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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
Case No. 12-51502-659

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In the Matter of:

PATRIOT COAL CORPORATION, et al.,

Debtors.

- - - - -x

REDACTED TRANSCRIPT (MANDARINO TESTIMONY OMITTED)

United States Bankruptcy Court
111 South 10th Street
4th Floor
St. Louis, Missouri

May 2, 2013
9:16 AM

B E F O R E:
HON. KATHY A. SURRETT-STATES
U.S. BANKRUPTCY JUDGE

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Motion to Reject Collective Bargaining Agreements and to Modify
Retiree Benefits Pursuant to 11 U.S.C. 1113, 1114 of the
Bankruptcy Code Filed by Debtor (3214)

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1 P R O C E E D I N G S

2 THE CLERK: Please rise. The United States Bankruptcy
3 Court for the Eastern District of Missouri is now in session,
4 the Honorable Kathy A. Surratt-States presiding.

5 THE COURT: Good morning. Please be seated. Good
6 morning. All right. It's like déjà vu. Here we are again in
7 the continued hearing in the Patriot Coal matter on the
8 debtors' motion under 1113 and 1114. Let me start first with
9 appearances in the courtroom.

10 MR. KAMINETZKY: Good morning, Your Honor. Michael
11 Russa -- no, sorry -- Benjamin Kaminetzky --

12 THE COURT: I was thinking the same thing. Mr.
13 Kaminetzky, I'm well aware of who you are today.

14 MR. MOSKOWITZ: Right. All I could say is all
15 overweight New York lawyers don't have the same name. But
16 anyway -- okay.

17 I'm sorry. Where was I? Oh yeah. I'm Benjamin
18 Kaminetzky of Davis Polk & Wardwell on behalf of the debtors.
19 I'm here in court with my colleague, Dan Loss. Elliot
20 Moskowitz will be joining us soon. Jonathan Martin. We're, of
21 course, here with from -- Lloyd Palans from Bryan Cave, our
22 local counsel in this issue. Thank you.

23 THE COURT: Good morning.

24 MR. WILLARD: Good morning, Your Honor. May it please
25 the Court. Greg Willard from Carmody MacDonald on behalf of

1 the official unsecured creditors' committee. With me is my co-
2 counsel, Stephen Blank, from Kramer Levin firm. Thank you,
3 Judge.

4 THE COURT: Good morning.

5 MR. WILLARD: Good morning.

6 MR. PERILLO: Good morning, Your Honor. Fred Perillo
7 on behalf of the United Mine Workers of America. And with me
8 today, my colleagues, Yingtao Ho and Sara Geenen.

9 THE COURT: Good morning.

10 MR. PERILLO: Also general counsel of the United Mine
11 Workers, Grant Crandall, and staff attorney of the United Mine
12 Workers, Art Traynor. Thank you, Your Honor.

13 THE COURT: Thank you and good morning.

14 MR. GARTNER: Good morning, Your Honor. Matthew
15 Gartner of Husch Blackwell on behalf of Citibank, the first out
16 DIP agent. With me in the courtroom today is Joe Smolinsky of
17 Weil, Gotshal & Manges also on behalf of the Citibank, first
18 out DIP agent.

19 THE COURT: All right.

20 MR. SMOLINSKY: Good morning, Your Honor.

21 THE COURT: Good morning.

22 MS. TOLEDO: Good morning. Laura Toledo of Latham &
23 Gage on behalf of Bank of America, the second out DIP agent.
24 In court today with me is Ana Alfonso Willkie Farr & Gallagher.

25 THE COURT: Good morning.

1 MS. TOLEDO: And Margot Schonholtz is on the phone,
2 also of Willkie Farr & Gallagher.

3 THE COURT: All right. Thank you.

4 MS. LONG: Good morning, Your Honor. Leonora Long on
5 behalf of the United States trustee.

6 THE COURT: Good morning.

7 MR. GOODCHILD: Good morning, Your Honor. John
8 Goodchild here on behalf of the UMWA Health & Retirement Funds.

9 THE COURT: Good morning.

10 MR. GOODCHILD: Good morning.

11 THE COURT: Okay. Good morning.

12 MR. MARSICO: Good morning, Judge. Leonard Marsico,
13 McGuireWoods, for Ohio Valley Coal and Ohio Valley
14 Transloading. With me today is Michael McKown who acts as
15 general counsel for Ohio Valley Coal.

16 THE COURT: All right. Good morning.

17 MR. LEVINE: Good morning, Your Honor. Jon Levine of
18 Andrews Kurth on behalf of Wilmington Trust as indenture
19 trustee.

20 THE COURT: Good morning.

21 MR. SCHNABEL: Good morning, Your Honor. Eric Lopez
22 Schnabel of Dorsey & Whitney on behalf of U.S. Bank as trustee.

23 THE COURT: Good morning.

24 MR. STRASSER: Good morning, Your Honor. Alan
25 Strasser from the Robbins Russell firm on behalf of the

1 noteholders.

2 THE COURT: Good morning.

3 MR. COUSINS: Good morning, Your Honor. Steven
4 Cousins of Armstrong Teasdale on behalf of Peabody Energy
5 Corporation.

6 THE COURT: Good morning.

7 MR. COUSINS: Good morning.

8 THE COURT: All right. And then on the telephone, we
9 have Ms. McGreal on behalf of the debtors?

10 MS. MCGREAL: Yes. Good morning, Your Honor.

11 THE COURT: Good morning. Gregory Plotko on behalf of
12 the creditors' committee.

13 MR. PLOTKO: That's right, Your Honor. Good morning.

14 THE COURT: Good morning. Margot Schonholtz on behalf
15 of Bank of America.

16 MS. SCHONHOLTZ: I'm here. Thank you, Your Honor.

17 THE COURT: Good morning. Blaine Early on behalf of
18 Argonaut Insurance.

19 MR. EARLY: I'm here, Your Honor. Good morning.

20 THE COURT: Good morning. Theresa Anderson on behalf
21 of the Pension Benefit Guaranty Corp.

22 MS. ANDERSON: Good morning, Your Honor.

23 THE COURT: Good morning. And Kristi Davidson on
24 behalf of Caterpillar.

25 MS. DAVIDSON: Yes. Good morning, Your Honor.

1 THE COURT: Good morning. All right. And before we
2 get started, I think we know where we're going today. We have
3 three witnesses that the UMWA will put on today in preparation
4 we have for tomorrow when we will be to closing arguments.
5 Although I previously ordered that the parties other than the
6 debtors and the UMWA could have twenty minutes for closing, I'm
7 going to have to amend that in light of the amount of time that
8 it has been taking. And I will give each of those parties ten
9 minutes to make their closing arguments so that I can ensure
10 that we will conclude tomorrow. The debtors and the UMWA will
11 not be timed in their closing arguments.

12 All right. Then, Mr. Kamin -- I'm sorry. Mr. Perillo
13 or Mr. Ho, are we ready to call the next witness?

14 MR. HO: Yes, Your Honor. United Mine Workers call
15 Micheal Buckner.

16 THE COURT: All right. Mr. Buckner, if you'd step up
17 to the podium first, please, to be sworn.

18 THE CLERK: Please raise your right hand, sir.

19 (Witness sworn)

20 THE CLERK: Please have a seat in the witness box,
21 sir. There is a step up. If you would please speak into the
22 microphone.

23 DIRECT EXAMINATION

24 BY MR. HO:

25 Q. Good morning, Mr. Buckner.

1 A. Good morning.

2 Q. What is your educational background?

3 A. I have a master of science degree in industrial relations
4 that I received from Western University in 1975.

5 Q. Mr. Buckner, if you could just speak up a little bit.

6 A. Yes, sir.

7 Q. Thank you. Have you ever worked in a coal mine before?

8 A. Yes. After I received my masters degree, I took a job in
9 northern West Virginia as an underground coal miner for
10 Consolidation Coal Company.

11 Q. What type of work did you perform in that job?

12 A. I performed a number of jobs over the almost three-year
13 period that I was employed. I worked underground at the face.
14 I ran a shuttle car. I did roof bolting. I was a belt
15 examiner. I was a general inside laborer. I also worked
16 outside for a period of time in the preparation plant and in
17 the coal loading yard.

18 Q. And was that a continuous miner operation?

19 A. Yes, it was.

20 Q. By whom were you employed after you worked in the coal
21 mines?

22 A. I worked in the mines from 1976 through the latter part of
23 1978 when I took a job with the United Mine Workers of America
24 International Union to work in its legislative department.

25 Q. Are you still employed by United Mine Workers?

1 A. Actually, I'm retired from the UMWA International. I
2 provide some consulting services to the union. And I'm an
3 employee of the UMWA Health & Retirement Funds as a trustee on
4 several plans.

5 Q. Can you briefly run through your employment history at the
6 United Mine Workers?

7 A. Yes. In late 1978, I was hired as a legislative
8 representative for the union working in the union's legislative
9 department. In approximately 1979, potentially 1980, I can't
10 remember the exact dates, I was appointed the union's
11 legislative director where I directed the union's lobbying
12 activity. In 1982, I was appointed the union's research
13 director and that was a position I held continuously until 2005
14 when I retired.

15 Q. Did the union have a research library during the time when
16 you were the research director?

17 A. Yes, sir.

18 Q. Did you have a role in maintaining the records in their
19 library?

20 A. Yes. That was one of my functions to maintain those
21 records.

22 Q. Did you perform other research for the union as well?

23 A. Yes. I did a broad range of research for the union
24 involving research on the coal industry for collective
25 bargaining purposes, for organizing purposes. I was involved

1 in analyzing the effects of the Clean Air Act on coal companies
2 and coal miners. So I did a broad range of research for the
3 union over the years.

4 Q. Did you also frequently perform analysis on the research
5 that you performed?

6 A. Yes. One of my jobs was to analyze information that the
7 company is provided during bargaining to the union and to
8 assist the officers and the other negotiators in formulating
9 proposals and making counterproposals and costing out the cost
10 of the contract.

11 Q. Have you ever testified before Congress or other
12 governmental bodies?

13 A. Yes. I've testified before both the United States Senate
14 and the U.S. House of Representatives, committees of both
15 bodies. I was a member of a federal coal export commission
16 appointed by the secretary of commerce. I participated in the
17 U.S. Department of Energy Task Force representing the mine
18 workers on the coal task force of those energy department.
19 I've testified before a number of state public utility
20 commissions on utility compliance under the 1990 Clean Air Act
21 amendments. I think that covers it.

22 Q. Have you ever prepared testimony for others on miners'
23 health issues?

24 A. Yes. I've been involved with health and safety issues
25 since I began working for the Mine Workers. I have

1 participated in the drafting of testimony that the officers of
2 the union presented and the directors of the occupational
3 health -- safety and health department.

4 Q. You testified earlier you were a trustee on employee
5 benefit funds? What specific funds have you serviced as
6 trustee?

7 A. In 2005, when I retired, I was appointed a trustee at the
8 UMWA Health & Retirement Funds. Prior to that, I was a trustee
9 on two of the union's construction -- the retired construction
10 benefit plan and the construction pension plan. In 2005, when
11 I became a trustee at the UMWA Health & Retirement Funds, I
12 served on the UMWA Combined Benefit Plan and the UMWA 1992
13 Benefit Plan which were -- which are statutory benefit plans
14 under the Coal Act. I've also served as a trustee of the UMWA
15 1993 Benefit Plan.

16 I stepped down from those positions last year and I'm a
17 trustee and have been a trustee since 2005 of the UMWA 1974
18 Pension Plan and the UMWA Retiree Bonus Account Plan and the
19 Cash Deferred Savings Plan.

20 MR. KAMINETZKY: Your Honor, I don't mean to interrupt
21 but we're having trouble hearing the witness and the people
22 can't hear at all. Is there a way we could pick up the
23 microphone or -- I'm sorry that I had to interrupt.

24 THE COURT: All right. No, not a problem. All right.

25 THE WITNESS: I can try to speak closer.

1 THE COURT: -- Mr. Buckner -- yes. Closer to the
2 microphone. That's much better.

3 THE WITNESS: I'm afraid I'm going to smack myself.

4 Q. Through your work as a trustee, did you acquire knowledge
5 of miners' health issues?

6 A. Yes.

7 Q. How did that occur?

8 A. Well, the benefit plans spend a great deal of time trying
9 to coordinate the care of the miners so that the trustees are
10 often involved in designing plans to help coordinate that care
11 and the issues that -- the chronic conditions that the miners -
12 - the retired miners have are frequently discussed at the
13 trustee meetings and at other meetings. We have a process
14 called a resolution of disputes when there's a dispute between
15 an active miner or retired miner and the employer. Those
16 disputes come to the Health & Retirement Funds for resolution.
17 And often, the question is medical necessity so there's a great
18 deal of information provided there.

