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:** **April 12, 2013 at 4 p.m. CDT** **Hearing Date:** **April 29 to May 3, 2013 at 10 a.m. CDT** **Hearing Location:** **Courtroom 7 North**

DECLARATION OF ELLIOTT I. COBIN IN OPPOSITION TO THE DEBTORS' MOTION TO REJECT COLLECTIVE BARGAINING AGREEMENTS AND TO MODIFY RETIREE BENEFITS PURSUANT TO 11 U.S.C. §§1113 AND 1114

Elliott I. Cobin declares pursuant to 28 U.S.C. §1746:

1. I am a Director employed by PricewaterhouseCoopers LLC ("PwC") in its Global Human Resources Services group. PwC was retained by the United Mine Workers of America ("UMWA") on September 19, 2012, as an advisor to the UMWA with respect the Chapter 11 cases of Patriot Coal Corporation ("Patriot"). I make this declaration in opposition to the Debtors' proposed motion to reject collective bargaining agreements and to modify retiree benefits pursuant to 11 U.S.C. §§1113 and 1114. This declaration is based upon my own personal knowledge, my review of the record in this matter, published materials in the field, and my professional opinion. I am competent to testify to all facts contained in this declaration. PwC is being compensated on a fixed monthly basis of $75,000 and has the right to request an additional fee (the "Restructuring Fee") at the end of the engagement.

I. Qualifications

2. I began my professional career at The Hartford Insurance Group in 1975 as an actuarial student. I became a consultant in 1988 with Coopers & Lybrand. I spent ten years with Towers Perrin and have been with PricewaterhouseCoopers for the past thirteen years as a Director in the health care practice. I am an Associate of the Society of Actuaries (SOA), a member of the health section of the SOA, and a Member of the American Academy of Actuaries. I hold a Bachelor's Degree in Mathematics from Queens College of the City University of New York and a Masters Degree in Mathematics from the University of Illinois. I have more than thirty years of experience in all areas of healthcare benefits including pricing, design, funding (including VEBA trusts), and accounting. I consult with many large public and government employers on these issues. I provide annual support to over fifty audit teams in reviewing postretirement, postemployment, and active employee medical IBNR (incurred but not reported and/or paid) valuations performed by our audit clients' actuaries. Appendix A contains my professional biography and qualifications.

3. In my research for the UMWA I have relied upon my own professional experience, industry knowledge obtained from published research studies and government reports, a medical trend model developed by Professor Getzen of Temple University with the supervision of the Society of Actuaries, and proprietary pricing models developed within PwC. All of the studies and models upon which I have relied in preparing this declaration are listed in Appendix B hereto.

II. Summary of Opinions

4. Summary of Opinions:

a. I have estimated the value of Patriot's promised retiree medical benefits for UMWA represented employees, excluding Coal Act liabilities, at approximately $1.79 billion (see, infra, ¶¶5-11). This estimate differs from Patriot's estimate of $1.45 billion primarily due to the use of different medical trend assumptions summarized in Appendix C. Our assumptions are based on a resource model commissioned by the Society of Actuaries' Pension Section and Health Section Research teams and prepared by Professor Thomas E. Getzen of Temple University. This model is used to predict an appropriate long term medical trend assumption used in the valuation of retiree medical liabilities.

b. Patriot's proposed treatment of retirees through a voluntary employee benefit association is inadequate because it is severely underfunded. A survey of other VEBAs created in the context of bankruptcy proceedings indicates that the typical VEBA is funded at a level of between 57% and 83% of the value of the retiree's claims, as more fully set out in ¶¶12-20. Patriot is offering an initial funding amount of $15 million, which is less than 1% of the liability, with no fixed or estimable additional funding.

c. Patriot's proposed treatment of its active UMWA-represented employees is inadequate because it fails to take into account the higher long term costs of medical treatment for UMWA miners. In addition, Patriot's expert compares the active medical plan being offered to UMWA employees with employees in all types of industries rather than focusing on unionized employees in heavy industries such as mining, leading to the misleading assertion that the proposed plan is more generous than the average plan (see, infra, at ¶¶21-25).

