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**

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

Thomas S. Terry declares pursuant to 28 U.S.C. § 1746:

1. I am President of TTerry Consulting LLC, and was retained in December 2012 by Patriot Coal Corporation ("**Patriot**") as an expert consultant in connection with Patriot's chapter 11 case and those of its subsidiaries that are debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**").

2. I submit this declaration in support of the Debtors' motion pursuant to 11 U.S.C. § 1113 and 11 U.S.C. § 1114 (the "**Motion**") 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;

(2) implementing the terms of the Debtors' section 1113 proposal (the "**1113 Proposal**"); (3) authorizing the Debtors to terminate retiree benefits for certain of their current retirees; and (4) implementing the terms of the Debtors' section 1114 proposal (the "**1114 Proposal**" and, together with the 1113 Proposal, the "**Proposals**").[1]

3. Except as otherwise indicated, all facts set forth in this declaration are based upon: my personal knowledge; my review of relevant documents and pleadings, and published research, reports, and studies; and my professional opinion. If called upon to testify, I would testify competently to the facts set forth in this declaration.

I. Qualifications and Assignment

4. I am currently the President and founder of TTerry Consulting LLC ("**TTerry Consulting**"). I began my professional career at Towers Perrin in 1975. In 1991, I founded CCA Strategies LLC which, at the time of its acquisition by J.P. Morgan in 2006, had 200 employees, including 100 actuaries. I founded TTerry Consulting in 2010, which consults to organizations on employee benefits, compensation, and leadership. In addition, I am active in the volunteer leadership of the actuarial profession in the United States and internationally. I currently serve as president-elect of the American Academy of Actuaries, an association with responsibility for public policy, professionalism and practice advancement for U.S. actuaries. I also serve as vice chair of the Pensions and Employee Benefits Committee of the International Actuarial Association.

[1] I am aware that only certain Patriot subsidiaries are parties to collective bargaining agreements and have related obligations to provide healthcare benefits to UMWA-represented employees and retirees. Nevertheless, for the sake of simplicity, I refer to the Proposals as "Patriot's" proposals and to the retirees as "Patriot's" retirees.

5. I hold a Bachelor's Degree in Math and Physics from Tufts University and a Masters of Actuarial Science from the University of Michigan. A copy of my curriculum vitae, which details my employment history, publications I have authored, and selected presentations to regional and national gatherings, is attached hereto as Appendix A.

6. I have more than thirty-five years of experience researching and consulting on the design and financing of employee benefit programs. My consulting has required me to monitor trends in all areas of employee benefits, including healthcare for both active employees and retirees, as well as trends in amounts and timing of benefits funding, and the various funding vehicles such as VEBA trusts (as defined below).

7. I have been retained by Patriot to evaluate its proposed healthcare plan for UMWA-represented employees and its retiree healthcare proposal. Patriot is compensating me at a discounted rate of $650 per hour.

8. In my current research and consulting activities, I rely upon my own professional experience, industry knowledge gleaned at professional conferences, as well as respected research studies and government reports in the field. All of the studies upon which I have relied in preparing this declaration are listed in Appendix B hereto. These studies focus on trends in active and retiree health coverage among large employers and are widely regarded as definitive, active compilations of statistical and financial data collected by the preparers from reliable sources. These studies are reasonably relied upon by those, like myself, who study current and emerging practices in the employee benefits field.

9. In addition to my own research and professional experience, I considered and/or relied upon the following materials in preparing this declaration: the 1113 Proposal; the 1114 Proposal; materials prepared by Patriot to describe the proposed healthcare plans; and certain

actuarial reports prepared for Patriot. These materials are listed in Appendix B, along with the published studies described above.

II. Summary of Opinions

10. I have examined Patriot's proposed healthcare plan for its active UMWA-represented employees and Patriot's proposal for the provision of healthcare benefits to certain retirees. I have compared the Proposals to the prevailing features of employer-sponsored active and retiree healthcare plans typically offered by large employers in the United States, and have reached the following conclusions:

- First, Patriot's proposed healthcare plan for UMWA-represented employees has all the important qualities of a good plan and compares favorably with the average plan of U.S. employers: in my opinion, it is comprehensive, it provides solid insurance protection, and it is at least as generous as, and in many ways more generous than, the norm.
- Second, Patriot's proposal for retirees will provide healthcare protection that is at least as good as, and potentially substantially better than, the protection typically available to retirees in the United States.

Both of these conclusions are addressed in further detail below.

11. While my analysis and commentary in this declaration are focused on the Proposals, I will note that the healthcare plans that Patriot currently provides to its UMWA-represented employees and retirees are very generous. Based on my professional experience, the current healthcare plans are far more generous than the typical plans available to employees or retirees of large U.S. companies. This can be seen readily from the fact that the current plans do not require UMWA-represented employees or retirees to pay any portion of the premium or any deductible.

III. Patriot's Proposed Plan for UMWA-Represented Employees Compares Favorably with Typical Employer-Provided Healthcare Plans

12. Patriot has proposed changes to the current healthcare plan for its UMWA-represented employees. In this section, I will address from a few different perspectives how the proposed plan compares to typical U.S. employer plans.

A. The proposed plan provides UMWA-represented employees with comprehensive healthcare protection.

13. The purpose of an employee healthcare plan is to ensure that employees and their family members have adequate and appropriate financial protection in the event of illness or injury. Medical care is expensive, and a good medical plan ensures that cost will not stand in the way of getting appropriate and timely care.

14. The proposed healthcare plan for Patriot's UMWA-represented employees is comprehensive. It covers general medical and drug expenses, such as doctor visits, hospital stays, emergency room visits, prescription drugs, and therapeutic and restorative treatments.

15. One hundred percent of the cost of preventative care, which is key to keeping employees healthy and reducing the risk of serious illness, is covered by the proposed plan. Examples of preventive care include annual physicals, well-child care, immunizations, general health screening tests, mammograms, colorectal cancer screenings, and other screening procedures for women.

16. Other areas of coverage include mental health and substance-abuse care, chiropractic, physical, occupational and speech therapy, home healthcare, hospice care, and private duty nursing.

17. In sum, all major categories of health services are covered by the proposed plan.

B. The proposed plan provides solid insurance protection.

18. An important feature of a good healthcare plan is that it cover both routine and catastrophic medical costs. Under the proposed plan, significant illnesses or injuries that require prolonged hospital stays or intensive medical treatment are covered in the same way that more routine treatments are.

19. Furthermore, the proposed plan has an "out-of-pocket maximum," which limits expenses incurred annually by UMWA-represented employees and their families. So, for example, if total costs associated with a significant illness run into the hundreds of thousands of dollars, the proposed plan will pay approximately 99 percent of those costs. This underscores the value of the annual limit to employees as well as, more generally, the importance of this insurance protection.

C. The proposed plan is at least as generous as, and in many ways more generous than, the norm.

20. I have already noted that the proposed plan covers a comprehensive array of services and provides important insurance protection. To their credit, most U.S. healthcare plans do the same.

21. Given comparable coverage, what makes a plan more or less generous boils down to its cost-sharing features – the details of the plan that determine how much the employee pays. In my opinion, this is where Patriot's proposed plan stands out as being more generous than typical U.S. healthcare plans.

