REDACTED

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

Dale F. Lucha declares pursuant to 28 U.S.C. § 1746:

1. I am Vice President of Human Resources of Patriot Coal Services, LLC. I have held this position since July 2008. Prior to this role, I had extensive experience in the coal industry, including serving as Vice President of Human Resources of Magnum Coal Company, Manager of Human Resources of Arch of West Virginia, Manager of Safety and Labor Relations of Ashland Coal, Inc., and Safety and Labor Relations Specialist of Hobet Mining Inc. I have a B.A. from Marshall University. My responsibilities include the areas of: recruiting, employment compliance, benefits, compensation administration, and employee and labor relations.

2. I submit this declaration in support of the motion of Patriot Coal Corporation and its affiliated debtors (collectively, "**Patriot**" or the "**Debtors**")[1] 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 ("**CBAs**") with the United Mine Workers of America (the "**UMWA**") to reject such CBAs; (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**").[2]

3. I have been actively involved in the development of the Proposals, a process that took months to complete and included the calculation of projected savings from the proposed modifications. I am also actively involved in the negotiations with the UMWA concerning the Proposals and Patriot's provision of relevant information to the UMWA. The purpose of this

[1] For convenience, I use the term "Patriot" to refer to both the "Debtors" and the "Obligor Companies."

[2] As discussed in the Declaration of Gregory B. Robertson, dated March 14, 2013 (the "**Robertson Declaration**"), the Debtors have 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 1113 Proposal**" and the "**Third 1114 Proposal**," together 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**"). For the sake of convenience, I refer 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 Robertson Declaration.

declaration is to describe the details of the Proposals and the cost savings anticipated by Patriot if the Proposals are implemented.[3]

4. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge, my review of relevant documents, my opinion based upon experience, knowledge, and information concerning the operations of Patriot, and information provided to me by employees working under my supervision. If called upon to testify, I would testify competently to the facts set forth in this declaration.

I. Patriot's Collective Bargaining Agreements and Retiree Healthcare Obligations

A. Collective Bargaining Agreements

5. Patriot's Motion addresses proposed modifications to certain terms of its CBAs with the UMWA, which is the union that represents Patriot's unionized workforce. Patriot collectively employs approximately 4,200 people in active status, of which approximately 41 percent overall and approximately 57 percent of Patriot's active *miners*, are unionized and represented by the UMWA under CBAs. Patriot's UMWA-represented employees work at various sites in Appalachia and at the Highland Complex in the Illinois Basin. Examples of unionized employees include roof bolters, shuttle car operators, truck drivers, bulldozer operators, mechanics, general laborers, and electricians.

6. Ten of the ninety-nine chapter 11 Debtors – the Obligor Companies – are signatories to CBAs. The signatories to the CBAs are: (1) Apogee Coal Company, LLC; (2) Colony Bay Coal Company; (3) Eastern Associated Coal, LLC; (4) Gateway Eagle Coal Company, LLC; (5) Heritage Coal Company LLC; (6) Highland Mining Company, LLC;

[3] The non-union and non-labor cost saving initiatives implemented by Patriot are described in the Declaration of Bennett K. Hatfield, dated March 14, 2013 (the "**Hatfield Declaration**").

(7) Hobet Mining, LLC; (8) Mountain View Coal Company, LLC; (9) Pine Ridge Coal Company, LLC; and (10) Rivers Edge Mining, Inc.

7. Eight of the Obligor Companies are signatories to CBAs that follow a labor agreement known as the National Bituminous Coal Wage Agreement ("**NBCWA**") of 2011: (1) Apogee Coal Company, LLC; (2) Eastern Associated Coal, LLC; (3) Heritage Coal Company, LLC; (4) Hobet Mining, LLC; (5) Colony Bay Coal Company; (6) Mountain View Coal Company, LLC; (7) Pine Ridge Coal Company, LLC; and (8) Rivers Edge Mining, Inc. The latter four companies have no employees.[4] 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 member bituminous coal mining companies in negotiations of the NBCWA with the UMWA. Although Patriot's subsidiaries are not members of the BCOA and are therefore not signatories to the NBCWA, the UMWA has historically insisted that all unionized coal companies with expiring CBAs sign a "Me-Too" agreement with terms substantially similar to the existing NBCWA. In the third quarter of 2011, these eight Obligor Companies signed CBAs with the UMWA that essentially adopted the terms of the NBCWA. For the sake of convenience, I refer to the CBAs signed by these Obligor Companies as the "**2011 NBCWA**." Approximately 1,100 employees – the majority of Patriot's UMWA-represented employees – are covered by the 2011 NBCWA.

[4] In 2011, as a condition to its entering into new CBAs with Apogee Coal Company, LLC, Eastern Associated Coal, LLC, Heritage Coal Company, LLC, and Hobet Mining, LLC, the UMWA insisted that Patriot enter into new CBAs with Colony Bay Coal Company, Mountain View Coal Company, LLC, Pine Ridge Coal Company, LLC, and Rivers Edge Mining, Inc., notwithstanding the fact that these four entities are not engaged in active mining operations and therefore have no employees. The UMWA took the position that new CBAs were needed because UMWA-represented retirees who are currently receiving benefits retired from those entities.

8. Two of the Obligor Companies – Highland Mining Company, LLC ("**Highland**") and Gateway Eagle Coal Company, LLC ("**Gateway**") – are signatories to CBAs which provide for, among other things, wage rates, work rules, and multi-employer fund contributions that differ from those in the 2011 NBCWA. The terms of Highland's CBA (the "**Highland CBA**") are substantially similar to the terms of the NBCWA of 2007. In 2011, in negotiations between Patriot and the UMWA over the new Highland CBA, the UMWA ultimately agreed to extend Highland's 2007 CBA through December 31, 2014 because coal could not be produced at a profit at Highland given the increased costs associated with the 2011 NBCWA. As further explained below, the Highland CBA contains lower hourly wage rates and less costly retirement-related obligations than the 2011 NBCWA. Approximately 400 employees are covered by the Highland CBA.

9. Gateway is a signatory to four separate CBAs (the "**Gateway CBAs**"), which were negotiated in 2010 and 2011 and cover four mines, the Gateway Eagle, Farley Eagle, Campbells Creek No. 10, and Sugar Maple mines. Although Gateway operates those four mines,[5] they are owned by Eastern Associated Coal, LLC ("**Eastern**"). Eastern had the right under its labor agreement to contract with a non-represented third party workforce to operate these mines, but chose to open the Gateway Eagle, Farley Eagle, Campbells Creek No. 10, and Sugar Maple mines to UMWA-represented employees. At the time the Gateway CBAs were negotiated, even though the coal markets were strong, Eastern's financial projections showed that operating these four mines would be unprofitable, largely because of the retirement-related costs that Eastern would incur if it operated the mine itself. Accordingly, I approached the

[5] The Sugar Maple mine is currently idled.

UMWA and communicated Eastern's proposal to open the Gateway Eagle mine to a UMWA-represented workforce if the UMWA and Eastern were able to negotiate a CBA pursuant to which the Gateway Eagle mine was expected to operate at a profit under projected market conditions at that time. In 2011, Patriot and the UMWA successfully negotiated a CBA for the Gateway Eagle mine. Later that year, Patriot negotiated CBAs with the UMWA for the Sugar Maple, Farley Eagle, and Campbells Creek No. 10 mines, which are substantially similar to the CBA for Gateway Eagle. Approximately 100 employees are covered by the Gateway CBAs.

10. Several of the key terms of the Gateway CBAs are similar to the terms Patriot included in its Proposals, which are described in detail below. Most significantly, pursuant to the Gateway CBAs, Patriot contributes to a retirement plan akin to a 401(k) plan in lieu of the contributions that Patriot makes to certain multi-employer pension and healthcare plans pursuant to the 2011 NBCWA and Highland CBA. Patriot is also not required to provide healthcare to Gateway retirees. Additionally, employees covered by the Gateway CBAs are entitled to benefits that are generally at lower levels than their counterparts covered by the NBCWA 2011 and Highland CBA.

11. Patriot's labor costs at its union operations significantly exceed those for similar jobs at its non-union operations. In particular, a comparison of Patriot's per-hour labor costs demonstrates that per-hour labor costs at Patriot's unionized subsidiaries are significantly higher than per-hour labor costs at Patriot's non-unionized subsidiaries. The disparities include, but are not limited to, the following:

- 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.

B. Retiree Healthcare Obligations

12. As of February 28, 2013, Patriot paid for or administered retiree healthcare benefits to approximately 21,000 individuals.[6] Of that total, Patriot paid the healthcare benefits for approximately 8,100 NBCWA retirees and dependents pursuant to certain of its CBAs and more than 2,300 retirees and dependents who receive benefits pursuant to the Coal Industry Retiree Health Benefit Act of 1992 (the "**Coal Act**"). Patriot also paid the healthcare benefits for approximately 1,200 non-union retirees and dependents and administered benefits to approximately 9,200 additional retirees and dependents.