III. Patriot's Plan for the Elimination of Retiree Medical Coverage Benefits

A. Valuation of the Current Retiree Plan Liabilities

5. The Debtors' actuarial advisor, Mercer, calculated the liability of the current retiree medical plan for UMWA retirees, excluding Coal Act liabilities, to be \$1.40 billion in 2012 and \$1.45 billion in 2013 (Mercer 2012 and 2013 valuations, Data Room Items 1.4.6.4 and 1.2.41.4).[1] I believe that the value of the retiree medical benefits promised by Patriot is significantly higher than the figures prepared by Mercer. The principal reason is that future medical trend is likely to be much higher than the assumption used by Mercer, which is 7% in 2013 trending down to 5% over a 6 year period. Mercer's approach is to use a trend assumption that is within the range of trends exhibited in surveys of employers' assumptions used for accounting purposes. The initial trend is set at the current level of increase and then grades down to an ultimate level that is deemed to be the long-term growth rate of general inflation, or CPI.

6. For purposes of this declaration, I have accepted the Mercer-supplied data that supports their use of the initial rate of 7%. I have also accepted their assumption of an ultimate rate of 5% medical inflation. What I believe is not reasonable is the grading period of just 6

[1] Mercer's \$1.45 billion valuation covers all non-Coal Act UMWA retirees and active employees currently covered by the Patriot retiree medical plan set forth in the 2011 Coal Wage Agreement ("NBCWA") between the UMWA and certain of Patriot's subsidiaries, referred to by Patriot as the Obligor Companies. Patriot's Memorandum of Law in Support of the Debtors' Motion ("Memo of Law"), at pp. 53-54, indicates that certain retirees of Peabody, referred to as the "Peabody-Assumed Group," may also lose their retiree medical coverage as a result of Patriot's bankruptcy proceeding. Patriot has not attempted to estimate the value of the Peabody-Assumed Group, and has not supplied the UMWA with data that would enable PwC to estimate the value of those benefits. There were 5,361 individuals in the Peabody-Assumed Group as of November 29, 2012 (see data room item 1.2.17, response to UMWA request no. 1 dated 11/29/12.

Patriot did supply PwC with its underlying data and assumptions for the participants covered under the NBCWA plan in sufficient detail to enable PwC to replicate Mercer's 2012 valuation estimates within commonly accepted ranges. PwC relied upon the data supplied to it by Mercer, and in turn we believe that Mercer has relied upon the data supplied to it by the Company. We note that Mercer's valuation estimates may be understated to the extent that the data supplied to it by the Company does not properly reflect employment service by UMWA miners at other employers (e.g., an individual may have had service with another signatory employer prior to or after being employed by Patriot, and thus Mercer may assume that such an employer does not have sufficient service to be eligible for a benefit when in fact the individual may have sufficient service.

years. The reason I believe that the grading period of just six years is not reasonable is that I have seen such trend assumptions used, only to be updated periodically as healthcare costs have and continue to increase at a high level. Six years from now, in 2019, it is likely that the rate of growth in healthcare costs will not have reduced to 5%. Moreover, since 1980, there has been no sustained period of time during which medical trend was 5%. For accounting purposes, such trend assumptions, in effect now, will need to be re-started as it becomes apparent that the grading period is too aggressive. In fact, Mercer's actuaries acknowledged on a conference call that they have periodically re-set the initial trend rate in the Patriot actuarial valuations, as trend has never consistently reached the predicted ultimate trend rate of 5%. When the trend rate is re-set in a valuation for accounting purposes, there is a corresponding loss recognized on the balance sheet of the financial statement that is amortized though expense in the income statement over several future years. Since the valuation is being used in this bankruptcy proceeding to fix a settlement of the Company's obligation for all future retiree medical obligations, and potentially to determine how much to fund a VEBA trust, there will be no future ability to re-state the trend assumption and to re-calculate the liability when future healthcare cost increases exceed the assumed increases. In other words, if the trend rate is underestimated, the VEBA will be seriously underfunded and it will run out of money without a future opportunity to correct the error. In summary, Mercer's approach does not adequately account for the risk associated with unknown future medical cost increases where an estimate of the liability is not supported by the promise of the Company to pay future costs under the plan.

7. Healthcare costs have been rising faster than general inflation for many years as evidenced by the growth in the healthcare component of GDP from 6% in 1960 to about 18% in 2012. Early models that predicted this past pattern projected healthcare expenditure growth that

continued to outpace total expenditure growth leading to the position that the whole of the US economy would ultimately be consumed by healthcare. The Society of Actuaries' Pension Section and Health Section Research teams commissioned Professor Thomas E. Getzen of Temple University to construct a resource model for the projection of long term healthcare cost trends that includes capacity constraints to ensure the long-term projection is rational. The motivation for the creation of the model was driven by its potential usage as a resource for the estimation of reportable liabilities for retiree healthcare benefits in accounting statements as specified under FAS 106 (now ASC 715) and GASB 45. The model, programmed in Microsoft Excel, projects per-person expenditures and growth rates through 2099 using baseline assumptions, and permits the flexibility for user input of alternative assumptions. I believe the Getzen model is a preferable method for constructing a medical trend assumption for purposes of valuing the retiree medical liability for funding a VEBA.

