

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:

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

**AMENDED DECLARATION OF ARTHUR TRAYNOR 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**

Arthur Traynor declares pursuant to 28 U.S.C. §1746:

1. I am currently employed as a Staff Attorney at the International Union, United Mine Workers of America ("UMWA"). 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, and materials reviewed during the course of these bankruptcy. I am competent to testify to all facts contained in this declaration.

2. I earned a Juris Doctorate from the Indiana University School of Law in May of 2007 and a Bachelors of Arts in Philosophy from the University of Florida in December of 2002.

3. I have held the position of Staff Attorney at the UMWA since January of 2010. My duties include the provision of legal representation and advice to Union officers, staff and members engaged in organizing, collective bargaining, contract enforcement, administrative and legislative matters. Prior to my employment with the UMWA, I was employed as an associate attorney at the union-side labor law firms Woodley & McGillivray in Washington, D.C. and Phillips & Richard in Miami, Florida.

4. Specifically, as related to the Patriot Coal Corporation ("Patriot") bankruptcy, I participated in bargaining meetings, reviewed the debtors' proposals and assisted with the development of the UMWA's counterproposals. I additionally was involved in the discussion of the debtors' financial situation and coordination with PriceWaterhouseCoopers ("PwC"), our financial advisers, the development of information requests, evaluation of the responses to information requests and their analyses of the financial impact and bases for the debtors' 1113/1114 proposals and our counterproposals.

Background/History

5. Patriot is the product of a spin-off of subsidiaries of Peabody Energy Corporation ("Peabody") and Arch Coal Company ("Arch"). During the course of transactions that created Patriot Coal, Peabody and Arch entered into agreements with the newly-created Patriot allocating retirement obligations and coal contracts, among other assets and liabilities. Patriot assumed a substantial amount of its parent companies' retirement obligations, ultimately becoming responsible to either pay or administer employer-paid retiree benefits for thousands of UMWA-represented retirees previously employed by Peabody or Arch. As a result of the transfer of these liabilities, over 90% of the retired miners that stand to be affected by Patriot's 1114 proposal retired from Peabody and Arch; these miners never worked a day for Patriot.

Patriot's Creation

6. Peabody - the largest publicly traded coal company in the world and largest coal producer in the United States – created Patriot Coal by distributing of all outstanding shares of Patriot common stock to Peabody shareholders, which resulted in Patriot becoming an independent corporate entity on October 31, 2007. See Exhibit A, Patriot Coal Corp., Annual Report (Form 10-K), at 4 (March 14, 2008).

7. The terms of the spinoff, transition and post-spinoff relationship between Peabody Energy and Patriot were set forth in a Separation Agreement and series of related agreements. Portions of these agreements were filed with the SEC on October 22, 2007. See Exhibit B, Peabody Energy Corp., Current Report (Form 8-K), (Oct. 22, 2007).

8. As a result of the spin-off, Patriot became the independent parent of sixty-four subsidiaries. Among the assets contributed to Patriot was Peabody Energy's ownership interest in eleven subsidiaries – Affinity Mining Co., Colony Bay Coal Co., Eastern Associated Coal, LLC, Marktinka Coal Co., LLC, Mountain View Coal Co., LLC, Heritage Coal Co., LLC (formerly Peabody Coal Company), Pine Ridge Coal Co., LLC, Sterling Smokeless Coal Co., LLC, Rivers Edge Mining Inc., Squaw Creek Coal Co., and Yankeetown Dock, LLC – which were current or past signatories to NBCWAs providing lifetime healthcare benefits to miners, retirees, and their dependents. Six of these subsidiaries– Peabody Coal Co., LLC (now Heritage Coal), Colony Bay Coal Co., Eastern Associated Coal LLC, Mountain View Coal Co., LLC, Pine Ridge Coal Co., LLC, and Rivers Edge Mining Inc. – were signatories to the 2007 NBCWA. Five of these subsidiaries – Affinity Mining Co., Squaw Creek Coal Co., Sterling Smokeless Coal Co., Martinka Coal Co., and Yankeetown Dock LLC – had not been operating for a substantial period of time, but Patriot has continued to fund OPEB liabilities incurred by these subsidiaries.

9. The Peabody subsidiaries that were spun-off into Patriot operated at a negative cash flow level for 2005 through 2007, when supporting contributions from Peabody were excluded. See Exh. A , Patriot Coal Corp., Form 10-K, (March 14, 2008) at 4, F-5.

[REDACTED]

11. The “legacy liabilities” Peabody gave to Patriot in the spinoff included the obligation to provide thousands of Peabody retirees and widows negotiated retiree healthcare benefits. Prior to the spinoff, Peabody Energy, with its affiliated and subsidiary corporations, maintained an employee benefit plan covering its employees represented by the UMWA, retired UMWA employees and their eligible dependents. The plan was the product of collective-bargaining between the UMWA and, among others, Peabody officials on behalf of their subsidiaries. These obligations were transferred to Patriot at the time of the spin-off. However, a large portion of the retiree healthcare obligations transferred to Patriot were assumed by

Peabody in two documents – the NBCWA Liabilities Assumption Agreement (Exhibit D) and 9711 Coal Act Liabilities Assumption Agreement (Exhibit E) – which were drafted by Peabody and executed contemporaneously with the Separation Agreement.

12. Peabody assumed \$615.8 million dollars of retiree health care and other liabilities associated with the transferred subsidiaries, while assigning \$554.7 million in retiree healthcare liabilities to Patriot. Without Peabody's assumption of a large portion the healthcare obligations transferred in the spinoff, Patriot would have shown a negative net worth on its pro forma financial statements. See Ex. A at p. 10, 27, 47; Patriot Coal Corp., Annual Report (Form 10-K) (March 2, 2009).

13. In May 2007, prior to the spinoff, Peabody met with the UMWA to provide a general overview of the terms of the spinoff. In August 2007, Peabody presented to the UMWA for countersigning an Acknowledgment and Assent ("A&A"), which explained the manner in which certain retiree healthcare obligations would be paid by Peabody after the spin-off. (See Exhibit F). At the time the A&A was presented to the Union, it was not in a position to confirm the representations made in the A&A or challenge the spinoff. An employer's corporate organization or restructuring decision affecting changes in the scope and direction of its business enterprise is not a matter subject to collective bargaining and the UMWA had no ability to preclude the spinoff. However, the UMWA understood the Liability Assumption Agreements to provide that Peabody would guarantee payment for a large portion of the retiree healthcare obligations transferred to Patriot. In signing the A&A, the Union agreed not to contend that Peabody was signatory to a labor contract or that the A&A created a labor law relationship between Peabody and the UMWA. It also agreed to the arrangement allowing Peabody to pay for the health care of the "Peabody-assumed" group of retirees as described within the A&A.

