultimately grants Patriot's motion, Patriot projects total savings of approximately from 2013 to 2016. (Hatfield Decl. ¶ 91(c).)

- **Modifications to Non-Union Long-Term Disability Benefits**: Patriot made two changes to its disability benefits. First, the duration of long-term disability benefits for salaried employees was reduced from up to social security normal retirement age to a maximum duration of sixty months. Second, the long-term disability benefits were eliminated for the non-represented hourly employees in the Midwest and replaced with the Sickness and Accident Benefits already in place for the non-represented hourly employees in West Virginia with a maximum benefit of 52 weeks. These changes were made so that Patriot could minimize upcoming increases in long-term disability premiums. (Hatfield Decl. ¶ 91(d).)

- **Reduction of Management**: Beginning in 2012 and through the first two months of 2013, Patriot reduced the number of management personnel by 78 people. This has resulted in cash savings of approximately $11.3 million per year. (Hatfield Decl. ¶ 90(a).)

- **Reduction in Non-Union Headcount**: During 2012, Patriot eliminated approximately 640 non-union employee and contractor positions. These reductions principally related to closed mining facilities. (Hatfield Decl. ¶ 90(b).)

- **Reduction in Non-Union Compensation**: Effective March 1, 2013, Patriot imposed a wage reduction for many of its hourly and all of its salaried employees, to adjust wages to market rates. The hourly wage adjustment will affect approximately one-half of Patriot's non-union workforce. These measures will result in approximately per year in cash savings. (Hatfield Decl. ¶ 92(a).)

- **Withholding of Earned Annual Incentive Compensation**: Patriot offered an Annual Incentive Plan (the "**Pre-petition AIP**") that provided cash incentives to motivate plan participants to achieve specific performance objectives. Patriot also offered mine-level incentive compensation plans (the "**Mine-Level Plans**"). No incentive payments were made pursuant to the 2012 Pre-petition AIP, despite the fact that participants earned approximately $3 million under the program, and no incentive payments were made under the Mine-Level Plans, despite the fact that benefits under those plans could have totaled $5 million. (Hatfield Decl. ¶ 92(b).)

- **Termination of Deferred Compensation Balances**: Patriot has moved to terminate its supplemental 401(k) plan, which allowed certain members of Patriot's management to defer compensation earned by them, and required Patriot to match a specified percentage of such deferrals. If the Court grants Patriot's motion, 401(k) plan participants will have approximately $2.5 million converted from cash obligations to pre-petition claims. As a result, some plan participants would lose hundreds of thousands of dollars, primarily of their own previously earned compensation. (Hatfield Decl. ¶ 92(c).)

Patriot also intends to modify or eliminate other non-union benefits, including various future retiree healthcare benefits and programs that allowed participants to use or receive a payout at termination for vacation that was accrued but unused. (Hatfield Decl. ¶ 92(d).)

Simply put, Patriot has cut expenses to the bone, identifying cash savings that will total approximately in 2014. Unfortunately, a gap of approximately $150 million per year still remains, even after implementing these painful cuts. (Hatfield Decl. ¶¶ 82, 104, 150; Huffard Decl. ¶¶ 45-51.)

3. Patriot's Burdensome Obligations to Its UMWA-Represented Employees and Retirees

Having implemented cash savings from every area of its business over which it has control, Patriot has no choice but to seek the necessary additional savings from its unionized workforce and retirees if it is to avoid liquidation and emerge as a viable enterprise. There is nowhere else to turn. These costs include Patriot's retiree healthcare obligations, Patriot's pension obligations, and Patriot's obligations to provide specified wages and benefits to its UMWA-represented employees.

(a) Patriot's UMWA Retiree Healthcare Obligations

Patriot has incurred well over a billion dollars in healthcare obligations for its UMWA retirees. As discussed above, as a result of the spin-off from Peabody and the acquisition of Magnum, Patriot became responsible for liabilities relating to thousands of former employees and retirees of Peabody, Magnum, and Arch who retired prior to the formation of Patriot. For that reason, Patriot currently pays healthcare benefits for five times the number of retirees and dependents than UMWA-represented employees. (Hatfield Decl. ¶ 94.)

Patriot's retiree healthcare obligations take multiple forms:

- **NBCWA Retiree Healthcare**: Patriot directly pays for retiree healthcare for approximately 8,100 NBCWA retirees and dependents. These retirees receive benefits pursuant to the CBAs. These medical benefits mirror those provided to UMWA-represented active employees, and include features such as no co-insurance, free mail-order prescription drugs, $12 co-payments for visits to physicians, and a maximum out-of-pocket cost of $240 per family per year. In 2012, Patriot spent approximately $65.3 million on NBCWA retiree healthcare. As of December 31, 2012, Patriot estimates the present value of its NBCWA retiree healthcare liabilities to be approximately $1.45 billion. (Hatfield Decl. ¶ 95(a).)

- **The Coal Act**: Patriot pays for retiree healthcare for approximately 2,300 retirees and dependents under the Coal Act. As discussed above, the Coal Act requires employers to provide health benefits, and in some cases death benefits, to eligible retirees. Patriot's liabilities under the Coal Act also include required payments to two multi-employer funds, the United Mine Workers of America Combined Fund and the 1992 Benefit Plan. In 2012, Patriot spent approximately $14 million on its healthcare obligations under the Coal Act. As of December 31, 2012, Patriot estimates the present value of its Coal Act liabilities to be approximately $134.7 million. (Hatfield Decl. ¶ 95(b); Lucha Decl. ¶ 15.)

- **1993 Benefit Plan**: Patriot makes payments to the UMWA 1993 Benefit Trust and Plan (the "**1993 Benefit Plan**") under certain of the CBAs. The 1993 Benefit Plan, established under the NBCWA of 1993, provides health and other non-pension benefits to approximately 9,000 retirees and their families who are not eligible for benefits under the Coal Act of 1992 and who are not receiving benefits from their last employer. In 2012, Patriot spent approximately $3.7 million on its contributions to the 1993 Benefit Plan. (Hatfield Decl. ¶ 95(c); Lucha Decl. ¶ 42.)

- **Other Healthcare Obligations**: As discussed above, Peabody pays the retiree healthcare costs for the Peabody-Assumed Group. However, Patriot administers the applicable health plans and remain responsible for certain costs relating to this group of retirees. In particular, under the Coal Act, Patriot must post security for the subset of the Peabody-Assumed Group that receives benefits under that statute. Patriot is required to post approximately $54 million in letters of credit to secure these obligations, of which $44 million relate to the Peabody-Assumed Group. (Hatfield Decl. ¶ 95(d).)

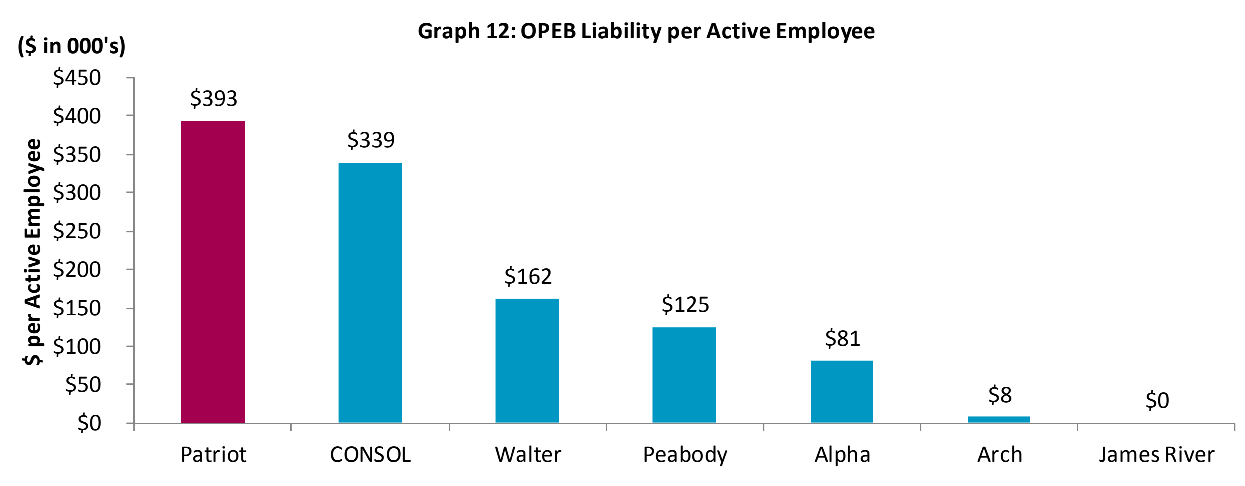
Patriot spent approximately $83 million on these UMWA retiree healthcare obligations in 2012 and is expected to pay absent relief. In the aggregate, the present value of the UMWA healthcare liabilities was estimated to be approximately $1.6 billion as of December 31, 2012. (Hatfield Decl. ¶¶ 95-96.)

Patriot's healthcare liabilities are also expected to increase in the coming years for a number of reasons. First, the federal government's Early Retiree Reinsurance Program ("**ERRP**") exhausted its $5 billion pool of funds in 2011. In 2010 and 2011, Patriot received $7.6 million in refunds from ERRP, but such reimbursement will no longer be available. Second, PPACA, the federal healthcare law, requires employers to cover dependents up to the age of 26; this requirement has added approximately 440 dependents to Patriot's plans at a cost of $1.5 million in 2012 alone. Third, there have been demographic trends that affect Patriot's healthcare costs, including an increase in retiree headcount, an increase in the number of high-cost claimants, and an increase in utilization of medical and prescription benefits. (Hatfield Decl. ¶ 97.) These trends threaten to make already burdensome costs even more so.

Not only does Patriot shoulder substantial costs relating to its retiree population, but its costs far exceed those of its competitors. For example, Patriot's Other Post-Employment Benefits ("**OPEB**") liabilities per active employee are significantly higher than those of its peers.[16] As illustrated by Graph 12 in the Declaration of Paul P. Huffard, while Patriot has OPEB liabilities equal to $393,000 per active employee, Walter Energy, Inc. ("**Walter**") has OPEB liabilities equal to $162,000 per active employee, Peabody has OPEB liabilities equal to $125,000 per active employee, Alpha Natural Resources, Inc. ("**Alpha**") has OPEB liabilities

[16] "OPEB" liabilities are typically defined to include benefits that an employee begins to receive at the start of his or her retirement, including healthcare benefits, life insurance benefits, and deferred compensation arrangements. They do not include pension benefits. (Hatfield Decl. ¶ 98 n. 16.)

equal to $81,000 per active employee, Arch has OPEB liabilities equal to $8,000 per active employee, and James River Coal Company ("**James River**") has no OPEB liabilities:



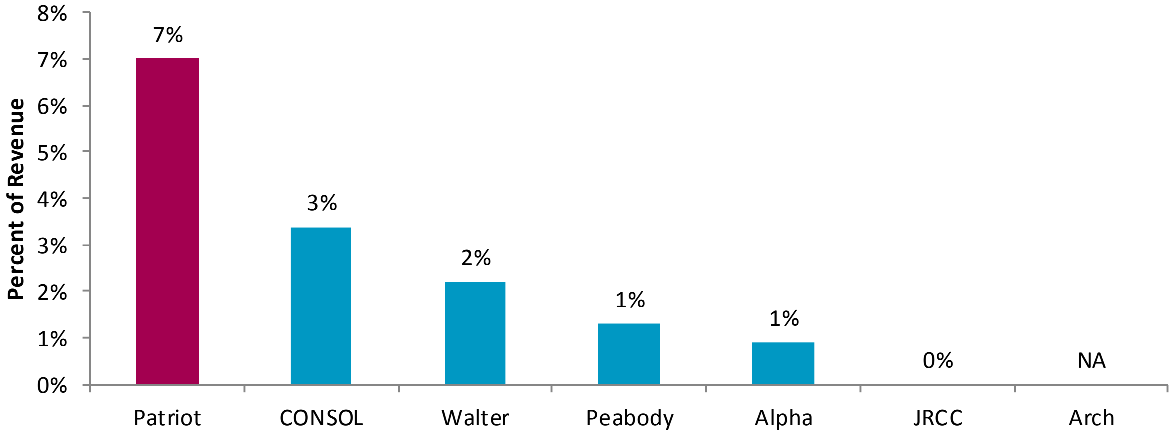
Source: Company filings.

(Huffard Decl. ¶ 64; Hatfield Decl. ¶ 98.) The only company whose per-employee OPEB liabilities costs is anywhere near Patriot's is CONSOL Energy, Inc. ("**CONSOL**"), a substantially larger, more diversified, and healthier enterprise that is better positioned to withstand market pressures.[17] (Hatfield Decl. ¶ 98.)