13. Peabody Energy Corporation ("**Peabody**") pays for the healthcare benefits of this latter group of approximately 9,200 retirees and dependents. Specifically, Peabody pays for the healthcare benefits for approximately 3,100 NBCWA retirees, 5,000 Coal Act retirees, and 1,100 non-represented salaried retirees. As a result of Patriot's spin-off from Peabody, Patriot

[6] Patriot recently announced its intention to reject or modify the benefits it pays to non-union retirees population. In connection with these steps, Patriot agreed to the formation of a committee of non-represented retirees pursuant to section 1114(d) for the purpose of determining whether any such benefits are not unilaterally amendable. If the Court ultimately grants Patriot's motion, Patriot expects to achieve total savings of approximately

inherited obligations to certain groups of retirees. As part of the spin-off, however, Peabody agreed to pay for retiree healthcare benefits for certain of those retirees. For a detailed description of Patriot's retirees and its inheritance of obligations to certain groups of retirees in the Peabody transaction and Magnum acquisition, please refer to the Hatfield Declaration.

14. As stated above, Patriot pays directly for healthcare benefits for approximately 8,100 NBCWA retirees and dependents pursuant to certain of its CBAs. As a general matter, individuals who are entitled to receive pensions from the UMWA 1974 Pension Plan pursuant to the 2011 NBCWA and Highland CBA are also entitled to receive retiree healthcare benefits from their last signatory employer. These healthcare benefits mirror those provided to UMWA-represented active employees, which are described below in paragraph 46.

15. Patriot also pays directly for healthcare benefits for more than 2,300 retirees and dependents covered by the Coal Act. Patriot administers an individual employer health plan to provide benefits to certain of these beneficiaries. Pursuant to its Coal Act obligations, Patriot also makes payments to two multi-employer funds, the UMWA Combined Fund and the 1992 Benefit Plan, which cover other beneficiaries. The Combined Fund provides benefits to certain retired former employees who last worked prior to 1976, as well as orphaned beneficiaries of bankrupt companies who were receiving benefits as orphans prior to the 1992 law. The 1992 Benefit Plan provides benefits for miners who retired between July 21, 1992 and September 30, 1994 and whose former employers are no longer in business. As of December 31, 2012, Patriot estimates the present value of these Coal Act liabilities to be approximately $134.7 million. In 2012, Patriot spent approximately $14 million on its Coal Act obligations.

II. The 1113/1114 Negotiations

16. From the date that the Debtors filed for chapter 11 bankruptcy, Patriot's senior management has communicated regularly with the UMWA to keep the union informed about important developments. As part of that effort, I had frequent discussions with the leadership of the UMWA. These communications included several conversations during the early stages of Patriot's bankruptcy, including an initial conversation informing the UMWA leadership about Patriot's bankruptcy filing, as well as subsequent conversations in which I answered questions posed by the UMWA.

17. I am also participating in negotiations with the UMWA, including: the initial meeting on November 15, 2012 in which Patriot provided an overview of the Original Proposal, market conditions in the coal industry, and Patriot's financial performance; and (ii) subsequent negotiation sessions in which Patriot discussed its four proposals and the UMWA's counterproposals. As part of this process, Patriot has provided an extensive amount of relevant information to the UMWA in a timely fashion to facilitate the UMWA's review of the Proposals and in response to the UMWA's many information requests. These communications and the information provided to the UMWA are discussed in detail in the Robertson Declaration.

III. Patriot's Original Proposal and Projected Cost Savings

18. For a period of several months, Patriot worked with its financial advisors, Blackstone Advisory Services L.P. and AP Services, LLC, to determine the amount of savings that it must achieve in order to survive. For a detailed description of Patriot's business plan and Patriot's need for the savings amounts contained therein, see the Declaration of Paul P. Huffard, dated March 14, 2013 (the "**Huffard Declaration**").

A. The Original 1113 Proposal

19. On November 15, 2012, Patriot presented the UMWA with an initial proposal to modify the CBAs for the ten Obligor Companies. The Original 1113 Proposal contemplated modifications to wages, health benefits, pension benefits and work rules that are consistent with – and even more generous than – the compensation level of Patriot's non-union employees.

This section provides a brief summary of the terms of the Original 1113 Proposal and details concerning the projected cost savings associated with the proposed modifications.

20. The Original 1113 Proposal contained the following six components: (i) modifications to wages, overtime pay, and shift differential payments; (ii) modifications to pension and other benefit contributions; (iii) modifications to paid time-off, including holidays, vacation, and personal and sick leave; (iv) modifications to healthcare benefits for active employees; (v) modifications to work rules; and (vi) other modifications designed to bring Patriot's unionized subsidiaries in line with its non-union subsidiaries and other coal producers.[8] The majority of these changes were included in all of Patriot's proposals under section 1113, and each category is summarized below. Because the majority of the proposed modifications to

[7] In the 1113 estimated cost savings spreadsheet, dated December 6, 2012, that Patriot provided to the UMWA, attached as Exhibit 12 to the Robertson Declaration, the 2013 estimated cost savings are reflected as an annualized number. Patriot's Five-Year Business Plan assumes that these savings would be realized by April 1, 2013. Although the timing of this proceeding makes it unlikely that any savings for 2013 will begin by then, the estimated cost savings reflected in this declaration are based on the same assumption. For the proposed modifications related to holidays and extended healthcare, the estimated cost savings are tailored to address the uneven distribution of those costs throughout the year.

[8] 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. (Third 1113 Proposal, Tab D at 1 (Robertson Decl., Ex. 2).)

Patriot's CBAs described in this section were included in each of Patriot's 1113 proposals, I refer to the "1113 Proposal" throughout this section. For the sake of clarity, I note herein any differences between the Original 1113 Proposal and the Second and Third Proposals.

(i) Proposed Modifications to Wages, Overtime Pay, and Shift Differential Payments

21. The 1113 Proposal will eliminate or reduce certain wage increases scheduled to take effect in coming years pursuant to Patriot's various CBAs and instead provide for wage increases in later years. For the 2011 NBCWA, Patriot proposed in its Original 1113 Proposal to (i) eliminate the $1.00 per hour wage increase scheduled for January 1, 2013, (ii) eliminate the $1.00 per hour wage increase scheduled for January 1, 2014, (iii) reduce the wage increases scheduled for January 1, 2015 and January 1, 2016 from $1.00 to $0.50, and (iv) provide a $0.50 per hour wage increase on January 1, 2017 and January 1, 2018. (Original 1113 Proposal, Tab A at 3 (Robertson Decl., Ex. 4).) Because Patriot was unable to realize union labor savings as of January 1, 2013, the Third 1113 Proposal adjusts the current 2013 wage rates that took effect on January 1, 2013 to those in effect as of December 31, 2012. (Third 1113 Proposal, Tab A at 2-3 (Robertson Decl., Ex. 2).)

22. For the Highland CBA, Patriot proposes to (i) eliminate the $1.25 per hour wage increase scheduled for July 1, 2013, (ii) eliminate the $1.25 per hour wage increase scheduled for July 1, 2014, and (iii) provide a $0.50 per hour wage increase on July 1, 2015, July 1, 2016, July 1, 2017, and July 1, 2018. (Third 1113 Proposal, Tab B at 4 (Robertson Decl., Ex. 2).)

23. Patriot also proposes to eliminate certain of the wage increases scheduled to take effect under the Gateway CBAs and instead provide for wage increases in later years. Specifically, for Farley Eagle, Sugar Maple, and Campbells Creek No. 10 mine employees, Patriot proposed in its Original 1113 Proposal to (i) eliminate the $1.00 per hour wage increase

scheduled for January 1, 2013, (ii) eliminate the $1.00 per hour wage increase scheduled to take effect on January 1, 2014, (iii) reduce the wage increases scheduled for January 1, 2015 and January 1, 2016 from $1.00 to $0.50, and (iv) provide a $0.50 per hour wage increase on January 1, 2017 and January 1, 2018. (Original 1113 Proposal, Tab C at 2 (Robertson Decl., Ex. 4).) For Gateway Eagle mine employees, Patriot proposed in its Original 1113 Proposal to (i) eliminate the $0.25 per hour wage increased scheduled for January 1, 2013 and (ii) provide a $0.50 per hour wage increase on January 1, 2015, January 1, 2016, January 1, 2017, and January 1, 2018. (Original 1113 Proposal, Tab C at 2 (Robertson Decl., Ex. 4).) Again, because Patriot was unable to realize union labor savings as of January 1, 2013, the Third 1113 Proposal adjusts the current 2013 wage rates that took effect on January 1, 2013 to those in effect as of December 31, 2012. (Third 1113 Proposal, Tab C at 2 (Robertson Decl., Ex. 2).)