[REDACTED]

Acquisition of Magnum and Former Arch Liabilities

15. In 2005, Arch executed a series of transactions that resulted in transfer of all of its UMWA represented operations to the newly created Magnum. Arch assigned the new company 12.3% of its assets but 96.7% of its retiree healthcare liabilities, thereby reducing its own liabilities from \$402 million to \$57 million or 85%. See Exhibit G, Arch Coal, Inc., Current Report, (Form 8-K), dated January 6, 2006, at p. 1.

16. On April 2, 2008, Patriot announced that it signed an agreement to acquire Magnum. The acquisition of Magnum increased Patriot's reported post-employment retiree benefit obligations, which were valued at \$555 million at the end of 2007 and increased to \$1.065 billion at the close of 2008 – a 92% increase. See Ex. A, p. 10, Patriot Coal Corp., Annual Report, (Form 10-K), 2008.

[REDACTED]

18. In its first year operating as a stand-alone entity, Patriot reported operating losses. Ex. A, at F-5. Patriot's first annual report showed \$1.2 billion in assets and \$1.1 billion in liabilities. (Id. at F-4) Despite reporting gains starting in the second quarter of 2008, Patriot

[REDACTED]

[REDACTED]

[REDACTED]

20. During the course of negotiations, the UMWA learned that if Patriot is granted relief with respect to its Motion to modify retiree benefits, Peabody will claim that it is longer responsible for paying or reimbursing Patriot for retiree healthcare obligations, as it claims that a provision in the NBCWA Liability Assumption Agreement allows it to cut the health care of its retained retirees in such a circumstance.

21. On March 14, 2013, 119 days after submitting its first 1114 proposal and 249 days after declaring bankruptcy, Patriot filed an adverse action seeking a declaration that Peabody's obligations to provide retiree healthcare Peabody assumed in the NBCWA Liability Assumption Agreement should not be reduced or eliminated by virtue of any relief granted in the instant § 1114 motion. [Doc. No. 3217]

22. Patriot never breached or sought modification or rescission of the below market coal supply agreements, nor did it ever, prior to these bankruptcy proceedings investigate whether the transactions that saddled it with these onerous agreements could be set aside as fraudulent.

Patriot's Bankruptcy and 1113/1114 Negotiations

23. On July 9, 2012, the UMWA learned that Patriot filed for Chapter 11 bankruptcy protection in the Bankruptcy Court for the Southern District of New York.

24. UMWA International President Cecil Roberts and Patriot President and Chief Executive Officer Bennett Hatfield first met in person on August 21, 2012, to discuss the bankruptcy, Patriot's financial condition and the coal market. Mr. Hatfield made clear to the

UMWA that, pursuant to §§ 1113 and 1114 of the Bankruptcy Code, a proposal to modify the collective bargaining agreements and to alter the post-retirement benefits of retirees would be forthcoming in September 2012. President Roberts and Mr. Hatfield subsequently met on September 10, 2012, to continue their discussion. Patriot had not yet completed their Section 1113 and 1114 proposals.

25. In order to prepare for the anticipated proposals and negotiations, and to be able to reasonably and accurately evaluate Patriot's financial situation, the UMWA and its advisers, PriceWaterhouseCoopers ("PwC"), made information requests even prior to Patriot presenting the UMWA with its first proposal. The UMWA made its first information request on October 31, 2012; Patriot did not complete its response to this request until December 19, 2012. (Robertson Decl. Ex. 8)

26. Subsequent to the UMWA's first information request, it was provided access to a confidential electronic data room ("the Data Room"), in which Patriot responded to the first and all subsequent UMWA information requests. In the Data Room, the Debtors have produced thousands of pages of information, however the breadth of the information supplied should not be confused with the quality of the information provided. Information requests made by the UMWA or on its behalf by PwC remain outstanding.

1113/1114 Negotiations

27. As of the date of this declaration, negotiators from the UMWA and Patriot have met a total of fourteen times over approximately six months to discuss and exchange information about each side's respective proposals for modification of their collective bargaining agreements and UMWA retiree healthcare obligations. At each of these meetings, UMWA representatives included International President Cecil Roberts, Director of Research Brian Sanson and me

(“UMWA Negotiating Team”). At each of these meetings, Patriot was represented by its President and Chief Executive Officer Bennett Hatfield, Vice President of Human Resources Dale Lucha, Patriot Senior Counsel Eric Waller and Greg Robertson, an attorney with the Virginia law firm Hunton & Williams (“Patriot Negotiating Team”). At certain meetings, advisors and other representatives of Patriot and the UMWA attended.

First Meeting - November 15 and Patriot’s First Proposal

28. On November 15, 2012 - after the UMWA’s first information request but before Patriot completed its response to the request and three months later than the promised delivery date - Patriot presented its first proposals (“First Proposal”) to the UMWA Negotiating Team and UMWA Vice Presidents from each of the UMWA Districts containing Patriot operations. Ben Hatfield delivered a PowerPoint presentation addressing Patriot’s financial liabilities and projections and market conditions. (See Robertson Decl. Ex. 9) Hatfield acknowledged the large amount of liabilities in terms of below market coal contracts and retiree pension and health care obligations that it assumed from Peabody and Arch had contributed to its present financial condition. Throughout the presentation and follow-up conversation, he worked to cultivate a sense of urgency created by an impending breach of liquidity and EBITDA covenants Patriot negotiated in its debtor-in-possession (“DIP”) financing.

29. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30. After Hatfield's presentation, Patriot provided the UMWA Negotiating Team a copy of the Powerpoint slides used in the presentation, a copy of the First 1113 and 1114 Proposals (See Robertson Decl. Ex. 5, 6) and a document entitled "Summary of Savings Associated with 1113 Proposal." (Robertson Decl. Ex. 11) We were not provided at the first meeting a copy of Patriot's October Bank Plan and had not yet been provided data reflecting the year to year EBITDA, cash flow or cash balance. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] It was not until the actual financial data in the October Bank Plan was provided and processed by our analysts at PwC that we were able to determine that [REDACTED] [REDACTED] resulted in Patriot having a cash balance of over [REDACTED] in 2016 even *without* any 1113/1114 savings.

31. Patriot's First Proposal sought drastic cuts to employee wages and benefits, proposed the complete elimination of retiree health care coverage, and contained unnecessary modifications to UMWA work jurisdiction provisions that would effectively limit the representation and organization of Patriot's miners by the UWMA in the future. In the "Summary of Savings Associated with 1113 Proposal" containing Patriot's valuation of each of its proposals, the proposed changes to contractual jurisdiction provisions each contained an "N/A" in the column providing Patriot's estimates of year to year savings. (Robertson Decl. Ex.

11) Patriot's proposals were not specifically tailored toward the improvement of short term cash flows necessary to bridge Patriot's short-term liquidity squeeze. Instead, the First Proposal was an ideologically motivated anti-union wish list proposing to undo all of the gains miners achieved over the course of nearly 70 years of collective bargaining and erode UMWA representation of Patriot's workforce as existing Union operations are replaced by non-union operations.