Retiree healthcare and pension benefits also constitute a far greater portion of Patriot's revenue than of its competitors' revenue. The comparison is illustrated in Graph 11 in the Declaration of Paul P. Huffard:

[17] CONSOL is better able to satisfy its high OPEB obligations for at least three reasons. First, CONSOL is a much larger company, with total revenues exceeding $5.4 billion in 2012. Second, more than 92 percent of CONSOL's coal mining operations are longwall mining operations, which is a lower-cost, higher-margin mining method. By contrast, Patriot employs longwall mining in only two of its mining complexes. As a result of the first two factors, CONSOL has higher revenues and a leaner cost structure, which enables it to better service its OPEB liabilities. Third, CONSOL produces and sells both coal and natural gas and, in that sense, is better insulated than Patriot from the current downturn in the coal markets and volatile coal pricing. (Hatfield Decl. ¶ 98 n. 17.) Additionally, as discussed in Point I.C, below, CONSOL announced in 2012 that it will make changes to reduce its retiree healthcare obligations.

Graph 11: OPEB[(1)] Expense as Percent of Revenue

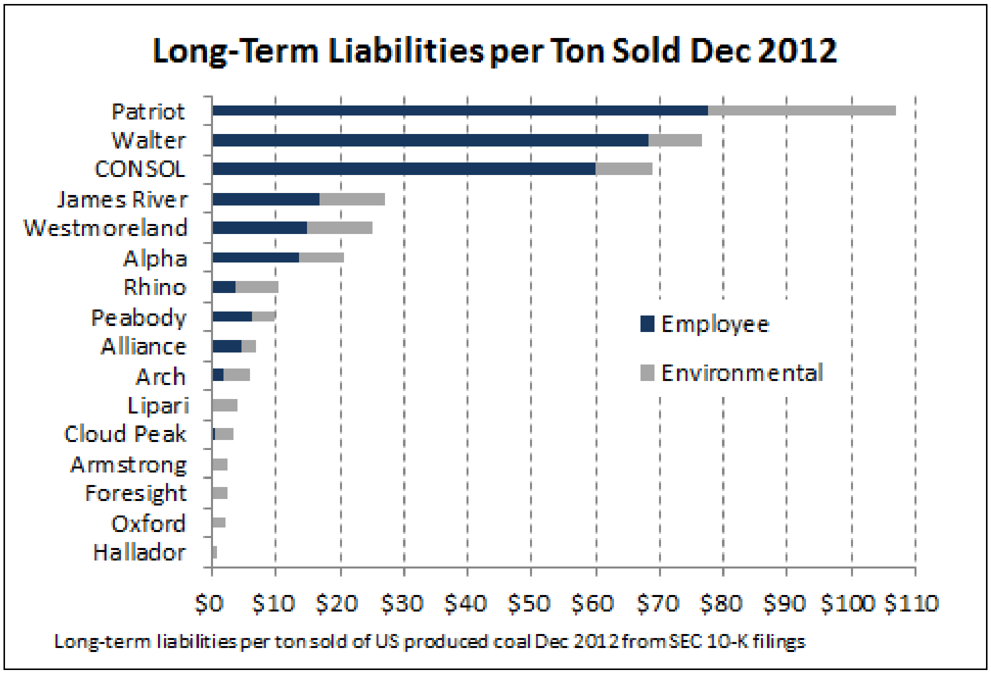


Source: Company Filings

Note: Arch has negative expense due to curtailments and amortization of prior service credits and actuarial gains.
(1) OPEB (Other Post-Employment Benefits) represents retiree health care costs.

Graph 11 shows that retiree healthcare and pension costs are a higher percentage of Patriot's revenue than any of its peers. By contrast, Walter, Peabody, Arch, and James River all spend 2 percent or less of their revenue on these costs. (Huffard Decl. ¶ 63.)

This comparison is borne out by yet another metric: the cost of Patriot's long-term liabilities per ton sold. As demonstrated in the Declaration of Seth Schwartz, Patriot's long-term liabilities, which include labor costs and environmental costs, far exceed that of its peers:



(Schwartz Decl. ¶¶ 62-63.) In essence, there is a massive mismatch between the cost of Patriot's retiree healthcare obligations and its ongoing ability to generate revenue to service these obligations. Patriot's return to long-term viability requires significant modifications to these liabilities.

(b) Patriot's Pension Obligations

Patriot has also incurred hundreds of millions of dollars in pension obligations. These pension obligations constitute a contribution that Patriot must pay for each hour worked by UMWA-represented employees, thereby driving up the cost per-hour of coal production. The obligations take the following forms:

- **The UMWA 1974 Pension Plan (the "1974 Pension Plan")**: The 1974 Pension Plan, a multi-employer pension plan established under the NBCWA of 1974, provides pension benefits to eligible mine workers who retire or become totally disabled as a result of mine accidents and to eligible surviving spouses of mine workers. Patriot's contribution to the 1974 Pension Plan has increased materially in recent years and will continue to do so. In 2007, the contribution rate was $2.00 per hour worked; it is currently $5.50 per hour and is expected to increase to a minimum of $12.50 per hour worked in 2017 and to $21.50 per hour worked in 2020. Patriot spent approximately $20.8 million in 2012 on contributions to the 1974 Pension Plan.

. (Lucha Decl. ¶¶ 31-35.)

- **The UMWA 2012 Retiree Bonus Account Trust and Plan (the "Retiree Bonus Plan")**: Effective January 1, 2012 and continuing through 2016, Patriot is also required to contribute $1.50 per hour worked to the Retiree Bonus Account Trust pursuant to the 2011 NBCWA. The Retiree Bonus Account Trust will make annual bonus payments projected to be either $455 or $580 to eligible participants in the 1974 Pension Plan in 2014, 2015, and 2016. In 2012, Patriot contributed approximately $4.4 million to the Retiree Bonus Account Trust. (Lucha Decl. ¶ 36.)

- **The UMWA Cash Deferred Savings Plan, 20-Year Service Payment (the "20-Year Service Payment")**: The UMWA Cash Deferred Savings Plan, ("**CDSP**") established under the NBCWA of 1988, is a defined contribution 401(k) pension plan which provides additional retirement income to retirees. Effective January 1, 2012, Patriot is required to contribute $1.00 per hour worked, increasing to $1.50 per hour worked in 2014, to the Savings Plan on behalf of any miner with 20 years of credited service under the 1974 Pension Plan. In 2012, Patriot contributed approximately $1.4 million in 20-Year Service Payments. (Lucha Decl. ¶¶ 37-38.)

- **The UMWA Cash Deferred Savings Plan, New Inexperienced Miner Payments ("New Inexperienced Miner Payments")**: Patriot is also required to make contributions to the Savings Plan on behalf of employees designated as "new inexperienced miners," who: (i) enter the coal industry on or after January 1, 2007 and do not have a State Miner's Certificate dated prior to January 1, 2007 (the "**2007 New Inexperienced Miner Payment**"); and (ii) enter the coal industry on or after January 1, 2012 (the "**2012 New Inexperienced Miner Payment**"). Patriot is required to contribute $1.00 per hour worked for the 2007 New Inexperienced Miner Payment pursuant to the 2011 NBCWA and the Highland CBA. Patriot is required to contribute $1.00 per hour worked, increasing to $1.50 per hour worked in 2014, for the 2012 New Inexperienced Miner Payment pursuant to the 2011 NBCWA. In 2012, Patriot spent approximately $586,000 on its 2007 and 2012 New Inexperienced Miner Payments. (Lucha Decl. ¶¶ 39-40.)

Pension costs are expected to increase significantly in the near future. As illustrated in Figure 2 in the Declaration of Dale Lucha, dated March 14, 2013, Patriot's annual payments to the 1974 Pension Plan are expected to :

The anticipated increase is due, in significant part, to the fact that the 1974 Pension Plan has been certified as being in "Seriously Endangered Status," which will require Patriot to make significant contribution increases.[18] (Lucha Decl. ¶¶ 33-34.)

(c) Patriot's Other Obligations to Its UMWA-Represented Employees

In addition to its pension obligations, Patriot has other substantial obligations to its active, UMWA-represented employees. For example, the CBAs include provisions that govern hourly wages and lock in wage increases, typically at rates that are substantially higher than

[18] Under the Pension Protection Act of 2006 (the "**PPA**"), a multiemployer plan's actuary must certify a plan's funded status each year. In 2011, the actuary for the 1974 Pension Plan certified it as being in "Seriously Endangered Status" for the plan year beginning July 1, 2011. As a result, the BCOA and the UMWA, as the 1974 Pension Plan's sponsors, developed and adopted a so-called funding improvement plan. The funding improvement plan includes two cost schedules, both of which will require significant contribution increases from 2017 through 2029. Under the first schedule, which assumes future benefit accruals are reduced to the maximum extent permitted by law, Patriot's hourly contribution rate will increase significantly from the current rate of $5.50 per hour worked to $12.50 per hour in 2017 (resulting in an estimated annual contribution of based on estimated UMWA hours worked) and to $23.50 per hour in 2021 (resulting in an estimated annual contribution of). Under an alternative schedule, which assumes that the benefit structure that currently exists will not change, Patriot's hourly contribution rates will increase even further. (Lucha Decl. ¶¶ 33-34.)

competitive wages paid to non-union workers serving in the same capacity. The CBAs also provide up to 47 vacation days, holidays, and sick days to UMWA-represented employees – or nearly four more full work weeks of paid time off than is available for non-union workers. (Hatfield Decl. ¶ 101(a), (b); Lucha Decl. ¶¶ 43-44.)

The CBAs also contain provisions that restrict the ability of signatory employers to deploy labor and operate their mines in a flexible and cost-effective manner, which puts signatory companies at a cost disadvantage. These provisions include restrictions on changing work crews, limits on the use of contractors, and the requirement that certain non-signatories offer a specified percentage of jobs to UMWA-represented employees. (Lucha Decl. ¶¶ 52-56; Hatfield Decl. ¶ 101(c).)

The CBAs also incorporate generous provisions concerning healthcare benefits. The current healthcare plan available to UMWA-represented employees includes no deductibles, no coinsurance, $12 co-payments for in-network primary care providers or specialists, free prescription drugs if purchased through the mail, and continuing healthcare coverage for at least twelve months following an employee's termination. (Lucha Decl. ¶ 46; Hatfield Decl. ¶¶ 95(a), 101(d).)

A comparison of Patriot's per-hour labor costs – including wages and benefits, but excluding retiree healthcare – demonstrates that labor costs at Patriot's unionized subsidiaries are significantly higher than labor costs at non-unionized subsidiaries. Indeed, the disparities among Patriot's union and non-union operations are significant:

- in the Illinois Basin, the cost per hour worked at UMWA underground operations was 20 percent greater than at non-union underground operations, and the cost per hour worked at UMWA surface facilities was 50 percent greater than at non-union surface facilities;

- in Appalachia, the cost per hour worked at UMWA underground operations was 20 percent greater than at non-union underground operations, the cost per hour worked at UMWA surface facilities was 45 percent greater than at non-union surface facilities, and the cost per hour worked at UMWA surface mines was 50 percent greater than at non-union surface mines.

(Schwartz Decl. ¶¶ 52-53.) Moreover, when comparing per-hour labor costs for a particular job category, the disparities become even more glaring:

- the per-hour labor cost for a rock truck driver at a surface mine is, on average, 90 percent higher under the 2011 NBCWA than at a non-unionized mine;

- the per-hour labor cost for a mobile equipment operator at a preparation plant is, on average, 61 percent higher under the 2011 NBCWA than at a non-unionized mine;

- the per-hour labor cost for a dozer operator at a surface mine is, on average, 60 percent higher under the 2011 NBCWA than at a non-unionized mine;

- the per-hour labor cost for a plant operator at a preparation plant is, on average, 54 percent higher under the 2011 NBCWA than at a non-unionized mine; and

- the per-hour labor cost for a shuttlecar operator at an underground mine is, on average, 27 percent higher under the 2011 NBCWA, 20 percent higher under the Gateway Eagle CBA, and 16 percent higher under the Highland CBA than at a non-unionized mine.

(Lucha Decl. ¶ 11; Huffard Decl. ¶ 55.) Because Patriot lacks the ability to influence the price the market will bear, it has no ability to recoup any of these additional costs from its customers.

D. Patriot's Proposals

In light of the facts that: (i) Patriot generally cannot by law cut certain costs; (ii) Patriot has cut other costs to the bone; and (iii) Patriot cannot increase the price of its coal to make up for these costs, Patriot must modify its labor and retiree healthcare costs if it is to survive. Patriot worked for months to develop the Proposals, which are narrowly tailored to obtain the relief that is needed for Patriot to reorganize successfully. (Robertson Decl. ¶ 27; Lucha Decl.