22. Employee cost-sharing mechanisms are widely understood to be an important element of a well-designed healthcare program. There is a distinct trend among U.S. companies today toward employees being asked to assume more of the total plan cost. There are at least

two explanations for this trend. First, employers are seeking relief from continually rising healthcare costs by sharing some of that cost burden with employees. Second, employers are seeking to encourage greater responsibility for healthcare choices by employees. It is widely understood that when employees have some reasonable amount of "skin in the game," they will tend to be more discerning when it comes to making healthcare service choices.

23. To further examine the proposed plan, I will take a closer look at two cost considerations: (1) how much would a UMWA-represented employee pay in monthly premiums to participate in the plan in comparison to the national average; and (2) how much would a UMWA-represented employee pay to receive medical services in comparison to the national average.

1. Comparison of monthly premiums under the proposed plan to the national average

24. Among U.S. employers, employee premium payments are commonly required, and the vast majority of employees pay employee premiums to join their plans. The Employer Health Benefits 2012 Annual Survey by the Kaiser Family Foundation and the Health Research & Educational Trust provides extensive survey data on employer-sponsored healthcare programs in the U.S. This survey, published annually since 1999, is widely used by researchers, benefit consultants, and healthcare professionals as a credible source of national statistics on the breadth of plan types and plan features that make up today's healthcare landscape. The Kaiser survey indicates that 94 percent of large employers require employee premium payments for individual coverage and 98 percent require employee premium payments for family coverage.

25. As illustrated in Figure 1 below, the proposed plan's monthly premium requirement is substantially more generous than the national average:

Figure 1

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

Source: Kaiser/HRET. Employer Health Benefits 2012 Annual Survey.[2]

26. Specifically, Figure 1 reflects that UMWA-represented employees will pay fewer dollars each month toward their healthcare benefits under the Patriot proposal than the average U.S. employee pays under an employer-sponsored PPO plan. Figure 1 also shows that the employee premium amount under Patriot's proposed plan, measured as a percentage of total premium cost, is less than the national average for both individuals and for families. In other words, under the proposed plan, Patriot will pay a greater share of the health costs for its UMWA-represented employees than does the average U.S. employer.

2. Comparison of out-of-pocket costs under the proposed plan to the national average

27. In addition to premium payments, employees can expect to pay certain "out-of-pocket" costs. An employee's out-of-pocket costs are related to actual healthcare expenditures, and are triggered by events such as doctor visits, hospital stays, and filling a prescription for

[2] A PPO, or a "Preferred Provider Organization," is a common type of health plan design whose primary distinguishing features are access to in-network providers at discounted prices, and freedom to go outside the network for services where desired. I compare Patriot's proposal to an average PPO because the features in a PPO are most similar to the features in Patriot's proposal.

drugs. These costs take the form of routine deductibles and copayments or coinsurance amounts as specifically defined by the terms of a plan.

28. While similarly situated employees will pay the same premium for the same coverage regardless of how much they use a plan, out-of-pocket payments will vary from employee to employee (and from year to year for any employee) based on the degree to which the employee uses healthcare services provided under that plan.

29. A plan will often apply an annual "cap" on the amount of employee out-of-pocket costs. This cap is also commonly referred to as the "out-of-pocket maximum." By limiting the amount an employee will pay in any given year, the out-of-pocket maximum serves to protect the employee and his or her family from extraordinary costs in the event of catastrophic illness or injury.

30. Under the proposed plan, what a UMWA-represented employee pays for medical care is almost always less than the national average. Figure 2 shows examples of different cost sharing features, along with a comparison to the national average for those plans that have those features. For most of these features, Patriot's proposed plan is more generous than the national average.

Figure 2

Comparison of Employee Cost Sharing Features: National Average (for PPO plans with the designated plan features) versus Patriot Proposed Healthcare Plan			
	National Average	**Patriot's Proposed Plan**	**How does the Patriot proposal compare with the national average?**
Annual deductible			
Individual (in-network)	$563	$250	More Generous
Family (in-network)	$523 per person	$250 per person	More Generous
Per visit co-pay			
Primary care physician (in-network)	$23	$20	Comparable
Specialist (in-network)	$33	$35	Comparable
Hospital services cost-sharing (employee share of cost)	17%	10%	More Generous
Emergency room cost-sharing (employee share of cost)	17%	10%	More Generous
Maximum annual out-of-pocket cost to employee			
Individual (in-network)	$2,000 - $2,999	$2,000	More Generous
Family (in-network)	$4,000 - $5,499	$4,000	More Generous
Prescription drugs, retail (30-day supply) co-pay/co-insurance			
Generic co-pay	$10	$5	More Generous
Preferred brand coinsurance	26%	30%	Less Generous
Non-preferred brand coinsurance	39%	50%	Less Generous

Source: Kaiser/HRET. Employer Health Benefits 2012 Annual Survey.

31. Of all the cost-sharing items in Figure 2, one significant item that affects every employee is the annual deductible, in that it affects the first dollar of spending regardless of whether it is for a doctor visit, a hospital stay, or for prescription drugs. The proposed plan's individual annual deductible is $250, which is less than half of the national average, and thus is a particularly generous feature.

32. Another significant item from Figure 2 is coverage for hospital services. Hospital services include inpatient and outpatient services and usually is the largest component of a health plan's medical costs. An average inpatient hospital stay can cost over $25,000. The proposed

plan's employee share of cost for a hospital stay is 10 percent (up to the out-of-pocket maximum of $2,000 per person), which is substantially less than the national average of 17 percent. Again, the proposed plan is generous.

33. The prescription drug cost-sharing provisions confer a more generous benefit for generic drugs and a less generous benefit for brand-name drugs. Generally, the reason for a difference in the levels of copay and coinsurance between generic and brand-name drugs is to encourage the use of less expensive but equally effective drugs where such choices are available. Therefore, the less generous benefit for brand name drugs should be understood in the context of this pricing differential. The cost-conscious employee will usually be able to take advantage of the more generous generic pricing.

34. In summary, Patriot's proposed healthcare plan for UMWA-represented employees has all the important qualities of a good plan and compares favorably with the average plan of U.S. employers: it is comprehensive, it provides solid insurance protection, and it is at least as generous as, and in many ways more generous than, the norm.

IV. Patriot's Proposed Plan for Retirees Compares Favorably with Healthcare Protection Typically Available to Retirees in the United States

35. In addition to proposing changes to the healthcare benefits available to its UMWA-represented employees, Patriot has also proposed modifications to the healthcare benefits available to Patriot's retirees who receive benefits pursuant to collective bargaining agreements.

36. Patriot is proposing that a Voluntary Employee Beneficiary Association ("**VEBA**") provide healthcare protection to retirees going forward. My observations and opinions in this section are focused primarily on Patriot's VEBA healthcare proposal.

37. The VEBA is a trust fund that will accept contributions from various funding sources and will pay healthcare expenses. The VEBA will be administered by the UMWA Health & Retirement Funds (the "**UMWA Funds**") or by the UMWA itself if the UMWA Funds will not or cannot administer the VEBA. As administrator, the UMWA Funds or the UMWA will appoint trustees who will be responsible for all critical healthcare plan decisions, including eligibility for coverage, program design, benefit levels, and retiree premium payments.