32. At the November 15th meeting, Patriot explained that it wanted to reduce the compensation of represented miners to the level of *non-union* miners. Specifically, Patriot would reduce wages by [REDACTED], impose a wage freeze for 2013 and 2014; reduce or eliminate overtime and other incentive pay; eliminate up to 19 paid leave days, including paid holidays, sick leave and vacation days; impose substantial costs on employees related to health insurance; extend the term of the parties' collective bargaining agreement by two years; and, eliminate employer-paid retiree medical care. (Lucha Decl. Ex. 1A, 1E)

33. Patriot's 1114 proposal to eliminate its retiree medical care obligations involved the creation of a Voluntary Employee Benefits Association ("VEBA") funded by a one-time \$10 million contribution to be made in installments between April 1, 2013, and July 1, 2013; although the VEBA would be barely funded, Patriot proposed transitioning all current retirees, except those whose benefits are statutorily protected by the Coal Act, to the VEBA on April 1, 2013. The VEBA *could* receive additional funding from a vaguely described profit-sharing mechanism with high thresholds for distribution and unspecified amounts of money that could be generated through the sale of the UMWA's unsecured claim. Patriot's First 1114 Proposal contemplated eliminating the right to retiree health care for future retirees as well as for the

Peabody-assumed group and the Squaw Creek employees--even though these benefits were fully funded by Peabody and Alcoa, respectively.

34. At the November 15 meeting, Patriot explained that its *annual* retiree medical costs exceeded \$73 million in 2012 [REDACTED]. PwC subsequently confirmed that the costs are expected to increase rapidly, even beyond the [REDACTED] figure. Despite these projected costs, the initial \$10 million contribution was the *only* guaranteed source of funding for the VEBA. Thus, the sole guaranteed funding for the VEBA contemplated in Patriot's First Proposal would not even provide two complete months of current retirees' health care costs. Additional funding was to be provided through a profit-sharing mechanism [REDACTED]. Finally, Patriot proposed that the UMWA's unsecured retiree medical claim "could" eventually take the form of equity ownership and therefore "could potentially" be monetized to provide additional funding to the VEBA for payment of medical benefits. [Original 1114 Proposal (Robertson Decl. Ex. 5, p. 2)]. In sum, the VEBA that Patriot proposed would itself be bankrupt in a matter of weeks.

35. Patriot's 1114 proposal would not affect "Coal Act Retirees;" these retirees' health care benefits are protected by the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. § 9701 – 9722, as amended. Among the provisions in the Coal Act is a statutory mandate requiring the continuation of individual health plans maintained by signatories to the 1978 and later NBCWAs as of February 1, 1993, which are required to provide benefits to both existing retirees and beneficiaries and to a limited number of future retired miners and dependents. 26 U.S.C. § 9711. As acknowledged in the 9711 Coal Act Liability Assumption Agreement,

Peabody remains a “related person” even after the spinoff of Patriot and therefore remains liable for retiree health care benefits transferred to Patriot. Medical benefits owing to Peabody and Arch retirees covered by the Coal Act are not readily eliminated or modified. Thus, Patriot’s exclusion of Coal Act retirees from its 1114 proposal is not a concession to such retirees.

36. Patriot’s proposed modifications to collective bargaining agreements would place UMWA-represented employees in a worse position than if they were non-union workers, generally.

[REDACTED]

[REDACTED]

[REDACTED]

Second Meeting - November 29, 2012

38. The Patriot and UMWA Negotiating teams met on November 29 with no other persons in attendance. At the outset of the meeting, I informed Patriot that our analysts at PwC were awaiting a response to our request for the company’s dynamic model of its business plan, which would allow our advisers to, among other things, test the employer’s scenarios, model coal pricing and production forecasts and run their own recovery scenarios. Patriot responded that it would provide PwC with what it called the “Bank Plan Dynamic Model,” which it described as a limited and less than fully dynamic model provided to its lenders that used inputs from its Hyperion accounting software (“Hyperion”). I asked if we would be given copies of the Hyperion data files or remote access to the underlying Hyperion data and was told this presented “very complex” IT (information technology) issues that would need to be addressed by our respective teams of advisers.

39. The contours of Patriot's 1114 Proposal have always been unclear with respect to which retiree groups for whom it proposed to modify benefits. The UMWA Negotiating Team asked numerous questions of the Company about the number of retirees Peabody had assumed in the spin-off liability assumption agreements. At this meeting, we also brought to Patriot's attention the possibility that it was unnecessarily paying retiree benefits that were to be paid by either Peabody or Alcoa¹. We specifically noted, for example, that the lists suggested to us that Patriot was paying retiree medical costs for retirees of the Squaw Creek mine, which was a joint-venture between Peabody and Alcoa in which Alcoa had agreed to pay retiree medical costs. We also noted that Patriot was paying for deferred vested retirees who met the NBCWA liability assumption agreement's description of retirees whose retiree medical costs would be assumed by Peabody. After explaining the discrepancies in the lists of retirees paid for and questions arising out of our review of the lists, we requested from Patriot more precise information, including all relevant correspondence and other documents, about the allocation of retiree medical liabilities between Peabody, Alcoa and Patriot. These documents were not provided for months.

40. The UMWA stated numerous times to Patriot that we needed to thoroughly understand the allocation of retiree medical care obligations between Peabody and Patriot and whether the treatment of those obligations was inconsistent with the spin-off liability assumption agreements. It was and is critical to the UMWA's evaluation of Patriot's 1114 proposal that Patriot's actual retiree medical liability is accurately described.

¹ The Squaw Creek mine operated pursuant to a Joint Venture agreement between Peabody Holding Co. and Alcoa that specifically provides that Alcoa is responsible for retiree medical expenses it pays for the Squaw Creek group. The retiree health care benefits provided to the Squaw Creek group are reimbursed by Alcoa and therefore cost Patriot nothing. Elimination of these retirees' benefits achieves no cost savings. This agreement is set forth in the December 28, 2011, letter from Peabody to Patriot, attached at Exhibit K, p. 3, 5.

41. With respect to the VEBA funding sources identified in Patriot's 1114 proposal, President Roberts observed that the initial \$10 million cash contribution would not be sufficient to provide retiree medical benefits between the proposed April 1, 2013 transition date and the time the UMWA might conceivably be able to "monetize" any sort of unsecured claim. Hatfield confirmed this observation, admitting that Patriot's proposal left the VEBA without funding in 2013 and at least through the time a plan of reorganization could be confirmed and all or part of the UMWA's unsecured 1114 claim could be somehow converted to cash for the VEBA. President Roberts made a statement he would repeat numerous times over the course of these negotiations: that the UMWA would not accept an inadequately funded VEBA that left UMWA retirees without medical care.