8. I also noted that Mercer reduced its calculated liability for expected future Medicare Part D reimbursements by assuming that the post-65 costs would be reduced by 21%. The 21% reduction is equivalent to reducing 2013 post-65 costs by [redacted]. I did not find support for the 21% reduction. Actual Patriot Medicare Part D reimbursements in 2012 were $[redacted] per person. Taking this actual data, I trended this figure at 7% to $[redacted] expected in 2013. Post-65 costs were then reduced by $[redacted] in 2013. The net amount was then used in our valuation model.

9. Using the Getzen model and the change in Medicare Part D assumption, PwC developed a medical trend assumption that results in a liability for 2013 of $1.79 billion versus Mercer's $1.45 billion. The underlying assumptions used in the Getzen model mirror historical averages: CPI growth of 2.75%; and growth in real GDP of 2.50%. Additionally, the ultimate

medical trend rate of 5% is assumed to be achieved in 2075 (note that only 4 of the current UMWA participants are expected to survive to 2075). The medical trend assumption used is detailed in Appendix C. Approximately 93% of the increase in liability is due to the change to the medical trend assumption and approximately 7% of the increase is due to the change to the Medicare Part D assumption.

10. There is no insurance market for settling this type of liability or for valuing such retiree medical obligations. The reason for this lack of a market is because of the uncertainty surrounding future medical trend. No insurance company will sell a policy for a one-time fee that covers the promise made by Patriot to its current and future retirees to pay their future retiree medical benefits. The absence of such a market highlights the risk that the Company's estimate of $1.45 billion does not adequately value these future liabilities, and that a significantly higher value should be assigned than Mercer's 2013 valuation liability.

11. With respect to the Affordable Care Act (ACA), Mr. Terry's declaration submitted on behalf of the Debtors asserts that "new healthcare exchanges may represent a new and viable healthcare alternative for retirees." (Terry Decl. ¶56). There are several reasons why this assertion is not valid support for the Company's proposal. First, the ACA was not intended to change the market for Medicare eligible individuals, and thus it is unclear what advantages the healthcare exchanges can actually offer to the vast majority of retirees who are post-65. Second, while the exchanges are intended to provide premium subsidies for low income families, it is my understanding of ACA that retirees who receive benefits through an employer or a union-sponsored VEBA are not eligible for the premium subsidies. As a result, absent a change in the regulations, ACA appears to offer no benefit whatsoever to the employees and retirees who would become covered by the VEBA proposed by the Company. Finally, for the pre-65 retirees

who potentially could be helped by the new ACA healthcare exchanges, the out-of-pocket costs associated with such coverage are likely to be substantial, and would impose a significant burden on these participants. A study commissioned by the Kaiser Family Foundation in 2011 (*What the Actuarial Values in the Affordable Care Act Mean*, April 2011) attempted to provide some estimate of the potential out-of-pocket costs in the pre-65 market (i.e., not Medicare-eligible). Kaiser asked three actuarial firms, Actuarial Research Corporation, Aon Hewitt, and Towers Watson, to estimate what the benefit design (and out-of-pocket maximums) might be to meet the actuarial value[2] requirements of the ACA. The out-of-pocket maximums estimated for the Silver plan, which is the plan designated for those eligible for the premium subsidy, ranged from $3,200 to $4,200 per year per person. The amount for a family would be double that amount, or $6,400-$8,400 per family. These high out-of-pocket maximums suggest that the pre-65 retirees' best hope for reasonable coverage requires a well funded VEBA.