19 As a pension trustee, one of the pension benefits
20 provided is a disability pension and there's a great deal of
21 information in those records. When a miner applies for a
22 disability pension, he has to demonstrate that he's totally
23 disabled and that his total disability is related to a work-
24 related injury.

25 Q. During the course of your employment as a trustee, have

1 you reviewed the files of hundreds of active and retired
2 miners?

3 A. Yes.

4 Q. Have you ever participated in bargaining over the NBCWA?

5 A. Yes. As I said, I was appointed the union's research
6 director in 1982. And I have participated in every round of
7 negotiations over the National Bituminous Coal Wage Agreement
8 since then. That would be the 1984 agreement, the 1988
9 agreement, the 1993 NBCWA, the 1998 NBCWA, 2007 agreement and
10 the most recent being the 2011 agreement.

11 Q. Are the level of pension benefits set in the collective
12 bargaining agreements?

13 A. The accrual rate is set. The actual pension is determined
14 once the pensioner makes application based on the accrual rate
15 of the contract he retired under and his years of service.

16 Q. What is the approximate level of current benefits offered
17 by the 1974 Pension Plan for retired miners?

18 A. The average pension under the 1974 plan is about 580
19 something dollars per month for a regular retiree and about 400
20 and something dollars a month for surviving spouse.

21 Q. In the course of researching to support the negotiations
22 over pension benefits, have you researched the issue of pension
23 benefits available from other industries?

24 A. Yes. We try to be aware of what other -- other pension
25 plans provide. One of the sources of information on multi-

1 employer pension plans is a group called the National
2 Coordinating Committee for Multi-Employer Plans which is a
3 group made up of plan sponsors, both employers and unions in
4 the multi-employer field.

5 Q. Based on your research and your personal knowledge of the
6 NBCWA, how miner pension benefits compare with pension benefits
7 offered in other industries?

8 A. They tend to be much lower. For example, the coordinating
9 committee that I mentioned periodically publishes survey
10 information on other multi-employer plans. The most recent
11 date that I've seen was a 2010 report and they reported that
12 the median pension benefit among their survey participants was
13 a little over 900 dollars a month and they termed that modest
14 by any definition. And as I said, our pension benefits last
15 year were about 580 dollars.

16 Q. In the NBCWA negotiations that you were involved in, how
17 important was retiree health as an issue for the union?

18 A. It is -- it's -- other than the health and safety issues
19 which are life and death to the active miners, nothing is more
20 important to the union than the retiree health benefits because
21 we view that as also a life and death issue for these retirees.

22 Q. Did the union ever communicate the importance of retiree
23 health benefits to the union across the bargaining table during
24 those negotiations?

25 A. We have always tried to communicate to the employers that

1 retiree health care is absolutely necessary in getting a
2 contract with the union and then we move on to the other wages
3 and benefits.

4 Q. In the past, has the employers given the union a choice
5 during the course of NBCWA negotiations on how to allocate
6 compensation between wages and benefits?

7 A. The employers have said to us at various times in
8 negotiations that they have a target amount of money that
9 they're willing to allocate towards the labor costs and that
10 they are somewhat agnostic about how we move that -- those
11 contract dollars around in terms of wages and benefits.

12 Q. And how did the union choose when given that choice by the
13 employers?

14 MR. KAMINETZKY: Objection, Your Honor. This calls
15 for hearsay. He's talking about an out-of-court statements
16 made by the union and made by the companies. He doesn't even
17 say what he's talking about with negotiations. But this is
18 classic hearsay.

19 MR. HO: Your Honor, I was talking about the very
20 negotiations that he himself participated in.

21 THE COURT: I'll overrule the objection. You can
22 answer the question.

23 Q. How did the union choose when given the choice on how to
24 allocate compensation between wages and benefits by employers?

25 A. Well, as I said, we've always insisted that the companies

1 live up to the promise of retiree health care. So we start
2 from that premise that the retiree health care benefits are
3 going to be paid. So as I believe the company's document
4 showed, we allocated significant amount of contract dollars
5 towards the retiree health care.

6 Q. Have you ever been involved in negotiations where the
7 employer tried to walk away from these retiree health
8 obligations?

9 A. Unfortunately, yes. In 1989, the Pittston Company, at the
10 expiration of the 1984 agreement, terminated health benefits
11 for approximately 2,000 of its retirees and said to us -- said
12 to the union that we should look to the funds, the UMWA funds,
13 to provide those benefits. So, unfortunately, yes, I have been
14 involved.

15 Q. And what happened in that situation when the employer
16 tried to walk away from its retiree health obligations?

17 A. Ultimately, the union struck Pittston for -- I believe the
18 strike began in April of 1989 and didn't end until the end of
19 December 1989 and involved intervention by the United States
20 government.

21 Q. And did the union incur very substantial fines during the
22 course of that strike?

23 A. The union was fined by state courts sixty-four million
24 dollars. I believe we were also fined several million dollars
25 by federal courts which, ultimately, got resolved. The sixty-

1 four million dollar fines ultimately were overturned on appeal
2 to the United States Supreme Court.

3 Q. Have you been involved in other strikes by the UMWA over
4 the retiree health issue?

5 A. Yes. And -- in 1993, after the Coal Act had been enacted,
6 the bargaining parties sat down and the Coal Act had merged the
7 1950 benefit plan and the 1974 benefit plan which were
8 providing health benefits to certain retirees, merged that into
9 a new plan under the Coal Act called the Combined Benefit Fund.
10 And the '74 benefit plan had been an orphan safety net when
11 companies went out of business, the '74 plan stepped in to take
12 over those obligations.

13 Because the Coal Act had eliminated the 1974 plan or
14 merged it into the Combined Benefit Fund, the union knew that
15 it needed a replacement. And the union proposed a 1993 benefit
16 plan that essentially would fill the role of the '74 plan. The
17 employers rejected that proposal and ultimately we engaged in a
18 series of strikes beginning in early 1993 and again, they
19 lasted ultimately until December of 1993.

20 Q. You spoke of the Coal Act. Was the Coal Commission a
21 precursor to the Coal Act?

22 A. Yes. One of the settlements -- I mentioned that the
23 federal government intervened in the Pittston strike. The
24 secretary of labor appointed a former secretary of labor,
25 William Usery to mediate the Pittston dispute. And one of the

1 things that Secretary Dole recommended as part of the ultimate
2 settlement of that strike was the appointment of a blue ribbon
3 commission that would look into the issues that had led to the
4 disputes over retiree health care. And she appointed a
5 commission made up of coal industry representatives, union
6 representatives, academia, federal government, health
7 insurance, actuarial firms to examine those issues. And
8 ultimately, they issued a report that's become known as the
9 Coal Commission Report.

10 Q. Were there coal company executives on that commission?

11 A. Yes, there were.

12 Q. And did that commission issue a recommendation or an
13 opinion on the retiree miner -- on retired miner's right to
14 health insurance coverage?

15 A. Yes. The commission issued its report, I believe, in
16 November of 1990. And one of their main conclusions was that
17 retired miners had a legitimate expectation of retiree health
18 benefits for life. They said that that was the way that the --
19 that was the promise that these miners received during their
20 working lives and that's how they planned their retirement
21 years. And the government ought to ensure that that promise
22 was fulfilled.

23 Q. During your tenure at the UMWA, were there times when the
24 union had a doctor on staff?

25 A. Yes, when I first became a legislative representative for

1 the union. At the time, the union had two departments: a
2 department of occupational health and a department of
3 occupational safety. And the director of occupational health
4 was a medical doctor by the name of Loren Kerr who had
5 previously been an area medical director for the UMWA Funds.
6 And during the legislative in the 1970s -- I'm sorry -- in the
7 late 1960s over black lung issues, the union hired him to be
8 the director of occupational health.

9 Q. And did the union maintain the records that Dr. Kerr
10 produced on health issues?

11 A. Yes.

12 Q. And do some of those records concern the black lung
13 disease?

14 A. Yes. A great deal of his work was related to black lung.

15 Q. Based on those records maintained by the union, what are
16 the causes of the black lung disease?

17 MR. KAMINETZKY: Objection, Your Honor. And I respect
18 your decision of yesterday. But we're talking now of --
19 because after talking black lung disease, he's clearly, under
20 701(c), not able to do this. He's not a doctor. It sounds
21 like his basis for talking about this is the fact that he spoke
22 to a doctor many years ago and that doctor told him something.
23 Number one.

24 Number two, his other -- I guess the point of his --
25 of Mr. Ho eliciting the testimony that he's a trustee of a

1 health and benefit fund, I think that goes a long way from
2 being a doctor yourself. I'm a trustee of a hospital and I
3 certainly won't give testimony about black lung disease or
4 other medical conditions.

5 This is clearly within the ambit of 701(c). He's not
6 a doctor. He can't talk about medical conditions.

7 MR. HO: Your Honor, if I may speak?

8 THE COURT: You may.

9 MR. HO: I thought we already spent on this yesterday.
10 And I really don't want to waste any more time on it. This is
11 straight from his declaration which you kept in. And he's not
12 giving a medical opinion here. What he's doing is, he's giving
13 you a summary of what's on the union's business records which
14 he's entitled to do.

15 MR. KAMINETZKY: Your Honor, the question was what are
16 the causes of black lung disease.

17 MR. HO: Based on the records.

18 MR. KAMINETZKY: Okay.

19 THE COURT: All right. If you rephrase the question
20 to include that, that's fine. And then likewise, I'll remind
21 you, Mr. Ho, as well that I have read Mr. -- I'm probably most
22 familiar with Mr. Buckner's declaration after yesterday. So I
23 am aware of many of the things in it. So we don't need to
24 drill down into detail on them.

25 MR. KAMINETZKY: But, Your Honor, they haven't

1 produced those records. So, I mean, this is like -- I mean,
2 this is textbook. They're saying they'll let him talk about
3 records even though he's not an expert but we don't get the
4 records to cross-examine him. This is why we have Rules of
5 Evidence.

6 THE COURT: Well, but I think when he amends the
7 question to say "According to the records that" -- you know,
8 and they're voluminous. Many of them are footnoted in his
9 declaration. I think that that's fine.

10 MR. KAMINETZKY: Yeah, but he has public records
11 footnoted in his declaration not the union's own private
12 records. They haven't been produced to us. Why haven't they
13 been produced to us? Because he's not an expert witness. They
14 don't have to be produced to us. And now he's pretending to be
15 a medical expert.

16 It doesn't really matter. Again, this is -- I just
17 kind of don't like farces happening in court and this is what
18 it is. You think we're really going to say that there's not a
19 problem of black lung disease? I think we have a big 403 issue
20 here. Exactly what relevance does this have, why is this not
21 just a waste of time. But if he wants to talk about black lung
22 disease, I guess, knock himself out. But this is not
23 appropriate for a courtroom for someone to come in and say I
24 spoke to a doctor and looked at their records and let me now
25 tell you what the causes are for black lung disease.

1 BY MR. HO:

2 Q. Based on the records you reviewed, what causes black lung
3 disease?

4 A. According to the National Institute for Occupational
5 Institute for Occupational Safety and Health, long term
6 exposure to respirable coal dust causes coal workers
7 pneumoconiosis.

8 Q. If you'd go to the back of your declaration, there are
9 eight lung pictures.

10 MR. HO: Can you give me the number of that?

11 Q. Look at one of these three.

12 A. Yes, sir.

13 Q. Where did these pictures come from?

14 A. These -- these are pictures of actual lung slices taken in
15 autopsies. These were part of a pamphlet produced by Dr. Loren
16 Kerr called "Black Lung". And he obtained them from
17 congressional testimony that was presented during the 1969 Coal
18 Mine Health and Safety Act. A Welsh doctor who had done a lot
19 of work on coal miners pneumoconiosis presented these to the
20 senate committee that was considering the Coal Mine Health and
21 Safety Act.

22 Q. And what's the approximate age of these pictures?

23 A. Well, they were presented in 1968 or 1969. So I'm
24 assuming that Dr. Goff (ph.) had accumulated them sometime
25 immediately prior to then.

1 Q. Are there more recent governmental reports that show that
2 underground miners are continuing to suffer from black lung
3 disease?

4 A. Yes. NIOSH has issued several reports recently that talk
5 about the prevalence of black lung after the passage of the
6 1969 Act for many decades. Since then, the prevalence of black
7 lung among active miners who is declining, NIOSH reports that
8 sometime in the 1990s that downward trend reversed. And the
9 rates now are about twice as high as they were at their low
10 point.