38. Patriot's proposal provides for an initial company contribution to the VEBA of $15 million plus additional funding that is expected to be available in the future. As set forth in Patriot's proposal, the sources of these future contributions include funds related to the monetization of any unsecured claim received by the UMWA, funds from a profit-sharing mechanism, and funds related to recoveries against third parties. Retiree premium payments will also be an important source of healthcare funding, particularly in the short term before the commencement of the additional future funding.

39. In the following section, I will assess the VEBA proposal in light of two important considerations: first, do retirees have access to health insurance coverage; and second, how much do retirees pay for that health insurance coverage? Very importantly, under the VEBA proposal, retirees will continue to have access to well-priced, comprehensive healthcare coverage. Later on, I will explain how important and valuable access to such coverage is. Further, I will explain how this aligns with current and emerging norms in the U.S. The immediately following section in this report addresses plan funding. In particular, I will explain the trend toward retiree healthcare plans that are funded exclusively by retiree premium payments, and then explain why the potential for substantial future funding pushes Patriot's VEBA proposal ahead of national norms.

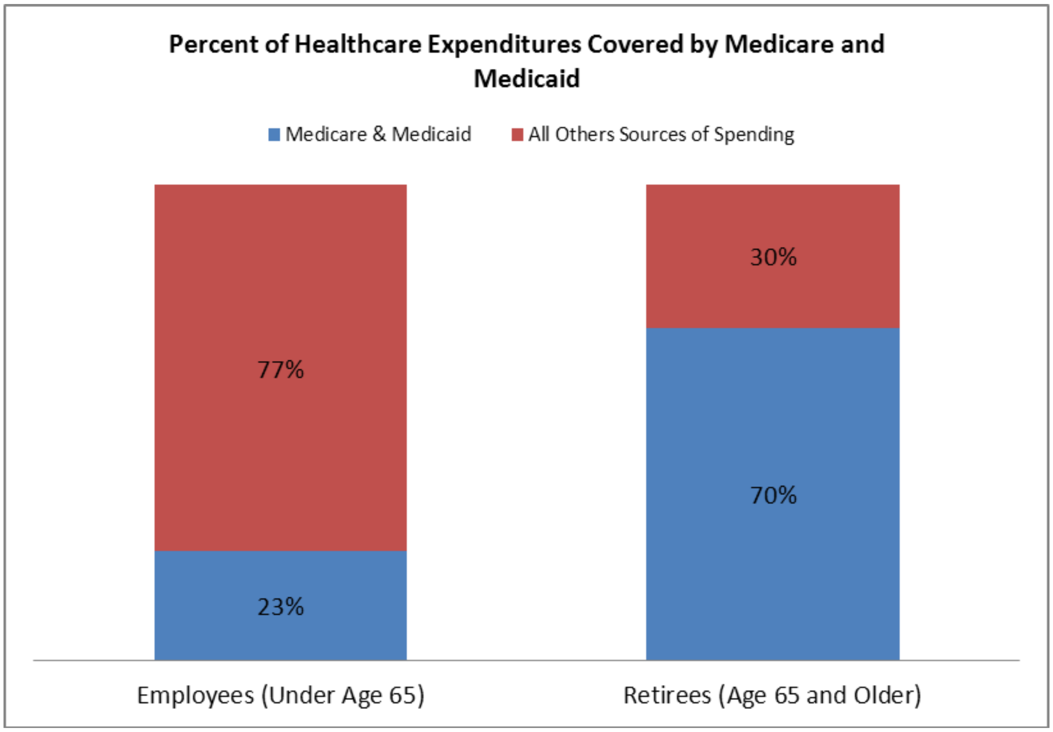
40. Finally, I note that government programs can provide assistance to Patriot retirees. For example, retirees who are age 65 or older can receive health coverage through Medicare. In addition, the federal healthcare legislation that was enacted in 2010, the Patient Protection and Affordable Care Act ("**PPACA**"), requires that healthcare exchanges be established and that those exchanges offer health insurance to any applicant, regardless of health status or pre-existing conditions. These new healthcare exchanges may represent a new and viable healthcare alternative for retirees. Additionally, under PPACA, states are responsible for changing their Medicaid programs, including by expanding eligibility and streamlining their enrollment processes. Regardless of how successful the healthcare exchanges may be, Patriot's retirees will continue to have access to healthcare coverage under the company's VEBA proposal in addition to any new health insurance options provided under PPACA.

A. Patriot's proposal is in line with prevailing practices, and it actually compares more favorably given the future funding potential.

1. Fundamental differences between employee and retiree healthcare

41. The employer role in providing healthcare is fundamentally different for active employees and retirees. For active employees, employer-sponsored group insurance coverage is dominant. For retirees, once they turn age 65, Medicare is dominant – so much so that, between Medicare and Medicaid, fully 70 percent of healthcare costs for the elderly are picked up by the combination of these government programs. Figure 3 depicts the relative role of Medicare and Medicaid and indicates how dominant that role is for retirees.

Figure 3



Source: Author's own compilation from CMS National Health Expenditure Tables, AHRQ Medical Expenditure Panel Survey, and CMS Medicare Current Beneficiary Survey

42. With Medicare and Medicaid playing such a dominant role in retiree healthcare (covering 70 percent of all retiree healthcare expenditures), U.S. employers have been taking a very critical look at their portion of the remaining 30 percent. In the main, U.S. employers are looking to exit the retiree healthcare business one way or another.

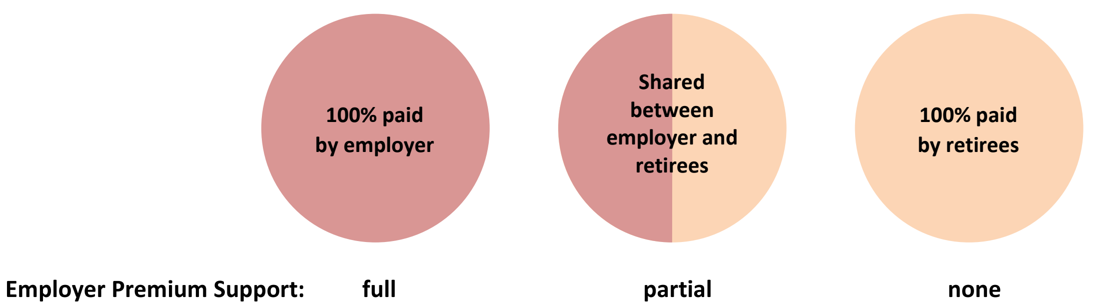
2. How the VEBA proposal compares to prevailing practices in retiree healthcare

43. A 2012 Towers-Watson survey provides insight into retiree healthcare trends. In particular, the survey examines who pays the cost of retiree healthcare.

