

**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)

Hearing Date:

April 29 at 10 a.m. CDT

Hearing Location:

Courtroom 7 North

RE: ECF No. 3832

**UMWA's RESPONSE TO THE DEBTORS' OBJECTIONS TO THE INTRODUCTION
OF CERTAIN EXHIBITS IN CONNECTION WITH THE HEARING ON THE
DEBTORS' MOTION TO REJECT COLLECTIVE BARGAINING AGREEMENTS
AND TO MODIFY RETIREE BENEFITS PURSUANT TO 11 U.S.C. §§ 1113, 1114**

The Debtors' object to the inclusion of Expert Materials relied upon by Srinivas Akunuri related to coal pricing because "the UMWA has produced only a selection of the November 2012 Wood Mackenzie coal forecast report and has refused to disclose all portions upon which Akunuri relied." (See Doc. No. 3832) The characterization that the UMWA failed to disclose information upon which Akunuri and his support staff at PwC relied is wrong.

Mr. Akunuri and PwC considered a specific large spreadsheet which contains coal prices and forecasts for different types of coal throughout the world through the year 2032 ("the forecast report" referred to by Debtors). The spreadsheet was prepared by the research and consulting firm, Wood Mackenzie. From it, Mr. Akunuri and PwC selected information for the types of coal most similar to coal produced by Patriot and then used Wood Mackenzie forecasted

prices for those types of coal as the basis for comparison with Patriot management's forecasted prices for Patriot coal. Pursuant to the use agreement between PwC and Wood Mackenzie, PwC was not allowed to produce to third parties any Wood Mackenzie data which they did not consider in formulating their opinions. Therefore, when Davis Polk made the request of Wood Mackenzie background materials, the UMWA produced the price forecasts, through 2032, for the types of coal that Mr. Akunuri and PwC actually considered for their analysis.¹

At the deposition of Mr. Akunuri on April 18, 2013, the Debtors questioned whether the correct types of coal were compared to Patriot coal. The UMWA responded, providing to Debtors from the Wood Mackenzie forecast all of its information on all of the classifications of coal in the Southern West Virginia, Northern West Virginia, and Western Kentucky areas—which are the areas where Patriot produced coal and are therefore the areas which Mr. Akunuri and PwC considered in their evaluation. (See Exhibit 1) It is beyond dispute between the parties that the best comparison for Patriot coal is other coal produced in the same seams and areas. The UMWA further offered that if Patriot could make a plausible showing that Mr. Akunuri had made a mistake in selecting the most comparable types of coal categorized by Wood Mackenzie to compare to Patriot coal, it would ask Mr. Akunuri to consider the forecasts for the additional type(s) of coal; this would then allow PwC to provide the Wood Mackenzie forecast for the new type of coal to Patriot.

¹ When Davis Polk requested the entire spreadsheets, the UMWA immediately contacted PwC and Wood Mackenzie and negotiated an agreement whereby access would be provided to Davis Polk if it subscribed to Wood Mackenzie at the price of \$28,000. When Davis Polk refused this offer, it was the UMWA's position that it had already provided to Davis Polk all of the materials actually considered by Mr. Akunuri, and that its obligation to disclose expert background materials had been discharged in full.

The Debtors' only produce coal in West Virginia and Western Kentucky. The Wood Mackenzie forecasts that the Debtors seek include the prices of international coal and coal from other coal-producing regions; those forecasts have no relevance to Akunuri's opinion or to the Debtors' ability to evaluate his opinion. Patriot's own expert, Seth Schwartz, only compared Patriot coal to standard forecasts for other types of coal produced in the same areas. By providing the Debtors a description of all of types of coal included in the Wood Mackenzie survey from the areas where Patriot produced coal, the UMWA provided the Debtors with all of the necessary data to evaluate whether the correct type of Wood Mackenzie coal was selected by Mr. Akunuri to compare to Patriot coal. The UMWA therefore has provided to the Debtors all of the information that Patriot needs to evaluate Mr. Akunuri's opinions on Wood Mackenzie coal forecasts, so that it should be allowed to present evidence on Wood Mackenzie forecasts, and how the forecasts compare to Patriot management's own forecasts, at the upcoming trial.

Dated this 27th day of April, 2013.

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