11 Also, there was a governmental report to the state of West
12 Virginia in the investigation of the Upper Big Branch disaster
13 from 2010 and they did autopsies of -- there were twenty-nine
14 victims. They had enough lung tissue to do autopsies on, I
15 believe, twenty-four of those. And they reported that
16 seventeen of the twenty-four, about seventy-one percent of the
17 Upper Big Branch victims, showed evidence of coal workers
18 pneumoconiosis. Some of those had less than ten years of
19 mining. And one of them that showed evidence was twenty-five
20 years old.

21 Q. You testified earlier that you had reviewed hundreds of
22 retiree and active miner health records in your capacity as a
23 trustee, right?

24 A. That's correct.

25 Q. What are some of the long-term disabilities or medical

1 issues you have seen miners suffering in those files?

2 MR. KAMINETZKY: Your Honor, obviously, I renew my
3 objection. He's now going to say that based on my review of
4 medical records of retirees, I believe the causes are x, y and
5 z. Again, we dispute any of this but this is a court and I
6 can't help myself. I love the law. And this is so outrageous
7 under the Rules of Evidence to have a lay witness talk about
8 the causes of disease -- of miners because as a research person
9 at the UMWA, his job was to look at medical records. I'm
10 sorry. I just have to object.

11 MR. HO: Your Honor, he's not talking about the
12 medical cause. He's simply talking about what is in the files
13 that he reviewed.

14 MR. KAMINETZKY: And again, we don't --

15 MR. HO: Again, they haven't requested those records.
16 And if they had requested them, we would have been happy to
17 provide them.

18 THE COURT: Well, where I -- all right.

19 MR. KAMINETZKY: Again, this now -- we go to the
20 point. If he's an expert, Rule 26 requires him to produce it
21 without a request. This is why he's a lay person. And if he's
22 a lay person, he can't talk about it.

23 MR. HO: Well --

24 THE COURT: Well, I'll sustain the objection. I think
25 we're a little far here with his review of medical records. So

1 you can ask your next question, Mr. Ho.

2 BY MR. HO:

3 Q. Has the union -- had the retirement funds commissioned a
4 study on the health of retired miners compared to other
5 populations?

6 A. Yes. The funds has conducted or has commissioned Mercer
7 Benefits in both 2004 and 2009 to make a comparison of the
8 illness burden of the funds' population compared to the overall
9 Medicare population.

10 Q. And is that study maintained in the union's business
11 records?

12 A. Yes.

13 Q. What was the conclusion of that study?

14 A. The simple conclusion was that the funds' population had
15 an illness burden that was approximately a third higher than a
16 comparable Medicare population.

17 Q. Under the collective bargaining agreement, how long does
18 it take NBCWA -- under the NBCWA, how long does it take a union
19 member to acquire vested retiree health benefits?

20 A. It depends on the age at which he last works. If he last
21 works after age 55, the requirement is ten years of signatory
22 service. If he's laid off before age fifty-five, he needs
23 twenty years.

24 Q. For the retired miner, does the collective bargaining
25 agreement provide any income aside from the pension?

1 A. There is a one-time pension bonus that's payable. Under
2 the previous agreement, it was paid in each year from the
3 pension plan. Under the current agreement, it's paid from a
4 separate trust called the Retiree Bonus Account Plan and those
5 payments are only applicable in the years 2014, 15 and 16.

6 Q. What is the amount of those payments?

7 A. For a retired miner, it's approximately 575 dollars and
8 for a surviving spouse, I think it's in the range of 400 and
9 something dollars. So it's essentially a one-month bonus.

10 Q. Did you participate in any meetings over the Gateway
11 negotiations?

12 A. I was not directly at the table but I was
13 contemporaneously involved with the union's bargainers. I met
14 with them on numerous occasions to talk about what Patriot was
15 proposing and what the union was counterproposing.

16 Q. Did you participate in meetings that discussed strategy?

17 A. Yes.

18 Q. Did you participate in meetings that discussed the union's
19 objectives during the course of the bargaining?

20 A. Yes.

21 Q. Are the Gateway collective bargaining agreements and the
22 NBCWA in the union's business records?

23 A. Yes.

24 Q. Are you familiar with them?

25 A. Yes.

1 Q. Does the initial Gateway Eagle contract provide a
2 different package of benefits in the normal NBCWA?

3 A. Yes. The Gateway Eagle contract paid initially
4 approximately 3.50 per hour more than the NBCWA. Now that gap
5 is narrowed as the NBCWA has had increases since then. In lieu
6 of participation in the 1974 Pension Plan, the Gateway Eagle
7 contract provided a 401K employer contribution of six dollars
8 per hour. And the hour major difference is that the Gateway
9 Eagle miners are not accruing years of service toward retiree
10 health care for their time at Gateway.

11 Q. Did the meetings that you attended include the discussions
12 on why the union accepted this different package of benefits?

13 A. Yes. The union wanted job opportunities at this new
14 operation for its employees at a nearby location called Rivers
15 Edge that was planned to be shut down. And the company said
16 that they were looking for experienced miners to staff it but
17 that they didn't want to sign the standard NBCWA and if we
18 could come to terms, they would give hiring preference to the
19 River's Edge employees.

20 Q. Was there also any discussions concerning transfer rights
21 in the meetings that you attended?

22 A. Ye --

23 MR. KAMINETZKY: Objection. Calls for hearsay. He's
24 about to talk about out-of-court statements.

25 MR. HO: Well, I'm just talking about meetings that he

1 attended and what was said in the meetings that he personally
2 attended. I think that's proper.

3 MR. KAMINETZKY: Yeah. And that's hearsay.

4 THE COURT: I'll sustain the objection. Why don't we
5 get to what does the agreement say.

6 BY MR. HO:

7 Q. What does the agreement say on transfer rights?

8 A. That the agreement between the union was not reduced to --
9 and Patriot was not reduced to writing in the text of the
10 contract. The understanding was that employees who took a job
11 at Gateway would have transfer rights to other Patriot
12 operations that were covered by the NBCWA so that those that
13 had already vested their right to retiree health care might
14 want to take advantage of the higher wage and the employer 401K
15 contribution and that someone who took a job who had not yet
16 vested his right to lifetime health care at Patriot would have
17 the right to transfer if a job was available at another mine
18 that had the NBCWA coverage.

19 Q. Are there other contracts for the Gateway complex?

20 A. Other contracts?

21 Q. Yes.

22 A. Yes.

23 Q. What other contracts are there?

24 A. After the initial Gateway contract, the company decided
25 that it wanted to terminate several contractors. One of those

1 was Farley Eagle; one of them is called the CC10; and I think a
2 third was Sugar Maple.

3 Q. Were you involved in the negotiations over those
4 contracts?

5 A. Not directly with the employer but in the same capacity
6 advising the unions' negotiators.

7 Q. How did those contracts' benefits compare to the NBCWA?

8 A. They also don't participate in the 1974 Pension Plan. The
9 miners are not accruing years of service toward their retiree
10 health benefits for the time that they work at those
11 operations. And I believe that the union reduced the amount of
12 payment into the 401K.

13 Q. Did those contracts have a lower total package of
14 compensation in the Gateway Eagle contract?

15 A. Yes.

16 Q. Did you attend meetings where it was discussed why the
17 union accepted these lower contracts of these other Gateway
18 mines?

19 A. Yes, I did. The rationale for the union was that these
20 were contract employees not Patriot employees. And if Patriot
21 had decided to just terminate those contractors, they had no --
22 no transfer rights to other Patriot mines and they had no
23 transfer rights to that mine unless we came to an agreement.
24 So we wanted to make sure that the employees -- the former
25 employees of the contractor which Patriot wanted to hire as

1 their employees could get those jobs.

2 MR. KAMINETZKY: Your Honor, I move to -- the
3 question -- he jumped questions so I didn't have a chance to
4 object. I move to strike the last answer as hearsay for the
5 precisely same reason he was just testifying people who
6 negotiated the contract told him after the fact. And that's a
7 classic out-of-court statement.

8 MR. HO: Well, he didn't say it was said to him. It
9 was a discussion he participated in. I think that's different
10 from just saying I heard someone else say something.

11 MR. KAMINETZKY: What?

12 MR. HO: Well, he participated in meetings over the
13 union's bargaining objectives. He's simply talking about what
14 those meetings resulted.

15 MR. KAMINETZKY: Good.

16 THE COURT: Yes.

17 MR. KAMINETZKY: And that's hearsay.

18 MR. HO: But that's not necessarily from someone else.

19 THE COURT: I'll overrule the objection and let the
20 answer stand.

21 BY MR. HO:

22 Q. Does the union maintain seniority lists for its Gateway
23 contracts?

24 A. The local union does, yes.

25 Q. Would that show how many employees are on the seniority

1 list?

2 A. Yes. They're called panel custodians. Both the company
3 and the union have responsibility for doing that.

4 Q. At the time their first contracts were negotiated, how
5 many employees were working in those Gateway mines?

6 A. I don't remember the exact number. I think it was
7 somewhere around thirty-five employees that they were
8 anticipating hiring. The original Gateway operation, I
9 believe, was a single continuous -- one single continuous miner
10 section.

11 Q. During the course of the NBCWA negotiations, was miner
12 productivity a frequently recurring topic of discussion?

13 A. A great deal of discussion is had in bargaining about
14 productivity, yes.

15 Q. Did you ever do any research for the union on productivity
16 issue?

17 A. Yes. At every bargaining session, yes.

18 Q. Do you also have personal experience working in the mines
19 concerning what affects productivity?

20 A. Yes, I do.

21 Q. Based on your research and personal experience, what other
22 factors have affected productivity of a mine?

23 A. Well, the primary factor is the geology, the height of the
24 scene, the roof conditions, the bottom conditions, whether
25 you've got wet conditions or dry conditions. Those are primary

1 drivers of productivity. Other factors would be the type and
2 the condition of the equipment that you're using. Those would
3 be the primary drivers. You've also got the experience of the
4 workforce, the experience and the quality of the management.

5 Q. Are you familiar with a statistic called cost per ton
6 produced?

7 A. Yes. That's a common -- a common measure of the -- used
8 in the coal industry.

9 Q. Do all the factors that you just mentioned affecting
10 productivity also affect cost per ton produced?

11 A. Yes. Productivity is a primary driver of the ultimate
12 cost of the product.

13 Q. And can all the factors you just mentioned be different
14 from mine to mine?

15 A. Yes. The -- it -- there's no two -- there's no two mines
16 that are exactly identical.

17 Q. What is the amount of the wage increase in the NBCWA from
18 2005 to 2012?

19 A. A little over six dollars an hour.

20 Q. What are the major benefit changes during that time
21 period?

22 A. In terms of cost, in 2005, the contribution to the 1974
23 Pension Plan was zero. It currently is \$5.50 per hour. So
24 that's a \$5.50 increase. I believe the 1993 plan was fifty
25 cents at that time and now it's \$1.10. In 2005, the bonuses

1 that we talked about were paid out of the Pension Plan. And
2 now they're paid from a separate trust that's \$1.50. So those
3 changes would probably add up to maybe eight dollars per hour.

4 Q. So when you add up all the wage and benefit changes in the
5 NBCWA from 2005 to 2012, approximately what number do you get?

6 A. Well, those two numbers would get you to thirteen,
7 fourteen dollars an hour. And then because of medical
8 inflation, the cost of providing active health care and retiree
9 health care would also have increased to a certain amount. So
10 you're probably talking somewhere in the range of twenty
11 dollars an hour increase.

12 Q. Does the EIA publish data on mine productivity?

13 A. Yes, as well as the Mine Safety and Health Administration.

14 Q. And would those statistics include the northern Appalachia
15 region?

16 A. Yes.

17 Q. According to those statistics, what is the average
18 productivity of a northern Appalachian mine?

19 A. Around four tons per hour.

20 Q. During the course of research health in negotiations over
21 productivity, have you ever worked on calculating the labor
22 costs per ton -- on the labor costs --

23 MR. HO: Scratch that for a second.

24 Q. Have you ever calculated the statistic of an increase in
25 labor costs per ton produced?

1 A. Yes.

2 Q. In the case of northern Appalachia, given the twenty
3 dollar increase in wages and benefits and the four ton per hour
4 statistic, how do we calculate the increased labor cost per ton
5 produced?

6 A. Well, if your cost increased by twenty dollars per hour
7 and you're producing four tons per hour, it's a simple
8 division. And you end up with five dollars per ton increase.