42. The UMWA had significant concerns related to Patriot's first 1113 proposal to modify the collective bargaining agreements. The elimination of long-standing contractual provisions intended to preserve UMWA members' work jurisdiction resulted in no economic benefit to the company and seemed intended to reduce and eventually eliminate the UMWA's role as the collective bargaining representative of its miners. Patriot conceded more than once that the purported economic benefits of its work-jurisdiction provisions were not quantifiable, explaining that the "increased flexibility" of operating with a non-union workforce was nevertheless preferable because it resulted in lower labor costs. The UMWA requested actual data supporting Patriot's assertion that non-union labor costs were lower than union labor costs – an assertion contrary to data reviewed by the UMWA and its analysts. The UMWA's comparative analysis of UMWA and non-union costs at Patriot and other mines is set forth in the declaration of Michael Buckner. See Buckner Decl.

43. Members of the Patriot Negotiating Team repeatedly reminded us that none of them were employed by Peabody or Patriot immediately before or at the time of the spinoff. In order to facilitate a better understanding of the allocation of retiree healthcare liabilities between Peabody and Patriot by reference to documents created contemporaneous to the spinoff, I requested from Patriot copies of all solvency opinions, diligence reports and related documents addressing the Peabody-Patriot spinoff and Patriot's subsequent acquisition of Arch. Patriot responded that many such documents would be confidential and/or privileged, so I clarified my request to include all non-confidential and non-privileged documents accompanied by a privilege log describing all responsive confidential and privileged documents at this meeting on November 29, 2012.

Third Meeting – December 3, 2012

44. The Patriot and UMWA Negotiating teams met on December 3 with no other persons in attendance. The meeting opened with a follow-up request that Patriot produce its dynamic business model and its response that a model would be forthcoming that day. However, Patriot reiterated that its model was not fully dynamic and the ability to access a fully dynamic model would require UMWA advisors to travel to St. Louis to directly access Patriot's accounting system.

45. On December 3, the UMWA restated its concern that Patriot was paying the retiree medical care of hundreds of retirees for whom Peabody had assumed liability. The UMWA repeated concerns about the discrepancies in the lists of retirees allocated to Peabody and Patriot pursuant to the spin-off liability assumption agreements. Patriot responded that they had investigated the discrepancies and determined that it was paying for benefits to certain Coal Act retirees who were supposed to be assumed by Peabody under the Coal Act Liability

Assumption Agreement because Peabody did not include them on a list of assumed retirees. Patriot was also paying for the retiree health benefits of certain NBCWA retirees who were supposed to have been assumed by Peabody under the relevant assumption agreement Peabody did not include them on a list of assumed retirees. Patriot acknowledged that it had never invoked the dispute resolution mechanisms provided in the liability assumption agreements. The parties agreed to discuss allocation of retirees between Peabody and Patriot in a teleconference, which was ultimately held on January 25, 2013.

46. At this meeting, Patriot confirmed that it has always received reimbursement from Alcoa for the cost of retiree medical expenses paid on behalf of retirees of Peabody's Squaw Creek joint-venture with Alcoa. Patriot also confirmed that its 1114 motion sought relief from its obligation to provide these benefits despite its ongoing and uninterrupted receipt of these reimbursements. As part of the discussion of the Squaw Creek retirees, Patriot disclosed that it had reached a settlement with Peabody in December of 2011 whereby it pledged to reimburse Peabody for amounts it had received from Alcoa. The settlement agreement's terms reference no benefit to Patriot and does not address Peabody's ongoing failure to pay for the over 500 retirees whose retiree medical care Peabody assumed in the liability assumption agreements but subsequently dumped on Patriot.

47. The UMWA asked for information about Patriot's ongoing investigation in the possibility of a fraudulent transfer action or other litigation against Peabody or Arch. Mr. Hatfield stated that the investigation was being conducted by Davis Polk, the same law firm that also represented Patriot at the time of the spinoff, and managed by Patriot General Counsel Joe Bean, a Peabody attorney and officer prior to the spinoff. Hatfield confirmed that the

investigations into Peabody and Arch would be completed within the time frame of the ongoing 1113 and 1114 negotiations, a statement his counsel would subsequently deny was made.

48. At the conclusion of the December 3 meeting, the UMWA Negotiating Team asked for additional clarification of Patriot's profit-sharing proposal, explaining that metrics like "net income" made the proposal too conceptual and vague, and that the value of such proposal could not be quantified or understood. Patriot did not provide an explanation; rather it suggested that the UMWA propose an alternative in a counterproposal.

Fourth Meeting – December 18, 2012

49. The Patriot and UMWA Negotiating teams met on December 18, 2012. At the outset of the meeting, Patriot presented the UMWA Negotiating Team with a letter dated December 17 from Ben Hatfield addressed to President Roberts. In that letter, Mr. Hatfield admitted that Patriot could not estimate the amount of funding available to the VEBA. (Robertson Decl. Ex. 43). In the letter, Hatfield also addressed a number of the information requests made by the UMWA and incorrectly characterized those requests as being filled.

50. The UMWA immediately addressed the mischaracterizations, opening the meeting by specifically identifying the outstanding components of the UMWA's information requests during the meeting and repeating our requests for correspondence and other documents referencing the allocation of retiree medical liabilities between Peabody and Patriot at the time of the spin off. President Roberts followed up on the status of those information requests, specifically identifying the need for a fully dynamic business model, solvency opinions, and information relating to the allocation of retirees to Peabody or Patriot.

51. Patriot responded that their lawyers had looked into the issue of Peabody-assumed retirees for whom Patriot had been paying medical expenses and determined that the allocation

of retirees could not be disputed. The UMWA insisted on production of the requested documents despite Patriot's position that it would not produce the documents without a subpoena. We responded that a subpoena was not necessary to obtain documents relevant to the Company's 1114 proposal and the question of whether Patriot's retiree medical liability could be reduced by correcting a misallocation of Peabody-assumed retirees was absolutely relevant. The UMWA renewed our still outstanding request for solvency opinions and diligence reports relating to the spinoff and Magnum acquisition. Finally, we brought to the Patriot Negotiating Team's attention our PwC advisors' difficulty obtaining mine-level pricing forecasts and analyses, having received the response from Patriot's advisors that this information could not be provided as it was "too granular." (Robertson Decl. Ex. 39)

52. [REDACTED]

[REDACTED]

[REDACTED] After lunch, President Roberts noted that 129 days lapsed between Patriot's bankruptcy filing and the presentation of its first proposals. President Roberts identified the key concepts the UMWA would require to reach a consensual resolution and informed Patriot that PwC was nearing completion of its preliminary analyses of the Patriot's business plan. As a result, the UMWA would be prepared to deliver its first Counterproposal shortly after the holidays. Mr. Hatfield responded that he understood the UMWA's concerns with Patriot's first proposals and explicitly acknowledged that the \$10 million in initial VEBA funding and profit-sharing was unlikely to result in any contribution before 2015 left a coverage "gap" from the time a plan of reorganization could be confirmed and the time the VEBA could receive any substantial funding from the UMWA's unsecured claim.