24. Furthermore, the 1113 Proposal would reduce standard hourly wage rates for many positions at Obligor Companies other than Highland; it would increase hourly wage rates, however, for certain positions at those companies where such increases are necessary to attract and retain skilled employees. (Third 1113 Proposal, Tab A, Att. 1 (Robertson Decl., Ex. 2).).

25. The proposed modifications to the Gateway CBAs are more limited. These modifications seek to conform the wage rates for certain positions to the wage rates of similar positions under the 2011 NBCWA that Patriot does not propose to modify. (Third 1113 Proposal, Tab C, Att. 1 (Robertson Decl., Ex. 2).) The 1113 Proposal does not propose modifying wage rates for Highland employees because Highland's current wage structure is in line with the labor market in which it operates (the western Kentucky region of the Illinois Basin). (Third 1113 Proposal, Tab B at 2 (Robertson Decl., Ex. 2).)

26. Patriot estimates that, as a result of these modifications to wage rates, it will achieve cost savings of approximately

A true and correct copy of the spreadsheets itemizing wage rate savings calculations are attached hereto as Exhibits 1A-D.

27. Patriot also proposes to modify the CBAs to eliminate double time and triple time rates. Under the 2011 NBCWA, Patriot is currently required to pay double time rates for overtime work performed on Saturdays and for any work performed on Sunday; it is also required to pay triple time rates for work performed on holidays. Under the Highland CBA and Gateway CBAs, Patriot is currently required to pay double time rates for work performed on Sunday and triple time rates for work performed on holidays.

28. Instead of paying these premium rates in all such cases, Patriot proposes to pay UMWA-represented employees overtime at the rate of time-and-one-half and only for hours actually worked beyond forty hours per week, including hours worked on Saturdays, Sundays, and holidays. (Third 1113 Proposal, Tab A at 3, Tab B at 3, Tab C at 1 (Robertson Decl., Ex. 2).) Patriot currently pays non-union employees overtime at the rate of time-and-one-half. Accordingly, if these modifications are implemented, overtime pay for UMWA-represented employees will conform to overtime pay at mines operated by Patriot's non-union subsidiaries. As a result of the modifications to overtime rates, Patriot projects that it will achieve cost savings of

A true and correct copy of the spreadsheets itemizing overtime savings calculations are attached hereto as Exhibit 1E.

29. Finally, Patriot proposes to eliminate certain shift differential payments required under its CBAs. Under the 2011 NBCWA, Patriot currently pays an additional $0.50 per hour

for the second or afternoon shift, and an additional $0.60 per hour for the third or evening shift. Employees of the Farley Eagle, Sugar Maple, and Campbells Creek No. 10 mines receive the same shift differential payments as employees covered by the 2011 NBCWA. Under the Highland CBA, employees working on the second or afternoon shift are paid an additional $0.40 per hour, and employees working on the third or evening shift are paid an additional $0.50 per hour. Employees of the Gateway Eagle mine receive the same shift differential payments as Highland employees. Under the 1113 Proposal, Patriot will no longer make these shift differential payments. (Third 1113 Proposal, Tab A at 4, Tab B at 4, Tab C at 2 (Robertson Decl., Ex. 2).) These modifications are intended to conform with payments at non-union operated mines, at only one of which Patriot currently makes shift differential payments.[9] Patriot estimates that, as a result of the elimination of the shift differential payments, it will achieve cost savings of

30. Taking into account projected headcounts for the next several years, Patriot estimates that together the proposed modifications to wages, overtime pay, and shift differential payments, will achieve cost savings of

(ii) Modifications to Pension and Other Benefit Contributions

31. Over the years, an extensive and costly package of contributions to multi-employer pension and other benefit funds has evolved under successive CBAs. In 2012, Patriot spent approximately $20.8 million on contributions to the UMWA 1974 Pension Plan and Trust

[9] Patriot also intends to eliminate the shift differential payment at the non-union operated mine.

alone (the "**1974 Pension Plan**"), and required contributions to that plan are expected to increase substantially in coming years. Accordingly, Patriot seeks authorization to withdraw from participation in the 1974 Pension Plan and other multi-employer funds and instead make contributions to a 401(k) plan or other similar arrangement that are commensurate with – and in some respects more generous than – the benefits available to non-union hourly employees. These proposed modifications are expected to save Patriot

32. **1974 Pension Plan**. The 1974 Pension Plan, a multi-employer pension plan established under the NBCWA of 1974, provides pension benefits to qualifying mine workers who retire or become totally disabled as a result of mine accidents and to their eligible surviving spouses. Required contributions to the 1974 Pension Plan are periodically negotiated and adjusted. In 2007, the contribution rate was $2.00 per hour worked; it is currently $5.50 per hour. Patriot makes these contributions pursuant to the 2011 NBCWA and Highland CBA; as noted above, Gateway does not contribute to the 1974 Pension Plan.[10] Patriot's 2012 contribution to the 1974 Pension Plan was approximately $20.8 million, or approximately $12,500 for each unionized employee.

33. Significantly, Patriot's contributions to the 1974 Pension Plan are expected to increase materially beginning in 2017 due to a planned increase in required contribution rates as

[10] Pursuant to the 2011 NBCWA, any participant in the 1974 Pension Plan is permitted to make an irrevocable election to opt out of the 1974 Pension Plan. Any employee who makes this election ceases to accrue any further service or benefits under the 1974 Pension Plan. Effective with this election, signatory employers contribute $1.00 per hour worked, increasing to $1.50 on January 1, 2014, to the UMWA Cash Deferred Savings Plan (the "**CDSP**") on the employee's behalf as a supplemental pension contribution. Few, if any, Patriot employees have ever elected to opt out of the 1974 Pension Plan. The 1113 Proposal will also eliminate this provision.

a result of the 1974 Pension Plan's certification as being in "Seriously Endangered Status." 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 in July 2011. As a result, the BCOA and the UMWA, as the 1974 Pension Plan's sponsors, developed and adopted a funding improvement plan, under which contributions to the 1974 Pension Plan would increase to a minimum of $12.50 per UMWA-represented hour worked in 2017 (resulting in an estimated annual contribution of based on estimated UMWA hours worked), and to a minimum of $25 per UMWA-represented hour worked in 2022 (resulting in an estimated contribution of). The minimum annual contribution rates under the funding improvement plan are set forth in the table below:

Figure 1

Minimum Annual Contribution Rates Under Funding Improvement Plan		
Year	**Contribution Rate Per UMWA-Represented Hour Worked**	
2017	$12.50	
2018	$16.00	
2019	$19.00	
2020	$21.50	
2021	$23.50	
2022	$25.00	

34. Accordingly, and as illustrated in the graph below, Patriot's annual contribution to the 1974 Pension Plan

Figure 2

35. The 1113 Proposal will eliminate Patriot's obligation to contribute to the 1974 Pension Fund. (Third 1113 Proposal, Tab A at 6, Tab B at 5 (Robertson Decl., Ex. 2).) While Patriot will cease making contributions, Patriot's UMWA-represented retirees will continue to be entitled to receive benefits from the 1974 Pension Plan.[11] Elimination of the current $5.50 contribution to the 1974 Pension Plan is expected to save Patriot approximately

[11] The 1974 Pension Plan may also be granted an unsecured claim on account of Patriot's withdrawal.

36. **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 Plan pursuant to the 2011 NBCWA. Neither Gateway nor Highland is required to contribute to the Retiree Bonus Plan. The Retiree Bonus Plan will make annual bonus or "thirteenth month" payments, projected to be $580 for most retirees and $455 for disabled retirees, to eligible participants in the 1974 Pension Plan in 2014, 2015, and 2016. If the Retiree Bonus Plan does not have sufficient funds to make these annual bonus payments, employers will be required to pay the difference directly to their retirees.[12] In 2012, Patriot contributed approximately $4.4 million to the Retiree Bonus Plan. The 1113 Proposal will eliminate Patriot's obligation to make this contribution. (Third 1113 Proposal, Tab A at 6 (Robertson Decl., Ex. 2).) Elimination of the $1.50 contribution for each hour worked to the Retiree Bonus Plan is expected to save Patriot

37. **20-Year Service Payment**. Effective January 1, 2012, Patriot is required to make an additional supplemental pension contribution of $1.00 per hour worked, increasing to $1.50 per hour worked in 2014, to the UMWA Cash Deferred Savings Plan (the "**CDSP**"), on behalf of any miner with 20 years of credited service under the 1974 Pension Plan (the "**20-Year Service Payment**") pursuant to the 2011 NBCWA. The CDSP, which was established under the

[12] Although Patriot is not required to make contributions to the Retiree Bonus Plan pursuant to the Highland CBA, under both the 2011 NBCWA and Highland CBA, employer-signatories are obligated to pay the difference if the Retiree Bonus Plan has insufficient funds to pay the signatory's retirees the full amount of the bonus.