B. <u>The VEBA Proposal</u>

12. The Terry Declaration asserts that the Company is proposing the creation of a VEBA to "provide healthcare protection" (Terry Decl. ¶ 36) for "well-priced, comprehensive healthcare coverage" (Id. at ¶39) for retirees. The Company's Sec. 1114 motion, however, acknowledges that it seeks to "terminate retiree benefits" for all retirees who are not covered by the Coal Act. The Company will not run the VEBA, and the Company makes no commitment that the VEBA will be able to provide any particular level of healthcare protection other than the initial $15 million contribution, which is the equivalent of about 2.5 months of benefits under the current plan. For the reasons to be discussed, the Company's proposal falls far outside the

[2] The levels of coverage under the ACA are not defined using specific deductibles, copays and coinsurance, but are defined using the concept of actuarial value. For example, a plan with an actuarial value of 70% (referred to as a "Silver" plan in the ACA) means that on average the plan would pay 70% of the costs while the enrollees purchasing such a plan would pay 30% of the costs through deductibles, copayments and coinsurance.

mainstream of similar VEBAs and fails to provide any meaningful or comprehensive healthcare protection for the UMWA retirees or active employees who are now, or who would become, eligible for such coverage under the current provisions of the NBCWA.

13. It is apparent, moreover, that the VEBA trust is being proposed by Patriot to eliminate its financial statement liability since the Company is not making a measurable, non-contingent promise for future funding. If it were measurable, then such amount would be a financial statement liability, and to our knowledge the Company does not intend to include any such liability if their proposal is adopted (see the Debtors' Five-Year Business Plan, Data Room 1.2.2, and its pro forma balance sheet for the reorganized company after §1114 relief, which only sets forth a retiree medical obligation of approximately [redacted], which corresponds to the liability for Coal Act retirees). Therefore, the VEBA is the Company's means of eliminating its obligation to provide the promised level of support for retirees.

C. Funding Proposed by Patriot

14. Patriot proposes a single, initial cash contribution to the VEBA of $15 million on July 1, 2013, when the VEBA becomes effective (Robertson Decl. ¶ 127). Then the UMWA would become entitled to an unsecured claim against Patriot in a form and amount to be determined. Finally, Patriot would agree to a profit-sharing plan to contribute to the VEBA an amount equal to 15% of net income earned by Patriot above $75 million in 2014 and 2015 and an amount equal to 15% of net income earned by Patriot above $150 million in 2016 and subsequent years. The Company has not provided any estimate of the value of the UMWA claim or of the amount of potential profit-sharing contributions. By comparison, the 2013 annual cash cost of retiree medical benefits, according to Mercer's estimates, is about $75 million (Lucha Decl. ¶97). Mercer previously projected cash costs for 2014, 2015, and 2016 to be $[redacted]

[redacted], respectively, absent any change in current plan provisions (Mercer's 2012 Valuation, Data Room Item 1.4.6.4).

15. PwC has reviewed the Company's own model for future profitability, and applying the profit-sharing formula summarized above, the Company would be obligated to contribute nothing in 2014 and 2015, and just $[redacted] in 2016, respectively (Mandarino Decl. ¶¶14a, 37, and 54; based on projected net income of [redacted]. Pending clarification of the extent of the UMWA's actual recovery on its Sec. 1114 claim, the Company proposal would pay about 40% of projected cash claims costs for the second half of 2013, nothing in 2014 or 2015, and about 2.6% of such costs in 2016. This averages out to about 6% of projected costs for the entire 3.5 year period.

16. Based on the amount of funding offered by the Company, it is evident that the VEBA will be substantially underfunded and unable to pay retiree benefits as promised. The only definitive promise by the Company is for the initial $15 million, which will pay for retiree medical costs for about 2.5 months. In the absence of additional funding, the only choice remaining to the VEBA trustees will be to design a plan that requires the retiree to pay the full cost of coverage. As medical costs continue to increase uncontrollably and unpredictably, retirees on a fixed income will soon find any such plan to be unaffordable. We have seen this outcome with other employers who provide "access only" plans - retiree participation decreases each year until no one can afford it, even those with the most severe health issues. Without significant initial funding, the trustees will quickly find their efforts to be futile.

D. <u>The Use of VEBAs for Retiree Benefits</u>

17. The Company's Memorandum of Law observes that VEBAs have been used in several recent instances, both inside and outside bankruptcy (Memo of Law, pp. 51-52, and n.

24). That observation is accurate: according to a 2008 survey by Sibson Consulting, a division of The Segal Group,[3] 17 of the 25 VEBAs studied in their survey formed in the past decade were in connection with either collective bargaining in a bankruptcy proceeding or bankruptcy alone.