Fifth Meeting – January 8, 2012 and the UMWA’s First Counterproposal

53. The Patriot and UMWA Negotiating teams met on January 8 with no other persons in attendance. At the outset of the meeting, we addressed with Patriot our concern about outstanding information requests, including a complete response to our request for correspondence and documents related to allocation of retiree medical liabilities under the spinoff agreements. Mr. Sanson made a comprehensive request for the Patriot active and retiree medical utilization data. Asked to clarify his request, Mr. Sanson said he wanted a comprehensive set of data to include, for example, the average cost of the top 25 most often used prescription drugs; savings obtained through pharmacy networks; pricing for ambulance services; emergency room costs; inpatient services costs; DME costs and savings, etc. The UMWA also followed-up with a request for medical utilization data in writing in a subsequent information request. (Robertson Decl. Ex. 50.)

54. In the context of conversations about new mine development, the UMWA Negotiating Team asked Patriot that when it made changes that affect the bank plan or other documents, it notify the Union of the change and provide an updated document. No such notice had been provided or updates made to the October Bank plan as of the date of this declaration.

55. We again requested that the Company renegotiate or replace its DIP financing arrangements [REDACTED]. Mr. Hatfield responded that it would not be appropriate to request renegotiation or seek replacement at this time because there had not been a breach.

56. The UMWA Negotiating Team pointed out that Patriot’s “headcount data” [REDACTED]
[REDACTED]

[REDACTED].² Lucha responded that the “headcount data” document represented personnel budgeted for December 31, 2013. We requested that Patriot provided actual figures for December 31, 2012, which was subsequently provided in the data room and then updated. (Exhibit M)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

58. Following a break for lunch, the UMWA presented its First Counterproposals addressing modifications to collective bargaining agreements under Section 1113 and modifications to retiree medical benefits under Section 1114. [UMWA Counterproposal—January 8, 2013 (Robertson Decl. Ex. 48)]. The UMWA’s First Counterproposals offered, among other provisions, a wage freeze, restricted and reduced overtime payments, permitted flexible scheduling to “hot-seat”³ and increase production, allowed supervisors to perform bargaining unit work in some circumstances, and active employee health insurance cost-sharing. In addition, the UMWA’s proposal sought a speedier exit from bankruptcy to realize substantial savings from bankruptcy-related costs. The proposal also contained provisions that would ensure that the UMWA was not the only Patriot constituency that bore the burden of reorganization, including a provision that prevented Patriot management from using any savings realized from

² 2012 Survey Results, U.S. Coal Mine Salaries, Wages and Benefits, InfoMine USA, Inc. © 2012.
³ “Hot-seat” refers to changing crews without idling a machine within a mine. Currently, crews switch off at the mine face. Under a hot-seat provision, the relief crew would start its shift and travel down the mine before the prior shift ends, allowing the relief employee to take over without the machine being turned off.

UMWA concessions to provide management bonuses or wage and benefit increases targeted exclusively for non-union employees and a provision that ensured that the concessions were temporary, so that UMWA-represented employees' wages would return to pre-bankruptcy levels when Patriot's financial situation improved. The UMWA also proposed the creation of a litigation trust and proposed language that increased UMWA members job security and work opportunities.

59. The UMWA's counterproposal contained some estimated figures representing the approximate values of many of its proposals, but the UMWA told Patriot that we required additional information exchange and diligence to quantify the entire proposal. The figures provided were preliminary estimates of their monetary value intended to convey the magnitude of each proposal and should not be considered or relied upon as precise or final and would be updated as information permitted. [Id.]

60. [REDACTED]

[REDACTED] Mr. Hatfield asked President Roberts whether he planned any work stoppages or other actions that could impact Patriot's operations, to which he responded that the UMWA would prepare for the worst and hope for the best. President Roberts concluded the meeting by stating, "If I weren't serious about coming up with a solution, I wouldn't be here. I'd send somebody else."

Sixth Meeting – January 18 and Patriot's Second Proposal

61. On January 17, 2013, Patriot transmitted its second proposal, which effectively rejected the UMWA proposal in its entirety. (Robertson Decl. Ex. 3) The changes included:

- a. An additional \$5 million initial cash contribution to the VEBA, representing approximately one month of its monthly retiree medical expense and postponement of the VEBA transition date from April 1 to June 1 in apparent recognition of the fact that an April 1 date was simply not feasible.
- b. Raising the maximum annual profit-sharing distributions to the VEBA from \$20 million to \$40 million and applying the profit-sharing to 2014, even though Patriot's business plan did not contemplate profits sufficient to generate any profit-sharing until 2016.
- c. A modest scaling back of its original proposal to eliminate nearly all contractual provisions protecting UMWA members' job opportunities and work jurisdiction.
- d. An agreement to the UMWA's suggestion as to how recoveries obtained by the litigation trust would be distributed, but no agreement to the litigation trust mechanism that would facilitate such recoveries.

62. Patriot's proposal left intact the other proposed changes to these provisions included in its initial proposal even though they do nothing to improve profitability or cash flow and the 1114 proposal continued to rely upon the vague term of "net income" and broad exclusions that left the UMWA's Negotiating Team uncertain as to precisely how the proposed profit-sharing mechanism would function.

63. The Patriot and UMWA Negotiating teams met on January 18. The UMWA Negotiating Team opened the meeting by noting a difference between PwC and Patriot's advisors as to the amount of money generated by the Patriot's profit sharing proposal assuming the forecasts in Patriot's October bank plan, which PwC had calculated to be [REDACTED]

██████████ 2016. The UMWA stated that it had not rejected the VEBA concept, but could not accept an essentially unfunded VEBA.

64. Concerned that the inability of the UMWA and Patriot to come to the same understanding on the amount of profit-sharing payments assuming the forecasts in Patriot's October Bank Plan were the result of PwC's inability to manipulate a fully dynamic model, President Roberts reiterated again his concern that Patriot had stated UMWA advisers would need to travel to St. Louis to use the Hyperion system in order to have full access to Patriot's model. UMWA advisers arranged to travel to St. Louis to examine the Hyperion system and evaluate its capacity to perform the analyses necessary to develop and evaluate proposals. The UMWA's advisers traveled to St. Louis on January 24, 2013.

65. Once again, the UMWA Negotiating Team asked for more information about Patriot's estimate as to the value of its unsecured claim. President Roberts asked, "If you've told me in these negotiations, I'm not sure I've heard it – what is your position on the value of our claim? The lower number you put on that claim, the worse off we are as far as being able to fund the VEBA." The UMWA received no substantive response to its inquiry.

66. The UMWA Negotiating Team also asked whether Patriot's proposal contemplated active employees with a vested right to retiree medical care transitioning to the VEBA and noted this population may comprise approximately half of Patriot's unionized workforce. Patriot sought to eliminate certain agreements altogether at idled operations, thereby eliminating all work jurisdiction provisions and job opportunities for UMWA members. At active operations, the UMWA Negotiating Team pointed out that Patriot's proposal left it with the ability to avoid its successorship obligations at certain mines.