NBCWA of 1988, is a defined contribution 401(k) pension plan which provides additional income to retirees. Patriot is not obligated to make these contributions pursuant to the Highland CBA or Gateway CBAs. In 2012, Patriot contributed approximately $1.4 million in 20-Year Service Payments.

38. The 1113 Proposal will eliminate Patriot's obligation to make the 20-Year Service Payment contributions. (Third 1113 Proposal, Tab A at 7 (Robertson Decl., Ex. 2).) This aspect of the proposal is expected to save Patriot

39. **<u>New Inexperienced Miner Payments</u>**. Patriot is also required to make contributions to the CDSP on behalf of employees designated as "new inexperienced miners," who: (i) enter the coal industry on or after January 1, 2007 and who 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, but not pursuant to the Gateway CBAs. 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.[13] In 2012, Patriot contributed approximately $586,000 in 2007 and 2012 New Inexperienced Miner Payments.

[13] Under the 2011 NBCWA, the 2012 New Inexperienced Miners are not eligible to participate in the 1974 Pension Plan.

40. The 1113 Proposal will eliminate these contributions. (Third 1113 Proposal, Tab A at 6-7, Tab B at 6 (Robertson Decl., Ex. 2).) This aspect of the Proposal is expected to save Patriot approximately

41. **<u>401(k) Retirement Plan Contributions</u>**. In place of these pension contributions, under the 1113 Proposal, Patriot would make contributions equal to six percent of gross hourly wages to a company-sponsored 401(k) plan or other similar arrangement. (Third 1113 Proposal, Tab A at 6, Tab B at 6 (Robertson Decl., Ex. 2).) This proposed retirement contribution is more generous than the six percent 401(k) match provided to non-union hourly employees. Unlike the 401(k) contribution available to non-union hourly employees, UMWA-represented employees will receive the six percent contribution regardless of whether they make their own personal contribution. As discussed above, Patriot already makes contributions to a retirement plan akin to a 401(k) for Gateway employees in lieu of the unsustainable pension obligations required under the 2011 NBCWA and Highland CBA. This aspect of the 1113 Proposal will require increased expenditures by Patriot but will be offset by the pension-related savings described above. This aspect of the proposal is projected to

42. **<u>UMWA 1993 Benefit Trust and Plan (the "1993 Benefit Plan")</u>**. Patriot is also obligated to contribute to a multi-employer fund that provides health and other non-pension benefits. The 1993 Benefit Plan, established under the NBCWA of 1993, provides health and other non-pension benefits to approximately 9,000 qualifying retirees and their families who

retired after September 30, 1994 and whose last signatory employer is no longer in business and has defaulted in providing its former employees with healthcare benefits. In 2012, Patriot contributed approximately $3.7 million to the 1993 Benefit Plan. Pursuant to the 2011 NBCWA, Patriot is required to contribute $1.10 per hour worked to the 1993 Benefit Plan through 2016. Pursuant to its CBA, Highland is required to contribute $0.50 per hour worked to the 1993 Benefit Plan through 2016. As stated above, Gateway is not required to contribute to the 1993 Benefit Plan pursuant to its CBAs. The 1113 Proposal will eliminate contributions to the 1993 Benefit Plan. (Third 1113 Proposal, Tab A at 6, Tab B at 5 (Robertson Decl., Ex. 2).) Elimination of this contribution is expected to save Patriot approximately

(iii) Modifications Related to Holidays, Vacation, and Personal and Sick Leave

43. The 1113 Proposal will reduce the amount of paid time-off available to unionized employees. Pursuant to the 2011 NBCWA, Highland CBA, and Gateway CBAs, UMWA-represented employees are currently entitled to up to 46 or 47 days of paid time-off each year (including holidays) or 35 or 36 days per year (excluding holidays): (i) eleven holidays (two of which are John L. Lewis Day (April 1) and each employee's own birthday); (ii) twelve vacation days; (iii) four floating vacation days earned in the previous year; (iv) up to fourteen graduated vacation days;[14] and (v) five or six personal or sick days.[15]

[14] Graduated vacation days are additional vacation days that accrue based on an employee's length of continuous employment. Employees who have worked five years receive one additional vacation day and then earn one day per year thereafter up to fourteen days.

[15] Employees are entitled to five sick or personal days pursuant to the Highland CBA and Gateway Eagle CBA and to six sick or personal days pursuant to the 2011 NBCWA and other Gateway CBAs.

44. The 1113 Proposal will reduce paid time-off to twenty-eight days per year: (i) eight holidays; (ii) ten vacation days; (iii) two floating vacation days; (iv) five graduated vacation days after five years of continuous employment; and (v) three personal or sick days. (Third 1113 Proposal, Tab A at 4-5, Tab B at 4-5, Tab C at 3 (Robertson Decl., Ex. 2).) The modifications set forth in the 1113 Proposal are intended to bring paid time-off for union employees in line with the paid time-off available to non-union employees, though many union employees would still have more paid time-off than their non-union counterparts. As illustrated in the chart below, the CBAs currently provide union employees with more than two weeks of additional paid time-off than is available to non-union employees.

Figure 3

Paid Time-Off									
	Length of Employment: Less than 5 Years			Length of Employment: 10 Years			Length of Employment: 20 Years		
	UMWA	Non-UMWA	1113 Proposal	UMWA	Non-UMWA	1113 Proposal	UMWA	Non-UMWA	1113 Proposal
Holidays	11	8	8	11	8	8	11	8	8
Regular Vacation	12	10	10	12	10	10	12	10	10
Graduated Vacation	0	0	0	6	5	5	14	5	5
Floating Vacation	4	0	2	4	0	2	4	0	2
Personal & Sick	5-6	2	3	5-6	2	3	5-6	2	3
Total Paid Time-Off	**32-33**	**20**	**23**	**38-39**	**25**	**28**	**46-47**	**25**	**28**
Paid Time-Off vs. Non-UMWA	**+12-13**		**+3**	**+13-14**		**+3**	**+21-22**		**+3/-2**

(iv) Modifications to Active Employee Healthcare Benefits

46. Under the 1113 Proposal, Patriot will no longer offer the generous and costly NBCWA healthcare coverage and will instead offer to UMWA-represented employees the "90/10 Plan," which is the same plan provided to Patriot's salaried and non-union hourly employees, who constitute the majority of Patriot's employees. (Third 1113 Proposal, Tab A at

6 & Att. 2, Tab B at 6 & Att. 1, Tab C at 4 & Att. 2 (Robertson Decl., Ex. 2).) The current healthcare plan available to UMWA-represented employees includes no contributions to premiums, no deductibles, $12 co-payments for visits to in-network primary care providers and specialists, free mail-order prescription drugs, and maximum out-of-pocket costs of $240 per family per year for in-network providers.

47. Under the 90/10 Plan, UMWA-represented employees, like their non-union counterparts, would contribute ten percent of the annual premium payments. Patriot's proposed modifications to the design of the medical plan also include:

- the introduction of a $250 per person deductible;
- an increase in co-payments for visits to in-network providers ($20 for primary care physicians and $35 for specialists);
- an increase in co-payments for prescription drugs, focused particularly on increasing co-payments for brand as opposed to generic prescription drugs; and
- an increase in the maximum out-of-pocket costs for in-network providers from $240 per family to $4,000 per family.

(*Id.*) Finally, the new healthcare plan will provide for (i) non-coverage of spouses who do not enroll in available healthcare plans provided by their own employer; and (ii) monthly contribution (premium) reductions for employees with spouses receiving secondary coverage due to enrollment in available healthcare coverage provided by their employer. (*Id.*)

49. I calculated these savings estimates with the assistance and advice of Mercer, Patriot's long-time healthcare consultant, as well as employees working under my supervision. Patriot provided the support for these estimated savings to the UMWA. A true and correct copy of the support for these healthcare savings estimates is attached hereto as Exhibit 2.

50. Patriot also proposes to eliminate the requirement in the 2011 NBCWA and Highland CBA that it provide retiree healthcare in the future for currently active employees. (Third 1113 Proposal, Tab A at 6, Tab B at 6 (Robertson Decl., Ex. 2).) These changes are necessary to ensure that the transition of retiree healthcare to the VEBA reflected in the 1114 Proposal as described below is not undone when active employees retire. There is no such proposal for Gateway because, as stated above, Patriot is already not required to provide retiree healthcare to Gateway employees under the Gateway CBAs.