18. One of the most notable examples of a retiree medical VEBA arising out of bankruptcy is the Dana case, cited by the Company in its Memorandum of Law[4]: in that case, Dana and the United Auto Workers agreed to the creation of a VEBA in place of the company's existing obligations under its union contracts. Dana agreed to deposit $700 million in cash and another $80 million in stock in exchange for liabilities valued at about $1.1 billion, or a 71% recovery.

19. The Dana case is fairly typical of other reported cases in which VEBAs were created. In the reported cases, retiree VEBAs received promised funding, in a mix of cash, notes, or stock, of between 57% and 83% of the value of their claims, as opposed to the less than 1% offered by Patriot ($15 million out of more than $1.5 billion in liabilities, by any measure). See Ellen O'Brien, Retiree Health Care: What Do the New Auto Industry VEBAs Mean for Current and Future Retirees? AARP Public Policy Institute, Publication #I4, March 2008. The following chart summarizes the initial funding and size of claim in the recent cases researched by Ms. O'Brien in which VEBAs have been adopted:

[3] "Study of Retiree Health VEBAs," Sibson Consulting, Winter 2008, at http://www.sibson.com/uploads/65896ec7d78c973e6a5e5666d448da26.pdf.

[4] In re Dana Corp., No. 06-10354 (BRL) (Bankr. S.D.N.Y.).

Company	Liabilities	$ Contributed	% of Liabilities	In / Out of Bankruptcy
Dana	$1.1 billion	$700mm in cash and $80mm stock	71%	Bankruptcy
AK Steel	$1 billion	Total of $663 million, consisting of initial cash of $468mm and 3 subsequent payments of $65mm cash each	66%	Out-of-Court
Delphi	Contractual obligations arising from the spinoff of Delphi	GM agreed to fund $450mm	N/A	Bankruptcy
Goodyear	$1.2 billion	$700mm in cash and $300mm in stock or deferred cash	83%	Out-of-court
GM	$46.7 billion	$31.9 billion, consisting of an existing VEBA, cash, note and wage diversions, contingent cash payments, and guaranteed payments through 1/1/10.	68%	Bankruptcy
Chrysler	$18.3 billion	$11 billion, with cash, debenture, COLA diversion, warrants, contingent cash and guaranteed payments through 1/1/10.	60%	Bankruptcy
Ford	$23.7 billion	$13.6 billion in total current value, consisting of cash and an existing VEBA, two notes, deferred payments, and continued retiree health care payments through 1/1/2010.	57%	Out-of-court

20. VEBAs have one distinct disadvantage over the existing Company obligation to provide retiree healthcare benefits: the trustees of the VEBA have no ongoing guaranteed source of funding, and must manage the VEBA to the best of their ability with only the initial corpus. The VEBA advantages outlined by Terry (Terry Decl. ¶67-81) are actually features of any

VEBA, and do not address the fundamental issue of adequate funding at the outset. Thus, Terry notes that a VEBA trust provides "a level of benefit security not available under the more typical unfunded retiree healthcare arrangement" (Terry Decl. ¶69); this can only be considered a meaningful statement in the context of an adequately funded VEBA. Similarly, Terry notes that the VEBA trustees have a high degree of benefit design flexibility (Terry Decl. ¶72); this statement, while true in the abstract, simply illustrates the fact that the Company is seeking to be absolved of its contractual responsibility to provide ongoing retiree benefits without stipulating what level of benefits can actually be provided with the proposed funding. The UMWA proposal, on the other hand, proposed an initial $400 million in cash, $400 million in preferred shares, an unsecured claim for the balance of the value of the retiree benefit being eliminated with the proviso that a new investor owns not less than 51% of the fully diluted common stock of the reorganized company, and a profit sharing formula based on EBITDA rather than net income (see UMWA's Third Counterproposal to the Debtor, dated March 27, 2013). These features of the UMWA proposal put it within the reported range of recoveries in bankruptcy and similar matters.

IV. <u>Patriot's Proposed Healthcare Plan for Active UMWA Members</u>

21. Patriot proposes that the current UMWA healthcare plan negotiated over time with the Union and contained in the NBCWA should be replaced with the same plan offered by Patriot to its salaried and non-union active employees (Memo of Law, pp. 49; Lucha Decl. ¶46-48). Terry asserts that the proposed medical benefit plan is comprehensive and is at least as generous, and generally more generous, in terms of employee out-of-pocket costs, than the typical PPO plan offered by employers (Terry Decl. ¶14; generally ¶12-¶34).