44. The premium cost for retiree healthcare may be paid for solely by the employer, solely by retirees, or by a combination of the two. The employer-paid portion of the total

premium is often referred to as "employer premium support." The retiree-paid portion of the total premium is referred to as "retiree premiums." As Figure 4 illustrates, employer premium support can be full, partial, or none – where retiree premiums make up any difference:

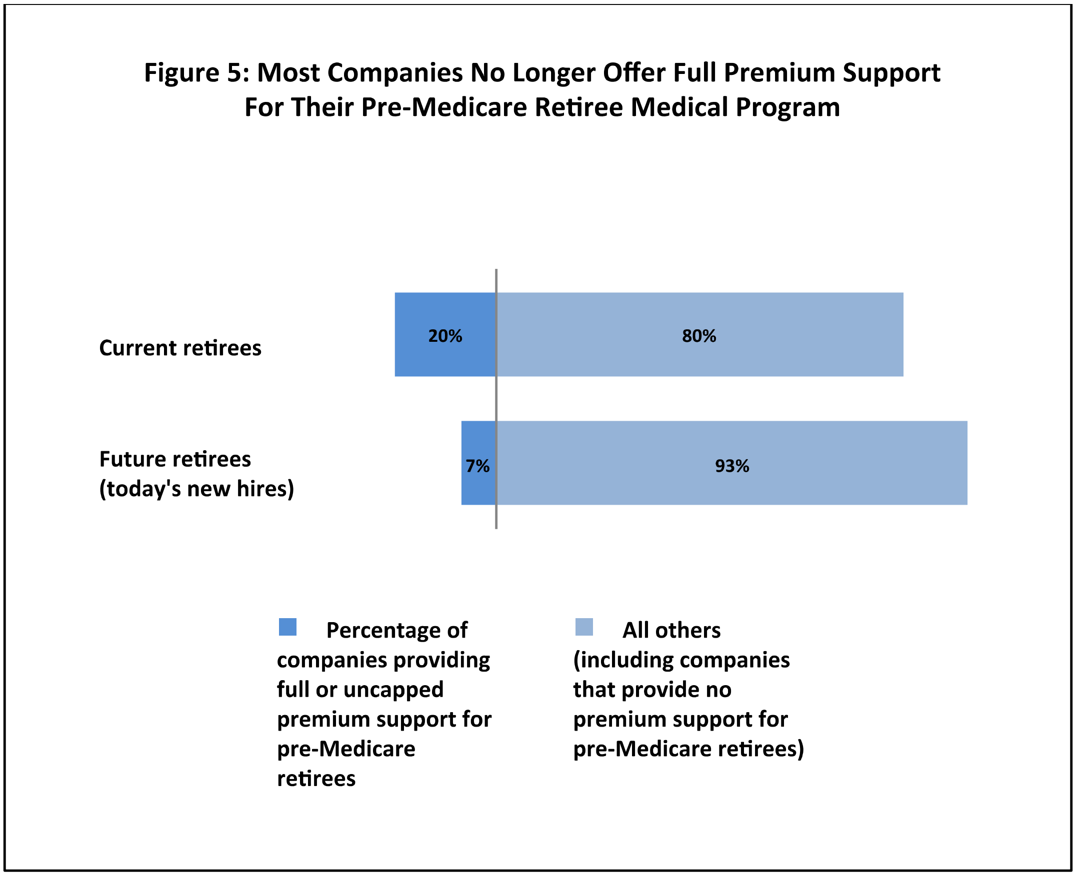
Figure 4: Who pays the premium cost for retiree healthcare?



Employers offering full or uncapped premium support

45. Figure 5 shows that only a small minority of employers – 20 percent – currently provide full or uncapped premium support for retiree healthcare. This minority practice is disappearing even further: as that same study indicates, the 20 percent will become just 7 percent by the time those workers being hired today are eligible to retire.

Figure 5



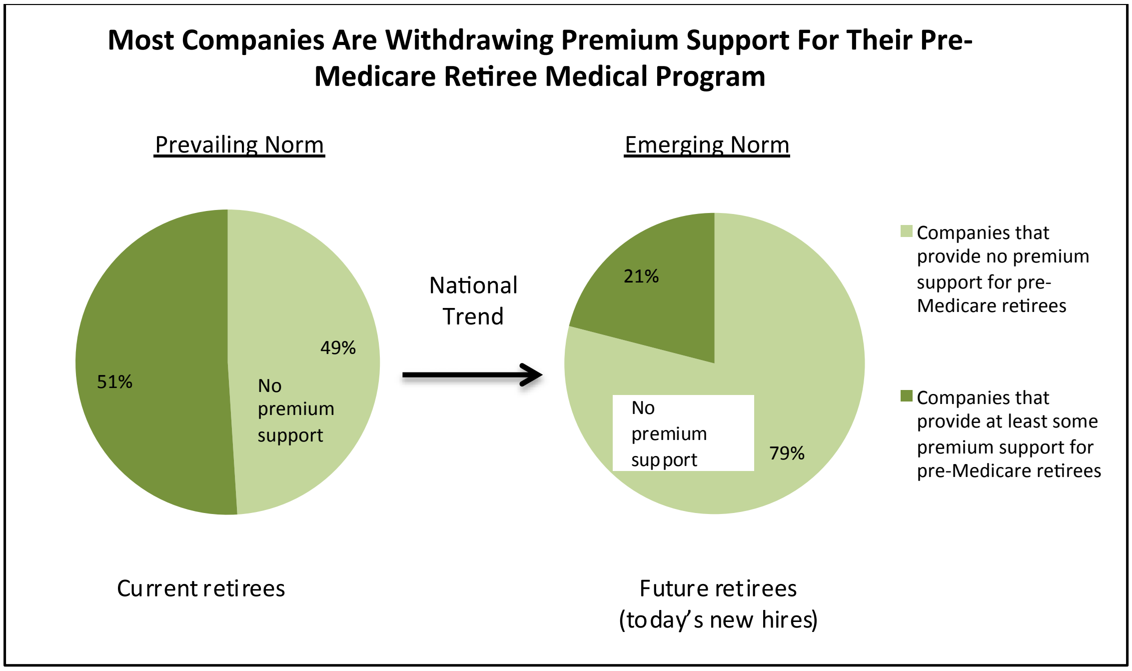
Source: Towers Watson/National Business Group on Health. Performance in an era of uncertainty, 17th annual Towers Watson/National Business Group on Health employer survey on purchasing value in health care.

46. The Towers-Watson data, which show that only a small minority of plans provide full or uncapped premium support, reinforce the fact that there is a trend among U.S. employers toward eliminating retiree healthcare.

Employers offering any sort of premium support

47. Figure 6 shows that only about half of U.S. employers (51 percent) currently provide any sort of premium support for retiree healthcare. This percentage will decline to 21 percent of employers by the time workers being hired today are eligible to retire:

Figure 6



Source: Towers Watson/National Business Group on Health. Performance in an era of uncertainty, 17th annual Towers Watson/National Business Group on Health employer survey on purchasing value in health care.

48. The VEBA proposal is positioned squarely in the middle of the pack in that, without any additional funding beyond the initial $15 million, Patriot retirees are among the 49 percent – and assuming future funding, Patriot retirees are among the 51 percent. The Towers-Watson survey shows that the emerging norm among U.S. employers is to eliminate employer support for retiree healthcare benefits (49 percent of employers today and increasing to 79 percent in the future).