51. Finally, Patriot proposes to reduce the duration of "extended healthcare" provided to laid-off employees under its CBAs. Currently, Patriot continues to provide healthcare to employees who have worked more than 2,000 hours for the balance of the month in which they are laid off, plus an additional twelve months. Under the 1113 Proposal, Patriot proposes to provide extended healthcare for sixty calendar days after an employee is laid off, the same terms of extended healthcare that it provides to its non-union employees. (Third 1113 Proposal, Tab A at 6, Tab B at 6, Tab C at 4 (Robertson Decl., Ex. 2).) The cost of providing such extended healthcare is significantly greater than the cost of providing healthcare to active employees, and the reduction in the availability of extended healthcare will save Patriot a substantial amount of money.

A true and correct copy of the support for the extended healthcare savings estimates, a copy of which was provided to the UMWA, is attached hereto as Exhibit 3.

(v) Modifications to Work Rules

52. The CBAs also contain provisions that restrict the ability of signatory companies to deploy labor and operate their mines in a flexible and cost-effective manner, which puts these companies at a cost disadvantage. The 1113 Proposal will modify certain work rules to increase Patriot's efficiency and provide further savings.

53. *First*, the 1113 Proposal incorporates an attendance policy similar to policies currently in effect for non-union employees. Under the proposed attendance policy, Patriot can discharge an employee in the event of two unexcused absences in 30 days, three unexcused absences in 180 days, or four unexcused absences in 360 days. (Third 1113 Proposal, Tab A at 7, Tab B at 6, Tab C at 4 (Robertson Decl., Ex. 2).)

54. *Second*, the 1113 Proposal modifies the 2011 NBCWA to increase flexibility during work shift transitions by permitting managers to change certain crews at the location where work is being performed, thereby reducing inefficiencies. (Third 1113 Proposal, Tab A at 4, Tab B at 4 (Robertson Decl., Ex. 2).) Managers of Patriot's non-union operated mines, Gateway mines, and the Highland mine are currently permitted to change any and all crews.

55. *Third*, the 1113 Proposal eliminates the requirement under the 2011 NBCWA and Highland CBA of a full-time "helper" on continuous mining machines and roof bolter machines and instead would permit management to assign helpers at management's discretion. (Third 1113 Proposal, Tab A at 4, Tab B at 4 (Robertson Decl., Ex. 2).) Due to advances in technology, helpers are no longer necessary on either type of machine, as reflected by the terms of the

Gateway CBAs, which do not require Gateway to employ helpers. By eliminating these unnecessary positions, Patriot will save

56. *Fourth*, the 1113 Proposal modifies the CBAs' restrictions on Patriot's ability to hire contractors to perform work at its operations. The 1113 Proposal permits Patriot to hire contractors as needed to fill in for temporary vacancies, perform short-term projects, perform repair and maintenance work, and perform any work at closed operations. (Third 1113 Proposal, Tab A at 2, Tab B at 2, Tab C at 1 (Robertson Decl., Ex. 2).)

57.

True and correct copies of the support for the work rule modification savings estimates, copies of which were provided to the UMWA, are attached hereto as Exhibits 4A-D.

(vi) Other Modifications

58. The 1113 Proposal will also eliminate the requirement under the 2011 NBCWA and Highland CBA that Patriot make contributions to certain industry-wide funds, including training and education funds, resulting in savings of approximately

59. 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, who operate under more flexible work rules and a significantly lower labor cost structure. These modifications, the most significant of which are described below, are difficult to value but are critically important to Patriot's ability to operate in a competitive marketplace.

60. *First*, the 2011 NBCWA and Highland CBA currently provide that their terms automatically apply to any new mines that Patriot opens. The 1113 Proposal contemplates modifying that provision to provide that the terms of the CBAs apply only within the boundaries of the property and coal reserves that constitute the currently operating mine, as currently provided in the Gateway CBAs. (Third 1113 Proposal, Tab A at 1, Tab B at 1 (Robertson Decl., Ex. 2).)

61. *Second*, the 1113 Proposal modifies the 2011 NBCWA and Highland CBA to permit supervisors to perform work of a classified nature, such as assisting miners that they supervise with certain tasks, as long as the work does not exceed one hour (cumulatively) during a shift. This modification will increase efficiency but Patriot does expect it to result in significant savings because Patriot does not intend for to reduce miner hours worked if this aspect of the 1113 Proposal is implemented. (Third 1113 Proposal, Tab A at 1, Tab B at 1 (Robertson Decl., Ex. 2).)

62. *Third*, the 1113 Proposal contemplates extending the termination date of the CBAs through December 31, 2018. (Third 1113 Proposal, Tab A at 8, Tab B at 7, Tab C at 4 (Robertson Decl., Ex. 2).) For further discussion of the importance of this proposed modification, please refer to paragraphs 49 and 88 of the Huffard Declaration.

63. *Finally*, the Original 1113 Proposal contemplated eliminating the requirement that certain non-signatory affiliates hire three of every five employees from a panel of laid-off union employees. (Original 1113 Proposal, Tab A at 8, Tab B at 7 (Robertson Decl., Ex. 4).) This process imposes a time lag and administrative burden on new hires and reduces the pool of competitive hires. In subsequent proposals, Patriot modified this aspect of the 1113 Proposal in response to concerns expressed by the UMWA, as discussed below.

B. The Original 1114 Proposal

64. Through the 1114 Proposal, Patriot proposes to modify – but not wholly eliminate – certain retiree healthcare benefits.

65. As a threshold matter, under the original and revised 1114 Proposals, Patriot will continue to provide healthcare coverage for those retirees and dependents who receive benefits pursuant to the Coal Act. (Original 1114 Proposal at 1-2 (Robertson Decl. Ex. 5); Fourth Proposal at 2 (Robertson Decl. Ex. 1).) As of December 31, 2012, the actuarial liability for providing these benefits was estimated at $134.7 million, and Patriot spent approximately $14 million to fulfill these obligations in 2012. The 1114 Proposal contemplates no changes with respect to these retirees.

66. The 1114 Proposal would eliminate the existing CBA provisions related to health benefit programs for non-Coal Act retirees as of a plan termination date, which under the Original 1114 Proposal was April 1, 2013 and which was extended to July 1, 2013 in subsequent proposals, as described below. At that time, health benefits for non-Coal Act retirees would transition to a trust, structured as a Voluntary Employees Beneficiary Association ("**VEBA**"), to be established and administered by the United Mine Workers of America Health and Retirement Funds (*i.e.*, the plans that provide health and pension benefits to retired coal miners and their eligible dependents, including United Mine Workers of America 1992 Benefit Plan, United Mine Workers of America 1993 Benefit Plan and Trust, United Mine Workers of America 1974 Pension Plan and Trust, and United Mine Workers of America Combined Fund) (collectively, the "**UMWA Funds**") or the UMWA, if the UMWA Funds are unable or unwilling to assume this role. Under the Original 1114 Proposal, Patriot proposed to contribute $10 million in initial

funding to the VEBA. (Original 1114 Proposal at 2 (Robertson Decl. Ex. 5).) Patriot raised this amount to $15 million in subsequent proposals, as described below.

67. The 1114 Proposal also contemplates that the VEBA would have several key funding sources that are difficult to calculate today but are likely to generate substantial value. Specifically, under the 1114 Proposal, the VEBA would be granted an unsecured claim against Patriot's estate in an amount to be calculated and negotiated, which could potentially take the form of equity in an emerging enterprise pursuant to a court-approved plan of reorganization. (Original 1114 Proposal at 2 (Robertson Decl. Ex. 5).) In addition, the 1114 Proposal contemplates that if market conditions improve, Patriot itself would make further contributions to the VEBA. (Original 1114 Proposal at 4 (Robertson Decl. Ex. 5).) Under the profit-sharing arrangement set forth in the Original Proposal, the Obligor Companies would contribute to the VEBA an amount equal to ten percent of net income earned by Patriot above $75 million in 2015 and an amount equal to ten 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 $20 million and an aggregate cap of $200 million. (Original 1114 Proposal at 4 (Robertson Decl. Ex. 5).) The profit-sharing component is designed to allow retirees to benefit if coal market conditions improve. Patriot made improvements to this element of the 1114 Proposal in subsequent proposals, as described below.

68. Furthermore, to account for the possibility that Peabody will take the position that implementation of the 1114 Proposal would relieve Peabody of its obligations (or reduce such obligations) to pay for the healthcare of certain UMWA retirees whose healthcare liabilities Peabody assumed in connection with Patriot's spin-off (the "**Peabody-Assumed Group**"), in the Original 1114 Proposal Patriot proposed to work with the UMWA to pursue contributions to the

VEBA on account of those retirees in an amount commensurate with current contribution levels and expected increases. (Original 1114 Proposal at 3 (Robertson Decl. Ex. 5).) In subsequent proposals, Patriot made adjustments to this provision and decided to file a declaratory judgment complaint against Peabody with respect to this issue.