9 Q. Are you involved in the current 1113/1114 negotiations?

10 A. Not directly at the table except for the one most recent
11 meeting. But I'm a member of the union's Patriot bankruptcy
12 team which consists of Cecil Roberts, Art Traynor, Brian Sanson
13 who would have done the direct bargaining with the company,
14 Grant Crandall, the union's general counsel, and I have been
15 involved in all phases of the 1113/1114.

16 Q. Do you also serve on unsecured creditors' committee?

17 A. I do.

18 Q. Are you familiar with other proposals that have been made
19 in this case?

20 A. Yes. I've been involved in developing and writing the
21 union's counterproposals and I've reviewed the proposals made
22 by the company.

23 Q. On the issue of changing a deface, has the union accepted
24 Patriot's proposal?

25 A. We have adopted their proposal and included it in our

1 counterproposals, yes.

2 Q. Having participated in collective bargaining negotiations
3 for over thirty years, have you ever participated in
4 ratification meetings?

5 A. Yes.

6 Q. Have you ever spoken to miners about their reactions to
7 certain terms in the collective bargaining agreement?

8 A. Quite frequently. Miners are not shy about sharing their
9 views of the collective bargaining agreement.

10 Q. Based on that experience, do you have an opinion on what
11 would happen to Patriot's attrition rates in union operations
12 if the 1113 motion was granted?

13 MR. KAMINETZKY: Objection. I don't think he has any
14 sort of basis to give this type of opinion to the Court. He's
15 not, again, an expert and this is just merely speculation on
16 his part.

17 MR. HO: Your Honor, it's a lay opinion based on his
18 first-hand impression, based on actually speaking with miners
19 who happened to react to the 1113 proposal.

20 THE COURT: Yeah. I'll overrule it. It's just his
21 opinion, what he thinks.

22 Q. Do you remember the question?

23 A. Yes. Given that the 1113 proposal contemplates
24 significant wage reductions for a large portion of the
25 workforce, given that the 1113 proposal proposes to reduce up

1 to nineteen paid leave days, given that the 1113 proposal
2 contemplates significant cost shifting to the active miners for
3 their health care, I believe that many of the miners, if this
4 1113 proposal were granted and implemented, would seek to find
5 employment at other coal mines.

6 Q. Do you know whether a significant percentage of Patriot's
7 union miners are eligible for retirement?

8 A. Yes. A huge percentage of them are.

9 Q. What's the approximate percentage?

10 A. More than half, I believe, are eligible.

11 Q. Did you work on the union's April 27th, 2013
12 counterproposal?

13 A. Yes, I did.

14 Q. Was PwC also involved in working on that counterproposal?

15 A. Yes. PwC has been involved in costing out all of our
16 proposals.

17 Q. Who did the math that supported that proposal?

18 A. At Pricewaterhouse.

19 Q. When compared to the previous union counterproposal, what
20 are the major economic changes -- what are the major changes to
21 the economic terms in the April 27th proposal?

22 A. Our previous proposal, in relation to the VEBA, was that
23 an outside investor would contribute sufficient money to fund
24 the VEBA with 400 million dollars of cash and that there would
25 be 400 million dollars of preferred stock issued to the VEBA.

1 Our most recent proposal, the union conceptually accepted
2 Patriot's offer for an equity share. We counterproposed a
3 different number for that share. But conceptually, we
4 counterproposed to accept their offer of an equity share.

5 We also accepted their concept of a royalty proposal and
6 we counterproposed a different number for what that royalty
7 rate would be.

8 The other economic issues is we accepted Patriot's
9 proposal for the elimination of shift differentials. And we
10 accepted their proposal to pay time off at straight time rates
11 rather than straight time plus regularly scheduled overtime
12 rates.

13 Q. What about the duration of the contract?

14 A. We also accepted their proposal to have the term of the
15 contract run through 2018 with a option for the union to have a
16 wage and benefit reopener in 2016.

17 Q. And could that reopener lead to a strike?

18 A. Under our proposal, yes.

19 Q. Were there also any changes to the active health care
20 proposal?

21 A. Yes. We've had a lot of back and forth between the union
22 and the company about the value of our previous proposals. Our
23 latest proposal proposed the benefit plan design of the 1993
24 benefit plan, the Fund's orphan plan, which has significantly
25 higher out-of-pocket costs -- significantly higher co-payments

1 and out-of-pocket costs than the current NBCWA plan.

2 Q. Did the union counterproposal also address some of the
3 company's concerns concerning the achievability of certain
4 savings proposals made by the union?

5 A. Yes. The union had proposed in previous proposals to
6 allow the company to do continuous production, allow them to
7 produce coal seven days a week. And there had been a lot of
8 discussion with the company. The company's position was that
9 at some locations they would actually lose money by operating
10 additional time. The union previously had narrowed its
11 proposal to only apply to those places where Patriot's data
12 showed that they could operate profitably. Patriot continued
13 to argue that that really -- that proposal really didn't have
14 much value to them. So we withdrew that proposal as part of
15 our latest counterproposal.

16 We had also proposed to accept the company's proposal to
17 allow supervisors to perform bargaining unit work for up to one
18 hour per day. The union and its financial advisors, PwC, had
19 calculated a savings that Patriot disputed. They essentially
20 said to us that they couldn't put an economic value on this
21 proposal. And we said, well, if it's not going to result in
22 cost savings, we'll withdraw the proposal.

23 Q. One final question, Mr. Buckner. Did you perform the
24 calculations that supported the union's equity stake and
25 royalty proposals?

1 A. No. PwC did that.

2 MR. HO: Those are my questions, Your Honor.

3 THE COURT: All right. Mr. Kaminetzky?

4 CROSS-EXAMINATION

5 BY MR. KAMINETZKY:

6 Q. Good morning, Mr. Buckner. Thank you for being here
7 today.

8 A. Good morning.

9 Q. You described briefly during your direct examination the
10 Pittston Coal situation, labor situation and subsequent strike?

11 A. Yes.

12 Q. Now Pittston Coal at the time wasn't in bankruptcy, was
13 it?

14 A. No, sir.

15 Q. It was a financially healthy coal company that tried to
16 get out of their obligations, is that right?

17 A. Yes, they were.

18 Q. Okay. You understand that Patriot Coal is in bankruptcy.

19 A. Unfortunately, yes.

20 Q. And you would agree with me that Patriot Coal is facing
21 severe financial distress at this time.

22 A. The union believes that the company has a temporary
23 liquidity problem for the next year or two, yes.

24 Q. Now I'm going to make references. I just want to make
25 sure you have the right documents in front of you. Your

1 declaration that you submitted in this case can be found at
2 Joint Exhibit 181. So if you could -- do you have that in
3 front of you? 'Cause we'll be jumping around in that
4 declaration a bit. So -- let me know when you get there.

5 A. Yes, sir.

6 Q. Now you do various analyses in your declaration and I'm
7 just going to touch on some of the analyses and ask you some
8 questions about it.

9 So the first analysis that I want to ask you some
10 questions about in your declaration, you talk a bit about the
11 amount of non-1113/1114 savings that Patriot can achieve. And
12 you've opined that Patriot is requesting more in savings than
13 is necessary for it to successfully emerge from bankruptcy? Is
14 that correct?

15 A. What paragraph are you?

16 Q. Yeah. If you could maybe take a look, and we can pull it
17 up on the screen, at page 31, paragraph 72. What we've done is
18 just to move things along, we've excerpted the language out I'm
19 going to be asking you at but, by all means, take a look at the
20 original but you could also take a look at the screen.

21 THE WITNESS: Excuse me, Your Honor. This seems to be
22 a redacted version.

23 THE COURT: Oh, I'm sorry. The unredacted version
24 is -- try Exhibit 184. I think that's the one that I was
25 using. See if that has everything in it.

1 Q. You have it now? I'm sorry. That's --

2 A. I do. I'm --

3 Q. -- my best. Okay. And do you see on page 31, paragraph
4 72, it says "In demanding \$150 million in savings from the
5 UMWA, Patriot is requesting far more in savings than is
6 necessary for it to successfully emerge from bankruptcy as a
7 viable economic enterprise." Is that your testimony?

8 A. Yes.

9 Q. Now you don't purport to be an expert in the amount of
10 cost savings a company in Chapter 11 needs to achieve in order
11 to be viable, is that correct?

12 A. I relied on the union's financial advisors,
13 Pricewaterhouse, for this conclusion, yes.

14 Q. Okay. So this isn't your own personal conclusion. This
15 is the conclusion of the Pricewaterhouse.

16 A. Based on Pricewaterhouse's analysis, the union believes
17 the company does not need 150 million dollars in labor cost
18 savings, that's correct.

19 Q. I understand. But a different question. Mr. Buckner, do
20 you understand that you've signed a declaration and that's your
21 own personal testimony rather than the union's position?

22 A. Yes.

23 Q. Okay. And again, I'm asking you, do you have the
24 expertise to come to the conclusion that you do in paragraph
25 72? Your personal experience, does that give you the basis to

1 determine how much savings a company needs to be a viable
2 entity after bankruptcy?

3 A. Yes. I believe I do.

4 Q. And based on -- we heard of your very impressive resume.
5 Based on what do you base your knowledge and expertise on what
6 a company needs to remain viable?

7 A. Based on the analyses that the union's financial advisors
8 have provided, we believe that we have met or exceeded the
9 EBITDA and liquidity targets that the company is seeking.

10 MR. KAMINETZKY: Again, Your Honor, I want to just --

11 Q. Again, I'm asking you questions as Mr. Buckner. I'm not
12 asking for the union's position. Okay? And -- but my only
13 question to you is are you an expert in the amount of cost --
14 you personally an expert in the amount of cost savings a
15 company in Chapter 11 needs to be a viable entity?

16 A. Again, counselor, I relied on the union's financial
17 advisors' analysis and that analysis showed that there was
18 substantial business plan savings that were outside of the
19 labor cost element. And if those savings were achieved then
20 the company does not need 150 million dollars a year in labor
21 cost savings.

22 Q. Again you made reference to your financial advisors.
23 Would you have been able to form that conclusion absent input
24 from your financial advisors?

25 A. I'm sorry. I didn't understand that question.

1 Q. You again, in your last answer, made reference to PwC,
2 your financial advisors. I'm asking you whether or not you
3 could have made the conclusion in declaration paragraph 72
4 without the input of your financial advisors.

5 A. Well, I didn't do it without the input.

6 Q. Why don't we take a look at your deposition testimony.
7 Tell me if this sounds familiar. And I'm quoting from your
8 deposition, page 28, line 19:

9 Q. You don't put yourself forward as an expert in the amount
10 of cost savings a company in Chapter 11 needs to achieve in
11 order to be viable, is that correct?

12 MR. HO: Your Honor, can the witness have the
13 transcript in front of him --

14 THE COURT: Oh, yeah. Mr. Kaminetzky?

15 MR. KAMINETZKY: Sure. Would Your Honor like one?

16 THE COURT: Oh, sure. Yes. That's fine. I'll look.
17 I'll let you know if I need you to look, too.

18 A. I'm sorry, counselor. Can you point me again?

19 THE COURT: Oh, yeah. Give Mr. Ho a copy, of course.

20 Q. Page 29 -- 28 and 29 of your transcript. Do you see that?
21 And I'm looking at the question that begins:

22 "Q. You don't put yourself forward as an expert in the amount
23 of cost savings a company in Chapter 11 needs to achieve in
24 order to be viable, is that correct?

25 "MR. HO: Objection.

1 "A. I'm not holding myself as an expert in that, no."

2 Was that fair and accurate testimony at the time?

3 A. I'm sorry, counselor. You said page 28?

4 Q. Page 28 or 29. If you want, I could --

5 THE COURT: Actually, 29.

6 MR. KAMINETZKY: 29. Sorry.

7 THE COURT: At the top of 29, line 2.

8 "Q. You don't put yourself forward as an expert in the amount
9 of cost savings a company in Chapter 11 needs to achieve in
10 order to be viable" -- do you see -- "is that correct?"

11 And your answer was:

12 "I'm not holding myself as an expert in that, no."

13 A. I'm sorry, counselor. I must be looking at the wrong --

14 THE COURT: Page 29.

15 MR. KAMINETZKY: If you want, I put it up on the
16 screen, if that's --

17 THE WITNESS: I'm looking at page 29 of the document.

18 THE COURT: Oh, sorry. This is a -- I forget -- a
19 condensed version. So there's four pages per page.

20 MR. KAMINETZKY: We tried to make -- if you want, you
21 can just look at the screen.

22 Q. My only question is, was that truthful testimony.

23 A. Yes, sir.

24 Q. And you've never worked for a company in Chapter 11, is
25 that correct?

1 A. No.

2 Q. Have you ever consulted for a company in Chapter 11 about
3 the amount of savings it needs for emergence from bankruptcy?