¶ 18.) And as described below, Patriot negotiated with the UMWA for nearly four months and modified the Proposals to respond to the UMWA's stated concerns. Thus, unlike in other cases where a debtor seeks relief under Section 1113 or 1114 shortly after delivering proposals to a union, the Proposals here are the product of extensive negotiation and reflect multiple rounds of substantial concessions by Patriot.

1. Patriot's 1113 Proposal

In the 1113 Proposal, Patriot offered modifications to the CBAs that would adjust UMWA wage and benefit packages to non-union levels, a level that Patriot can afford.[19] Specifically, Patriot sought savings of approximately $75 million per year.[20] These proposed modifications are consistent with – and at least as generous as – the wages and benefits that Patriot provides to its non-union employees, who constitute approximately 43 percent of Patriot's active miners and 59 percent of Patriot's workforce.

The 1113 Proposal includes changes to wages that are expected to save Patriot approximately per year in 2014 through 2016:

- **Adjustments to wage increases and adjustments to wage rates**: The 1113 Proposal would eliminate or reduce certain wage increases scheduled to take effect in 2013 and future years. The 1113 Proposal also would reduce wage rates for certain union pay grades so that they conform with rates paid at mines operated by Patriot's non-union subsidiaries. The wage rate

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[19] As discussed above, four of Patriot's unionized subsidiaries – Pine Ridge Coal Company, LLC, Mountain View Coal Company, LLC, Colony Bay Coal Company, and Rivers Edge Mining, Inc. – have no employees. As a result, the 1113 Proposal would terminate these CBAs, rather than modify the benefits as set forth herein. (Robertson Decl. ¶ 35; Lucha Decl. ¶ 20 n.8.)

[20] (Lucha Decl. ¶ 19.)

modification is expected to save Patriot .[21] (Robertson Decl. ¶ 35; Lucha Decl. ¶¶ 21-26.)

- **Adjustments to overtime, double time, triple time, and premium pay**: The 1113 Proposal would modify provisions concerning overtime, double time, triple time, and premium pay. This aspect of the proposal is expected to save Patriot (Robertson Decl. ¶ 35; Lucha Decl. ¶¶ 27-28.)

- **Elimination of shift differential payments**: The 1113 Proposal would eliminate per-hour shift differential payments, which provide higher wages to UMWA-represented employees who work the afternoon shift or the night shift. This aspect of the proposal is expected to save Patriot (Robertson Decl. ¶ 35; Lucha Decl. ¶¶ 29-30.)

The 1113 Proposal also includes modifications to Patriot pension contributions so that these benefits are commensurate with those available to non-union employees. The proposed changes are expected to save Patriot approximately per year in 2014 through 2016 and will enable Patriot to avoid vastly higher pension obligations in 2017 and beyond:

- **Elimination of 1974 Pension Plan Contributions**: Under the 1113 Proposal, Patriot would withdraw from the 1974 Pension Plan and would cease making contributions to that pension plan. This aspect of the proposal, which would not affect pensioners' receipt of payments from this multi-employer fund, is expected to save Patriot . Importantly, withdrawal from the 1974 Pension Plan would enable Patriot to avoid making substantially and unsustainably higher pension payments – – that commence in 2017. The 1974 Pension Plan would be granted an unsecured claim on account of Patriot's withdrawal. (Robertson Decl. ¶ 35; Lucha Decl. ¶ 35 n.11.)

- **Elimination of the 20-Year Service Payment**: The 1113 Proposal would eliminate the 20-Year Service Payment included in certain of the CBAs. This aspect of the proposal is expected to save Patriot

[21] In certain documents, savings for 2013 are reflected as an annualized number. Because Patriot was unable to realize unionized labor and retiree cash savings as of January 1, 2013, the 2013 savings identified herein are calculated as if Patriot realizes those savings as of April 1, 2013. For most categories, the 2013 total is pro-rated for the nine-month period, but for two categories (holidays and extended healthcare), the calculation is tailored to address the uneven distribution of those costs throughout the year. (Lucha Decl. ¶ 19 n.7.)

(Robertson Decl. ¶ 35; Lucha Decl. ¶¶ 37-38.)

- **Elimination of Retiree Bonus Plan Contributions**: The 1113 Proposal would eliminate retiree bonus contributions required under certain of the CBAs. This aspect of the proposal is expected to save Patriot (Robertson Decl. ¶ 35; Lucha Decl. ¶ 36.)

- **Elimination of New Inexperienced Miner Payments**: The 1113 Proposal would eliminate the 2007 and 2012 New Inexperienced Miner Payments. These aspects of the proposal are expected to save Patriot (Robertson Decl. ¶ 35; Lucha Decl. ¶¶ 39-40.)

- **Contributions to a 401(k) Plan or Similar Plan**: Under the 1113 Proposal, Patriot would make contributions equal to 6 percent of gross hourly wages to a 401(k) or similar plan. This will require increased expenditures by Patriot, but will be offset by the pension-related savings described above. This aspect of the proposal is expected to increase Patriot's spending by (Robertson Decl. ¶ 35; Lucha Decl. ¶ 41.)

The 1113 Proposal also includes modifications to various forms of paid time off available to Patriot's unionized work force. Collectively, the proposed changes are expected to save Patriot approximately per year in 2014 through 2016:

- **Changes to holidays**: The 1113 Proposal would reduce the number of holidays available to unionized employees from 11 (two of which holidays are John L. Lewis Day (April 1) and each employee's own birthday) to 8 per year. This aspect of the proposal is expected to save Patriot (Robertson Decl. ¶ 35; Lucha Decl. ¶¶ 43-45.)

- **Changes to vacation days and sick days**: The 1113 Proposal would reduce the number of regular vacation days, floating vacation days, and graduated vacation days. It would also reduce the number of available sick days per year. Currently, an experienced miner may take off as many as 47 days per year under the CBAs (including holidays) or 36 days per year (excluding holidays). This aspect of the proposal is expected to save Patriot (Robertson Decl. ¶ 35; Lucha Decl. ¶¶ 43-45.)

The 1113 Proposal also modifies the healthcare benefits available to Patriot's unionized workforce and will bring them in line with benefits available to Patriot's non-union employees. The proposed changes will together save Patriot approximately per year in 2014 through 2016:

- **Changes to NBCWA healthcare coverage**: Under the 1113 Proposal, Patriot would no longer offer the generous and costly NBCWA healthcare coverage and would instead offer the still-generous, but less costly, "90/10 Plan." The 90/10 Plan is the same plan provided to Patriot's salaried and non-union hourly employees, who constitute the majority of Patriot's workforce. Unlike the current healthcare plan, under which UMWA-represented employees make no contributions to premiums, have no deductibles, and pay nothing for mail-order prescription drugs, the 90/10 Plan would introduce reasonable co-payments, deductibles, and other forms of cost sharing. This aspect of the proposal is expected to save Patriot (Robertson Decl. ¶ 35; Lucha Decl. ¶¶ 46-48.)

- **Changes to extended healthcare**: Patriot would also reduce the availability of extended healthcare for UMWA-represented employees who are laid off. Under the 1113 Proposal, extended healthcare would be available for 60 calendar days after a layoff, rather than for the balance of the layoff month plus up to 12 months of continuing coverage. This aspect of the proposal is expected to save Patriot (Robertson Decl. ¶ 35; Lucha Decl. ¶ 51.)

- **Elimination of 1993 Benefit Trust Contributions**: The 1113 Proposal would eliminate contributions to the 1993 Benefit Trust, which provides healthcare and other non-pension benefits to certain coal industry retirees. This aspect of the proposal is expected to save Patriot (Robertson Decl. ¶ 35; Lucha Decl. ¶ 42.)

Patriot also proposes to modify certain work rules in the 1113 Proposal. The proposed changes will together save Patriot approximately per year:

- **Modifications to work rules**: The 1113 Proposal would increase flexibility during shift transitions; it would incorporate a more stringent attendance policy that would enable Patriot to discharge an employee in the event of a certain number of unexcused absences; it would eliminate the requirement of a full-time helper on continuous mining machines and roof bolters; it would

> permit management to assign helpers at management's discretion; and it would permit the use of contractors when needed for certain work. Collectively, these aspects of the proposal are expected to save Patriot . (Robertson Decl. ¶ 35; Lucha Decl. ¶¶ 52-57.)

The 1113 Proposal also includes other modifications that are designed to make Patriot's unionized subsidiaries competitive with other coal producers, including Patriot's own non-unionized subsidiaries, which operate under more flexible work rules and a significantly lower labor cost structure. These modifications are critically important to Patriot's ability to operate in a competitive marketplace. (Robertson Decl. ¶ 35; Lucha Decl. ¶¶ 58-63.)

Finally, the 1113 Proposal includes terms that Patriot drafted in response to the UMWA's stated concerns. Among other provisions, the 1113 Proposal expressly recognizes successorship, which means that UMWA rights will be recognized even with a change in ownership. The 1113 Proposal also responds to the UMWA's concerns about future staffing. To that end, the 1113 Proposal includes provisions that will facilitate the UMWA's efforts to secure future job opportunities for UMWA-represented employees, including at select future operations. Additionally, in response to UMWA concerns, the 1113 Proposal provides that UMWA-represented employees will receive wage increases if similarly-situated non-union employees receive increases above the UMWA wage level.

2. Patriot's 1114 Proposal

Patriot's 1114 Proposal seeks to reduce retiree healthcare costs to a sustainable level. Once implemented, the 1114 Proposal would provide Patriot average cash savings of approximately $75 million per year.[22]

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[22]

As a threshold matter, Patriot is making no changes to healthcare benefits for retirees and beneficiaries who receive benefits pursuant to the Coal Act. These obligations amounted to approximately $14 million in 2012 and pertain to approximately 2,300 individuals. (Hatfield Decl. ¶¶ 62-66.) By contrast, for all other categories of UMWA retirees, with the possible exception of the Peabody-Assumed Group, the 1114 Proposal would transition responsibility for retiree healthcare from Patriot to a Voluntary Employee Beneficiary Association – or a "VEBA."[23] (Robertson Decl. ¶¶ 36-37.)

A VEBA is a vehicle that employers use to offer retirees a dedicated source of funding for future medical benefits. A VEBA can either reimburse members for money spent on medical treatment or can pay premiums directly. VEBAs have become extraordinarily common vehicles for providing retiree healthcare and have been implemented by both healthy and financially distressed companies in recent years. (Declaration of Thomas S. Terry, dated March 14, 2013 ("**Terry Decl.**") ¶ 67.) VEBAs are typical among power utilities, telecommunications companies, and defense contractors. In these industries, and others, companies have implemented VEBAs for the provision of retiree healthcare and have done so absent the need for financial restructuring. (See Terry Decl. ¶ 68.) Other companies, such as Chrysler, Dana Corporation, Delphi Corporation, Delta Air Lines, Eastman Kodak Company, General Motors,

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(Lucha
Decl. ¶ 97.)

[23] As discussed below, the Peabody-Assumed Group is only covered by the 1114 Proposal, and their benefits would only be administered through the VEBA, if the Court does not rule that the amount that Peabody must pay for the retiree healthcare benefits of the Peabody-Assumed Group is unaffected by Patriot's modification of other retirees' benefits pursuant to Section 1114.

and Tower Automotive, have employed VEBAs when financial distress has forced them to reevaluate their retiree healthcare costs.[24]

VEBAs are generally designed to operate somewhat or fully independently of the employer. Here, Patriot would cede control of the VEBA to the UMWA Funds, an entity that administers plans that provide healthcare and pension benefits to UMWA-represented employees and retirees, or to the UMWA itself. Under the 1114 Proposal, the UMWA Funds would have full control over the use of the funds in the VEBA as well as eligibility, administration, participation, program designs, and benefit levels. Through this control, the UMWA Funds could leverage their purchasing power – acquired over time through their administration of various health plans – to secure cash savings for the retirees.[25] (Terry Decl. ¶¶ 70-81.)