69. Patriot spent $65.3 million in 2012 to provide healthcare benefits to non-Coal Act UMWA retirees. Union active, extended, and retiree healthcare costs increased more than 15.6 percent in 2012 and are projected to increase further in future years. Based on its prior spending on retiree healthcare and current trends,

IV. <u>The UMWA's First Counterproposal</u>

70. On January 8, 2013, the UMWA delivered a counterproposal in response to Patriot's Original Proposal (the "**First Counterproposal**") that rejected Patriot's Original Proposal in its entirety. Significantly, the UMWA did not calculate the cost savings associated with the First Counterproposal. In order to evaluate the First Counterproposal, Patriot and its advisors calculated the cost savings, which amount to approximately $6.4 million in 2013, $13.1 million in 2014, and $15.5 million in 2015, as illustrated in Figure 4 below and explained further in this section.

Figure 4

First Counterproposal: Estimated Cash Savings			
Counterproposal Provision	**2013**[16]	**2014**	**2015**
Temporary wage freeze	$0.5 million	$4.9 million	$8.4 million
Adjustment to overtime	$2.1 million	$2.9 million	$1.6 million
Work rule: changing crews	$1.7 million	$2.5 million	$2.7 million
Work rule: supervisors performing bargaining unit work[17]	None	None	None
Scheduling flexibility to allow increased production[18]	None	None	None
Adjustment to retiree healthcare benefits	$2.1 million	$2.8 million	$2.8 million
Total	**$6.4 million**	**$13.1 million**	**$15.5 million**

71. The UMWA's First Counterproposal included the following proposed modifications to the CBAs:

72. *Temporary Wage Freeze*. The First Counterproposal included a provision that would freeze the wages of active UMWA-represented employees "until the company emerges from its temporary liquidity crisis." This wage freeze, however, was coupled with a provision that would prevent Patriot from granting any increase in pay or benefits to any personnel, including management, non-union employees, and independent contractors. (First Counterproposal at 2, 6 (Robertson Decl. Ex. 48).) As illustrated in the chart above, Patriot

[16] The estimated cost savings reflected in Figure 4 assume that Patriot would realize these savings as of April 1, 2013.

[17] For the reasons described in paragraph 61 above, Patriot does not anticipate cost savings from this aspect of the UMWA's First Counterproposal.

[18] The "Scheduling Flexibility" aspect of the First Counterproposal would actually result in a net loss to Patriot and offset the benefit associated with the wage freeze and overtime changes. As explained further below, due to the broad contraction in market demand for coal, the projected pricing for such additional production would fall below the production cost, at least for the next two to three years.

estimated that it would achieve cost savings of approximately $0.5 million in 2013, $4.9 million in 2014, and $8.4 million in 2015 from this provision.

73. *Adjustment to Overtime.* The UMWA proposed that "overtime shall not be paid until the employee works beyond 40 hours per week" but clarified that "[t]his provision shall not apply to Saturday work past 8 hours or any work on Sunday . . . [or] to holidays." (First Counterproposal at 6 (Robertson Decl. Ex. 48).) As illustrated in the chart above, Patriot estimated that it would achieve cost savings of approximately $2.1 million in 2013, $2.9 million in 2014, and $1.6 million in 2015 from this provision.

74. *Adjustment to Certain Work Rules.* The UMWA accepted Patriot's proposal to allow certain work crews to be changed out "where the employer can demonstrate a substantial economic need for such change." As illustrated in the chart above, Patriot estimates that it will achieve cost savings of approximately $1.7 million in 2013, $2.5 million in 2014, and $2.7 million in 2015 from this provision. The UMWA also accepted Patriot's proposal to allow supervisors to "perform work of a classified nature as long as such work does not exceed one hour" but stated that this modification must be "agreed to in advance by the local union." (First Counterproposal at 6 (Robertson Decl. Ex. 48).) As described above in paragraph 61, Patriot does not anticipate any cost savings from this provision.

75. *Scheduling Flexibility to Allow Increased Production*. The First Counterproposal also included a modification to allow UMWA workers to work a greater number of hours per week. The UMWA asserted that such flexibility would result in approximately 60 extra production days per year at UMWA-represented mines and that such additional production would result in hundreds of millions of dollars in additional revenue. (First Counterproposal at 6 (Robertson Decl. Ex. 48).) The UMWA did not provide support for this assertion. For that

reason, Patriot conducted its own quantitative analysis of the effect of the scheduling flexibility provision, which illustrated that Patriot would not achieve meaningful profits in the next two to three years by the implementation of the UMWA's proposed production schedule because of market conditions and the cost of production.

76. Specifically, that analysis showed that implementation of the scheduling flexibility provision will not lead to a meaningful increase in profits in the near term for three reasons. *First*, the cost of the additional production exceeds prices that Patriot can receive for coal under current market conditions. As the UMWA knows, current market conditions have forced Patriot to close mines, idle mines, and lay off employees over the last year. Furthermore, in 2012 Patriot had to reduce its thermal coal production by approximately 4.1 million tons and its metallurgical coal production by approximately 1.9 million tons because the costs of mining exceeded expected revenues. *Second*, the increased production would require Patriot to hire additional personnel to staff newly-created production shifts. When hiring additional personnel, Patriot would have to pay additional wages and benefits it could not afford, including overtime. In other words, increased labor costs would raise overall production costs, reducing Patriot's ability to achieve any margin on additional coal sales. *Third*, the additional production proposed by the UMWA would not be practical at certain mines. At the Federal mine, for example, Patriot already 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, the UMWA's production schedule would undermine efficient longwall mining, because longwall mining requires panel development before using the longwall machine, and the proposed increased production would not permit time for such development. Patriot

provided the UMWA with its evaluation of this aspect of the First Counterproposal, a true and correct copy of which is attached hereto as Exhibit 5.

77. As described in the Robertson Declaration, Patriot has repeatedly asked the UMWA for the data that supports the purported savings relating to increased production. To date, the UMWA has declined to provide certain key requests that presumably served as the basis for the UMWA's production revenue calculations. To the best of my knowledge, it appears that the UMWA simply assumed, for example, that if Patriot had ten percent more hours of production time, it could sell ten percent more coal at the exact same price. This is not the case for the reasons described above.

78. The First Counterproposal also contained a list of requested concessions from Patriot, which comprised nearly seven pages of the nine-page counterproposal. The requested concessions included union job-security provisions, a blanket prohibition on Patriot increasing compensation for any employee, and a complete and complex "snap-back" provision, all of which Patriot and its advisors concluded would impair Patriot's ability to operate, dissuade potential investors and exit financers, and threaten Patriot's ability to survive. (First Counterproposal at 1-6, 8-9 (Robertson Decl. Ex. 48).) For additional detail concerning the impact of the UMWA's proposed concessions, see the Huffard Declaration.

79. Furthermore, the First Counterproposal included a provision calling for the establishment of a litigation trust, which would have the right to commence and pursue all litigation on behalf of Patriot. A committee – comprised of two members appointed by the UMWA, two members appointed by certain UMWA Funds, and one member appointed by the Committee of Unsecured Creditors – would oversee the litigation trust. (First Counterproposal at 9 (Robertson Decl. Ex. 48).)

80. Finally, the First Counterproposal rejected Patriot's VEBA proposal and instead required that Patriot continue to provide retiree healthcare, subject to modest cost-sharing provisions. (First Counterproposal at 7 (Robertson Decl. Ex. 48).) Patriot asked Mercer to prepare estimates of annual plan savings for each of the modifications proposed by the UMWA. Significantly, the proposed modifications to retiree healthcare benefits – which result in approximately $2.8 million in annual savings[19] – were 96% short of the $75 million in annual retiree healthcare savings that Patriot has estimated it requires to survive. A true and correct copy of the Mercer analysis of the UMWA First Counterproposal, dated January 17, 2013, is attached hereto as Exhibit 6. These modifications and preliminary estimates include:

- *Generic Prescription Drug Formulary*. The First Counterproposal contemplated the implementation of a generic prescription drug formulary, accompanied by a $10 surcharge on brand-name prescription drugs when a retiree needs an off-formulary prescription. (First Counterproposal at 7 (Robertson Decl. Ex. 48).) Mercer estimated that this program would achieve savings of five percent on drug costs, approximately $941,250 annually. (Ex. 6 at 1-2.)