22. The data cited by Terry in his Figure #1(Terry Decl. ¶25) does indicate that the proposed plan compares favorably with national averages. These national averages, however, include employers in all industries, regardless of type of industry or unionized status. My experience indicates that unionized workers in heavy industries such as mining, steel, and manufacturing tend to have more generous plans, with lower employee premium payments, than non-union firms in lighter industries such as retail sales and service industries. The economic research supports this observation (see Buchmueller, DiNardo, and Valletta, Union Effects on Health Insurance Provision and Coverage in the United States, which finds that unionized employees receive significantly more valuable health insurance coverage than non-union employees).[5] Furthermore, the Government Accounting Office report on the Retired Coal Miners Health Benefit Funds in 2002 compared the benefit package provided by the UMWA Funds to "benefit packages offered by the major manufacturing companies and companies with unionized workforces," finding that, while several aspects of the Fund's benefits package is more generous, overall "the extent of coverage is generally comparable." GAO Report, p.3.[6] The GAO Report reviewed the Fund's Coal Act benefit package, which is, according to Micheal Buckner of the UMWA, very similar to the coverage provided by Patriot under the NBCWA. It is thus instructive that the comparison the GAO thought appropriate was to heavy industries with unionized workforces. The GAO concluded (GAO Report at p. 23):

> "We acknowledge that the retired coal miners traded lower pensions for the promise of future health care benefits, and that this may be an important consideration when interpreting our benefit comparisons with packages offered by other manufacturing companies and companies with significant numbers of unionized workers. Our analysis

[5] Buchmueller, DiNardo, and Valletta, Union Effects on Health Insurance Provision and Coverage in the United States, Industrial & Labor Relations Review, ILR School, Cornell University, vol. 55(4), pp. 610-627, July 2002. Also published by the National Bureau of Economic Research, at http:/www.nber.org/papers/w8238.

[6] GAO, Report to the Honorable Don Nickles, U.S. Senate, "Retired Coal Miners' Health Benefit Funds, Financial Challenges Continue," April 2002. Hereinafter cited as "GAO Report."

finds that the Funds' plans are generally comparable, but more generous in some dimensions and less generous in others."

23. Additionally, active mine workers incur work-related injuries and illnesses covered by workers compensation and other disability benefits at a much higher frequency than active workers in the general U.S. population. This is evidenced from information provided by Patriot which indicates that Patriot's cost for workers compensation insurance is approximately [redacted]% of payroll. By comparison, the cost of workers compensation for all employers in the U.S. averages less than 2% of payroll. The [redacted] cost of workers' compensation relative to payroll at Patriot is indicative of the dangers associated with mining and the higher-than-average incidence of illnesses and injuries related to this occupation, just as the miner group experiences higher than average non-occupational medical costs.

24. There is ample evidence that healthcare costs for retired miners are higher than for employees in other industries due to their arduous working conditions over a lifetime. For example, the GAO Report concluded that the cost of healthcare for the UMWA Funds' beneficiaries was about 29% higher than for demographically similar Medicare beneficiaries (GAO Report, at p. 4). Similarly, a study prepared by Mercer, dated August 14, 2009, for the UMWA Funds[7] found that the Funds' population "has an illness burden 32.4% higher than average for Medicare" (Mercer, at p. 1). The detailed findings included significantly higher incidence of cardio-respiratory conditions, congestive heart failure, vascular and lung problems, and cerebro-vascular issues. While these findings were for retired miners, it is reasonable to conclude that the higher incidence of these serious health conditions accumulate over time and are highly correlated with the miners' working conditions. A health plan for active miners must

[7] Mercer, "Health Status Assessment Project, United Mine Workers of American Health and Retirement Funds," August 14, 2009.

take into account the fact that miners work in a dangerous industry, and that their illnesses and injuries are more costly than the national average.

25. In one important respect the proposed Patriot healthcare plan is less favorable to UMWA members: its treatment of prescription drugs. The average plan nationwide currently pays 10% to 15% of total plan claims costs for prescription drugs. Therefore, the high coinsurance amounts, labeled "less generous" in Figure #2 of the Terry Declaration (Terry Decl. ¶ 30), heavily weigh in determining how the plan in totality compares to other employer provided healthcare plans.