Seventh Meeting – January 31, 2013

67. The Patriot and UMWA Negotiating teams met on January 31, 2013, with no other persons in attendance. At the outset of the meeting, the UMWA Negotiating Team was notified it needed to execute additional confidentiality agreements required by Patriot's third party administrator, CVS Caremark, in order to obtain the medical utilization data requested at the January 8 meeting and a follow-up written request. Following the meeting between the UMWA and Patriot Negotiating Team, there was a conference call with advisers from each side to exchange information about the data and assumptions used in a valuation of Patriot's retiree medical liabilities.

68. We again raised our unresolved concern that the absence of a fully dynamic model impaired its ability to promptly and confidentially process a range of production and pricing scenarios and conduct other analyses. I shared the observation of our advisers at PwC that they had never been involved in a large corporate bankruptcy in which the Debtor does not have a fully dynamic business model. Mr. Hatfield responded:

We have always had a dynamic business model. We do not have a modular or portable business model – in other words, we can't put it on a thumb drive. I don't think this is markedly different than what you see at other coal companies, where forecasting is rolled up from the financial infrastructure. We have a dynamic business model system. We have a complex business – 14 complexes across two states – it's a complex business. What Blackstone attempted to do was create a more portable business planning model that accomplishes a lot of that business plan flexibility – it does require some manual or hard data entry on certain functions, but it does provide a lot of flexibility. We gave it to our banks and they generally responded it was helpful. Things haven't changed – we've been telling you this all along. If you need to run scenarios that go beyond what the Blackstone model can deliver you can come to St. Louis. We've given you what we have – so for PwC to complain isn't very helpful.

69. The UMWA Negotiating Team again implored Patriot to seek renegotiation or replacement of its DIP covenants. To this, Mr. Hatfield responded that Patriot had not

approached Patriot's DIP lenders on the liquidity covenant because he did not forecast breaching the liquidity covenant, it would cost money to negotiate a new covenant in the form of fees, interest rates, etc., and financing with more favorable covenants were not likely available. On this last point, I responded that our advisers at PwC informed us replacement DIP financing with lower cash balance requirements was certainly available and I asked Mr. Hatfield whether we could negotiate a separate confidentiality agreement that would enable PwC to speak to lenders about options for replacement financing. Mr. Hatfield responded that any DIP lender would require information about the progress of our negotiations to which I responded the DIP lenders recovery would likely be secure under any conceivable outcome of our negotiations. Mr. Hatfield stated that he would consider our proposal and provide a response. We did not receive a response.

70. The UMWA Negotiating Team repeated once more its concern that a complete response to its request for documents and correspondence relating to allocation of retiree medical liabilities at the time of the spinoff had not been provided. In addition, we asked whether Patriot's 1114 proposal included those retirees for whom the obligation to provide retiree medical care had been assumed by Peabody. Mr. Hatfield responded that he was not sure and needed to confer with counsel, but assured us that Patriot did not intend to provide Peabody a windfall. He also stated that his attorneys continued to review the issue of the approximately 500 Peabody-assumed retirees and were exploring avenues for relief under the spin-off agreements' dispute resolution mechanisms.

71. In furtherance of our repeated efforts to obtain additional information about Patriot's position concerning the quantification of any potential UMWA unsecured claim generated by reason of the elimination of retiree medical care, the UMWA Negotiating Team

requested that it confirm that the obligation to provide our retirees' medical benefits was a corporate responsibility. Patriot has failed to provide any substantive response. The absence of this, as well as additional necessary and relevant information pertaining to the valuation of a core component of Patriot's 1114 proposal (the primary funding mechanism proposed for the VEBA), made it difficult for the UMWA to conduct any meaningful evaluation of the feasibility of Patriot's proposal.

Eighth Meeting – February 5 and the UMWA's Second Counterproposal

72. The Patriot and UMWA Negotiating teams met on February 5 with no other persons in attendance. At the outset of the meeting both parties acknowledged that their respective advisers continued to work together on a valuation of Patriot's retiree medical liabilities, noting that preliminary reports suggested the parties may be about [REDACTED] apart due to a difference in view on certain key assumptions. The UMWA Negotiating Team repeated once more its request for correspondence and other documents referencing the allocation of retiree medical liabilities between Peabody and Patriot at the time of the spin off. In response to further follow-up on our request for medical utilization data, we were informed that Patriot's third-party administrators would not release certain information even with the confidentiality agreements. Patriot again indicated it would provide confidentiality agreements for us to review and execute.

73. The UMWA also notified Patriot that it would file a notice with the National Labor Relations Board that it may go on strike at Patriot's facilities. President Roberts made clear that the notice did not reflect a plan or intent to call a strike, but that filing the notice allowed the UMWA to strike if it became necessary.

74. After providing an overview of the history of the retiree medical benefit going back to resolution of a 1946 strike and the government's seizure of coal mines, President Roberts discussed the terms of the UMWA's second counterproposal, which included acceptance of the Company's proposal to transition Patriot's retirees into a VEBA, if the VEBA was sufficiently funded. The UMWA proposed funding the VEBA through several sources, including a rights-offering mechanism to deliver \$600 million to the VEBA, secured in part by a \$400 million note and an EBITDA based-calculation, with minimum and maximum contribution amounts. The UMWA's profit-sharing proposal explicitly noted that calculation of EBITDA for the purpose of profit-sharing "will be determined based on subsequent discussions," as the UMWA stated any reasonably concrete and workable metric not subject to manipulation would be acceptable. The UMWA's VEBA proposal, unlike Patriot's, did not contemplate relief for the Peabody-assumed group, who would not transition to a VEBA and remain Peabody's responsibility. The second counterproposal also modified the automatic snap-back provision [REDACTED]

[REDACTED] Proposed wage freezes, changes to overtime compensation, scheduling flexibility, shift start times, the ability of supervisors to perform bargaining unit work, and provisions related to work opportunities were all carried over substantially unchanged from the UMWA's First Counterproposal.

75. At the conclusion of the meeting, I told Patriot's Negotiating Team that preliminary estimates of the value of the UMWA's Second Counterproposal, totaled approximately \$135 million in 2013 even under the conservative coal pricing forecasts in the October Business Plan, a value close to the [REDACTED] in 1113/1114 savings targeted in Patriot's October Business Plan for the same year.

Ninth Meeting – February 6, 2013

76. The Patriot and UMWA Negotiating teams met on February 6, 2013 for the ninth time related to this matter. Patriot responded to the UMWA's Second Counterproposals expressing skepticism about the feasibility of the proposed rights-offering, but once again acknowledged the first-year "gap" in VEBA funding in its own proposal. In support of an assertion that the UMWA's rights-offering proposal was not feasible, Patriot stated that the presumed an unrealistic total enterprise value. But Patriot refused to provide us its own view of the Company's total enterprise value, leaving us uninformed as to both the basis of comparison used to determine our proposal was "unrealistic" and the company's view as to what value was realistic.