- *Mandatory Mail-Order Program for Prescription Drugs*. The First Counterproposal contemplated implementing a mandatory mail-order program, which would be coupled with a new $5 co-payment for mail-order prescription refills. In addition to the current co-payment, a $10 surcharge would apply to prescriptions filled at a retail pharmacy. (First Counterproposal at 7 (Robertson Decl. Ex. 48).) Based on its experience with similar programs, Mercer estimated that this program would save Patriot approximately $1.5 million annually. (Ex. 6 at 2.)

- *Emergency Healthcare Co-Payments*. The First Counterproposal included a proposed $200 co-payment for emergency room visits. (First Counterproposal at 7 (Robertson Decl. Ex. 48).) Based on the number of emergency room visits of retirees during the twelve months ending November 30, 2012, Mercer estimated that this program would save Patriot approximately $428,000 annually. (Ex. 6 at 2-3.)

[19] This savings calculation incorporates the provision of the First Counterproposal that Mercer estimated would impose a modest *net cost* on Patriot each year[, because the UMWA stated that its proposals could only be accepted as "an entire package."] (First Counterproposal at 1 (Robertson Decl. Ex. 48).)

- *Changes to Durable Equipment Network*. The First Counterproposal also contemplated that Patriot would adopt the UMWA Funds' durable equipment network. That network includes vendors who provide medical equipment, diabetic supplies, and other supplies at negotiated rates to beneficiaries of certain UMWA Funds' benefit plans. (First Counterproposal at 7 (Robertson Decl. Ex. 4).) Based on the incurred costs for durable medical equipment during the twelve months ending November 30, 2012, Mercer estimated that this program would save Patriot approximately $114,760 annually. (Ex. 6 at 3.)

- *Changes to Coal Act Benefits*. Even though Patriot proposed no changes to the benefits available to Coal Act retirees, the First Counterproposal contemplated working with Patriot to implement a Participating Provider List or "PPL" for Coal Act beneficiaries. A PPL is a network of physicians, hospitals, pharmacies, and other providers. Beneficiaries pay less for visits to physicians on the PPL, and less for prescriptions provided by physicians on the PPL, than for out-of-PPL visits and prescriptions. (First Counterproposal at 7 (Robertson Decl. Ex. 48).) Mercer concluded that this aspect of the proposal is unlikely to achieve any savings, because (i) a PPL network would not be relevant to Medicare-eligible Coal Act beneficiaries; and (ii) Patriot already uses a PPL network for non-Medicare eligible Coal Act beneficiaries. (Ex. 6 at 3-4.)

- *Modifications to Spousal Coverage*. The UMWA proposed to make Patriot's retiree health plans secondary to any plan sponsored by the employer of a spouse or other such beneficiary; notwithstanding this provision, Patriot would have to reimburse the spouse for any premium costs associated with such alternative health coverage. (First Counterproposal § at 7 (Robertson Decl. Ex. 48).) Mercer estimated that this aspect of the proposal may result in an additional *cost* of approximately $151,400 annually to Patriot depending on whether Patriot must reimburse premiums for spouses who already have other healthcare coverage in addition to those who newly enroll in their employers' benefit plan. (Ex. 6 at 4-5.)

V. <u>Patriot's Second Proposal</u>

81. On Thursday, January 17, 2013, Patriot provided the Second Proposal to the UMWA. Patriot modified certain aspects of the Original Proposal in response to the concerns that the UMWA raised in bargaining sessions as well as elements of the First Counterproposal. Significantly, Patriot's concessions in the Second Proposal represent a reduction in savings of approximately $20 million in 2013 when compared to the Original Proposals.

82. The Second Proposal modified certain aspects of Patriot's Original 1113 Proposal in response to the UMWA's concerns, including: (1) providing that any agreement reached with the UMWA would apply to any mining complex that later becomes subject to collective bargaining rights and (2) withdrawing Patriot's proposal to eliminate the requirement that three of five employees hired by certain non-signatory affiliates be UMWA-represented employees. With respect to the latter modification, the Second Proposal contemplates modifying the CBAs to provide that the application of the three-out-of-five rule be based on demonstrated ability to perform the work of the job and satisfaction of other hiring standards. (Second Proposal at 1-2 (Robertson Decl. Ex. 3).)

83. The Second Proposal also represented significant movement by Patriot on the Original 1114 Proposal, including: (i) deferring the date on which retiree health coverage would be transitioned to the VEBA from April 1, 2013 to June 1, 2013 in order to provide additional time for the VEBA to be established and administered (at a cost to Patriot of more than $6 million per month); (ii) increasing the initial VEBA contribution from $10 million to $15 million and making the contribution as a lump sum payment, rather than in installments; (iii) increasing the profit-sharing amounts that the UMWA could receive each year from an amount equal to 10% of net income earned by Patriot above $75 million in 2015, to an amount equal to 15% of net income above $75 million in both 2014 and 2015 and by raising the annual cap to $40 million from $20 million; and (iv) agreeing to the UMWA's proposed distribution of any recoveries from Peabody, Arch, or other third parties, but noting that it was premature to determine whether a litigation trust mechanism is necessary or appropriate. (Second Proposal at 2-3 (Robertson Decl. Ex. 3).)

VI. The UMWA's Second Counterproposal

84. On February 5, 2013, the UMWA delivered a second counterproposal to Patriot (the "**Second Counterproposal**"). While the UMWA has asserted that the Second Counterproposal would save Patriot approximately $150 million per year, the UMWA has failed to support that assertion, and Patriot does not remotely agree with it.

85. Patriot and its advisors calculated the cost savings for the Second Counterproposal's provisions related to the proposed modifications to Patriot's CBAs. As illustrated in the chart below and explained further in this section, they amount to only $5.7 million in 2013, $12.2 million in 2014, and $14.6 million in 2015.

Figure 5

Second Counterproposal: Estimated Costs Savings			
Counterproposal Provision	**2013**[20]	**2014**	**2015**
Temporary wage freeze	$0.5 million	$4.9 million	$8.4 million
Adjustment to overtime	$2.1 million	$2.9 million	$1.6 million
Work rule: changing crews	$1.7 million	$2.5 million	$2.6 million
Work rule: supervisors performing bargaining unit work[21]	None	None	None
Scheduling flexibility to allow increased production[22]	None	None	None
Adjustment to active employee healthcare benefits	$1.4 million	$1.9 million	$1.9 million
Total	**$5.7 million**	**$12.2 million**	**$14.6 million**

[20] The estimated cost savings reflected in Figure 5 assume that Patriot would realize these savings as of April 1, 2013.

[21] For the reasons described in paragraph 61 above, Patriot does not anticipate cost savings from this aspect of the UMWA's First Counterproposal.

[22] For the reasons described in paragraphs 75-77 above, this savings calculation does not incorporate the "Scheduling Flexibility" aspect of the Second Counterproposal.

86. Overall, the Second Counterproposal was similar to the First Counterproposal but included the following additional proposed modifications to the CBAs:

87. *Modifications to Active Employee Healthcare Benefits*. The Second Counterproposal included modifications to active healthcare coverage that correspond to those proposed for retirees in the First Counterproposal. Specifically, the Second Counterproposal contemplated: (i) the implementation of a generic prescription drug formulary, accompanied by a $10 surcharge on brand-name prescription drugs; (ii) the implementation of a mandatory mail-order program, which would be coupled with a new $5 co-payment for mail-order prescription refills; (iii) the implementation of a $200 co-payment for emergency room visits; (iv) the adoption of the UMWA Funds' durable equipment network; and (v) the modification of spousal health coverage such that Patriot's health plans would be secondary to any plan sponsored by the employer of a spouse or other such beneficiary. (Second Counterproposal at 7 (Robertson Decl. Ex. 58).) Patriot asked Mercer to prepare estimates of annual plan savings for each of these modifications. According to Mercer's estimates, these modifications would save Patriot only $1.9 million per year. A true and correct copy of the Mercer analysis of the UMWA Second Counterproposal, dated February 5, 2013, is attached hereto as Exhibit 7.

88. *Wage Freeze, Overtime, Adjustment to Certain Work Rules, and Increased Production.* The Second Counterproposal included the same provisions concerning wage freeze, overtime, work rules, and scheduling flexibility as the First Counterproposal. The Second Counterproposal, however, included assertions concerning the savings Patriot could expect to realize from the increased production provision. (Second Counterproposal at 5-7 (Robertson Decl. Ex. 58).) As described above, Patriot's own analyses demonstrate that the increased production provision will not enable Patriot to earn significant additional profit in the next two to

three years. The Second Counterproposal also included the same onerous terms from the First Counterproposal, including the prohibition on compensation increases and provisions requiring Patriot to hire UMWA-represented personnel for all open positions. (Second Counterproposal at 2, 8 (Robertson Decl. Ex. 58).)