The 1114 Proposal envisions that the VEBA will be established by July 2013 and that funding of the VEBA will begin at that time. If the 1114 Proposal is approved by the Court, funding will come from three distinct sources. First, Patriot will provide a $15 million lump-sum cash payment to the VEBA on July 1, 2013. (Robertson Decl. ¶ 127.) Second, the UMWA will be entitled to an unsecured claim against Patriot's estate, which could take the form of equity in the emerging enterprise and could be monetized by the UMWA – even before emergence – to provide a source of funding for the VEBA. (Robertson Decl. ¶ 37.) Indeed, the 1114 Proposal contains a detailed process through which Patriot would assist the UMWA in marketing and

[24] See, e.g., In re Old Carco LLC (f/k/a Chrysler LLC), No. 09-50002 (SMB) (Bankr. S.D.N.Y); In re Dana Corp., No. 06-10354 (BRL) (Bankr. S.D.N.Y.); In re Delphi Corp., No. 05-44481 (RDD) (Bankr. S.D.N.Y.); In re Delta Airlines, Inc., No. 05-17923 (CGM) (Bankr. S.D.N.Y.); In re Eastman Kodak Co., No. 12-10102 (ALG) (Bankr. S.D.N.Y.); In re Motors Liquidation Co. (f/k/a General Motors Corp.), No. 09-50026 (REG) (Bankr. S.D.N.Y.); In re Tower Automotive, Inc., No. 05-10578 (ALG) (Bankr. S.D.N.Y.).

[25] Other than providing funding to the VEBA, as discussed below, Patriot would exercise no control over the provision of retiree healthcare benefits but has volunteered to work closely with the UMWA to ensure a rapid and successful transition to this new mechanism. (Terry Decl. ¶ 37; Robertson Decl. ¶ 37.)

monetizing its claim so that a substantial cash contribution can be made to the VEBA. (Robertson Decl. ¶ 169; Huffard Decl. ¶ 70.) Moreover, the UMWA, and their respective advisors have devoted substantial time to valuing the claim. Based on market pricing of Patriot's unsecured debt, the UMWA's unsecured claim would have an implied value of hundreds of millions of dollars. (Huffard Decl. ¶ 69.) Third, further contributions could be made to the VEBA under a profit-sharing plan established by Patriot. Under the proposed arrangement, the Obligor Companies would agree to contribute to the VEBA an amount equal to 15 percent of net income earned by Patriot above $75 million in 2014 and 2015 and an amount equal to 15 percent of net income earned by Patriot above $150 million in 2016 and subsequent years. Such contributions would be subject to certain conditions, including an annual cap of $75 million and an aggregate cap of $300 million. (Robertson Decl. ¶ 169.) This profit-sharing component will allow the UMWA to share in any upside should Patriot's financial performance improve in years to come or should Patriot receive a share of recoveries from litigation against third parties. In light of this funding, the VEBA can provide meaningful benefits to Patriot's retirees, including valuable access to group coverage and premium support. (Terry Decl. ¶¶ 51-57; 75-78.)

As noted above, the 1114 Proposal generally contemplates that all non-Coal Act retirees would receive benefits from the VEBA. However, the Peabody-Assumed Group is treated differently in the 1114 Proposal. Peabody pays for the healthcare benefits provided to these individuals and, unlike Patriot, Peabody is not in the midst of a financial crisis and cannot avail itself of the provisions of the Bankruptcy Code to restructure its costs. However, although the agreements from the spin-off remain in force, Peabody has stated that it may seek to reduce or eliminate its obligations should Patriot secure relief under Section 1114. This leaves Patriot with a difficult choice: it can include the Peabody-Assumed Group in the 1114 Proposal, which would potentially give Peabody an unjust windfall and harm retirees for whom Peabody is responsible; or it can carve out the Peabody-Assumed Group from the 1114 Proposal and bear the risk that Peabody will renege on its obligations, leaving Patriot responsible for retiree health costs it cannot afford. As a result, Patriot has structured its 1114 Proposal as applying to the Peabody-Assumed Group unless the Court rules that Peabody's obligations remain intact. Consistent with the 1114 Proposal, Patriot has contemporaneously filed an adversary complaint, in which it seeks a declaration that the obligations of Peabody with respect to the Peabody-Assumed Group will not be affected in the event that Patriot secures relief under Section 1114.

Putting aside the issue of who will receive benefits from the VEBA, Patriot's 1114 Proposal is consistent with the changing nature of employer-provided retiree healthcare benefits. (Terry Decl. ¶¶ 43-50.) Many companies have eliminated retiree healthcare over the past few decades. This trend is widely-known and universally acknowledged:

- According to a recent periodical, "[e]mployers have been easing away from offering [retiree medical] benefits since the early 1990s. . . . Roughly 60 percent of employers are reconsidering their approach to providing retiree medical benefits or plan to do so within the next two years, according to a 2011 survey of 248 companies conducted by Towers Watson and the International Society of Certified Employee Benefit Specialists. Many employers see health care reform as a way to exit plan sponsorship by relying on state health insurance exchanges and other innovations in the reform law to ensure that retirees have access to affordable coverage."[26]

- According to a recent trade publication, "[g]iven the dollar amounts involved, there are often significant financial advantages to reducing or eliminating [retiree medical] benefits, and many companies have done that or are in the process of doing it. Today only 45 per cent of employers provide medical benefits to current retirees, and only 22 per cent of employers include retiree medical as one of the benefits offered to new hires. Moreover, according to a

[26] Joanne Sammer, "Exit Strategy: Employers Planning to End Retiree Medical Benefits Look to Health Care Reform to Fill the Void," HRMagazine, Sept. 1, 2011.

recent survey, approximately 43 per cent of companies currently offering retiree medical benefits are planning to reduce or eliminate them."[27]

- According to a recent news report, "[o]f large U.S. companies (200 or more workers) that offer health benefits to active workers, only 28 percent extended some benefit to retirees in 2010, continuing the downward trend of recent years, according to the Kaiser/HRET Survey of Employer-Sponsored Health Benefits. That's down from 66 percent in 1988. . . . The move reflects companies' efforts to shift to workers the risks associated with offering health care coverage and other defined benefits, said Bob Applebaum of Miami University's Scripps Gerontology Center. 'Almost all the defined-benefit plans in the private sector are going away,' said Applebaum, who lists pensions among defined benefits on the decline. 'Only the public-sector plans are left,' he said."[28]

- According to a recent periodical, "[m]any employers are planning to discontinue their group health plans for retirees. New retiree medical options created by health care reform are causing companies to rethink whether they still need to provide health benefits to former workers."[29]

- According to a recent news report, "[a]ny retiree or anyone headed toward retirement with employer-paid health care coverage should count themselves as lucky – and rare. The days when retirement health care insurance coverage was part of pension plans are rapidly nearing an end."[30]

- According to a recent op-ed column, "[m]ore companies are expected to drop retiree health, according to another survey released [in May 2010] by consulting firm Towers Watson. Looking at the expected impact of the health care bill, it found that almost 80% of the 650 mid- to senior-level benefit professionals surveyed say 'there is likely to be either a moderate or

[27] Nancy G. Ross, "Reducing Corporate Retiree Health Care Costs," Executive Counsel, Aug. 2012.

[28] Ben Sutherly, "Health care benefits shrink for area retirees; Some are losing health coverage altogether," Dayton Daily News (Ohio), Aug. 2, 2011.

[29] Emily Brandon, "Employers Plan to End Retiree Health Coverage," U.S. News & World Report, Jun. 17, 2011, available at http://money.usnews.com/money/blogs/planning-to-retire/2011/06/17/employers-plan-to-end-retiree-health-coverage.

[30] David Henricks, "Say Bye-Bye to Retirement Health Care Benefits," San Antonio Express News, Nov. 24, 2012, available at http://www.mysanantonio.com/business/business_columnists/david_hendricks/article/These-retirement-benefits-rarer-4061997.php.

> significant decrease in the number of large employers offering employer-sponsored retiree medical benefits.'"[31]

Of those employers that continue to provide retiree health coverage, only 20 percent provide full premium support, a figure that is projected to decline to 7 percent by the time workers hired today are eligible to retire. Similarly, only half of employers that provide retiree health coverage offer any premium support, a figure that is expected to decrease to approximately 20 percent in coming years. (Terry Decl. ¶ 47.) In short, Patriot is not alone in being forced to recognize the need to reduce the heavy financial burden of providing retiree health benefits.

While Patriot no longer can afford the cost of retiree healthcare, it will do everything possible to establish a vehicle that will enable its retirees to receive meaningful healthcare benefits over the long term. Indeed, Patriot has listened to the UMWA's stated concerns and has responded to those concerns with modified provisions, notwithstanding the fact that such provisions will reduce Patriot's savings by tens of millions of dollars. For example, Patriot included provisions in the 1114 Proposal that: delay the transition of retiree healthcare to the VEBA by three months (at a cost to Patriot of more than $5 million per month); create a detailed procedure for promptly monetizing the UMWA's unsecured claim so that the VEBA can be provided with additional cash; increase the initial funding amount to $15 million and provide all such funding up front; and raise the annual profit sharing percentage, the annual profit sharing maximum, and the aggregate profit sharing maximum so that the retirees benefit if market conditions improve.[32] (Robertson Decl. ¶¶ 34, 127, 169; Lucha Decl. ¶¶ 95-96.)

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[31] Jillian Mincer, "Focusing on Early Retiree Health-Care Costs," Dow Jones News Service, May 26, 2010.

[32] The new federal healthcare legislation, PPACA, may also afford relief to Patriot's retirees. Beginning in 2014, retirees will have access to group health insurance through healthcare exchanges established pursuant to that statute. For retirees not yet eligible for Medicare, the exchanges represent a viable alternative for health coverage. (Terry Decl. ¶ 56.) Similarly, federal legislation has been introduced in both the Senate and the House of

E. Negotiations with the UMWA

Patriot has negotiated diligently and in good faith with the UMWA since delivery of the Original Proposal. Throughout this process, Patriot has demonstrated a commitment to reaching a consensual resolution and will continue to seek a consensual resolution during the pendency of this Motion.

Although Patriot presented its Original Proposal in November 2012, Patriot has engaged in regular communication with the UMWA since the day the Debtors commenced their chapter 11 cases. (Robertson Decl. ¶ 12.) In the months prior to delivering the Proposals, Patriot and the UMWA spoke frequently about the challenges facing Patriot, the need to secure timely and substantial labor cost reductions, and Patriot's desire to reach a consensual resolution. (Robertson Decl. ¶¶ 7, 191, 193.)

During that time, Patriot also compiled a significant amount of data to enable the UMWA to evaluate Patriot's forthcoming labor proposals. While Patriot understood that it would take time to compile a comprehensive set of proposals that addressed its long-term business needs, Patriot was determined to provide the UMWA with relevant information in advance of making the Proposals so that the UMWA would be well-positioned to begin the bargaining process once the Proposals were made. To that end, Patriot set up a web-based data room (the "**Data Room**") to facilitate information sharing. (Robertson Decl. ¶¶ 17-20.) Patriot made the Data Room available to the UMWA on October 15, 2012, and Patriot began responding to information requests from the UMWA and its advisors even before that date. (Robertson Decl. ¶¶ 18, 21-22.)

Representatives that would: (1) protect retirees' benefits under the 1974 Pension Plan; and (2) provide certain health benefits to retirees whose employers have filed for bankruptcy. See The Coalfield Accountability and Retired Employee Act, H.R. 980, 113th Cong. (2013); S. 468, 1113th Cong. (2013).

On November 15, 2012, Patriot met with the UMWA to formally present the Original Proposal. During that meeting, Patriot provided the UMWA with an overview of market conditions, Patriot's historical financial performance, the reasons for Patriot's restructuring, Patriot's business plans, the Original Proposal, and a proposed timeline. (Robertson Decl. ¶¶ 30-32.) Over the next four months, Patriot formally met with the UMWA another eleven times, for a total of nearly forty-five hours of formal meetings. (Robertson Decl. ¶¶ 7, 191, 193.) Patriot and its advisors also participated in dozens of conference calls and exchanged hundreds of e-mails – contacts that often took place multiple times per day. (Robertson Decl. ¶¶ 7, 193.)

During this period of time, Patriot continually responded to information requests from the UMWA and its advisors. In so doing, Patriot responded to eight written requests for information by the UMWA's advisors, which included over sixty discrete demands for information, excluding subparts – subparts that often amounted to dozens within a single request. (Robertson Decl. ¶¶ 8, 23, 43, 61, 76, 82, 85, 122, 163.) In addition to the eight written requests from the UMWA's advisors, Patriot also responded to numerous informal requests made by the UMWA and its advisors during meetings, on conference calls, and via e-mail, and included more than 100 requests for healthcare utilization data. (Robertson Decl. ¶¶ 8, 104, 114, 122, 130, 140, 156 192.) In total, Patriot has uploaded more than 3,800 megabytes of data to the Data Room, or nearly 43,000 pages of material, which consisted of pre-existing business records and information generated by Patriot specifically in response to the UMWA's requests. (Robertson Decl. ¶¶ 8, 14, 192.)

Patriot and its advisors also repeatedly made themselves available to explain this information. Such clarification took place at formal negotiating sessions, via conference calls, in e-mails or written status reports, or through meetings scheduled for this specific purpose.