49. A critically important attribute of Patriot's proposal is the continued support for retiree healthcare in the form of the potential for significant future funding. As future funding emerges, the retirees' share of premium payment will fall. In fact, the future funding has the potential to cause retirees' share of premiums to fall well below the level established by most companies.

50. This upside potential for Patriot retirees is in stark contrast with the situation faced by the vast majority of retirees from other U.S. companies who face ever-increasing premiums and the uncertain future of their healthcare benefits. Thus, the company's proposal offers Patriot retirees opportunities that are unavailable to the majority of retirees from other U.S. companies.

3. The value of providing continued access to group health insurance

51. The reduction or elimination of company premium support in no way means the elimination of access to valuable group health insurance protection for retirees. In fact, employers who withdraw premium support have the choice of either eliminating coverage altogether or continuing to provide access to group health insurance. Access to group health insurance coverage, regardless of the source of financing, is important to retirees. And this is especially so prior to the retiree reaching age 65 and Medicare eligibility.

52. A critically valuable aspect of Patriot's VEBA proposal is that it provides retirees with continued access to group healthcare coverage. Patriot retirees will be free of the distressing experience of navigating the complex health insurance marketplace to purchase "individual health insurance" on their own.

53. Especially for those not yet Medicare eligible, the continued access provided by the Patriot proposal is important for two reasons. First, obtaining individual coverage is difficult for those with health problems. Individual insurance underwriting will typically rely on age and health status as variables for accepting applicants and for setting insurance rates. Denial of individual coverage is a common problem for those with health problems. Second, individual coverage is more expensive. In other words, even if retirees obtain individual insurance, they

face benefit restrictions, premium surcharges, or both. In the individual marketplace, these underwriting standards are applicable to both retirees and their dependents.

54. Pollitz, Sorian, and Thomas (2001) studied the impact of less-than-perfect health on the ability to obtain individual health insurance. They sent hypothetical information to insurance companies and HMOs around the country to see how they would respond to an application for coverage. They found that over one-third of the time, applicants were rejected outright, implying a complete denial of coverage. Furthermore, of those who were offered coverage, benefit restrictions and/or surcharges were imposed fully 85 percent of the time. Looking at the same statistics from another perspective, applicants were accepted for standard coverage only 10 percent of the time.

55. Individual health insurance is typically more expensive than group insurance. A direct "apples to apples" comparison is difficult because of differences in underwriting standards and plan design. Nevertheless, a 2005 study by the Commonwealth Fund sheds some light on this difference. The Commonwealth Fund surveyed working-age adults age 19 to 64 and concluded that those who rely on individual healthcare insurance coverage, compared with those with group coverage, report lower satisfaction with their health insurance, face higher deductibles, enjoy less comprehensive benefits, and incur higher out-of-pocket costs. Additionally, among those who sought to purchase individual healthcare, 89 percent never bought a plan. These survey respondents provided various explanations for this trend and were permitted to cite more than one reason (thus, the totals below add up to more than 100 percent):

- 34 percent found it very difficult or impossible to find coverage they need;
- 58 percent found it very difficult or impossible to find affordable coverage; and

- 21 percent were turned down or charged a higher price because of a pre-existing condition.

The study also showed that those with individual health insurance indicated they paid higher insurance premiums for similar coverage, or paid similar premiums for less coverage.

56. Given the inefficiencies of the individual health insurance market, one of the goals of the PPACA is to improve health insurance access for all Americans. Beginning in 2014, the new healthcare exchanges established under this legislation will be required to offer health insurance to any applicant, regardless of health status or pre-existing conditions. Thus, new healthcare exchanges may represent a new and viable healthcare alternative for retirees. Regardless of how successful the healthcare exchanges may be, Patriot's retirees will have access to group insurance through the VEBA proposal in addition to the new health insurance options provided under PPACA.

57. Continued access to group health insurance, which is central to Patriot's VEBA proposal, provides a means of avoiding the considerable distress of relying on the vagaries of the individual insurance marketplace. Instead, Patriot's proposal gives retirees guaranteed availability of group insurance coverage at discounted group rates. This solves the problem of pre-existing condition exclusions, inadequate benefit coverage, and generally more expensive premium rates. Because Patriot retirees will have access to group health insurance under any circumstances, they are better off than the growing numbers of U.S. retirees without any such access.

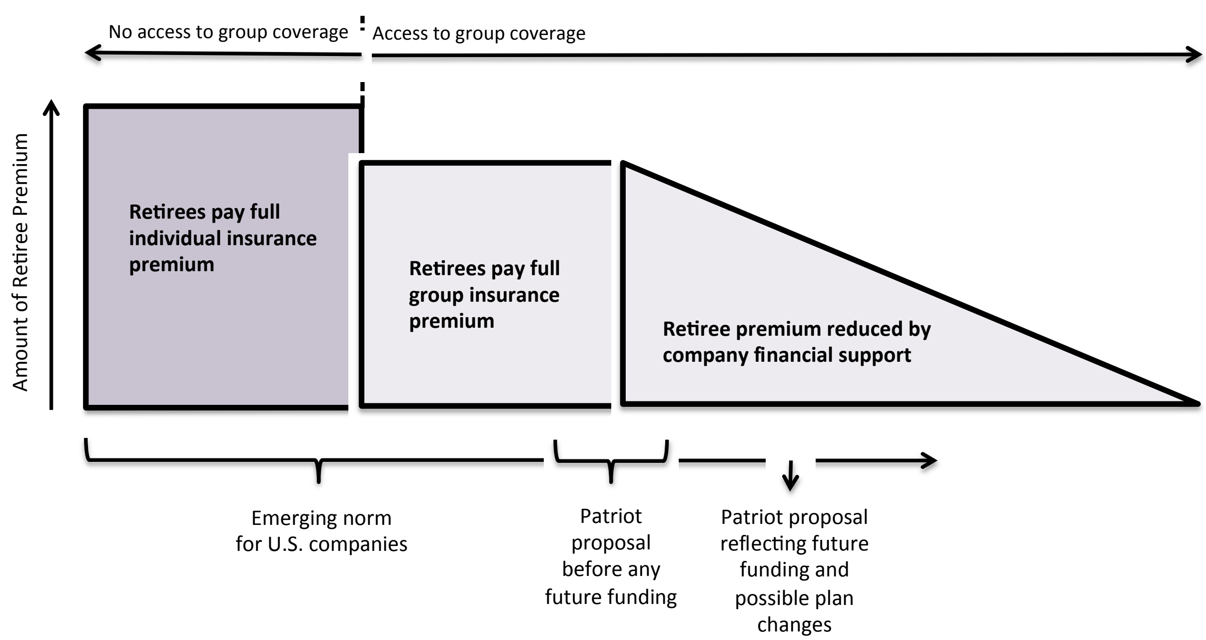
4. Patriot's proposal evidences a firm commitment to retiree healthcare

58. In short, my assessment of Patriot's proposal is as follows: (1) with respect to the question of where retirees obtain access to healthcare coverage, Patriot's proposal to provide

continued guaranteed access to group health insurance constitutes valuable healthcare protection; and (2) with respect to the question of how much retirees pay for their healthcare coverage, the potential for significant future funding can reduce retiree premiums substantially. Patriot's proposal for retirees is thus more favorable than the approach to retiree healthcare taken by most U.S. companies.