89. Furthermore, the Second Counterproposal included new terms that were designed to protect UMWA members, would result in no cost savings to Patriot, and which would hinder Patriot in its efforts to compete going forward. *First*, the Second Counterproposal stated that the parties would agree that retiree healthcare liabilities "are and will continue to be treated as a corporate-wide responsibility," as opposed to a liability that resides with the Obligor Companies only, although only ten of the Debtors have obligations under the CBAs. *Second*, in the Second Counterproposal, the UMWA sought an automatic "snap-back" on or before December 1, 2016. The snap-back provision would reverse all modifications to the CBAs on or before December 1, 2016, more than two years earlier than Patriot proposed in the 1113 Proposal. Additionally, if a new CBA is not negotiated by that date, the Second Counterproposal provides that Patriot would restore wages and benefits to their pre-1113 levels pending the negotiation of a new contract. (Second Counterproposal at 1, 3 (Robertson Decl. Ex. 58).)

90. The Second Counterproposal also contemplates certain structural changes relating to retiree benefits. These changes, which are described in detail in the Robertson Declaration, include:

91. *Acceptance of a VEBA*. Under the Second Counterproposal, the UMWA agreed to transition responsibility for non-Coal Act retiree healthcare to a VEBA. The Second Counterproposal contemplates multiple funding sources for the VEBA, including a rights offering, a secured loan from Patriot, an unsecured claim, and profit-sharing. The combination

of these funding sources would provide the VEBA with more than $1 billion in cash. The VEBA would not apply to future retirees, nor would it apply to current retirees whose benefits are being paid for by Peabody. (Second Counterproposal at 5-6 (Robertson Decl. Ex. 58).)

92. Specifically, to fund the VEBA, the UMWA proposed that: (i) Patriot undertake a rights-offering of at least $750 million, with a guarantee of $600 million of such proceeds going to the VEBA; (ii) Patriot issue the UMWA a $400 million secured note to fund the VEBA; (iii) the VEBA be funded by an unsecured claim on top of the $1 billion described above; and (iv) the VEBA also be funded by an annual profit-sharing contribution in an amount equal to 7.5 percent of EBITDA, subject to certain minimums that would rise from $3.8 million in 2013 to $15 million in 2016. (Second Counterproposal at 5-6 (Robertson Decl. Ex. 58).) For further discussion of these provisions of the UMWA's Second Counterproposal, please refer to the Huffard Declaration.

93. Finally, the Second Counterproposal included a revised provision concerning the establishment of a litigation trust, which would have the right to commence and pursue all litigation on behalf of Patriot. The updated provision requires Patriot to make a $15 million contribution to the litigation trust following its emergence from bankruptcy. The revised provision also alters the composition of the litigation trust committee, so that it would comprise of three members appointed by the UMWA and two members appointed by the Committee of Unsecured Creditors (as opposed to two members appointed by the UMWA, two members appointed by certain UMWA Funds, and one member appointed by the Committee of Unsecured Creditors). (Second Counterproposal at 9 (Robertson Decl. Ex. 58).)

VII. Patriot's Third Proposal

94. On February 19, 2013, Patriot provided the Third Proposal to the UMWA in a further attempt to reach a consensual agreement. Each of the revisions included in the Third Proposal was tailored to respond to the Second Counterproposal and to the central issues raised by the UMWA in the various bargaining sessions.

95. The Third Proposal modified certain aspects of the Original 1113 Proposal, including: (i) responding to the UMWA's concern about parity of treatment by providing that UMWA-represented employees will receive a wage increase in the event that a similarly-situated non-union employee receives a wage increase to a level that is higher than the UMWA-represented employee; (ii) responding to the UMWA's concern about the possible elimination of successorship by including specific language that recognizes successorship in the modified CBAs; and (iii) responding to the UMWA's concern about future job opportunities by providing that the entities that are parties to the CBAs will work with the UMWA to develop methods that allow Patriot subsidiaries to recognize the UMWA at the future operations at specific mines. (Third 1113 Proposal, Tab A at 1-2, Tab B at 1-2, Tab C at 1 (Robertson Decl. Ex. 2).)

96. The Third Proposal also modified certain aspects of Patriot's Original 1114 Proposal, including: (i) responding to the UMWA's concern about the date on which healthcare obligations would be transitioned to the VEBA by further extending the transition date to July 1, 2013, which would provide the UMWA with additional time to set up the VEBA and monetize a claim; (ii) responding to the UMWA's concern about providing the VEBA with liquidity as soon as possible by including a detailed mechanism by which Patriot would promptly reach agreement with the UMWA as to the amount and treatment of the UMWA's unsecured claim, followed by an accelerated process in which the parties would cooperate to monetize the claim; (iii)

responding to the UMWA's concerns about the profit-sharing component by increasing the annual cap to $75 million from $40 million, and increasing the lifetime aggregate cap to $300 million from $200 million; and (iv) responding to the UMWA's concerns with respect to Peabody by providing that Patriot will seek a judicial determination that Peabody is not relieved of its obligations to the retirees for whom Peabody pays healthcare costs (the "**Peabody-Assumed Group**"). The provision is structured such that the 1114 Proposal would carve out the Peabody Assumed Group should the Court rule in Patriot's favor. (Third Proposal at 2-6 (Robertson Decl. Ex. 2).)

97. In light of the substantial concessions made to the UMWA in the Proposals, Patriot now expects to secure in retiree healthcare savings in 2013. Starting in 2014, the 1114 Proposal would provide Patriot an average cash savings of approximately $75 million per year.

VIII. Patriot's Fourth Proposal

98. On February 27, 2013, Patriot delivered the Fourth Proposal to the UMWA in response to concerns raised by the UMWA regarding the Third Proposal's approach to the Peabody retirees. The Fourth Proposal incorporates the terms of the Third Proposal and modifies the provision of the 1114 Proposal concerning the Peabody-Assumed Group to make clear that whatever changes Patriot is able to secure in the 1114 process, Patriot will seek a declaration from this Court that Peabody's contributions on behalf of the Peabody-Assumed Group should continue to be made in exactly the manner they are today.

99. Specifically, the Fourth Proposal maintained the provision that the 1114 Proposal applies to all non-Coal Act retirees of the Obligor Companies, including the Peabody-Assumed Group, unless the Court rules that Peabody remains liable on its obligations to the Peabody-

Assumed Group. Should the Court so rule prior to ruling on this Motion, however, the 1114 Proposal will not apply to the Peabody-Assumed Group. Alternatively, should the Court rule in favor of Patriot after having ruled on this Motion, the 1114 Proposal would be modified to exclude the Peabody-Assumed Group *nunc pro tunc* to the date the Court ruled on this Motion.

100. Notwithstanding Patriot's significant concessions, the UMWA rejected the Third and Fourth Proposals outright. In doing so, the UMWA rejected many of the same modifications that it accepted in 2011 in connection with the negotiation of the Gateway CBAs, as illustrated in the chart below.

<u>Figure 6</u>

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

IX. Conclusion

101. Patriot fully appreciates the burdens and difficulties associated with its cost reduction efforts, including the Proposals. These proposed modifications, however, are necessary for Patriot to avoid liquidation and maintain jobs and benefits for thousands of employees and their families, as well as to provide meaningful contributions towards the healthcare costs of retirees and their dependents. If Patriot is forced to liquidate, the result – immediate termination of thousands of jobs and the loss of retiree healthcare for approximately 21,000 individuals – would be catastrophic.

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

Dated: Charleston, West Virginia
March 14, 2013

/s/ Dale F. Lucha
Dale F. Lucha

ALL EXHIBITS
FILED UNDER SEAL

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**

SUMMARY OF EXHIBITS TO THE DECLARATION OF DALE F. LUCHA IN SUPPORT OF THE DEBTORS' MOTION TO REJECT COLLECTIVE BARGAINING AGREEMENTS AND TO MODIFY RETIREE BENEFITS PURSUANT TO 11 U.S.C. §§ 1113, 1114

Patriot Coal Corporation and its affiliated debtors (collectively, "**Patriot**" or the "**Debtors**") respectfully submit that the following exhibits, referenced in the Declaration of Dale F. Lucha in Support of the Debtors' Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114, will be made available for inspection at the hearing on the Motion or upon request of parties in interest:

1A. Wage Rate Savings - Part I

1B. Wage Rate Savings - Part II

1C. Wage Rate Savings - Part III

1D. Wage Rate Savings - Part IV

1E. Wage Rate Savings - Overtime

2. Healthcare Savings

3. Extended Healthcare Savings

4A. Work Rule Savings - Part I

4B. Work Rule Savings - Part II

4C. Work Rule Savings - Part III

4D. Work Rule Savings - Part IV

5. Summary Quantification of Counterproposal Savings

6. Assessment of First Counterproposal

7. Assessment of Second Counterproposal

Dated: March 14, 2013

New York, New York

Respectfully submitted,

/s/ Elliot Moskowitz

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