Patriot's efforts concerning its business plan model are illustrative of the steps Patriot has taken throughout the negotiations. After providing its model, Patriot offered to run any revised assumptions on cost, pricing, or other factors through the business plan model, and Patriot in fact performed such analyses for the UMWA's advisors. Thereafter, Patriot provided a functional version of its business plan model, which was built off of Patriot's budgeting and planning system, and in which changes can be made to numerous inputs. At that time, and numerous times thereafter, Patriot offered to help the UMWA and its advisors increase their familiarity and comfort with the model, and in fact hosted conference calls and meetings about the model. After the training, Patriot offered to provide the UMWA with open access to the budgeting and planning system, an offer the UMWA has not yet accepted. (Robertson Decl. ¶ 133.)

Notwithstanding Patriot's efforts, the UMWA made statements and took actions that cause Patriot to question the UMWA's commitment to reaching a consensual resolution. For example, the UMWA refused to respond formally to the Original Proposal for nearly eight weeks. During that time, Patriot and its advisors made no fewer than ten requests for a counterproposal – in meetings, in letters, and via e-mail – each of which was expressly rebuffed or simply ignored. (Robertson Decl. ¶¶ 58, 87, 89, 90, 94-96, 98, 109.)

The UMWA also refused to supply a counterproposal on the grounds that it had not received necessary information, such as Patriot's functional business plan model or materials related to the Peabody and Magnum transactions. (Robertson Decl. ¶¶ 88, 94, 96, 98.) Yet each of the reasons that the UMWA offered for its refusal was mooted by Patriot's timely provision of the very information that the UMWA demanded. (Robertson Decl. ¶ 113.)

When the UMWA finally provided its first counterproposal in January 2013 (the "**First Counterproposal**"), its proposed savings were paltry. Indeed, even though Patriot demonstrated that it needed to secure approximately $150 million per year in savings in order to survive, the First Counterproposal offered savings totaling approximately $6.4 million in 2013, $13.1 million in 2014, and $15.5 million in 2015. (Robertson Decl. ¶ 120; Lucha Decl. ¶ 70.) The First Counterproposal also contained a list of requested concessions from Patriot, which comprised nearly seven pages of the nine-page counterproposal. (Robertson Decl. ¶ 113, Ex. 48.) The requested concessions included union job-security provisions, a blanket prohibition on Patriot increasing compensation for any employee, and a complex "snap-back" provision, all of which Patriot and its advisors concluded would vastly reduce the chance that Patriot could secure exit financing and emerge from bankruptcy. (Huffard Decl. ¶¶ 85-92; Robertson Decl. ¶ 118.)

The parties made limited progress in February 2013 – nearly three months after negotiations began – when the UMWA acknowledged that the savings requested were necessary and that retiree healthcare obligations could be transitioned to a VEBA. In their second counterproposal (the "**Second Counterproposal**"), the UMWA proposed changes to the CBAs and to retiree healthcare that it inaccurately characterized as amounting to more than 100 percent of Patriot's requested savings. However, the Second Counterproposal was deeply flawed for two fundamental reasons. First, the Second Counterproposal contained severe restrictions that would hinder Patriot's efforts to secure financing and emerge from bankruptcy. Such provisions included the following:

- A so-called "snap-back" provision that would reverse all modifications on or before December 1, 2016. This provision would hinder Patriot's efforts to secure financing, because lenders will view the labor savings as insignificant and Patriot's efforts to revise its cost structure as flawed. (Huffard Decl. ¶¶ 88-89; Robertson Decl. ¶ 148.)

- A requirement that Patriot contribute $1 billion into a VEBA, including a guarantee of $600 million from a rights offering and a $400 million secured loan. These requirements bear no relationship to market reality in that they require Patriot to guarantee that it can raise more than a half-billion dollars for the UMWA. (Huffard Decl. ¶ 91; Robertson Decl. ¶ 147.)

- A profit-sharing mechanism that would require Patriot to contribute funds equal to 7.5 percent of EBITDA. This provision includes minimum annual payments, which would rise from $3.8 million in 2013 to $15 million in 2016, and annual caps. This profit-sharing arrangement is exceedingly draconian, based on unreasonable metrics, and threatens to further destabilize Patriot. (Huffard Decl. ¶ 100; Robertson Decl. ¶ 147.)

- A provision that bars Patriot from granting any increase in pay or benefits or any bonus to any personnel, including management, non-union employees, and independent contractors. This provision would hinder Patriot's effort to recruit and retain needed personnel. (Huffard Decl. ¶ 86; Robertson Decl. ¶ 117.)

Second, the Second Counterproposal does not come close to delivering the requisite savings. For example, the Second Counterproposal turns on the assumption that Patriot will secure hundreds of millions in savings on retiree healthcare. But, for the reasons discussed above, the UMWA's rights offering concept and secured loan requirement will make its VEBA proposal impossible to implement and will prevent Patriot from achieving the related savings. (Huffard Decl. ¶ 91; Robertson Decl. ¶ 147.) Additionally, the Second Counterproposal presumes that Patriot will secure hundreds of millions in revenue from producing additional coal. However, those savings will not materialize because:

- The cost of production exceeds prices Patriot can receive for its coal under current market conditions. This problem is illustrated by the fact that Patriot closed or idled multiple mines in 2012 – including the idling of Rocklick – because Patriot's cost of producing coal at those locations exceeded expected revenues.

- Increased production would require Patriot to hire additional personnel to staff newly created production shifts. When hiring additional personnel, Patriot would have to pay added wages and benefits it could not afford, including overtime – which the UMWA contemplates receiving in each of its counterproposals. Increased labor costs will raise overall production costs, reducing Patriot's ability to achieve any margin on additional coal sales.

- Increased production is not practical at many of Patriot's mines. For example, at the Federal mine, Patriot operates a six-day-a-week production schedule. On the seventh day, Patriot must perform maintenance of the machines to enable its workers to resume mining the following week. In addition, a 24/7 production schedule at Federal would undermine efficient longwall mining, because longwall mining requires panel development before using the longwall machine, and increased production does not permit time for such development.

(Robertson Decl. ¶ 117; Lucha Decl. ¶¶ 75-77; Hatfield Decl. ¶ 86.)

In response to the Second Counterproposal, Patriot prepared its Third Proposal, which further responded to the UMWA's stated concerns. Among other things, the proposal responded to the rights offering concept by including a provision that would achieve the UMWA's aim of providing the VEBA with liquidity in the near term. Specifically, the Third Proposal included a detailed framework for the prompt monetization of the UMWA's unsecured claim, which was successfully used to monetize creditors' claims in prior large bankruptcies, such as that of Delta Air Lines. After delivering its Third Proposal, the UMWA and Patriot engaged in discussions about the substance of the Third Proposal, and Patriot made a revision to the Third Proposal to provide further clarity to a provision that the UMWA believed was unclear. Notwithstanding the promise of the Third and Fourth Proposals, the UMWA rejected the Proposals outright. (Robertson Decl. ¶ 180.)

In rejecting the Proposals, the UMWA rejected many of the very modifications that it accepted in connection with the renegotiation of the Gateway CBAs in 2011. Indeed, if one were to evaluate the Proposals on a component-by-component basis, it becomes clear that the UMWA has taken a completely inexplicable position here:

Patriot's Proposed Modifications	UMWA Response to 1113 Proposal	UMWA Response in Connection with Gateway CBAs
Adjust overtime pay, double time, triple time	Reject (other than OT > 40)	Accept in part
Eliminate shift differential payments	Reject	Not included
Eliminate 1974 Pension Plan contributions	Reject	Accept
Eliminate Retiree Bonus Plan contributions	Reject	Accept
Eliminate 20-Year Service Payment	Reject	Accept
Eliminate New Inexperienced Miner Payments	Reject	Accept
Add 401(k) plan contributions	Reject	Accept
Eliminate 1993 Benefit Plan contributions	Reject	Accept
Modify paid time-off	Reject	Not included
Modify healthcare benefits	Reject	Not included
Reduce extended healthcare	Reject	Not included
Modifications to work rules	Reject	Accept in part
Elimination of industry fund payments	Reject	Accept

(Lucha Decl. ¶ 100.) Most striking about the UMWA's rejection here is not that it is inconsistent with its conduct in connection with the Gateway agreements. Rather, it is that the UMWA made the Gateway concessions when Patriot was not in acute financial distress, yet refuses to do so now when Patriot faces the prospect of liquidation absent these changes.

Finally, for the first three months of the negotiation process, the UMWA focused in the negotiation sessions on its own claims against Peabody and Arch. This tactic dates back to shortly after Patriot commenced these chapter 11 cases, and appears to represent a calculated decision that 1113/1114 litigation was inevitable, so focusing on Peabody and Arch – rather than negotiating with Patriot – would provide a greater benefit to the UMWA and its members. (Robertson Decl. ¶¶ 57, 84, 98.)

Patriot and the UMWA have made limited progress during the negotiation, but Patriot needs immediate savings to ensure its short-term survival and long-term viability. Because Patriot must secure savings now, it has reluctantly come to the Court to seek the relief at issue in the Motion. Nevertheless, Patriot remains willing to achieve a consensual resolution and will continue to bargain in good faith during the pendency of this Motion.

ARGUMENT

A debtor is permitted to reject its collective bargaining agreements and modify its retiree benefits if the proposed modifications comply with Section 1113 and Section 1114 of the Bankruptcy Code. 11 U.S.C. §§ 1113(c), 1114(g).[33] As a threshold matter, a proposal must be "necessary to permit the reorganization of the debtor." 11 U.S.C. §§ 1113(b)(1)(A), 1114(f)(1)(A); Family Snacks, 257 B.R. at 892-93. In addition, a proposal must be "based on the most complete and reliable information available," 11 U.S.C. §§ 1113(b)(1)(A), 1114(f)(1)(A); the debtor must have supplied the union with "such relevant information as is necessary to evaluate the proposal," 11 U.S.C. §§ 1113(b)(1)(A), 1114(f)(1)(B); and the debtor must meet with the unions "at reasonable times" and must "confer in good faith" in an attempt to agree on modifications to the collective bargaining agreements. 11 U.S.C. §§ 1113(b)(2), 1114(f)(2).

[33] It is well-settled that the requirements of Section 1113 apply with equal force to a debtor's effort to modify retiree benefits under Section 1114. See In re Horizon Natural Res. Co., 316 B.R. 268, 281 (Bankr. E.D. Ky. 2004) (noting that the "requirements for modification of retiree benefits are . . . substantially the same as the requirements for rejection of collective bargaining agreements" and applying the same standard); see also United Food & Commercial Workers Union, Local 211 v. Family Snacks, Inc. (In re Family Snacks, Inc.), 257 B.R. 884, 896-97 (8th Cir. B.A.P. 2001) (Dreher, J.) (relying on § 1114 cases to interpret § 1113); In re Ionosphere Clubs, Inc., 134 B.R. 515, 520 (Bankr. S.D.N.Y. 1991) ("When Congress enacted § 1114, it used the same procedures and standards as existed for modification or rejection of collective bargaining agreements under § 1113."); S. Rep. No. 119, 100th Cong., 1st Sess. 1987, 1988 U.S.C.C.A.N. 683, 687 (standards for modifying benefits under § 1114 "are intended to be identical to those contained in Section 1113 [because] . . . it is important to use a standard with which the courts are already familiar"). As a result, courts consistently analyze motions for relief under Section 1113 and 1114 in tandem. See, e.g., Horizon Natural, 316 B.R. at 279-83; In re Horsehead Indus., Inc., 300 B.R. 573, 583 (Bankr. S.D.N.Y. 2003).

Finally, the proposal must satisfy certain equitable requirements: it must treat all parties "fairly and equitably," 11 U.S.C. §§ 1113(b)(1)(A), 1114(f)(1)(A); the union must have rejected the proposal without "good cause," 11 U.S.C. §§ 1113(c)(2), 1114(g)(2); and the "balance of the equities" must favor rejection. 11 U.S.C. §§ 1113(c)(2), 1114(g)(2); see also Family Snacks, 257 B.R. at 892 (citing In re Am. Provision Co., 44 B.R. 907, 909 (Bankr. D. Minn. 1984) (Kressel, J.)).

Because Patriot has satisfied each of the applicable requirements – both as to its proposed rejection of the CBAs and as to its proposed modification of retiree benefits – the Motion should be granted.

POINT I.

PATRIOT'S PROPOSALS ARE NECESSARY TO ITS RESTRUCTURING

Sections 1113 and 1114 provide that proposed modifications must be "necessary to permit the reorganization of the debtor." 11 U.S.C. §§ 1113(b)(1)(A), 1114(f)(1)(A). This element is "[t]he most fundamental requirement for rejection of a collective bargaining agreement," In re Nw. Airlines Corp., 346 B.R. 307, 321 (Bankr. S.D.N.Y. 2006), and it is clearly satisfied here.