59. Figure 7 provides a pictorial representation of the array of situations retirees find themselves in with respect to these two major issues and, in particular, where on this array the company's proposal places Patriot retirees.

Figure 7: The potential benefits of company funding position Patriot retirees ahead of the majority of retirees of U.S. companies



60. The height of the areas in Figure 7 represents the amount of the premium retirees are expected to pay. The diagram illustrates retiree premium levels under various situations.

Retirees fare better as we move from left to right, from higher premiums on the left to lower premiums on the right.

61. On the far left side of the spectrum in Figure 7, where the retirees do not have access to group health insurance, they would be required to pay the full cost of individual health insurance, which is often more expensive than comparable group insurance coverage and often subject to critical restrictions. Retirees would experience the difficulty of getting individual health insurance, and some may become uninsured.

62. Moving toward the right along the spectrum in Figure 7, retirees have assured access to group health insurance (usually through their employer). In addition, even if paying the full group premium, they will generally pay a lower premium than the premium required for comparable individual coverage.

63. On the right side of the spectrum in Figure 7, where the employer provides access to coverage as well as premium support for the retirees' health insurance, the retirees' share of the total premium cost is reduced based on the amount of the employer's premium support. The declining "ramp" reflects the degree to which increasing employer financial support results in declining retiree premiums.

64. The captions along the bottom of Figure 7 depict Patriot's proposal relative to emerging norms among U.S. employers. Because Patriot's proposal preserves retirees' access to group health insurance, it is at least as generous as the norm for U.S. companies. Furthermore, future funding of the VEBA can be substantial as the company becomes more profitable and the UMWA monetizes any unsecured claim, among other things. VEBA trustees can use these funds to reduce retiree premiums. Combined with the trustees' ability to change the healthcare plan design, as discussed in further detail below, the retiree premiums can go even lower. Thus,

when future funding materializes, Patriot's retirees are positioned squarely on the right side of the spectrum in Figure 7 (on the down ramp), a position not available to the majority of retirees in the U.S.

65. To summarize, the national trend is toward eliminating employer financial support for retiree healthcare, oftentimes leaving retirees uncertain about how to obtain access to group health insurance. Patriot's proposal defies this trend in two ways: it anticipates substantial future funding, while providing continued guaranteed access to lower-cost group health insurance.

66. For all the reasons stated above, the company's proposal positions Patriot retirees to receive retiree healthcare protection that is at least as good as, and potentially substantially better than, the national norms.

B. A VEBA trust is an ideal vehicle for providing retiree healthcare benefits.

1. Advantages of a VEBA

67. I will now discuss why a VEBA trust is an ideal vehicle for providing retiree healthcare benefits for Patriot retirees. A VEBA is a trust fund established under federal tax law for the purpose of providing healthcare or other benefits to employees or retirees. Congress singled out collectively bargained VEBAs as being eligible for special tax advantages, with the result that we see greater use of VEBAs for union-represented employees and retirees. The primary advantage is that investment earnings on assets accumulating in a collectively bargained VEBA are generally tax-free. Thus, VEBAs are particularly popular in situations where assets are to be segregated to pay benefits for retirees under a collective bargaining agreement.

68. VEBAs are common across different industries and among companies of different sizes. They are particularly common among power utilities, telecommunications companies, and

defense contractors, but certainly not used exclusively in those industry sectors. VEBAs are also used by small businesses to provide welfare benefits to owners and their employees. According to the 2011 IRS Data Book, there were approximately 7,800 VEBAs operating in the U.S. as of September 30, 2011.

69. The primary function of a VEBA is to safeguard assets, which are held in trust. Those assets are to be used only for the trust's intended purpose – paying benefits. Funds contributed to the VEBA cannot be diverted for other purposes until all benefits are paid. Therefore, from the perspective of the retiree, a VEBA trust provides a level of benefit security not available under the more typical unfunded retiree healthcare arrangements.

2. Flexibility of a VEBA

70. Under Patriot's proposal, the trustees of the VEBA will be appointed by the UMWA Funds or the UMWA. Those trustees can decide eligibility for benefits offered through the VEBA, can control and manage retiree health benefits, can determine the appropriate level of premium sharing, and manage the assets of the VEBA. In short, the trustees will have considerable responsibility and considerable flexibility in fulfilling their duties.

71. The VEBA trustees will have considerable flexibility in responding to the emerging healthcare challenges in the U.S. today. They will have flexibility in benefit design, financing matters, and overall program management.

Flexibility in benefit design

72. The proposed arrangement offers the same design flexibility as any employer sponsor has, including the flexibility to:

- Select coverage features most appropriate for Patriot's retirees. For example, the trustees can select coverage for certain preventive services, medical procedures, prescription drugs, or other benefits, such as hearing aids, that are particularly important to retirees. The trustees can also offer dental and vision benefits, and initiate health management programs that keep retirees engaged with their own health.

- Determine the form of insurance. The trustees can choose what to offer from among various forms of health insurance, such as traditional preferred provider organizations (PPOs), health maintenance organizations (HMOs), consumer-driven healthcare plans, or Medicare Advantage plans.

- Set and modify all cost-sharing features (i.e., deductibles, copays, coinsurances, and out-of-pocket maximums) of the plan. These cost-sharing elements can be designed to promote the most efficient use of healthcare resources.

73. In addition, the trustees will be able to decide how to appropriately integrate other available healthcare options including:

- Medicare – the primary healthcare plan for those age 65 and older.

- Medicaid – the safety net program for lower income Americans, regardless of age.

- Healthcare exchanges – beginning in 2014, coverage will be available through the healthcare exchanges provided for under the Patient Protection and Affordable Care Act (PPACA). For retirees not yet eligible for Medicare, this can be a new and viable healthcare alternative. In addition, low-income retirees will be eligible for government subsidies.

74. Integrating Medicare, Medicaid, and the new healthcare exchanges with the offerings for Patriot retirees will be a particularly important responsibility of the VEBA trustees. Each of these government programs is significant in its own right, and collectively, they offer the trustees significant latitude to craft effective and efficient healthcare coverage for Patriot retirees. For example, the VEBA trustees may choose to focus their efforts on pre-Medicare retirees, and offer only pre-Medicare health insurance because Medicare-eligible retirees can obtain coverage

through Medicare. In that case, the VEBA assets would be used exclusively for pre-Medicare retirees, whose insurance premiums could be reduced substantially.

Flexibility in financing the benefits

75. The proposed arrangement offers financing flexibility to design and calibrate retiree premium requirements and to manage and invest accumulated funds.

76. As an example of setting retiree premiums, the VEBA trustees may choose to offer a choice from among different health insurance options, and set retiree premiums based on plan choices and available funds. The VEBA trustee can also set different premiums based on pre-Medicare or post-Medicare eligibility, and individual or family coverage. Many considerations go into the setting of retiree premiums: balancing different needs of the retirees, promoting the use of cost-efficient plan options, and encouraging healthy behaviors (through premium incentives, for example). VEBA trustees have considerable latitude to achieve appropriate objectives through the adoption of carefully considered premium structures.