4 A. No, sir.

5 Q. Have you ever helped a company obtain exit financing?

6 A. No, sir.

7 Q. And your opinion that Patriot is requesting more savings
8 than necessary is based on PwC's estimate that Patriot can
9 achieve 189 million in non-1113/1114 savings over the next four
10 years, is that correct?

11 A. Yes.

12 Q. Now, but you don't have an independent basis other apart
13 from PwC told you to believe that Patriot can actually achieve
14 the 189 million dollars identified by PwC, is that correct?

15 A. That's correct.

16 Q. In your declaration, you perform an analysis where you
17 compare Patriot's union mine productivity tons per hour to
18 regional averages. Do you recall that? And specifically, I
19 want to call your attention to your declaration at paragraph 62
20 on page 26.

21 A. Yes.

22 Q. And for ease, I pulled that up. It says -- and let me
23 know if I got this right. It says, "Data from the U.S. Energy
24 Information Administration" -- and we'll call that EIA -- "the
25 independent statistical and analytical arm of the U.S.

1 Department of Energy, shows that Patriot's union mines are
2 above or in line with average productivity in their respective
3 regions." Do you see that?

4 A. Yes.

5 Q. And you reached that conclusion by comparing the number of
6 tons produced per labor hour at Patriot union mines with
7 regional averages reported by the EIA, is that correct?

8 A. That's correct.

9 Q. And for the Patriot data, you used the productivity
10 calculation in Mr. Schwartz' declaration, is that correct?

11 A. That's correct.

12 Q. Now isn't it true that the EIA calculations of tons
13 produced per employee labor hour took into account more
14 categories of employees than the Patriot data?

15 A. Yes, it did.

16 Q. Indeed, the EIA data included categories such as office
17 workers at the mine and processing employees, is that correct?

18 A. Yes, sir.

19 Q. And the Schwartz data to which you compare the EIA data
20 does not include these additional categories of workers, is
21 that correct?

22 A. Yes, sir.

23 Q. Indeed, when performing your comparison, you didn't even
24 know that the Patriot data was based on fewer categories of
25 employee labor than the EIA regional data, is that correct?

1 A. I had forgotten that the EIA data include those, yes.

2 Q. So you use data that excluded these labor hours at Patriot
3 union mines, is that correct?

4 A. Yes.

5 Q. And you used data that included these additional labor
6 hours when looking at regional averages, is that correct?

7 A. Yes, sir.

8 Q. And if you would add back those labor hours when looking
9 at Patriot union mines, that would yield lower productivity.

10 A. That's correct.

11 Q. So I guess it's fair to say that your comparison that you
12 performed wasn't quite apples to apples, was it?

13 A. No, sir, it wasn't.

14 Q. And just to be clear, a higher number of tons produced per
15 hour means greater productivity.

16 A. Yes, sir.

17 Q. So let's take a look at what effect this would have on
18 your analysis, if you will. So if we'd go back to your
19 declaration at paragraph 62. You say, for example, "Schwartz
20 shows productivity at Highland at 3.86 tons per hour in 2011."
21 You see that? "EIA's most recent Annual Coal Report shows
22 average productivity at underground coal mines in western
23 Kentucky at 3.53 tons per hour and for Illinois Basin EIA
24 reports productivity at 3.70 tons per hour." Do you see that?

25 A. Yes, sir.

1 Q. And in the declaration what you're trying to do is make
2 the point that 3.86 tons per hour was hour than 3.53 and 3.70
3 tons per hour, correct?

4 A. Yes, sir.

5 Q. That's the comparison you were trying to make, correct?

6 A. Yes, sir.

7 Q. Now are you aware of the number of tons produced per labor
8 hour at the union Highland mine in 2011 counting total labor
9 hours including office and preparation workers?

10 A. I haven't done the calculation, no.

11 Q. Are you aware that Mr. Schwartz has supplied a reply
12 declaration in this case?

13 A. Yes.

14 Q. And did you have an opportunity to review his reply
15 declaration?

16 A. Yes, I did.

17 Q. And if we could take a look at Mr. Schwartz' reply
18 declaration, which is Joint Exhibit 149 -- sorry -- 148. And
19 specifically, in Joint Exhibit 148, we're looking at page 15,
20 paragraph 18.

21 A. Okay.

22 Q. And do you see -- and we've also pulled the quote out on
23 the screen. It says: "Had Mr. Buckner looked at the same data
24 source, he would have known that the Highland mine and
25 preparation plant had a total labor productivity of 3.43 tons

1 per hour (tph), not 3.86 tph in 2011, which number was based on
2 only mine labor hours." Do you see that?

3 A. Yes, sir.

4 Q. Do you have any reason to dispute that calculation?

5 A. I didn't -- I didn't check his math. I have no reason to
6 dispute it. And I would point out that my declaration said
7 above or in line.

8 Q. But his --

9 A. 3.43 and 3.53, I would say, is in line.

10 Q. Okay. Is 3.43 higher or lower than 3.53 and 3.70?

11 A. It is lower.

12 Q. Moving on, Mr. Buckner, now I'm going to talk a little bit
13 or ask you some questions about the comparison you did in your
14 declaration of productivity of UMWA mines in general, not
15 specific to Patriot, and nonunion mines, again, not specific to
16 Patriot. And specifically, I believe you've opined that Mr.
17 Schwartz had "faulty logic" in his analysis of work rules --

18 A. Can you point me to where --

19 Q. Yeah, please. Why don't we turn to your declaration at
20 paragraph 61 -- 61 on page 26.

21 A. Yes, sir.

22 Q. And let me know when you get there. Now do you recall --
23 before we look at the paragraph, you do recall that -- you
24 opined that Mr. Schwartz had "faulty logic" in his analysis of
25 work rules, is that correct?

1 A. Yes.

2 Q. And that conclusion was based in part on the fact that in
3 2012, five longwall UMW mines in the Pittsburgh seam had better
4 productivity than the nonunion Bailey mine, is that correct?

5 A. Yes, sir.

6 Q. And why don't we take now a look at your declaration at
7 paragraph 61? And I pulled that out on the screen and again,
8 it's on page 26. Let me see if I have this right:

9 "Schwartz' data on page 37 of his declaration shows his
10 faulty logic related to work rules." I'm skipping a little
11 bit. "Schwartz' own data shows that in 2012, five of the UMWA
12 mines operating the NBCWA operating with the same work rules
13 that Schwartz and Lucha claimed in P productivity had better
14 productivity than the nonunion Bailey mine. Clearly, the work
15 rules under the NBCWA, which are not applicable at Bailey, are
16 not competing productivity."

17 Did I get that right?

18 A. I believe so.

19 Q. And that's your opinion?

20 A. I went on to say that "This drop is unlikely to be
21 explained simply by the Bailey workforce becoming 20% percent
22 less efficient..."

23 Q. Right. When you concluded that Mr. Schwartz' logic was
24 faulty, you were not aware that Bailey had added workers in
25 2012 for an expansion project, is that correct?

1 A. That's correct.

2 Q. And the addition of workers, you would agree with me, for
3 an expansion project, could explain the drop in productivity at
4 Bailey in 2012.

5 A. If you produce the same amount of tons and you add those
6 hours, the math is compelling.

7 Q. Exactly. Now isn't it true that the same data that you
8 relied on for Bailey's 2012 productivity shows that, over the
9 past four years -- again, not just 2012 but over the past four
10 years. Bailey's productivity exceeded the UMWA average, isn't
11 that correct?

12 A. Can you point me to --

13 Q. Sure. Why don't you take a look at Schwartz' -- Mr.
14 Schwartz' open declaration at page 37? And that's the chart, I
15 believe, or the data, I believe you've looked at. And that's
16 Joint Exhibit 135. And we tried to pull that out on the screen
17 to make it easy for everyone to look at that are following
18 along. Do you see that chart?

19 A. Exhibit 135?

20 Q. It's Joint Exhibit 135, the Schwartz declaration. It's
21 the initial declaration rather than the reply declaration that
22 we just looked at.

23 A. And what page, counselor?

24 Q. Sorry. Again, it's on page 37. And I'm specifically
25 looking at the chart that's now blown up on the screen in front

1 of you.

2 A. Yes, sir. I'm with you now.

3 Q. Okay. And again, my question was, the same data that you
4 relied on for Bailey's 2012 productivity shows that over the
5 past four years, Bailey's productivity exceeded the UMWA
6 average, isn't that correct?

7 A. It appears so.

8 Q. You see the line where it says Bailey is at 4.88 while the
9 total UMWA average is at 4.23? You see that?

10 A. I do. But I would point out that the Murray Energy
11 Powhatan mine is --

12 Q. Excuse me. I --

13 A. The Murray Energy Powhatan mine is an NBCWA mine. And it
14 had higher productivity than several of these nonunion mines.

15 Q. But you were not comparing in this analysis one mine to
16 the other. You were comparing Bailey to the average, were you
17 not?

18 A. I believe I was comparing Bailey to five other mines in
19 2012.

20 Q. Right. And if you do the same thing over a four-year
21 period, the average is 4.88 at Bailey versus 4.23 at the UMWA.

22 MR. HO: Objection. Asked and answered. He just
23 asked the same question and the witness said yes.

24 THE COURT: I'll overrule the objection. You can
25 answer the question, Mr. Buckner.

1 A. I see the numbers that you're referencing. That's not
2 what my declaration said. My declaration was comparing Bailey
3 in 2012 to five other UMWA mines that had higher productivity.

4 Q. I understand that. I'm asking you something else but
5 that's fine. I asked you to look now over a four-year period.
6 But we have what we need.

7 Let's move on. In your declaration, you contend that
8 comparing the productivity rates of Patriot's underground union
9 mines and nonunion mines in West Virginia disproves the notion
10 that NBCWA work rules impede productivity. Do you recall that?
11 And if you want, I'll refer you to your declaration on page 27,
12 paragraph 64. Let me know when you get there.

13 A. Yes, sir.

14 Q. And you see, I pulled out on the screen:

15 "I looked at MSHA data for 2011 (note that Big Mountain
16 shut down in 2012) to compare Patriot's underground union mine
17 versus nonunion mines in West Virginia. According to this
18 comparison, Schwartz' claim that the NBCWA work rules impede
19 productivity again is proven wrong."

20 Do you see that?

21 A. Yes, sir.

22 Q. Now, in this analysis, one comparison you highlight is
23 between the union Federal number 2 and the nonunion Panther
24 mine, correct?

25 A. Yes, sir.

1 Q. And again, you do that in Buckner paragraph 64. You say:
2 "The Federal #2 mine as shown in Schwartz' declaration had
3 a productivity rate of 3.35 tons per hour. In comparison, the
4 nonunion Panther longwall mine had a productivity rate of 2.20
5 tons per hour and the nonunion Brody mine had a productivity
6 rate of 1.49 tons per hour." Correct?

7 A. Yes, sir.

8 Q. And I think I heard you testify earlier that geological
9 conditions can affect the productivity of a mine, is that
10 correct?

11 A. Yes, sir.

12 Q. And you heard Mr. Hatfield say that the other day,
13 correct?

14 A. Yes, sir.

15 Q. And where in your declaration do you discuss the different
16 geological conditions of Federal number 2 mine versus the
17 Panther mine?

18 A. I don't know that I specifically discuss that in my
19 declaration. I talk about geological conditions generally
20 having an effect on productivity. My point here is that Mr.
21 Schwartz lays the entire productivity differences to work rules
22 in the agreement. And what I'm trying to point out is that you
23 can't get to that analysis without taking all these other
24 things into account.

25 Q. Precisely. So, in other words, you have to take into

1 account the fact that Federal number 2 mine has superior
2 geology with thicker coal and less rock, is that right?

3 A. I --

4 Q. That's something you would need to take into account.

5 A. I believe that's correct, yes.

6 Q. And you contend that the union Highland mine has lower
7 labor costs per ton than the nonunion Dodge Hill mine, correct?
8 And that's declaration paragraph 57 at page 24.

9 A. Yes, sir.

10 Q. Do you see that? And do you discuss anywhere in your
11 declaration how the geological position of Highland compared to
12 Dodge Hill?

13 A. Not specifically, but again, I acknowledged elsewhere in
14 my declaration that geology and a lot of other factors other
15 than work rules have an effect on productivity.

16 Q. Exactly. So saying one has higher hours than the other
17 isn't really a useful comparison, is that right, without taking
18 into account all the other factors?