77. Patriot noted that our most recent proposal contemplated the Company remaining in the 1974 Pension Plan, while Patriot had proposed to withdraw. Mr. Hatfield stated we should consider Patriot's position that withdrawal would permit the Funds to make litigation claims against Peabody and Arch. After receiving clarification that Patriot was referring to an action under a provision in ERISA allowing a claim against related entities that "evade or avoid" withdrawal liability, we requested all documents and other evidence that would support such a claim. To date, we have not received a response to this request, leaving us unable to determine the merits of what Patriot indicates is a significant benefit of its proposal to withdraw from the Pension Plan.

78. On February 8, nearly a full month after the UMWA Negotiating Team first requested medical utilization data necessary to fully value its active medical savings proposals, Patriot provided by e-mail a copy of one of two third-party CVS/Caremark confidentiality

agreements for our review and execution. The second agreement would not be provided until February 14.

Tenth Meeting – February 15, 2013

79. The Patriot and UMWA Negotiating teams met on February 15. Also in attendance were the UMWA’s financial advisors Perry Mandarino and Adam Rosen of PwC and Patriot’s financial advisors Paul “Flip” Huffard and Adam Schlessinger of Blackstone Advisory Services (“Blackstone”).

80. PwC provided all in attendance materials that outlined the terms of the UMWA’s most recent proposal. (Exhibit L) After an explanation of the valuation of our 1113 proposals, PwC reviewed the specifics of the rights-offering and other aspects of the UMWA’s 1114 proposal. A detailed break-out of the individual components of 1113 and other savings identified in the written document presented at the meeting was subsequently provided to Blackstone by e-mail. The PwC proposal provided an outline of the terms of the rights offering, the detail as to how proceeds of the rights-offering would be used to fund the VEBA and other expenses and an estimate of recoveries other unsecured creditors could expect to receive. Adam Rosen stated that the rights-offering proposal assumed a Patriot Total Enterprise Value of approximately \$2.25 billion.

81. After PwC’s presentation, Paul Huffard of Blackstone provided comments, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

82. Following presentations by the financial advisors and their departures, the UMWA and Patriot Negotiating teams remained to discuss certain items. Among these was Patriot's statement that it would send a letter to Peabody disputing the improper allocation of the approximately 500 retirees in the Peabody-assumed group for whom Patriot had been paying retiree medical benefits.

83. The parties agreed that further discussions would be needed to exchange the extensive mine-specific information necessary to arrive at a consensus on the potential benefits of the UMWA's proposal for scheduling flexibility to allow increased production. A series of teleconferences were scheduled and subsequently held between Patriot personnel and UMWA personnel and advisers.

Eleventh Meeting – February 19, 2013 and Patriot's Third and Final Proposal.

84. The Patriot and UMWA Negotiating teams met on February 19, 2013. The meeting began with a request from Patriot that PwC provide additional detail relating to valuation of the Union's 1113 proposals for the purpose of determining the value of the UMWA's scheduling flexibility proposal at each mine complex. Patriot discussed its request for information from PwC demonstrating market demand for any additional tonnage that could be produced under the proposal.

85. Patriot presented its Third 1113 and 1114 proposals at this meeting. (Robertson Decl. Ex. 2) These proposals contained remarkably little substantive movement from Patriot's second and first proposals. A summary of their terms is as follows:

- a. Union employees will receive a wage increase in the event that a similarly-situated non-union employee receives a discretionary wage increase from management to a level that is higher than the Union employee. This modification does not represent any real quantifiable movement from the first or second proposals. Moreover, it does not take into account the fact that non-union miners are eligible for mine-level production and safety incentives that may push their total compensation even higher than what is contemplated for union miners under Patriot's proposal.
- b. New language in the proposal recognizing successorship adds nothing to the meaning or effect of the original proposal. Similarly, a promise to "work with the Union to develop methods that allow the Employer to recognize the Union at future operations" is so vague and devoid of substance as to be meaningless.
- c. The 1114 proposal also contained what purports to be a "detailed mechanism" for monetization of the UMWA's unsecured claim. The process - involving the UMWA coming to an agreement with the Company on resolution of 1113/1114 matters before learning whether the VEBA would be adequately funded - was obviously unsatisfactory. An additional one-month extension of the date on which retirees would transition to the VEBA cannot be viewed as a concession from the position taken in earlier proposals inasmuch as it is likely necessary given the time it would take to prepare for administration of the VEBA. Finally, additional increases in the annual and aggregate caps in the Company's profit-sharing proposal do nothing to increase [REDACTED]

86. Patriot stated in its Third 1114 proposal that it would request from the Court declaratory relief determining Peabody's responsibilities to the Peabody-assumed group in the event a consensual agreement or court order modified or terminated Patriot's retiree medical care obligations. (Robertson Decl. Ex. 2) Because the proposal, which suggested that the Court could order Peabody to make payments to VEBA, was not feasible, Patriot transmitted on February 27 a Fourth 1114 Proposal correcting these deficiencies in the Third. (Robertson Decl. Ex. 1) Other than this correction, the Fourth proposal made no changes to the Third.

87. With the exception of the one-month extension of the VEBA transition date, its Third Counterproposals offered nothing in terms of quantifiable movement from their Second and First Counterproposals

88. Neither at the February 19th meeting nor in its written proposals did Patriot inform us how much funding the VEBA would receive and when. As a result, President Roberts concluded the meeting asking Patriot to make a proposal as to the amount of the money that would be put into the VEBA. He noted that the Union's proposal provided a specific number, but that Patriot had not provided even a "ballpark figure." The UMWA needed to know how much money was available, how quickly and how long term funding of health benefits would work in reality.

89. The UMWA asked a number of times during the meeting if the VEBA would be adequately funded, when the VEBA would be funded, for how long, and for more specific information about the expectations that the VEBA's profit-sharing mechanism would ultimately provide funding to the VEBA. We received no substantive answers. On February 28, 2012, President Roberts sent a letter to Mr. Hatfield enclosing a list of questions seeking "details on a

corresponding number – or any fixed numbers. Blackstone’s presentation addressed none of the UMWA’s requests for information about a significant component of Patriot’s 1114 proposal.