77. Additionally, the trustees can adjust premiums as future funding materializes. When such funding becomes available, the trustees may choose to reduce retiree premiums, modify other plan design features, or both.

78. Managing and investing assets is another important function of the VEBA trustees. The income generated from invested assets will be an important source of funds to help pay for healthcare costs. Based on the projected financial needs of the plan, the VEBA trustees can establish an investment policy, select investment managers, and monitor asset performance.

Flexibility in overall program management

79. The proposed arrangement offers the trustees overall program management flexibility to exercise purchasing power and negotiate workable agreements with insurance companies and other third-party providers.

80. For example, the trustees can leverage the influence and purchasing power of the UMWA Funds to obtain discounts on prescription drugs and healthcare services. In addition, the trustees can monitor healthcare utilization data in order to assure the ongoing effectiveness and efficiency of services provided. Hospitals and doctors can be regularly evaluated to ensure that service providers are of the highest quality.

81. To summarize, regardless of the degree of additional funding in future years, the VEBA trustees will enjoy considerable flexibility in benefit design, benefit financing, and overall program management – and thus will be well positioned to make the appropriate decisions essential to maintaining a viable retiree healthcare program.

* * *

82. In summary, Patriot's proposal for retirees combines the flexibility of the VEBA, the value of continued access to lower-cost group health insurance, and the potential for substantial future funding into a package that meets the healthcare needs of Patriot retirees. It will provide healthcare protection that is at least as good as, and potentially substantially better than, national norms.

83. I declare under penalty of perjury that the foregoing is true and correct.

Dated: Chicago, Illinois
March 14, 2013

/s/ Thomas S. Terry
Thomas S. Terry

APPENDIX A

Thomas S. Terry
Professional Biography and Qualifications

Thomas S. Terry
TTerry Consulting LLC
445 E. Illinois St., Suite 330
Chicago, IL 60611

cell: 312-543-5206
e-mail: Tom.terry@tterryconsulting.com

Education

B.S. — Tufts University, 1973
- Summa Cum Laude
- Double major in Math and Physics
- Phi Beta Kappa
- Winner, N. Hobbs Knight Prize Scholarship for excellence in theoretical and practical physics

M.A.S. (Masters of Actuarial Science) — Graduate School of Business Administration, University of Michigan, 1975

Professional

TTerry Consulting LLC (2010 to present)
- President

JPMorgan (2006 to 2010)
- JPMorgan acquired CCA Strategies LLC in October 2006
- CEO of JPMorgan Compensation and Benefit Strategies

CCA Strategies LLC (1991 to 2006)
- Co-founder and President
- Firm of approximately 200 professionals in ten offices across the US.

Towers Perrin (1975 to 1991)

- Principal and Vice President
- More than two thousand actuaries and employee benefits professionals world-wide
- Retirement Plan Practice Leader in Chicago Office

Professional Memberships

Society of Actuaries

- Fellow of the Society of Actuaries (1976)
- Board member (2007 – 2010)
- Vice President and board member (2010 – 2012)

Enrolled Actuary (1979)

Conference of Consulting Actuaries:

- Member (1982), Fellow (2001)
- Board Member (2001- 2009)
- Vice President, Pensions (2001-2003)
- Treasurer (2003-2005)
- President-elect, President (2006-2007)

American Academy of Actuaries:

- Member (1981)
- Pension Practice Council member (2001- 2009, 2010 to present)
- Chair of Defined Benefit Revitalization Task Force (2002-2004)
- Chair of Stock Options Task Force (2004 – present)
- Board of Directors (2005 – 2009)
- Vice President for pension issues (2007 – 2009)
- Chair of Public Interest Committee (2009 to present)
- Member, strategic planning committee (2010)
- President-elect, President (2013-2014)

International Actuarial Association

- Vice chair, Pensions and Employee Benefits Committee (2011 – present)

Board of Actuaries

- Chair of this three person board with oversight responsibility for the Civil Service Retirement System and the Federal Employees Retirement System

Speeches and Panels

Mortality Improvement – What's Up With That?
Longevity 8 Conference, Waterloo, Canada, 2012

What Is the Market Telling Us? Strategies for Managing DB Risks and Increasing Shareholder Value
Fidelity Investments Chief Financial Officers & Treasurers Forum, 2012

What Every Actuary Should Know About Social Security Funding
Casualty Actuarial Society Annual Meeting, 2011

Managing the Decumulation Phase
International Actuarial Association, Edinburgh, Scotland, 2011

Financing Pensions for Public Sector Workers
International Actuarial Association, Edinburgh, Scotland, 2011

Standards of Practice – Should They Be International?
International Actuarial Association, Edinburgh, Scotland, 2011

Pension Trends in the US
Association of Consulting Actuaries, London, 2011

Pension Actuaries Who Live and Breathe ERM
Conference of Consulting Actuaries Annual Meeting, 2011

Actuaries Behaving Badly? Professional and Ethical Dilemmas
Conference of Consulting Actuaries Annual Meeting, 2011

Rapid Retirement Research Initiative, A New Approach to SOA Research
Society of Actuaries Annual Meeting, 2011

Social Security Myths and Reality
Columbus Actuarial Club, 2011

Testimony on Social Security's Current Benefit Expenditures, Proposed Changes to Future Benefits and the Impact Those Changes would Have on the Program, Future Beneficiaries, Workers, and the Economy
U.S. House of Representatives Ways and Means Committee Subcommittee on Social Security, 2011

Enterprise Risk Management and Pensions
Conference of Consulting Actuaries Annual Meeting, 2010

Communicating Uncertainty
Conference of Consulting Actuaries Annual Meeting, 2009

Seeing the Forest for the Trees: Bringing Value Back to the Actuary-Client Relationship
Conference of Consulting Actuaries Annual Meeting, 2009

Pensions in the US
Canadian Institute of Actuaries Annual Meeting 2008

It's About Time: Raising the Social Security Retirement Age
American Academy of Actuaries Capitol Hill Briefing, 2008

Why Benefits?
Western Pensions and Benefits Council Spring Meeting 2008

The Future is Here, So What Does That Mean?
Enrolled Actuaries Meeting, 2007

The Future of Actuarial Consulting
Conference of Consulting Actuaries Annual Meeting, 2007

Pension Plans: Turning Today's Challenges into Opportunities
Blue Cross and Blue Shield Association Annual Benefits Conference, 2006

Changing Our Focus: Consulting About Risk
Society of Actuaries Spring Meeting, 2005

Financial Risks in Retirement Systems: Plan Design
Society of Actuaries Spring Meeting, 2005

Pension Crises – Dangerous Opportunities: Pensions in the US
University of Waterloo Institute for Insurance and Pension Research (Toronto) 2005 Conference

Pensions in the US
CitiStreet Benefits Symposium, 2005

Beyond Pensions: Retirement Security in 2030
Council on Employee Benefits Annual Spring Conference, 2005

Stock Option Valuations for Dummies
Conference of Consulting Actuaries Annual Meeting, 2005

Pensions at the Crossroads
Agricultural Fertilizer Human Resources Association Conference, 2005

Actuarial Approaches to Determining Exercise Behavior
E-Trade Financial, Directions 2005,