* * *

26. In conclusion, Patriot has underestimated the size of the retiree medical claim, and has proposed a severely underfunded VEBA as a substitute. UMWA's proposal is within the normal range for bankrupt companies seeking Section 1114 relief or negotiating to eliminate their retiree medical liabilities. Patriot's proposal for active employees fails to account for the fact that miners face higher incidence of illness and injury over their lifetimes, and that the UMWA healthcare plan was specifically negotiated by the Union to provide a high level of healthcare benefits to its members.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 3rd day of April, 2013.

/s/ Elliott I. Cobin
Elliott I. Cobin

Appendix A

Elliott I. Cobin
Professional Biography and Qualifications

Elliott I. Cobin
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Education

B.A. – Queens College of The City University of New York, 1968
- Cum Laude
- Major in Mathematics with a minor in Physics

M.A. – University of Illinois, 1969
- National Science Foundation Fellowship
- Teaching Assistantship

Professional

PricewaterhouseCoopers (2000 to present)
- Director in the Global Human Resource Solutions practice.

Towers Perrin (1990-2000)
- Senior Consultant and Actuary

Coopers & Lybrand (1988-1990)
- Senior Consultant

Colonial Penn Insurance Company (1985-1988)
- Small Group and Special Risk Actuary

Provident Mutual Insurance Company (1983-1985)
- Small Group and University Medical Insurance Actuary

The Hartford Insurance Group (1975-1983)
- Actuarial Student in various rotational positions including pension, individual annuities, special risk, and group health

Professional Memberships

- Associate of the Society of Actuaries (1980)
- Member of the health section of the Society of Actuaries
- Member of the American Academy of Actuaries (1980)

Professional Presentations and Articles

- Non-Discrimination Testing for Health Plans (Society of Actuaries Conference, 1995)
- GASB adoption (several States and Local Government meetings, 2005-2006)
- "GASB Statements 43/45 - Top Ten Misconceptions" (authored in 2006)

Appendix B

Material Considered or Relied Upon

I. Public Resources

- Ellen O'Brien, Retiree Health Care: What Do the New Auto Industry VEBAs Mean for Current and Future Retirees? AARP Public Policy Institute, Publication #I4, March 2008. (source for the VEBA chart)
- SOA–Getzen Long-Term Healthcare Cost Trends Resource Model v12.2-updated March 2012 - XLS version, December, 2011.
- Practical Issues for Health Actuaries–Written by Project Oversight Group, January, 2007.
- Kaiser Family Foundation, Prescription Drug Trends. The Henry J. Kaiser Family Foundation, May 2010.
- Devon M. Herrick, Unnecessary Regulations that Increase Prescription Drug Costs, National Center for Policy Analysis, Policy Report No. 346, March, 2013.
- Sibson Consulting, Study of Retiree Health VEBAs, Winter 2008, at http://www.sibson.com/uploads/65896ec7d78c973e6a5e5666d448da26.pdf.
- Kaiser Family Foundation, What the Actuarial Values in the Affordable Care Act Mean, April 2011.
- GAO, Report to the Honorable Don Nickles, U.S. Senate, "Retired Coal Miners' Health Benefit Funds, Financial Challenges Continue," April 2002.
- Mercer, Health Status Assessment Project, United Mine Workers of American Health and Retirement Funds, August 14, 2009.
- Buchmueller, DiNardo, and Valletta, Union Effects on Health Insurance Provision and Coverage in the United States, Industrial & Labor Relations Review, ILR School,

Cornell University, vol. 55(4), pp. 610-627, July 2002. Also published by the National Bureau of Economic Research, at http:/www.nber.org/papers/w8238.

- U.S. Department of Commerce, Bureau of Economic Analysis, Gross Domestic Product (GDP), Current-dollar and "real" GDP (Excel spreadsheet), http://www.bea.gov/national/xls/gdplev.xls
- United States Department of Labor, Bureau of Labor Statistic, Consumer Price Index (CPI), Table Containing History of CPI-U U.S. All Items Indexes and Annual Percent Changes From 1913 to Present, http://www.bls.gov/cpi/#tables

II. Resources from the Debtors' Data Room

- Mercer Inc., Actuarial Valuation Report: Net Periodic Benefit Cost for Fiscal Year Ending December 31, 2012, February, 2012 (Data Room Item 1.4.6.4)
- Mercer Inc., AASC 715 (US GAAP) Actuarial Valuation Report for Fiscal Year Ending December 31, 2013, Patriot Coal Corporation Postretirement Welfare Benefit Plan, March 8, 2013 (Data Room Item 1.2.41.4)
- UMWA Request for Healthcare Utilization and Cost, NBCWA Retirees (Data Room Item 1.4.9.4)
- UMWA Request for Healthcare Utilization and Cost, NBCWA Actives (Data Room Item 1.4.9.3)
- Peabody and Patriot Healthcare enrollment as of 11-29-2012 (Data Room Item 1.2.17 Response to UMWA request dated 11-29, item 1)

Appendix C

Medical Trend Assumption

With consultation of a PwC Managing Director, who is a healthcare economist, in the PwC Washington D.C. office, the Getzen model was used to develop the medical trend assumption shown below. For comparison purposes, the Mercer assumption is also shown.