19 A. I'm simply trying to address the contentions in Mr.
20 Schwartz' and Mr. Lucha's declarations that the work rules
21 impede productivity and therefore lead to higher costs. And I
22 don't think you can make that conclusion. I think that's
23 faulty logic.

24 Q. You can't make the conclusion either way without taking
25 into account all the other factors one of which is geological

1 conditions.

2 A. Yes. And --

3 Q. It sounds like we're in violent agreement.

4 A. That would be a good thing.

5 Q. Now if you take a look at your declaration paragraph 72 at
6 page 31 --

7 A. Yes, sir.

8 Q. Now you opine that natural gas prices are likely to rise,
9 correct?

10 A. Can you --

11 Q. Sure. It says, paragraph 72, page 31: "I agree with
12 Akunuri's conclusions that natural gas prices have already
13 doubled from their historical lows (when adjusted for
14 inflation) in 2012, and that the rise in natural gas prices is
15 likely to continue." Do you see that?

16 A. Yes.

17 Q. And you've opined that rising natural gas prices will
18 cause thermal coal price to rise, correct? And I, again, refer
19 you to paragraph 72 where you say:

20 "Rising natural gas prices will in turn discourage
21 electricity producers from continuing to switch from coal to
22 natural gas power generation, and thus cause an increase in the
23 demand for thermal coal which it in turn caused rising prices."

24 Do you see that?

25 A. Well, I said that rising prices would increase the demand

1 and that should increase prices, yes.

2 Q. And you don't claim to be an expert in natural gas
3 pricing, is that correct?

4 A. No, sir. I was relying on Mr. Akunuri's testimony.

5 Q. So, and once again, similar to the question I asked you at
6 the outset, so you couldn't have made this statement without
7 first consulting with an expert.

8 A. I think the statement that "Rising natural gas prices will
9 lead to increased demand for thermal coal", yes, I think I
10 could have made that statement.

11 Q. And you're not holding yourself out as an expert in coal
12 or natural gas pricing, are you?

13 A. No, sir.

14 Q. Have you ever been hired to forecast energy prices?

15 A. No, sir.

16 Q. Now, based on your opinion that coal prices will rise, you
17 concluded that Patriot will likely increase its level of
18 thermal coal production. Is that correct? I'm looking at
19 declaration paragraph 74. You can find that on page 32. I
20 tried to pull that out on the screen. You see? It says:

21 "In a rising pricing environment Patriot will likely
22 increase its revenue not only by realizing a greater margin per
23 ton" -- and this is what I'm looking at now or concentrating on
24 -- "but also by increasing the level of its thermal coal
25 production."

1 Do you see that?

2 A. Yes, sir.

3 Q. Now you don't work for a coal company now, do you?

4 A. No, sir.

5 Q. And the last time you did was how many years ago?

6 A. Late 1978.

7 Q. And you were -- from your description, it sounds like you
8 were a rank and file miner, is that right?

9 A. And proud of it.

10 Q. And you have no experience as the manager of a coal
11 company.

12 A. No, sir.

13 Q. And you've never been in a position of responsibility for
14 deciding how much coal a company should produce, is that right?

15 A. That's correct.

16 Q. Now you consider Energy Ventures Analysis a reliable
17 source for coal price projections, is that right?

18 A. I believe that they're one of several reliable sources,
19 yes.

20 Q. And you cited EVA's fourth quarter 2012 Quarterly Coal
21 Report which was published in December of 2012 in reference to
22 EVA's high volatility metallurgical coal price forecast,
23 correct? And that's on page -- your declaration, pages 32 and
24 33 at paragraph 75.

25 A. Yes, sir.

1 Q. Now you testified that you reviewed Mr. Schwartz' reply
2 declaration that was filed in this case, correct?

3 A. Yes.

4 Q. So then you saw Mr. Schwartz state that EVA has published
5 a more recent quarterly report in which it reduced its forecast
6 for metallurgical coal, correct? And if you want, I could pull
7 up Schwartz' reply declaration, paragraph 6 at page 7. And
8 again, for those trying to follow along, that's Joint Exhibit
9 148.

10 A. Yes, sir. I see that.

11 Q. Okay. It says: "EVA has published a more recent forecast
12 for the 1st Quarter of 2013 in March 2013. In our more recent
13 forecast, we have reduced our projection of future coal prices
14 for U.S. coals -- both thermal and metallurgical -- for a
15 number of reasons", et cetera. Do you see that?

16 A. Yes, sir.

17 Q. And did you hear Mr. Schwartz' testimony in court that
18 "Patriot's Rocklick grade coal is the best comparator for high-
19 volatility A real met coal that is forecasted in the EVA
20 report."

21 A. I wasn't here for all of his testimony. I did hear much
22 of it.

23 Q. Okay. Do you agree with Mr. Schwartz' -- with the
24 statement I just made?

25 A. Can you say it again?

1 Q. Yeah. Mr. Schwartz testified that "Patriot's Rocklick
2 grade coal is the best comparator for the high-volatility A
3 real met coal that is forecasted in the EVA report."

4 A. I think that's probably accurate, yes.

5 Q. Now, so you're aware that the forecast for met coal in
6 EVA's most recent report is substantially lower than the most
7 analogous forecast in Patriot's business plan, isn't that
8 correct?

9 A. That's what I understand, yes. I haven't seen the actual
10 report.

11 Q. Okay. But based on what you've heard and what you believe
12 and what you've read, you understand that EVA's most recent
13 report shows that it's substantially lower than what's in the
14 business plan, is that correct?

15 A. I see that that's what Mr. Schwartz said in his reply
16 declaration, yes.

17 Q. And after having reviewed that reply declaration, did you
18 do any analysis which resulted in your concluding that Mr.
19 Schwartz got that wrong?

20 A. No, sir.

21 Q. Now you've opined that an increased cost of production for
22 Australian coal will have the effect of increasing the
23 competitiveness of North American coal in the world market.
24 And you did so, I believe, in your declaration at paragraph 79,
25 if you could take a look.

1 MR. KAMINETZKY: And if we could pull that up on the
2 screen. And then I'll have to read it. It says:

3 "If the" -- starting in the middle: "If the Dahlman
4 report is accurate these factors will increase the course of
5 production for Australian metallurgical coal which will have
6 the effect of increasing the competitiveness of North American
7 metallurgical coal in the world market." Do you see that?

8 A. Yes, sir.

9 Q. And you're not an expert in global markets, correct?

10 A. No, sir.

11 Q. Now even assuming an increased cost of production of
12 Australian coal, currency exchange rate could prevent North
13 American coal producers from benefiting, correct?

14 A. Counselor, I believe I said in my deposition that if I
15 answered that you would accuse me of trying to be an expert in
16 exchange rates. But generally, I think that exchange rates
17 have an effect on the price, yes.

18 Q. Now in your declaration at paragraph 65 at page 27, you
19 opine that UMWA mines compare favorably with its nonunion
20 operations in terms of hourly wage and fringe benefits per ton.
21 Do you see that?

22 A. Yes, sir.

23 Q. And that's paragraph -- again, paragraph 65.

24 A. Yes.

25 Q. Now that comparison of wage and benefit cost per ton at

1 Patriot's UMWA and nonunion complexes was based on 2011 data,
2 is that correct?

3 A. Yes. It was based on data that the company had provided
4 in the data room to the union.

5 Q. And you're aware that UMWA-represented employees received
6 a wage increase in 2012, is that right?

7 A. Yes.

8 Q. Now does your analysis of Patriot union versus nonunion
9 hourly labor cost per ton take into account geological
10 differences, differences in the type of mining equipment or
11 regional differences?

12 A. No. This is simply an analysis of the wages and fringe
13 benefit cost at the various complexes as reported by Patriot.

14 Q. Without taking into account all those other factors. This
15 might be something that, again, we violently agree with.

16 A. Yes, sir.

17 Q. Okay. Now if you could take a look at Buckner
18 declaration, paragraph 70, on page 30, and there's something a
19 bit anomalous in that there's two paragraph 70s. So I turn you
20 to the first paragraph 70 in your declaration.

21 A. I apologize for the confusion.

22 Q. No. That's completely fine. Just for the record.

23 Now in paragraph 70 on page 30, you say that in 2012,
24 Patriot paid its employees at the nonunion Panther mine workers
25 -- I think that's a typo -- significantly higher wages per hour

1 than it paid workers under the NBCWA. Do you see that?

2 A. Yes.

3 Q. Now in comparing Panther's wages per hour and wages per
4 hour under the NBCWA, you did not consider overtime pay, is
5 that correct?

6 A. No. I'm comparing the rates here.

7 Q. You're comparing wage rates and not actual dollars paid by
8 Patriot, is that right?.

9 A. These are just rates, yes.

10 Q. All right. And under the NBCWA, miners have opportunities
11 for daily overtime even if they haven't worked forty hours a
12 week, is that right?

13 A. That's correct.

14 Q. And under the 2011 NBCWA, they earn double time on
15 Saturdays and triple time on holidays even if they haven't
16 worked a forty-hour work week, is that right?

17 A. That's correct.

18 Q. But none of those things is the case at Patriot's nonunion
19 mines, is that correct?

20 A. My understanding is that they get time and a half after
21 forty in compliance with federal labor laws.

22 Q. Right. But they don't get all those things that you just
23 testified to with respect to what's in the NBCWA.

24 A. No. There's an advantage to belonging to a union, yes.

25 Q. So although your declaration says that in 2012, Patriot

1 paid its employees at Panther higher wages per hour than it
2 paid workers under the NBCWA, you did not even analyze the
3 actual wages, is that right?

4 A. No. I did that in the previous paragraph that we were
5 talking about.

6 Q. We already talked about that. Now you testified and you
7 stated in your declaration that the Gateway CBA provides for
8 full transfer rights, is that correct?

9 A. Yes.

10 Q. Okay. And by full transfer rights, you mean that when a
11 job opens up at one of Patriot's NBCWA mines participating in
12 the 1974 plan, you believe Gateway miners have a right to
13 transfer to the NBCWA mine and accrue pension credit, investing
14 credit for its retiree health care, correct?

15 A. That's correct.

16 Q. Okay. Now you would agree with me that nothing in the
17 actual text of the Gateway CBA reflects this transfer right
18 feature, is that correct?

19 A. That's correct. It's a verbal agreement between the union
20 and Patriot.

21 Q. And who made that a verbal agreement to you?

22 A. The bargainers. They talked about it when they were
23 finishing the agreement.

24 Q. So you were in the room?

25 A. The union's bargainers in --

1 Q. The union's bargainers.

2 A. -- consultation with me.

3 Q. So no one's told you that -- or you weren't there when
4 anyone from the company's side made any statement to that
5 effect.

6 A. I've never had a discussion with the company about that,
7 no.

8 Q. And there's nothing in the text of the agreement.

9 A. That's correct.

10 Q. And you didn't personally participate across the table at
11 the Gateway negotiations, is that right?

12 A. I did not.

13 Q. Now you opined in your declaration that -- and we're now
14 looking at paragraph 105 -- that eliminating helpers will have
15 negative safety consequences for miners, is that right?

16 A. Yes.

17 Q. You were aware that MSHA has the ability to make bindings
18 of violations at mines for safety and health hazard, is that
19 correct?

20 A. That's correct.

21 Q. Were you in the courtroom when Mr. Lucha testified that
22 MSHA has never found a violation at Patriot's nonunion miners
23 based on a lack of helpers?

24 A. I believe I was, yes.

25 Q. Are you also -- well, are you aware of any violations that

1 MSHA has issued for lack of helpers at a Patriot mine?

2 A. No, sir.

3 MR. KAMINETZKY: One second.

4 Q. Earlier in your direct testimony, Mr. Ho had a dialogue
5 with you about what would happen if the proposal that are
6 now -- the company's proposals that's now on the table would be
7 implemented. And I think you said something like folks would
8 look for jobs elsewhere, go work elsewhere. Do you recall
9 that?

10 A. Yes.

11 Q. Okay. I want to quote for you a question and answer that
12 I engaged with with President Roberts at his deposition. And
13 I'm looking at the deposition on pages 70 --

14 MR. HO: Your Honor, objection. President Roberts'
15 deposition was not made an exhibit in this case.

16 MR. KAMINETZKY: Actually it was. We exchanged
17 deposition designations and -- for the purpose of doing just
18 that. In lieu of having to call President Roberts, we agreed
19 with counsel that we would just designate from his deposition.
20 And even if it wasn't designated, what I'm here to is try to
21 impeach the testimony using the testimony of someone else --
22 actually, his boss, which is completely appropriate in any
23 event.