Stock Options 101: Everything You Ever Need to Know About Stock Options
Conference of Consulting Actuaries Annual Meeting, 2004

Stock Options 102: Stock Option Pricing Models
Conference of Consulting Actuaries Annual Meeting, 2004

Is Retirement Security at a Crossroads?
Enrolled Actuaries Meeting, 2004

Professionalism in Today's Environment
Conference of Consulting Actuaries Annual Meeting, 2003

Defined Benefit Plans – If Not Now, Then When?
Conference of Consulting Actuaries Annual Meeting, 2002

Balancing the Interests of Plan Sponsors and Participants
Conference of Consulting Actuaries Annual Meeting, 2001

The Future of Defined Benefit Plans
Conference of Consulting Actuaries Annual Meeting, 2001

Strategic Presentation Skills
Conference of Consulting Actuaries Annual Meeting, 2001

Defined Benefit Plans Are Dead – Or Are They?
Blue Cross and Blue Shield Association Annual Benefits Conference, 2001

Pension Consulting and Professionalism
Conference of Consulting Actuaries Annual Meeting, 2000

Communications and Disclosure
Conference of Consulting Actuaries Annual Meeting, 2000

Representing Workers' Interests
Conference of Consulting Actuaries Annual Meeting, 2000

Defined Benefit Programs – Now and In The Future
Blue Cross and Blue Shield Association Annual Benefits Conference, 2000

The New Hybrid Pension Plans – Good News or Bad?
Conference of Consulting Actuaries Annual Meeting, 1999

Pay Me Now or Pay Me Later – Retirement Benefits in a Lump Sum World
Conference of Consulting Actuaries Annual Meeting, 1999

What Did You Do To My Pension?
Blue Cross and Blue Shield Association Annual Benefits Conference, 1999

Defined Benefit Pension Plan Review
Agricultural Chemical Industrial Relations Association Conference, 1998

Washington Update
Blue Cross and Blue Shield Association Annual Benefits Conference, 1998

Retirement Plan Trends
LCG & Associates Investment Conference, 1995

Reform in the U. S. Employee Benefit System
Harris Master Trust Client Conference, 1993

Understanding Actuarial Valuations Required by SFAS 106
Utility Law Section of the Indiana State Bar Association, Fall Conference, 1993

FASB Statement 106 — Actuarial Implications
Bellcore Telecommunications Industry Accounting Conference, 1991

Funding and Tax Considerations Related to Retiree Health Benefits
Institute for International Research, 1991

Review of Current Retirement Plan Issues
Metropolitan Chicago Healthcare Council, 1989

Training Session on Actuarial Valuations
Delivered to Audit Staff of Arthur Andersen, Chicago, 1989

Post-employment Benefit Plan Design Issues
National Utilities and Telecommunications Conference, 1989

Postretirement Benefits — FASB Exposure Draft
Iowa State Regulatory Conference, 1989

Employee Benefit Policy for the '90s
Harris Master Trust Client Conference, 1989

Employee Benefits Update
Illinois CPA Society Conference, 1988

Funding of Deferred Compensation
Conference of Consulting Actuaries Annual Meeting, 1988

The Actuarial View of Post-employment Benefits
National Utilities and Telecommunications Conference, 1988

Non-qualified Benefit Plans
Chicago Compensation Association, 1986

A Historical Perspective on Employee Benefits
Chicago Compensation Association, 1986

Articles and Other Media

Interview as part of report on Increasing Social Security Retirement Age
CNN, 2010

Fix Social Security by Increasing the Retirement Age
US News and World Report, 2010

Benefit Math: With DB, 1+1=3
BenefitsNews.com, January 2006

Interview as part of feature report on Retirement Security Crisis
CBS Evening News, June, 2002

Commentary on *Actuaries Become Red-Faced Over Recorded Pension Talk*
Wall Street Journal, 1999

Custom Pension Software Comes Full Circle
Employee Benefit Plan Review, June 1997

More Than an Accounting Rule
Institutional Investor, 1989

A Pre-tax Contributory Pension Plan — Why Not?
Business Insurance, 1982

Revenue Ruling 79-90: Adding 'Option Factors' to the Plan
National Law Journal, 1982

Expert Witness – Regulatory

- New York State Public Service Commission, on behalf of the Niagara Mohawk Power Corporation (2004).

- Illinois Commerce Commission, on behalf of SBC Corporation (2001).

Expert Witness – Legal

- Rio Algom Mining LLC v. Tronox Worldwide LLC (D.N.M.), on behalf of Rio Algom Mining LLC (2006-07).

- Fred Loewy v. Retirement Committee, Plan Administrator of the Motorola, Inc. Pension Plan, and the Motorola, Inc. Pension Plan (D. Ariz.), on behalf of Motorola (2004).

- General Electric Company v. United States of America (Ct. Cl.), on behalf of General Electric (2002-08).

- Raytheon Co. v. Towers Perrin Forster & Crosby, Inc. (C.D. Cal.), on behalf of Raytheon Co. (2002-08).

APPENDIX B

Materials Considered and/or Relied Upon

I. Public Resources

- Collins, S., Kriss, J., Davis, K., Doty, M., Holmgren, A. (2006). Squeezed: why rising exposure to health care costs threatens the health and financial well-being of American families. The Commonwealth Fund, September 2006.
- Kaiser Family Foundation. Health care costs, a primer. The Henry J. Kaiser Family Foundation, 2012.
- Kaiser Family Foundation, Health Research & Educational Trust. Employer Health Benefits, 2012 Annual Survey. The Henry J. Kaiser Family Foundation, 2012.
- Pollitz, K., Sorian, R., & Thomas, K. (2001). How available is individual health insurance for consumers in less-than-perfect health? The Henry J. Kaiser Family Foundation, report #3313.
- Towers Watson, National Business Group on Health. Performance in an era of uncertainty, 17th annual Towers Watson/National Business Group on Health employer survey on purchasing value in health care. Towers Watson/National Business Group on Health, 2012.
- United States Center for Medicare & Medicaid Services. National Health Expenditure tables.
- United States Agency for Healthcare Research and Quality. Medical Expenditure Panel Survey.
- United States Center for Medicare & Medicaid Services. The Medicare Current Beneficiary Survey.
- United States Internal Revenue Service. The Internal Revenue Service Data Book 2011.
- Yee, T., Cunningham, P., Jacobson, G. (2012). Cost and access challenges: a comparison of experiences between uninsured and privately insured adults aged 55 to 64 with seniors on Medicare. The Henry J. Kaiser Family Foundation, May 2012.

II. Resources from the Debtors' Data Room

- 1113 Proposal (Data Room Items 1.2.13, 1.5.2, and 1.5.3).
- 1114 Proposal (Data Room Items 1.2.15, 1.5.2, 1.5.3, and 1.5.5).

- Mercer (US) Inc., Actuarial Valuation Report: Net Periodical Benefit Cost for Fiscal Year Ending December 31, 2012 (Feb. 2012) (Data Room Item 1.4.6.4).

- UMWA Represented Employee Guide to Medical and Prescription Drug Benefits (Draft as of Feb. 7, 2013) (Data Room Item 1.2.12.38).