92. Patriot filed its Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 of the Bankruptcy Code (“1113/1114 Motion”) on March 14, 2013. [Doc. No. 3214]

Thirteenth Meeting – March 15, 2013

93. The Patriot and UMWA Negotiating teams met on March 15. Mark Bushman from Blackstone attended. Grant Crandall, General Counsel of the UMWA attended for a small portion of the meeting. Prior to the meeting, on March 14, President Roberts sent a letter to Ben Hatfield expressing disappointment in the decision to file the Section 1113 and 1114 motions and frustration at Patriot’s continued unwillingness to provide information about the largest proposed source of VEBA funding in Patriot’s 1114 proposal. Recounting their last meeting before Patriot filed its motions – the March 4 meeting – President Roberts wrote:

Your advisors’ presentation contained no information about specific dollar amounts to fund the VEBA, made no attempt whatsoever to specify a dollar amount of total annual benefit payments the VEBA outlined in your proposal could sustain, and danced around an essentially nonresponsive range of [REDACTED] potential "scenarios" as a response to our request for your estimate of the value of the company assuming your proposed 1113/14 savings.

See Roberts Letter to Bennett dated March 14, 2013—Exhibit O.

94. The meeting on March 15, 2013, did not cure any of these defects. It began with a discussion of a March 13 request made from PwC to Patriot’s advisors asking that coal pricing scenarios be run through the Company’s business model and Hyperion system. The day after the request was made, Mr. Hatfield wrote a letter to President Roberts criticizing PwC’s request. PwC responded to the letter disputing the criticisms. See Traynor email to Hatfield, 4/9/13,

Exhibit P. This exchange highlights the difficulties inherent in PwC's need to rely on Patriot to model its coal pricing and other scenarios in the absence of reasonable access to a truly dynamic model.

95. At this meeting, Patriot explained its theory as to how it could withdraw from the 1974 Pension Plan and pay a stream of payments rather than incurring the full amount of withdrawal liability. The UMWA made clear that not only was this option not available to Patriot, but it would impose higher cash costs through 2016 than would remaining in the Plan.

Fourteenth Meeting – April 3 and the UMWA's Third and Final Counterproposal

96. On March 27, I sent to the Patriot Negotiating Team the UMWA's Third Counterproposals (Exhibit Q), along with a cover letter from President Roberts (Exhibit R) and a "Summary of Savings" document (Exhibit S) detailing the value of the savings contemplated in the UMWA's proposal and illustrating how these savings matched the annual targets for EBITDA and liquidity position set forth in Patriot's October Bank Plan.

97. The UMWA's Third Counterproposal made several substantial revisions to its Second Counterproposal, many in response to concerns raised by Patriot's Negotiating Team in prior meetings:

- a.* First, the UMWA revised its Section 1114 VEBA proposal. The investor contribution to the Debtors for the purpose of funding a plan of reorganization, providing funding to the VEBA and providing working capital for the reorganized Company was reduced to \$500 million in response to the Company's concerns. The investment would be made at a discount of 7.5% and would result in a cash contribution of no less than \$400 million into the VEBA upon emergence from bankruptcy. Again, in response to Company concerns, the new proposal provides

that a new investor would own not less than 51% of the fully diluted common stock of Reorganized Patriot and hold a majority of seats on its Board. In lieu of the Secured VEBA Promissory Note proposed in the UMWA's Second Counterproposal, the UMWA proposed that Patriot would issue the VEBA Preferred Stock in an initial amount of not less than \$400 million, which would PIK at 5% per annum for 18 months in order to provide relief during the Company's liquidity crunch and then be payable in cash. Finally, the UMWA eliminated its proposal that the UMWA receive "Class B" non-voting shares and reduced the number of UMWA appointed Directors to the Reorganized Board of Directors from 3 to 2, adding one additional independent director.

- b.* In response to the Company's concern that it have certainty that the UMWA's concessions would be locked-in for the duration of the period forecast in its October Bank plan, the UMWA eliminated the equitable snap-back provisions included in its earlier proposal. This locked-in the UMWA's 1113 concessions through the date of an automatic snap back in December of 2016, when the Company, according to its own October Bank Plan, would be profitable and have positive cash flow *even without any* 1113 and 1114 concessions.
- c.* In response to the Company's insistence that the UMWA's scheduling flexibility proposals did not provide value at most of its operations – a point the UMWA does not concede – we adopted the Company's projections that its Rocklick and Highland complexes could generate additional revenues through the proposal beginning in 2014. We note that delay in the implementation of the proposal addresses the Company's concerns that ramping up production would take some

time and also note that the smaller overall amount of increased tonnage is easier to market. Per the Company's request, our advisors provided a market demand forecast showing demand for additional tons produced at Highland and Rocklick in the years 2014 through at least 2016.

- d.* In addition, the UMWA adopted Patriot's request that the proposed litigation trust be limited to certain causes of action and exclude the possibility of "double recoveries" by providing that an action commenced by the trust involving the obligation to provide UMWA retiree healthcare shall be distributed entirely to the UMWA for healthcare, unless such proceeds would constitute a double-recovery, in which case any such proceeds would be distributed to the Company and creditors in the same ratio contemplated for recoveries in other actions.

98. PwC provided the Summary of Savings with the UMWA's Third Proposals which contained charts comparing data from Patriot's October business plan and PwC's analyses of the value of the UMWA's Third Proposals that demonstrate that implementation of the UMWA's proposals would result in Patriot having a liquidity position that is at or above their target levels. Similarly, it shows that with respect to profitability measured by EBITDA, implementation of the UMWA's Third Proposal allows Patriot to meet or exceed their targets. All of these amounts are calculated using Patriot's conservative coal forecasts and more realistic coal pricing would, of course, result in even better performance.

99. Shortly before 9:00 p.m. EST on April 10, 2013, the UMWA received notice that Patriot submitted its Fourth section 1113 proposal and Fifth section 1114 proposal. At the time I signed this declaration, I had not had an opportunity to review these new proposals.

December 28, 2011, relating to Alcoa and Squaw Creek Allocation, Reimbursement and Settlement.

- L. Patriot Coal headcount data—budgeted, [Data Room 1.1.11.3]
- M. Patriot Coal headcount data—actual figures for December 31, 2012; [Data room 1.1.11.4 and 5].
- N. Patriot Coal Presentation to the UMWA, March 4, 2013, prepared by Blackstone.
- O. PwC Discussion Materials, February 2013, for 2-15-2013 bargaining meeting, including breakout savings summary.
- P. March 14, 2013 letter from UMWA President Roberts to Mr. Hatfield, concerns about lack of VEBA funding and business plan cost estimates
- Q. April 9, 2013 email from Art Traynor to Hatfield and Patriot Negotiating Team relating to Hatfield’s March 14, 2013 letter, PwC’s concerns about outstanding documents and sensitivity analysis
- R. UMWA’s Third Counterproposals – March 27, 2013
- S. Cover letter from UMWA President Roberts to Mr. Hatfield enclosing Third Counterproposal dated March 27, 2013
- T. UMWA Third Counterproposals “Summary of Savings,” dated March 27, 2013.

Dated this 14th day of April, 2013.

s/ Sara J. Geenen
Signature

CERTIFICATE OF SERVICE

I hereby certify that the foregoing AMENDED Declaration of Arthur Traynor was filed with the Court this day and served upon all CM/ECF Participants.

Dated this 15th day of April, 2013.

s/ Sara J. Geenen