24 THE COURT: Well, I agree deposition designations were
25 provided and agreed upon to was my understanding.

1 MR. KAMINETZKY: That's --

2 MR. HO: It depends on whether the reference that
3 counsel's referring to was actually designated.

4 MR. KAMINETZKY: I believe it was. But either way --
5 it absolutely was. And either way --

6 THE COURT: Somehow I feel certain it probably was.
7 But let me -- and I don't have my depo designations in here
8 with me even though Mr. Howley asked this morning did I want
9 them in the courtroom.

10 MR. KAMINETZKY: Oh, no more. No more. Again --

11 THE COURT: Yeah. I just have a lot of paper here, I
12 would say.

13 MR. KAMINETZKY: Well, I can ask it in a different
14 way.

15 THE COURT: All right.

16 Q. Mr. Roberts testified in his deposition that -- I asked
17 him what would -- "So, in the event of a strike and a
18 subsequent liquidation, you would expect that a lot of the UMWA
19 miners who lost their jobs would not be able to quickly find a
20 new job in the coal mines."

21 And Mr. Roberts' answer -- or President Roberts' answer:

22 "If they were looking for jobs in the coal industry
23 currently it would be extremely difficult."

24 Do you agree with that?

25 A. I would agree that it would be difficult to find jobs in

1 the coal industry now, yes.

2 Q. There's a lot -- because of the downsizing that has
3 occurred over the last several years, there's a lot of out of
4 work coal miners, is that right?

5 A. Yes. It's a cyclical industry and we're at the down
6 cycle. But being a cyclical industry, it will come back at
7 some point.

8 Q. Right. But right now, you would agree with me that if,
9 God forbid, Patriot liquidate, you'd have a lot of out of work
10 UMWA members, is that right, for at least a period of time.

11 A. Possibly, yes.

12 MR. KAMINETZKY: That's all I have, Your Honor.

13 THE COURT: All right. Mr. Ho, any redirect?

14 MR. HO: Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. HO:

17 Q. In the course of working for the UMWA, have you ever seen
18 how coal companies react to rising coal prices?

19 A. Coal companies, like any business, try to maximize their
20 profit. And if rising prices allow them to generate more
21 revenue and if the rising prices are in response to increased
22 demand, they'll try to fill that demand.

23 Q. In his testimony, Mr. Schwartz mentioned that the
24 volatility quality of medical is measured on a continuum. Do
25 you agree with that?

1 A. Yes. I generally agree with that.

2 Q. Do you know what's the exact volatility characteristic of
3 the high-vol A coal that EVA uses for its forecast?

4 A. No, I don't.

5 Q. Do you know whether the Rocklick product is identical to
6 the EVA product?

7 A. No, I don't.

8 Q. During the course of your negotiations for the union, has
9 the union ever received information from the company concerning
10 the exact characteristics of company coal products?

11 MR. KAMINETZKY: Your Honor, he testified that he
12 wasn't at the negotiations so there's no foundation for that.

13 MR. HO: Well, I'm speaking more generally of the
14 negotiations, his experience in over the thirty years that he
15 was working for the union.

16 MR. KAMINETZKY: Which negotiations over -- so maybe
17 it's just a clarification. Is he referring to negotiations
18 about the Patriot situation here or negotiations he
19 participated in over a thirty year period.

20 MR. HO: Over the thirty period.

21 THE COURT: All right. Why don't you --

22 MR. KAMINETZKY: With whomever.

23 MR. HO: Right.

24 THE COURT: -- rephrase the question then, Mr. Ho.

25 MR. HO: Yes.

1 BY MR. HO:

2 Q. Over the thirty year period, has Patriot received data
3 from coal companies concerning the exact characteristics of the
4 coal products they produce?

5 MR. KAMINETZKY: Objection. He just said Patriot.
6 Did you mean the UMWA?

7 THE COURT: I think you mean UMWA.

8 MR. HO: Yes.

9 Q. Has the UMWA received from coal companies data concerning
10 the exact characteristics of the products they produce?

11 A. We've received information about the types of coal that
12 the companies sell. If you're asking for the exact
13 specifications, I'm not sure that we have, no.

14 Q. Would that information typically from the sales
15 departments of coal companies?

16 A. It could, yes.

17 Q. Do you know whether any member of the Patriot sales
18 department has offered a declaration in this case?

19 A. Not that I'm aware.

20 Q. Do you know whether any member of the Patriot sales
21 department has been a witness in this case?

22 A. Not that I'm aware.

23 Q. What is the union current counterproposal on overtime?

24 A. The union's counterproposal is to allow overtime after
25 forty hours.

1 Q. Do you believe denying the 1113 motion will immediately
2 lead to the liquidation at Patriot?

3 A. That's a possibility. That won't be my decision. That'll
4 be a decision that President Roberts makes in consultation with
5 the members affected. But it's a possibility.

6 MR. HO: Sorry. Irresponsible to my question. But I
7 have nothing further.

8 MR. KAMINETZKY: I have nothing further, Your Honor.
9 I think we're completed with this witness. Thank you.

10 THE COURT: All right. Mr. Buckner, you may step
11 down. Thank you.

12 THE WITNESS: Your Honor, I think I knocked some of
13 the books down --

14 THE COURT: Sure. You want to look over there and see
15 if one of the many binders fell over there.

16 THE WITNESS: There's loose paper here.

17 THE COURT: Oh, my goodness. That's even worse. All
18 right. Mr. Ho, Ms. Geenen, Mr. Perillo, if you'd like to call
19 your next witness, please.

20 MR. PERILLO: Your Honor, the union would call Mr.
21 Elliott Cobin as our next witness.

22 By way of introduction, Your Honor, Mr. Cobin is a
23 director in the health care group of PricewaterhouseCoopers.
24 He is an actuary and an associate of The Society of Actuaries,
25 a member of the health care section of The Society of Actuaries

1 and a member of the American Academy of Actuaries. We tendered
2 him as an expert in the area of health care benefits including
3 the pricing, design, funding, including funding of VEBA trusts,
4 and accounting. And without further ado, I would submit Mr.
5 Cobin for cross-examination.

6 THE COURT: All right. Thank you. If Mr. Cobin would
7 step up to the podium first, please, to be sworn.

8 THE CLERK: Please raise your right hand, sir.

9 (Witness sworn)

10 THE CLERK: Please have a seat in the witness box,
11 sir. There is a step up. And if you would please speak into
12 the microphone.

13 MR. PERILLO: I believe this is only a formality, Your
14 Honor, but I forgot to say it. We tender as his direct
15 testimony the declaration of Mr. Cobin which is found, I
16 believe, at tab 235.

17 MR. MARTIN: I almost thought I was going to just have
18 cross on the record. For the record, Your Honor, Jonathan
19 Martin from Davis Polk for the debtors.

20 THE COURT: All right. You may proceed.

21 CROSS-EXAMINATION

22 BY MR. MARTIN:

23 Q. Good morning, Mr. Cobin.

24 A. Good morning.

25 Q. It's good to see you again. Mr. Cobin, this is your first

1 time testifying as an expert witness, is that correct?

2 A. Yes.

3 Q. This is the first time you've been retained as an expert
4 witness in connection with a legal proceeding, is that correct?

5 A. Correct.

6 Q. Mr. Cobin, who is Michael Skolnik?

7 A. He's a colleague of mine, director in the Chicago office
8 at PricewaterhouseCoopers.

9 Q. Is he a director or a managing director?

10 A. A managing director.

11 Q. He's more senior to you, correct?

12 A. Correct.

13 Q. He's the one who contacted you about preparing a
14 declaration in this matter, is that correct?

15 A. Yes.

16 Q. And he told you that the debtors had submitted three
17 expert reports and that the union was going to submit three
18 expert reports and you would be one of the declarants on behalf
19 of the union, is that correct?

20 A. Correct.

21 Q. Mr. Skolnik and Mr. Perillo had already prepared an
22 outline of the declaration that they sent to you, is that
23 correct?

24 A. I believe it was prepared by Mr. Perillo, yes.

25 Q. Part of your task was to evaluate the declaration of Tom

1 Terry, is that correct?

2 A. Yes.

3 Q. At the time you were provided the outline prepared by Mr.
4 Perillo, were you also provided a copy of Mr. Terry's
5 declaration?

6 A. Yes.

7 Q. Mr. Cobin, I'd like to refer you now to your declaration
8 which is Joint Exhibit 235.

9 THE COURT: Feel free to close up some of those books
10 that you don't need. There's a host of them.

11 THE WITNESS: I'm not sure which binder it's in.

12 THE COURT: They don't have numbers. I'm sorry.
13 You'll just have to look in there and see -- if you glance at
14 the tab. It's in the --

15 MR. MARTIN: If you look at the tabs, Mr. Cobin.

16 THE COURT: -- book that starts with 231.

17 THE WITNESS: Yes. This one goes up to 230, I
18 believe.

19 THE COURT: All right. Yeah. There's another one
20 that starts with 231.

21 THE WITNESS: Ahh. It's always the last one.

22 THE COURT: And feel free to close those other ones
23 over there if you need more space.

24 THE WITNESS: Thank you.

25 THE COURT: Um-hmm.

1 Q. Are you there, Mr. Cobin?

2 A. I'm at the beginning, yes.

3 Q. You have your declaration in front of you, is that

4 correct?

5 A. Correct.

6 Q. What's the date of your declaration?

7 A. April 29th -- I'm sorry.

8 Q. If you look on the signature page.

9 A. April 3rd.

10 Q. You drafted your declaration in about two weeks, is that

11 correct?

12 A. Yes.

13 Q. And you followed the outline that Mr. Perillo had prepared

14 when you were drafting the declaration, is that correct?

15 A. Yes.

16 Q. So the topics you addressed in your declaration are the

17 same topics that Mr. Perillo had included in the original

18 outline, correct?

19 A. Yes.

20 Q. Did you tell Mr. Perillo that you didn't have sufficient

21 expertise to address any of those topics?

22 A. No.

23 Q. Mr. Skolnik helped you to draft the declaration, is that

24 correct?

25 A. Yes.

1 Q. Mr. Cobin, you are an associate in The Society of
2 Actuaries, is that correct?

3 A. Yes.

4 Q. Is there a more senior designation in The Society of
5 Actuaries?

6 A. Fellowship.

7 Q. You took five exams to become an associate in The Society
8 of Actuaries, is that correct?

9 A. Yes.

10 Q. You would have had to take additional exams to become a
11 fellow, is that correct?

12 A. I took one additional exam, yes.

13 Q. But you didn't take all of the exams --

14 A. I did not --

15 Q. -- necessary to become a --

16 A. -- complete it, correct.

17 Q. For the record, just wait until I finish my question. You
18 didn't take all of the exams necessary to become a fellow,
19 correct?

20 A. Correct.

21 Q. Are you a member of any other actuarial associations?

22 A. The American Academy of Actuaries.

23 Q. Are you aware that Tom Terry is the president-elect of the
24 American Academy of Actuaries?

25 A. Yes.

1 Q. In your declaration, you offer three opinions, is that
2 correct? I refer you to paragraphs 4a through 4c.

3 A. Yes.

4 Q. Let's begin with your first opinion which concerns the
5 estimation of Patriot's retiree health care liabilities. In
6 your declaration, you estimate Patriot's retiree health care
7 liability to be approximately 1.79 billion dollars, correct?

8 A. Yes.

9 Q. The company estimates its liability for retiree health
10 care to be approximately 1.45 billion dollars, is that correct?

11 A. Yes.

12 Q. That figure, the company's figure, appears in the
13 company's financial statements filed with the United States
14 Securities and Exchange Commission, is that correct?

15 A. Yes.

16 Q. You agree that the company is correctly stated its retiree
17 health care liability for purposes of its financial reporting,
18 correct?

19 A. Yes.

20 Q. You think that a different number should be used for
21 purposes of valuing a claim for retiree health care benefits in
22 this bankruptcy, correct?

23 A. Yes.

24 Q. Your number is higher than the company's financial
25 statement figure of 1.45 billion dollars because you used

1 different medical cost trend assumption, is that correct?

2 A. Correct.

3 Q. Medical cost trend refers to the rate of growth of health
4 care costs over time, is that correct?

5 A. Yes.

6 Q. Medical cost trends are not related to how sick people
7 are, is that correct?

8 A. Well, of course, it does. If people weren't sick then
9 medical costs wouldn't trend.

10 Q. Because if people weren't sick, nobody would use health
11 care, correct?

12 A. Correct.

13 Q. But the growth over time in the use of health care relates
14 to growth in the economy, how much disposable income people
15 have, is that correct?

16 A. Yes.

17 Q. Medical cost trend is an important assumption when
18 calculating retiree health care liabilities, is that correct?