Year	Mercer	PwC	Year	Mercer	PwC
2013	7.00%	7.00%	2044	5.00%	6.71%
2014	6.67%	7.00%	2045	5.00%	6.69%
2015	6.33%	7.00%	2046	5.00%	6.68%
2016	6.00%	7.53%	2047	5.00%	6.55%
2017	5.67%	7.48%	2048	5.00%	6.46%
2018	5.33%	7.44%	2049	5.00%	6.40%
2019	5.00%	7.40%	2050	5.00%	6.35%
2020	5.00%	7.36%	2051	5.00%	6.31%
2021	5.00%	7.32%	2052	5.00%	6.28%
2022	5.00%	7.28%	2053	5.00%	6.25%
2023	5.00%	7.25%	2054	5.00%	6.22%
2024	5.00%	7.21%	2055	5.00%	6.19%
2025	5.00%	7.18%	2056	5.00%	6.16%
2026	5.00%	7.15%	2057	5.00%	6.14%
2027	5.00%	7.12%	2058	5.00%	6.12%
2028	5.00%	7.09%	2059	5.00%	6.10%
2029	5.00%	7.06%	2060	5.00%	6.08%
2030	5.00%	7.03%	2061	5.00%	6.06%
2031	5.00%	7.00%	2062	5.00%	6.04%
2032	5.00%	6.97%	2063	5.00%	6.02%
2033	5.00%	6.95%	2064	5.00%	6.01%
2034	5.00%	6.92%	2065	5.00%	5.99%
2035	5.00%	6.90%	2066	5.00%	5.98%
2036	5.00%	6.88%	2067	5.00%	5.96%
2037	5.00%	6.85%	2068	5.00%	5.95%
2038	5.00%	6.83%	2069	5.00%	5.94%
2039	5.00%	6.81%	2070	5.00%	5.93%
2040	5.00%	6.79%	2071	5.00%	5.91%
2041	5.00%	6.77%	2072	5.00%	5.90%
2042	5.00%	6.75%	2073	5.00%	5.89%
2043	5.00%	6.73%	2074	5.00%	5.88%
			2075+	5.00%	5.00%

Although the Getzen model produces rates through 2099, for simplicity we used the ultimate rate of 5.00% beginning in 2075 since only four participants in the current population are likely to be left.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re Patriot Coal Corp.	)	
	)	Case No. 12-51502
	)	Chapter 11
Debtor(s).	)	

EXHIBIT SUMMARY

Pursuant to the Local Rules of Bankruptcy Procedure, the following exhibits are referenced in support of the DECLARATION OF ELLIOT COBIN. Copies of these exhibits will be provided as required by Local Rules:

1. Kaiser Family Foundation in 2011 (*What the Actuarial Values in the Affordable Care Act Mean*, April 2011)

2. Devon M. Herrick, Unnecessary Regulations that Increase Prescription Drug Costs,National Center for Policy Analysis, Policy Report No. 346, March, 2013.

3. Kaiser Family Foundation, Prescription Drug Trends. The Henry J. Kaiser Family Foundation, May 2010.

4. Mercer 2009 Health Status Assessment Project

5. Practical Issues for Health Actuaries−Written by Project Oversight Group, January, 2007.

6. Sibson Consulting, Study of Retiree Health VEBAs, Winter 2008, at http://www.sibson.com/uploads/65896ec7d78c973e6a5e5666d448da26.pdf.

7. Mercer, Health Status Assessment Project, United Mine Workers of American Health and Retirement Funds, August 14, 2009.

8. Ellen O'Brien, Retiree Health Care: What Do the New Auto Industry VEBAs Mean for Current and Future Retirees? AARP Public Policy Institute, Publication #I4, March 2008.

9. SOA−Getzen Long-Term Healthcare Cost Trends Resource Model v12.2 updated March 2012 - XLS version, December, 2011.