A. Patriot's Proposals Must Enable It to Reorganize Successfully

In construing the necessity requirement, courts have articulated several key principles that guide the instant inquiry. First, a proposal must contain "necessary, but not absolutely minimal, changes that will enable the debtor to complete the reorganization process successfully." Truck Drivers Local 807 v. Carey Transp., Inc., 816 F.2d 82, 90 (2d Cir. 1987); see also Ass'n of Flight Attendants-CWA v. Mesaba Aviation, Inc., 350 B.R. 435, 449 (D. Minn.

2006) ("Mesaba II") (Davis, J.) (applying Carey Transp.); In re Valley Steel Prods. Co., Inc., 142 B.R. 337, 341 (Bankr. E.D. Mo. 1992) (McDonald, J.) (same). Otherwise stated, the debtor's proposal "need not be limited to the bare bones relief that will keep it going." N.Y. Typographical Union No. 6 v. Royal Composing Room, Inc. (In re Royal Composing Room, Inc.), 848 F.2d 345, 350 (2d Cir. 1988), cert. denied, 489 U.S. 1078 (1989). This construction of the necessity requirement is prudent in the bankruptcy context. Because the ultimate aim of chapter 11 is the confirmation of a plan that is "not likely to be followed by liquidation, or the need for further financial reorganization," 11 U.S.C. § 1129(a)(11), "[i]t would not be in the best interests of the [d]ebtors, employees or the creditors to attempt to fine tune the necessary changes to a minimal standard that would greatly enhance the chances of an unsuccessful reorganization." Valley Steel, 142 B.R. at 341.[34]

Second, the necessity inquiry is inherently long-term. The goal of modification is a "successful reorganization . . . from which the debtor emerges as an economically viable operation." In re Mile Hi Sys., Inc., 899 F.2d 887, 893 (10th Cir. 1990). Thus, "in virtually every case, it becomes impossible to weigh necessity as to reorganization without looking into the debtor's ultimate future and estimating what the debtor needs to attain financial health." Carey Transp., 816 F.2d at 89. Similarly, a debtor's ability to compete with its competitors is crucial to its long-term health. The necessity inquiry requires a court to determine what "must be

[34] Although the Court of Appeals for the Eighth Circuit has not addressed the necessity requirement, every court in the Circuit to decide the issue has embraced the Second Circuit's reading of the statute. See, e.g., Mesaba II, 350 B.R. at 449; Valley Steel, 142 B.R. 337. To be sure, the Bankruptcy Court for the Northern District of Iowa stated in one decision that it was "not inclined" to follow the Second Circuit's reading, but that court concluded that the debtors there had failed to establish that their proposed modifications were necessary under any applicable standard and did not reach the issue of which standard applied. See In re Pierce Terminal Warehouse, Inc., 133 B.R. 639, 647 (Bankr. N.D. Iowa 1991) (Edmonds, J.) ("Regardless of whether this court follows the Second Circuit or Third Circuit in construing 'necessary,' debtors-in-possession have failed to prove that their proposal contains modifications necessary to permit reorganization.").

extracted by way of wage and benefit reductions and other employee concessions to so improve the [d]ebtor's cash flow that it could emerge from Chapter 11, financially stable and viably competitive . . . and remain so[.]" In re Mesaba Aviation, Inc., 341 B.R. 693, 731 (Bankr. D. Minn. 2006) ("Mesaba I") (Kishel, J.) (emphasis added); see also Nw. Airlines, 346 B.R. at 321 (holding that modifications that enable the debtor to "compete in the marketplace" satisfy the necessity standard); Valley Steel, 142 B.R. at 341-42 (holding that modifications were necessary and noting the costs of the debtors' operations relative to the market rates).

Third, the "court must focus on the total impact of the changes [o]n the debtor's ability to reorganize, not on whether any single proposed change will achieve that result." In re Appletree Mkts., Inc., 155 B.R. 431, 441 (S.D. Tex. 1993); see also In re Horsehead Indus., Inc., 300 B.R. 573, 584 (Bankr. S.D.N.Y. 2003) ("In determining 'necessity,' the proposal must be viewed as a whole, and not by its specific elements."). In fact, if a debtor were required to justify each element of its proposal, "no proposal could ever truly be 'necessary,' since any single vital element of a proposal can hardly be 'necessary' if it can be replaced by some alternative not included in the package which would achieve the same dollar savings for the debtor." Royal Composing Room, 848 F.2d at 348; see generally In re Falcon Prods., Inc., 354 B.R. 889, 894 (E.D. Mo. 2006) (Shaw, J.) (holding that a debtor's request for distress termination of multiple pension plans must be evaluated in the aggregate and not on a plan-by-plan basis), aff'd on other grounds, 497 F.3d 838 (8th Cir. 2007).

Fourth and finally, modifications of the non-economic provisions of an agreement – such as provisions concerning work rules, vacation days, and overtime – may satisfy the necessity requirement. See, e.g., Carey Transp., 816 F.2d at 86 (proposal that included changes to overtime, sick days, workers' compensation, and scheduling rules was "necessary"); Valley

Steel, 142 B.R. at 340 (changes to a collective bargaining agreement that increased "flexibility in layoffs, improve[ed] the [d]ebtors' dispatch procedures and relax[ed] work rules" were necessary). Indeed, there is "no legal or logical impediment to including" non-economic changes "intended to have a direct economic effect." Appletree Mkts., 155 B.R. at 441.

Each of these principles counsels in favor of granting Patriot's Motion.

B. Patriot's 1113 Proposal Is Necessary for Its Short-Term Survival and Long-Term Competitiveness

. Patriot and its advisors have engaged in a rigorous analysis of Patriot's business and concluded that it needs to achieve approximately

. In developing a comprehensive business plan, Patriot and its advisors identified and implemented cash savings that will total approximately

in 2014 alone, which relate to non-union labor costs, capital expenditures, unprofitable contracts, and surplus assets. Many of Patriot's remaining costs – such as liabilities relating to the Coal Act, the Black Lung Act, and environmental reclamation – generally cannot be modified in bankruptcy. With no other areas to cut, Patriot must secure savings from its unionized employees and retirees. (Huffard Decl. ¶¶ 45-51.) The savings are necessary for three overarching reasons.

. Patriot will breach numerous DIP covenants if it does not obtain immediate, significant labor cash savings. For example, the DIP agreements require Patriot to maintain a minimum of $100 million of liquidity after January 1, 2013.

. In light of these facts, Patriot is highly unlikely to survive in the short term if it fails to overhaul its labor cost structure. (Huffard Decl. ¶¶ 73-77.)

Second, the 1113 Proposal is necessary for Patriot to secure financing in the medium term. Market conditions have deteriorated since Patriot secured its DIP financing in the summer of 2012. In light of these new facts, it will be extremely difficult for Patriot to secure exit financing absent an overhaul of its cost structure. (Schwartz Decl. ¶¶ 33-40; Huffard Decl. ¶¶ 78-80.)

Third, the 1113 Proposal is necessary for Patriot to survive in the long term. In fact, under the applicable law, the Court must consider Patriot's long-term prospects – in particular, its long-term ability to compete in the thermal and metallurgical coal markets. See Carey Transp., 816 F.2d at 89-90. The evidence is clear that Patriot has no such ability absent the savings that it has sought in the 1113 Proposal.

The coal industry is highly competitive and Patriot is uniquely poorly positioned to compete with its peers. For example, Patriot's per-employee labor costs are up to 90 percent higher in its union mines than in its non-union mines. Patriot's workforce is 41 percent unionized, which is one of the highest rates among major U.S. coal companies. By contrast, Peabody's workforce is 21 percent unionized, Alpha's is 11 percent unionized, Arch's is 3 percent unionized, and James River has no union members. As a result, Patriot's labor costs consume a far greater portion of its revenues than that of its peers, making it unable to weather market downturns and price volatility. (Hatfield Decl. ¶¶ 1-2; Huffard Decl. ¶¶ 53-56; Schwartz Decl. ¶¶ 51-61, 69-70.)

Finally, any dispute concerning the necessity of any particular modification is misplaced. Patriot needs to identify approximately $150 million in annual cash savings from its UMWA-represented employees and retirees. If the UMWA truly took issue with any particular component of the 1113 Proposal, it could identify alternative ways to achieve the same amount of savings. To date, however, the UMWA's concessions would provide Patriot with cash savings that fall far short of the amount needed. (Robertson Decl. ¶ 120; Lucha Decl. ¶ 85.) Similarly, the modifications to work rules and similar terms are necessary to the 1113 Proposal. Patriot has demonstrated that many of those changes confer an economic benefit on Patriot, but more importantly, the changes provide Patriot with the flexibility it needs to survive. Thus, even changes to which Patriot has not ascribed a dollar amount are critical to ensuring Patriot's ability to compete on a long-term basis. (Lucha Decl. ¶¶ 59-63.)

By producing an aggregate of $75 million in savings per year, Patriot's 1113 Proposal will allow it to survive in the short and medium term and to achieve long-term viability. For these reasons, Patriot's requested modifications to the CBAs are necessary to its successful reorganization.

C. Patriot's 1114 Proposal Is Necessary for Its Short-Term Survival and Long-Term Competitiveness

For similar reasons, Patriot must quickly realize significant savings from its retiree healthcare obligations. As discussed above, Patriot has meticulously evaluated every aspect of its business and has made all feasible cuts. Only after all possibilities were exhausted did Patriot turn to its retiree healthcare obligations for cash savings.

As discussed in detail above, Patriot currently provides its UMWA retirees with extraordinarily generous healthcare benefits. Under the NBCWA, these benefits include limited or no out-of-pocket expenses, no co-insurance, and free mail-order prescription drugs. And these benefits come at a significant cost: Patriot spent $65.3 million in 2012 to provide healthcare benefits to NBCWA retirees, and these costs are projected to increase to $ in 2013 and $ in 2014. (Hatfield Decl. ¶ 95(a).) Patriot also lacks an active employee base to sustain these benefits. At present, it employs only 1,650 UMWA-represented employees, but provides retiree benefits to five times as many UMWA-represented retirees and beneficiaries. (Hatfield Decl. ¶¶ 18-20, 26.)

The 1114 Proposal is necessary for Patriot to survive in the short term. For the same reasons discussed above, Patriot risks defaulting on the liquidity covenant in its DIP loans, running out of cash entirely, and liquidating if it does not restructure its retiree healthcare obligations. (Hatfield Decl. ¶¶ 57-59; Huffard Decl. ¶¶ 73-77.) The 1114 Proposal is also necessary for Patriot to attract and secure exit financing in the medium term. It will be extremely difficult for Patriot to demonstrate an ability to repay and refinance an exit facility, and to provide contract counterparties with assurances that it is on sound financial footing, absent improved cash flow. (Huffard Decl. ¶¶ 76-80.) Finally, the 1114 Proposal is necessary to enable Patriot to compete on a long-term basis. For example, Patriot's OPEB liabilities per active employee is $393,000, a figure that is 49.1 times greater than Arch's, 4.9 times greater than Alpha's, 3.1 times greater than Peabody's, and 2.4 times greater than Walter's. (Hatfield Decl. ¶ 98; Huffard Decl. ¶ 64.) Even CONSOL, which carries higher OPEB liabilities than other coal companies (but lower than Patriot's) announced in 2012 that it will end company-sponsored medical benefits for retirees.[35] In short, Patriot's competitors have reduced their retiree healthcare obligations and Patriot similarly needs to restructure its costs to be able to compete.

For these additional reasons, Patriot's modifications to retiree benefits are necessary to its successful reorganization.

D. The Possibility of Future Recovery from Non Parties Is Irrelevant to the Necessity Inquiry

Throughout the negotiations, the UMWA has insisted that Patriot's proposed labor savings are not necessary because they will be offset by recoveries from litigation against Peabody and Arch. Not only is any such recovery wholly speculative, it is not relevant to the necessity inquiry.

As an initial matter, properly investigating such claims requires time and resources. The investigation, which is being conducted by Patriot and the Creditors' Committee, is still in its preliminary stages and is not expected to conclude until after Patriot runs out of cash. (Hatfield Decl. ¶¶ 37-38.) Even assuming Patriot concludes that it should pursue claims against Peabody and/or Arch, any such claims would result in extensive litigation and could last for years. Indeed, in a preemptive filing on November 30, 2012, Peabody flatly rejected the suggestion that it was liable to Patriot, giving every indication it would vigorously contest such a claim.[36] [ECF

[35] According to recent news coverage, CONSOL "plans to end company-sponsored medical benefits for 900 retirees and instead will provide fixed annual payments and force retirees to shop for coverage beginning on Jan. 1, 2014." Kim Leonard, "Consol to end retiree health care," Pittsburgh Tribune Review, Apr. 13, 2012. According to the article, "Consol cited a decline in medical coverage for retirees by corporations, and dramatic cost increases over the past 10 years, as reasons for the change. Fewer than 25 percent of employers offered medical coverage to retirees in 2011." Id.; see also CONSOL Energy Inc., Annual Report (Form 10-K) (Feb. 7, 2013) at 65.

[36] In response to a motion by certain interested shareholders for the appointment of an Official Committee of Equity Security Holders, Peabody asserted that: "[w]hile Peabody takes no position with respect to the relief requested in the [m]otion, Peabody rejects as meritless the Shareholders' unsupported assertions that (a) Peabody 'saddled' the Debtors with more than $1 billion in liabilities in connection with the spin-off of certain of the Debtor entities from Peabody in 2007 . . . (b) there may be 'significant fraudulent transfer and other claims' against

No. 1656.] In short, Patriot does not have the luxury of waiting to restructure its labor costs until the end of this time-intensive and uncertain process. It will long since have died on the operating table.

Moreover, courts do not require related litigation to conclude before granting relief under Section 1113 or 1114. For example, the creditors' committee for Lyondell Chemical Company began an investigation in July 2009, which gave rise to claims that are still not ready for trial more than three years later. See In re Lyondell Chem. Co., 467 B.R. 712 (S.D.N.Y. 2012). Similarly, the "very attenuated nature" of potential claims at this stage of a bankruptcy was the very reason the bankruptcy court in Mesaba barred a union's attempt even to conduct discovery related to a fraudulent conveyance claim in a Section 1113 proceeding. Tr. of Hr'g at 82, In re Mesaba Aviation, Inc., No. 05-39258 (GFK) (Bankr. D. Minn. Feb. 7, 2006) [ECF No. 480]. In that case, as here, the court reasoned that the union "made it sound like [the] money [from the estate's potential claim was] just set to fall out of the sky," while the claim in question was in fact "an unfixed, unliquidated cause of action not yet put into suit . . ." Id. at 82-83. Even if Patriot could attempt to predict the amount of any eventual recovery from Peabody or Arch, it would be reckless for Patriot to gamble with its very survival by betting only on an entirely speculative recovery to meet its actual financial needs.

More importantly, even if Patriot could value such claims, a speculative, future cash infusion is simply not relevant to the necessity inquiry. Sections 1113 and 1114 look to "the debtor's ultimate future and estimate what the debtor needs to attain financial health." Carey

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Peabody arising from the Spin-Off and (c) a six-year look-back period applies to any fraudulent transfer actions related to the Spin-Off." [ECF No. 1656 at 2.] After detailing certain responses to these allegations, Peabody concluded that it "cannot stand by while parties make unsupported assertions against Peabody and its affiliates and fully reserves all of its rights with respect to any such assertions." [ECF No. 1656 at 5.]

Transp., 816 F.2d at 89. As discussed above, these provisions of the Bankruptcy Code are concerned with "providing for the long-term rehabilitation of distressed businesses." Mesaba II, 350 B.R. at 449 (emphasis added). A one-time benefit to the estate that will not materialize for years – if ever – cannot, by definition, alter this long-term calculus.

This conclusion is underscored by two recent rulings. In Mesaba, the bankruptcy court ruled that the possibility of a future recovery in fraudulent conveyance litigation was not relevant to the Section 1113 analysis, because the debtor's proposal there – like Patriot's Proposals here – was based on its need for a "reduced cost structure" in order to survive in the market. See Tr. of Hr'g at 83-84, In re Mesaba Aviation, Inc., No. 05-39258 (GFK) (Bankr. D. Minn. Feb. 7, 2006) [ECF No. 480]. Similarly, in AMR, the union argued that the debtor airline had failed to satisfy Section 1113 because it might merge with a financially healthy competitor, rendering the savings unnecessary. 477 B.R. 384, 411 (Bankr. S.D.N.Y. 2012). Noting that even proposed mergers do not necessarily succeed, the court concluded that it was inconsistent with Section 1113 to make a debtor wait for new opportunities to materialize before seeking necessary relief. Id. at 413. In so ruling, the court explained that "the Section 1113 inquiry is tethered to the proposal made by a debtor, not some other party" and it was therefore inappropriate to focus on the union's alternative ideas for the debtor's future. Id.[37]

[37] Although framed in terms of the good cause requirement, the court in Horsehead Industries reached a similarly instructive conclusion. 300 B.R. 573. There, the court found that a union lacked good cause to reject the debtors' proposals where it refused to negotiate unless the debtors' "suitor and possible purchaser" participated, reasoning that even a contemplated merger is far from certain. Id. at 582, 589. As the court further explained, "[t]he [d]ebtors, not [their prospective buyer], were parties to the collective bargaining agreements. They made it clear to [the union] that they had to reduce the [d]ebtors' costs under the [d]ebtors' labor contracts in order for the [d]ebtors to survive." Id. at 589.

Finally, this position is entirely without merit because the UMWA requested a specific apportionment of all proceeds from litigation recoveries, and Patriot accepted the UMWA's exact proposed split of such proceeds.

*   *   *

For all of these reasons, Patriot has carried its burden of demonstrating that the Proposals are necessary.

POINT II.

PATRIOT HAS UTILIZED COMPLETE AND RELIABLE INFORMATION, HAS SUPPLIED NECESSARY INFORMATION TO THE UMWA, AND HAS BARGAINED IN GOOD FAITH

Pursuant to Sections 1113 and 1114, a debtor's proposal must be "based on the most complete and reliable information available," 11 U.S.C. §§ 1113(b)(1)(A), 1114(f)(1)(A), a debtor must provide the union with "such relevant information as is necessary to evaluate proposal," 11 U.S.C. §§ 1113(b)(1)(A), 1114(f)(1)(B), and a debtor must meet with the union "at reasonable times" and must "confer in good faith." 11 U.S.C. §§ 1113(b)(2), 1114(f)(2). Patriot has satisfied each of these elements.

A. Patriot's Proposals Are Based on the Most Complete and Reliable Information Available

It is well-settled that proposals to reject collective bargaining agreements and to modify retiree benefits must be "based on the most complete and reliable information available at the time of the proposal." <u>In re Am. Provision Co.</u>, 44 B.R. 907, 909 (Bankr. D. Minn. 1984) (Kressel, J.) (citing 11 U.S.C. § 1113); <u>see also</u> 11 U.S.C. § 1114(f)(1)(A).

Patriot has supported its Proposals with internal data, an updated business plan that incorporates revised market trends, and analyses by industry experts. This information is as complete, reliable, and current as possible. Indeed, Patriot revised its Five-Year Business Plan in October 2012 so that it incorporated recent market trends, including declining prices for both thermal and metallurgical coal. (Huffard Decl. ¶¶ 34-35.)

The UMWA cannot take issue with the fact that Patriot has not incorporated potential recoveries from Peabody and Arch into its Proposals. Sections 1113 and 1114 do not require (or even permit) this sort of guesswork. Rather, they require only that a debtor's proposal be "based on the most complete and reliable information available at the time of the proposal." Am. Provision, 44 B.R. at 909; 11 U.S.C. §§ 1113(b)(1)(A), 1114(f)(1)(A). Because motions to modify wages and benefits "will almost always be filed before an overall reorganization plan can be prepared," a debtor cannot be expected to know the details of its post-emergence finances before it makes its proposals. Truck Drivers Local 807 v. Carey Transp., Inc., 816 F.2d 82, 91 (2d Cir. 1987) (citing In re Ky. Truck Sales, 52 B.R. 797, 802 (Bankr. W.D. Ky. 1985)); see also In re Nw. Airlines Corp., 346 B.R. 307, 326 (Bankr. S.D.N.Y. 2006) (uncertainty about burden to be borne by unsecured creditors not a bar to deciding fairness of 1113 proposal). For that reason, the possibility that Patriot may recover monies from Peabody, Arch, or from any other future litigation is irrelevant to the Section 1113 and 1114 analysis and too remote to be incorporated into the Proposals.

Accordingly, Patriot has based its Proposals on the most complete and reliable information available.

B. Patriot Has Provided the UMWA with the Information Necessary to Evaluate the Proposals

Patriot has also supplied the UMWA with "such relevant information as is necessary to evaluate" the Proposals, as required under Sections 1113 and 1114. 11 U.S.C. §§ 1113(b)(1)(A), 1114(f)(1)(B). As described above, Patriot set up the Data Room, proactively included more than 11,000 pages of information, and made that information available to the UMWA and its advisors a month before Patriot delivered its Proposals. (Robertson Decl. ¶ 20.)

In addition, Patriot has continuously updated the Data Room since the delivery of the Proposals – and even in the weeks prior to delivering the Proposals. That is because Patriot has made it a priority to respond as fully and as quickly as possible to every reasonable request for information. Since the process began, Patriot has:

- provided a wealth of information about its business to the UMWA, amounting to nearly 43,000 pages of material (Robertson Decl. ¶¶ 8, 14, 192);
- responded to eight formal requests for information by the UMWA's advisors, which included more than sixty discrete demands for information, excluding subparts, which often amounted to dozens within a single request (Robertson Decl. ¶¶ 8, 23, 43, 61, 76, 82, 85, 122, 163);
- responded to numerous requests made by the UMWA and their advisors during meetings and on conference calls, which included more than 100 discrete requests for healthcare data by the UMWA (Robertson Decl. ¶¶ 8, 104, 114, 122, 130, 140, 156, 192);
- located and supplied preexisting business records to the UMWA; generated documents and schedules that responded to the UMWA's requests; and revised existing documents and schedules to incorporate information that the UMWA requested but is not typically present in Patriot's records (Robertson Decl. ¶¶ 8, 14, 192);
- offered to schedule, and have scheduled, meetings and conference calls with Patriot's advisors to provide context to the information in the Data Room (Robertson Decl. ¶¶ 48, 50, 57, 67, 68, 129, 133, 138); and
- authorized the sharing of information with the UMWA Funds – at the UMWA's request – so that the UMWA could avail itself of the UMWA Funds' expertise.

Patriot has also provided the UMWA with access to a functional version of its business plan model, has arranged meetings and calls so that Patriot's advisors could explain the functionality of the model to the UMWA and its advisors, and has provided the UMWA with full access to Patriot's budgeting and planning system. (Robertson Decl. ¶¶ 50, 57, 68, 133.)

This record plainly reflects that Patriot has supplied the UMWA with far more information than what courts have deemed sufficient to satisfy this element. See, e.g., In re AMR Corp., 477 B.R. 384, 439-43 (Bankr. S.D.N.Y. 2012) (airline debtor supplied necessary information by giving high priority to union requests, facilitating sharing of confidential information through a web-based data room, and sharing its valuations of proposed work rule changes, even though it did not perform new analyses at union's request or provide a live business plan model); In re Pinnacle Airlines Corp., No. 12-11343 (REG), 2012 WL 5828779 (Bankr. S.D.N.Y. Nov. 16, 2012), as corrected (Nov. 29, 2012) (airline debtor supplied necessary information by providing business plan model, financial reports, and costing information, notwithstanding the fact that it was unable to respond to certain of the union's requests); In re Appletree Mkts., 155 B.R. 431, 438 (S.D. Tex. 1993) (debtor, then Houston's third largest supermarket chain, supplied necessary information when it "opened its books" to the unions and furnished "reports and other information"); In re Valley Steel Prods. Co., Inc., 142 B.R. 337, 338 (Bankr. E.D. Mo. 1992) (McDonald, J.) (debtors, a steel manufacturer and freight service with 240 employees, supplied necessary information when they disclosed four years of operating statements, three years of consolidated balance sheets, and one monthly bankruptcy operating report).

In sum, Patriot has overwhelmingly satisfied its information-sharing burden.

C. Patriot Has Made Itself Available for Meetings and Has Acted in Good Faith

"Between the time of the making of the proposal and the time of the hearing . . . the debtor must meet at reasonable times with the [u]nion . . . [and] [a]t the meetings the debtor must confer in good faith in attempt to meet mutually satisfactory modifications. . . ." Am. Provision, 44 B.R. at 909; see also 11 U.S.C. §§ 1113(b)(2), 1114(f)(2). "[O]nce the debtor has shown that it has met with the [u]nion representatives, it is incumbent upon the [u]nion to produce evidence that the debtor did not confer in good faith." Am. Provision, 44 B.R. at 909. Since delivering the Proposals on November 15, 2012 – and even before – Patriot and its advisors have done everything reasonably within its power to reach a consensual deal.

The negotiation process started with a multi-hour meeting and a detailed presentation to the UMWA. Following the initial meeting, Patriot has actively engaged in negotiations with the UMWA, including through eleven additional formal meetings, dozens of conference calls, hundreds of e-mail exchanges, and continual responses to information requests from the UMWA and its advisors. (Robertson Decl. ¶¶ 7, 191, 193.) These contacts – between and among Patriot, the UMWA, and their respective advisors – have taken place multiple times per day over a period of months. (See generally the Declaration of Gregory B. Robertson.)

Additionally, Patriot has consistently agreed to meeting requests and has repeatedly communicated that they stood willing to meet at any time and in any location. (Id.) Indeed, when Patriot was concerned that negotiations were proceeding at too slow a pace, it suggested numerous near-term meeting dates so that the parties could expedite the negotiation process. (Robertson Decl. ¶¶ 102, 134.)

Patriot has not been able to reach a consensual agreement with the UMWA but not for lack of trying. It listened to the UMWA's concerns and developed creative solutions to address those concerns, including by introducing provisions regarding future job opportunities, ensuring that UMWA-represented employees benefit from wage increases made available to similarly situated non-UMWA employees, delaying the implementation of retiree healthcare changes, increasing funds available for retiree healthcare, and coming up with a detailed proposal to facilitate the UMWA's efforts to monetize its unsecured claim in a timely fashion. (Robertson Decl. ¶ 169; Huffard Decl. ¶ 70.) These represented significant concessions by Patriot, but were rejected by the UMWA.

Accordingly, Patriot has fulfilled its obligations to confer in good faith.

POINT III.

PATRIOT'S PROPOSALS SATISFY THE EQUITABLE FACTORS OF SECTIONS 1113 AND 1114

The remaining inquiry focuses on the equities. Here, Patriot's Proposals treat all parties "fairly and equitably," 11 U.S.C. §§ 1113(b)(1)(A), 1114(f)(1)(A), the UMWA rejected the proposal without "good cause," 11 U.S.C. §§ 1113(c)(2), 1114(g)(2), and the "balance of the equities" clearly favor rejection, 11 U.S.C. §§ 1113(c)(2), 1114(g)(2). For these reasons, the Motion should be granted.

A. Patriot's Proposals Treat All Parties Fairly and Equitably

Patriot's Proposals "assure that all creditors, the debtor, and all other affected parties are treated fairly and equitably." United Food & Commercial Workers Union, Local 211 v. Family Snacks, Inc. (In re Family Snacks, Inc.), 257 B.R. 884, 892 (8th Cir. B.A.P. 2001) (Dreher, J.) (citing In re Am. Provision Co., 44 B.R. 907, 909 (Bankr. D. Minn. 1984) (Kressel, J.)).

"[E]quity means fairness under the circumstances," and does not require the proposal to give every constituency the very same treatment. In re Mesaba Aviation, Inc., 341 B.R. 693, 749 (Bankr. D. Minn. 2006) ("Mesaba I") (Kishel, J.) (quoting In re Ind. Grocery Co., Inc., 138 B.R. 40, 48 (Bankr. S.D. Ind. 1990); In re Walway Co., 69 B.R. 967, 974 (Bankr. E.D. Mich. 1987) ("a comparative dollar-for-dollar concession" is not mandated by the fairness-and-equity requirement)).

Patriot has undertaken an exhaustive process to reduce costs and stem its losses, both before and after their chapter 11 filing. The purpose of this process was to ensure that its request for concessions from its unionized workers and retirees would be as small as possible. As described in detail above, Patriot has reduced production of thermal and metallurgical coal, including by idling and closing mines, eliminated unprofitable contracts, sold surplus assets, eliminated management personnel, and made significant modifications to the wages and benefits available to its non-union workforce. Through these initiatives, Patriot has identified more than in cash savings for 2014 alone. Only after Patriot exhausted other options did it turn to its unionized workforce and retirees for relief. (Huffard Decl. ¶¶ 45-51; Hatfield Decl. ¶¶ 82, 103.)

Patriot's 1113 Proposal satisfies the "fair and equitable" standard. In fact, Patriot has already sought relief from its non-union workforce by cutting employee and contractor positions, reducing wages, and by modifying medical and prescription drug benefits. Patriot's 1113 Proposal is intended to treat the entire active workforce similarly, and would implement cuts to achieve parity of wages and benefits, while avoiding reduction of union headcount. (Huffard Decl. ¶ 50; Hatfield Decl. ¶ 103.) Indeed, this effort to normalize wages and benefits for UMWA-represented employees has already occurred with Gateway where, in 2011, the UMWA agreed to wide-ranging concessions to benefits, including the elimination of payments to a multi-employer pension plan. (Lucha Decl. ¶¶ 9-10.) The healthcare component of the 1113 Proposal is also fair and equitable. It is comprehensive and compares favorably with the average plan of U.S. employers. (Terry Decl. ¶ 10.) As illustrated in Table 1 of the Declaration of Thomas S. Terry, the monthly premium amount under Patriot's proposed healthcare plan is, without exception, more generous than the national average:

Comparison of Employee Premium Requirements: National Average (for PPO plans with monthly premiums) versus Patriot Proposed Healthcare Plan			
	National Average	**Patriot's Proposed Plan**	**How does the Patriot proposal compare with the national average?**
Employee Premium Payments			
Single Coverage – Monthly Amount	$88	$79	More Generous
Single Coverage – % of Total Premium Cost	19%	10%	More Generous
Family Coverage – Monthly Amount	$349	$213	More Generous
Family Coverage – % of Total Premium Cost	26%	10%	More Generous

(Terry Decl. ¶¶ 25-26.)

Patriot's 1114 Proposal also satisfies the "fair and equitable" standard. The requested concessions would leave Patriot's retirees with a meaningful healthcare benefit. At a minimum, the 1114 Proposal provides Patriot's retirees with valuable access to healthcare coverage. Additionally, when supplemental funds are contributed to the VEBA through anticipated funding arrangements, these funds can be used to reduce retiree cost-sharing in a meaningful way. (Terry Decl. ¶ 64.) These features leave the UMWA retirees in a better position than Patriot's non-UMWA retirees. Moreover, the 1114 Proposal is consistent with trends among major U.S. employers, both in bankruptcy and out of bankruptcy. Currently, approximately half of U.S.

employers provide any support for retiree healthcare. This percentage will decline to 21 percent by the time workers hired today are eligible to retire. (Terry Decl. ¶ 47.) Although the changes would be painful for the retirees, they are superior to this norm and fair and equitable in context.

Finally, the UMWA will point to Patriot's motion to approve certain compensation plans to argue that the Proposals are not fair and equitable. This argument is misplaced because Patriot's non-union employees have been forced to accept significant cuts to wages and benefits, including decreased compensation, reduced healthcare benefits, 401(k) balances that were eliminated, and millions of dollars of earned incentive compensation that has been withheld. (Hatfield Decl. ¶¶ 90-92.) The bonus plans at issue are both modest and necessary to retain key employees because, with further attrition, Patriot's ability to emerge from bankruptcy could very well be compromised.

Under these circumstances, Patriot has clearly satisfied this standard.

B. The UMWA Has Rejected the Proposals Without Good Cause

"[O]nce the debtor has shown that the [u]nion has refused to accept its proposal the [u]nion must produce evidence that it was not without good cause." <u>Am. Provision</u>, 44 B.R. at 910; <u>see also</u> <u>Mesaba I</u>, 341 B.R. at 755 (finding that the debtor has a "minimal" burden under this requirement of showing that the unions rejected its proposal); <u>In re Valley Steel Prods. Co., Inc.</u>, 142 B.R. 337, 342 (Bankr. E.D. Mo. 1992) (McDonald, J.) (holding that union refused to accept the proposals without good cause because, in part, it failed to offer any evidence or examples to substantiate its assertion of good cause).

The UMWA refused to accept Patriot's Proposals and such refusal was without "good cause." During the early stages of the negotiations, the UMWA repeatedly stalled by refusing to provide a formal response to the Original Proposal for nearly eight weeks. When the UMWA finally made the First Counterproposal, it fell more than 90 percent short of the savings needed in each of 2013 and 2014 for Patriot to survive. Additionally, despite representations that Patriot had responded to the UMWA's data requests in a timely and appropriate fashion, the UMWA later wrote letters and e-mails taking the opposite position, in a transparent attempt to build the record for this litigation. (Robertson Decl. ¶¶ 63, 79, 108.)

Much later, the UMWA implicitly conceded that Patriot's requested savings were necessary, and that retiree healthcare could be transferred to a VEBA, but nevertheless rejected the Proposals. Instead of accepting the Proposals, the UMWA offered its Second Counterproposal, which appears to provide some savings on its face. However, as discussed in detail above, even a cursory analysis demonstrates that only a negligible fraction of the purported savings would materialize and that the Second Counterproposal includes provisions that would otherwise threaten Patriot's efforts to successfully emerge from bankruptcy. (Robertson Decl. ¶¶ 120, 147-48; Lucha Decl. ¶¶ 84-93.)

The UMWA also maintained an unrelenting focus on Peabody and Arch, despite repeated statements by Patriot that it did not have the luxury to wait for the conclusion of any such litigation. An examination of Peabody's actions and Arch's actions is necessary and appropriate, and the Creditors' Committee is undertaking such an investigation. However, the UMWA's focus on those issues appeared to distract it from the critical task at hand – namely negotiations over the merits of the Proposals. (See, e.g., Robertson Decl. ¶¶ 43, 54, 57, 70.)

For these reasons, the UMWA cannot meet its burden of showing that it rejected the Proposals for good cause.

C. The Balance of the Equities Clearly Favors Implementing the Proposals

Finally, the balance of the equities favors rejection of the CBAs and modification of retiree benefits. This is a fact-specific inquiry, and courts consider the following six factors:

> (1) the likelihood and consequences of liquidation if rejection is not permitted; (2) the likely reduction in the value of creditors' claims if the bargaining agreement remains in force; (3) the likelihood and consequences of a strike if the bargaining agreement is voided; (4) the possibility and likely effect of any employee claims for breach of contract if rejection is approved; (5) the cost-spreading abilities of the various parties, taking into account the number of employees covered by the bargaining agreement and how various employees' wages and benefits compare to those of others in the industry; and (6) the good or bad faith of the parties in dealing with the debtor's financial dilemma.

Mesaba I, 341 B.R. at 757 (quoting Truck Drivers Local 807 v. Carey Transp., Inc., 816 F.2d 82, 93 (2d Cir. 1987)).

For the very reasons discussed above, the equities weigh in favor of Patriot's Proposals. The alternative to the requested modifications will be far, far worse for all constituencies: Patriot will run out of cash and additional financing is unlikely. Under such a scenario, the value of these estates will plummet, all of Patriot's creditors will suffer, all of Patriot's employees will lose their jobs, all of Patriot's retirees will lose their healthcare, and there is the potential of a multiplier effect across the region.[38] Moreover, Patriot has acted in good faith and has requested

[38] The effect of a liquidation would not be limited to jobs lost at Patriot. Pricewaterhouse Coopers, the UMWA's own advisor, concluded that in 2010 the coal industry generated approximately 555,000 jobs, including "indirect" and "induced" jobs, such as contractors and suppliers that provide goods and services to mining companies. In short, PwC estimated a national employment multiplier of 3.61 for the coal mining industry. See PricewaterhouseCoopers, The Economic Contributions of U.S. Mining in 2008 3-5 (2010), available at http://www nwma.org/pdf/economic_contributions.pdf (the "PwC Report); see also ENVIRON Int'l Corp., Economic Analysis of Proposed Stream Protection Rule Stage 1 Report 3-11 (Mar. 5, 2012), available at http://www nma.org/pdf/tmp/030612_ENVIRON_study.pdf (citing the PwC Report). Based on these and similar studies, one could conclude that if thousands of jobs were lost at Patriot, there would be a ripple effect throughout Appalachia and the Illinois Basin.

only those savings that it truly needs, with the burden of those savings spread equitably among Patriot's various constituencies. Although the Proposals will be difficult to bear, the balance of the equities favors implementation.

CONCLUSION

For all of these reasons, Patriot respectfully requests that the Court grant its Motion for an order: authorizing it to reject the collective bargaining agreements with the UMWA pursuant to Section 1113 of the Bankruptcy Code; authorizing it to terminate retiree benefits for certain of its current retirees pursuant to Section 1114 of the Bankruptcy Code; and implementing the terms of its Proposals.

Dated: March 14, 2013
New York, New York

Respectfully submitted,

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