19 A. Yes.

20 Q. And you used something called the Getzen model to estimate
21 future medical cost trends for your calculation, is that
22 correct?

23 A. That's correct.

24 Q. The model was created about five years ago by a professor
25 at Temple University named Thomas Getzen, is that correct?

1 A. Yes.

2 Q. I'd like you to refer, Mr. Cobin, to Joint Exhibit 252.

3 A. Yes.

4 Q. This is a printout from the Society of Actuaries' website.
5 You've seen this website before, correct?

6 A. Yes.

7 Q. In fact, you cut and pasted text from this web page into
8 your declaration, correct?

9 A. I did.

10 Q. The Getzen model was developed for the benefit of
11 actuaries for education use only, correct?

12 A. That's what's stated, yes.

13 Q. The last sentence of the first paragraph of this web page
14 states, and I'll read it: "The motivation for creation of the
15 model was driven by its potential usage as a resource for the
16 estimation of a reportable liabilities for retiree healthcare
17 benefits as specified under FAS 106 and GASB 45" accounting
18 statements. Do you see that?

19 A. Yes.

20 Q. FAS 106 is the accounting standard that governs the
21 estimation of retiree health care liabilities, is that correct?

22 A. Yes.

23 Q. We've established that you believe that the company's
24 calculation of its retiree health care liability complies with
25 FAS 106, is that correct?

1 A. Correct.

2 Q. As of two or three years ago, you didn't know any company
3 that was using the Getzen model to estimate retiree health care
4 liabilities, is that correct?

5 A. That's correct.

6 Q. When you were preparing your declaration in March, you e-
7 mailed other actuaries at PwC and asked them how commonly the
8 Getzen model is used for calculation of retiree health care
9 liabilities, is that correct?

10 A. Yes.

11 Q. And you followed up that e-mail survey of your colleagues
12 with some phone calls, is that correct?

13 A. Yes.

14 Q. None of the people you heard from by e-mail or by phone
15 was able to identify any clients that they could represent used
16 the Getzen model, is that correct?

17 A. They did identify it. I just didn't have the names in
18 front of me during my deposition.

19 Q. Well, what you told me in your deposition was that none of
20 them said they used Getzen but they might use Getzen. Does
21 that sound familiar?

22 A. Well, what I meant to say if I didn't was that I asked
23 specifically for a list of clients that used the Getzen model.
24 They sent me a list. So I do have a list of clients that
25 purportedly use the Getzen model. I haven't seen the actuarial

1 reports that identifies the Getzen model, so I think what I
2 indicated in my deposition was that they were long trends and
3 they probably did use the Getzen model but I just wasn't a
4 hundred percent sure. I'm still not a hundred percent sure.

5 Q. That's what I was looking for.

6 A. Right.

7 Q. You're not a hundred percent sure that they used the
8 Getzen model, correct?

9 A. I cannot testify that they absolutely did.

10 Q. At PwC, you provide audit support for fifty PwC audit
11 clients, is that correct?

12 A. Yes.

13 Q. Of those fifty clients, there are two that use the Getzen
14 model, is that correct?

15 A. Yes.

16 Q. The Getzen is not a standard actuarial practice, is that
17 correct?

18 A. That's correct.

19 Q. Before preparing this declaration, you had never
20 personally used the Getzen model to calculate retiree health
21 care liabilities, is that correct?

22 A. That's correct.

23 Q. I'd like you to turn to paragraph 5 of your declaration.
24 Are you there, Mr. Cobin?

25 A. Paragraph 5? Yes.

1 Q. Yes. And I'd focus your attention on the last sentence.

2 We discussed this at your deposition if you recall.

3 A. Yes.

4 Q. Is there a mistake in that sentence?

5 A. Yes. It should be -- the last word says CPI. It should
6 be GBT.

7 Q. Have you identified any other errors in your declaration
8 since you submitted it?

9 A. Yes.

10 Q. Would you explain them to the Court so that the Court is
11 aware of them when reviewing your declaration?

12 A. Sure. During my deposition, you asked me about the value
13 of the company for purposes of applying the thirty-five percent
14 equity stake. And the value of the company, you pointed out,
15 was calculated by PwC to be 2.2 billion dollars. And then we
16 proceeded to take thirty-five percent of 2.2 billion dollars.
17 That was a mistake. The mistake was that the thirty-five
18 percent equity stake is really based on the net disposable
19 value of the company after payment of other obligations. And
20 the other obligations add up to be about 1.3 billion dollars.
21 So the net -- at least based on the 2.2 billion dollar value is
22 only .9 billion. And taking thirty-five percent of that leads
23 to a very different result than what I had in my deposition.

24 Q. I asked you whether there were any errors in your
25 declaration not your deposition.

1 A. Oh, I'm sorry. I thought you -- I'm sorry.

2 Q. It's okay. You'll have an opportunity to say just what
3 you said.

4 A. I'm sorry.

5 Q. -- when Mr. Perillo gets up.

6 A. No. I did not identify any other errors in my
7 declaration.

8 Q. Mr. Cobin, the effect of using the Getzen model is that it
9 balloons the retiree health care liability, is that correct?

10 A. That's a statement I made. But you just took it out of
11 context.

12 Q. Well, it is a statement you made, correct?

13 A. But it needs to be in context.

14 Q. Well, why don't you provide the context?

15 A. Yes. During my deposition, you asked me about why
16 employers and their actuaries are not using the Getzen model.
17 And my remark was that the assumptions are employer
18 assumptions. They are not actuary -- they are not the
19 assumptions of the actuaries. The actuaries provide guidance
20 to employers in choosing assumptions. But ultimately, it's the
21 employer's assumptions.

22 The Getzen model results in a very long grading period
23 that would then increase the liabilities much more than using a
24 shorter grading period. And when employers look at that and
25 the guidance provided by their actuaries, they decide very

1 quickly that they would rather have a shorter grading period at
2 lower liability as long as the accounting -- their account --
3 their audit firm signs off on it. And that's why I used the
4 term it would "balloon" the liability, meaning that it would
5 increase the liability and employers are typically not
6 interested in doing that.

7 Q. And we'll get to this point, but employers have to comply
8 with GAAP in stating their retiree health care liability for
9 purposes of their financial statements, correct?

10 A. Yes.

11 Q. And so the answer to my question is that it is true that
12 the use of the Getzen model balloons the liability, correct?

13 A. Relative to a much, much shorter grading period, that's
14 more commonly used, yes.

15 Q. I'd like to refer you to Joint Exhibit 253, Mr. Cobin.

16 A. Yes.

17 Q. Joint Exhibit 253 is a version of the Getzen model with
18 your input, is that correct?

19 A. Yes.

20 Q. If you turn to page 2 of the exhibit, there is a Microsoft
21 Excel spreadsheet. And it sets out five steps that the user
22 can use to input various assumptions, is that correct?

23 A. Yes.

24 Q. I'd like to look first at step 3. In that step, the user
25 can input assumptions for inflation, or CPI, and for real GDP

1 as well as two other assumptions, is that correct?

2 A. Yes.

3 Q. Your input for CPI is 2.75 percent, is that correct?

4 A. That's correct.

5 Q. Now for the record, and for the Court, the entry here
6 actually says 2.8 percent but you've represented to me that the
7 way this works is it's actually 2.75 percent in the model, is
8 that correct?

9 A. It is. The second decimal is hidden and it cannot be
10 unhidden. But if you put your cursor over it, you can see it.

11 Q. We'll trust you.

12 A. Yes.

13 Q. Your input for real GDP is 2.5 percent, correct?

14 A. Yes.

15 Q. The Getzen model proposes baseline assumptions for various
16 inputs, is that correct?

17 A. Yes.

18 Q. And those are, at least in step 3, those are just above
19 the boxes for the inputs, is that correct?

20 A. Correct.

21 Q. And putting aside the short-term rates in step 1, you
22 changed three of the baseline assumptions in the Getzen model,
23 is that correct?

24 A. Yes.

25 Q. Two of them are CPI and real GDP, correct?

1 A. Yes.

2 Q. The baseline assumptions for both CPI and real GDP are
3 lower than the assumptions you used, correct?

4 A. Correct.

5 Q. And Professor Getzen updated the model and the assumptions
6 a year ago in March 2012, correct?

7 A. Yes.

8 Q. You don't know why Professor Getzen chose the baseline
9 assumptions that he did for CPI and real GDP, correct?

10 A. I do not.

11 Q. The principal drivers of the Getzen model are CPI and real
12 GDP, correct?

13 A. Correct.

14 Q. By changing those two inputs, you can change the output of
15 the Getzen model in significant ways, correct?

16 A. Yes.

17 Q. If one wanted to put a thumb on the scale in the Getzen
18 model, one would choose CPI and real GDP as the inputs to
19 change, correct?

20 A. Yes.

21 Q. In step 4, you also changed the input for health share GDP
22 above which cost growth is assumed to meet resistance, correct?

23 A. Yes.

24 Q. Can you explain to the Court what that assumption is?

25 A. Yes. Currently, health care costs are slightly above

1 eighteen percent of GDP. And the question is how high can
2 health care costs grow as a percentage of GDP. And that's
3 this -- this is really a constrain. The baseline, as you
4 indicated, had a constrain of twenty-five percent. I put
5 thirty percent in. The assumptions that I used resulted in
6 approximately twenty-six percent so not much higher than the
7 baseline. It didn't go up to thirty.

8 Q. The resistance point is the point at which the economy is
9 likely to constrain the growth of health care costs, correct?

10 A. Yes.

11 Q. And as you said, the assumption -- the baseline assumption
12 here is twenty-five percent, correct?

13 A. Yes.

14 Q. And the current percentage of GDP consumed by health care
15 costs is eighteen percent, correct?

16 A. It's slightly higher than 18. It's about 18.2.

17 Q. Does increasing the input from twenty-five percent to
18 thirty percent have the effect of increasing or decreasing
19 medical cost trends in the model?

20 A. Increasing it very, very slightly. Almost no effect in
21 this situation that we're talking about.

22 Q. Then why did you change it from twenty-five percent to
23 thirty percent?

24 A. Because we're already at 18.2 and I want -- I felt it was
25 more reasonable to let it grow unconstrained. And that's what

1 it did. It grew unconstrained and stopped at twenty-six
2 percent.

3 Q. We'll trust you on that. I'd like you to turn to Appendix
4 C of your declaration.

5 A. Yes.

6 Q. Appendix C sets out the medical trends that PwC calculated
7 using the Getzen model, correct?

8 A. Yes.

9 Q. And the preface states: "With consultation of a PwC
10 managing director who is a health care economist in the PwC
11 Washington D.C. office, the Getzen model was used to develop
12 the medical trend assumptions shown below." Did I read that
13 correctly?

14 A. Yes.

15 Q. Note the passive voice there. You say that the Getzen
16 model "was used to develop the medical trend assumptions" in
17 your declaration. Who did this?

18 A. I did.

19 Q. Did Mr. Skolnik help?

20 A. No.

21 Q. You don't identify who the PwC managing director is here
22 in your declaration but we learned at your deposition that it's
23 Jack Rogers, correct?

24 A. Correct.

25 Q. And he's an economist, correct?

1 A. Yes.

2 Q. You're not an economist, correct?

3 A. Correct.

4 Q. And you consulted with Jack Rogers on the inputs for CPI
5 and GDP, correct?

6 A. Yes.

7 Q. And he told you what he thought the inputs could be,
8 correct?

9 A. He led me to the GAO website where there's a history of
10 CPI and GDP. And based on that history, and his knowledge --
11 he has extensive knowledge over thirty years -- his expectation
12 is that the economy will grow with a CPI of at least 2.75
13 percent. He thought that was conservative. And at least two
14 and a half percent GDP and he thought that was conservative.

15 Q. Isn't it true that he didn't tell you the basis for his
16 view as to why these inputs were correct?

17 A. Well, there really is -- I wouldn't label them as correct.
18 It's an opinion as to how the economy will grow in the future.

19 Q. I agree. Mr. Rogers doesn't have a crystal ball. But he
20 didn't tell you the basis for his opinion, is that correct?

21 A. Well, he did. It's based on history, the long history and
22 that GAO document is attached. And you can see the history
23 since, I think, 1929.

24 Q. You remember being deposed in this case, correct?

25 A. Yes.

1 Q. You were under oath?

2 A. Yes.

3 Q. Do you remember being asked these questions and giving
4 these answers?

5 A. Yes.

6 THE COURT: Mr. Martin --

7 MR. MARTIN: I'm ref --

8 THE COURT: -- can you give him a copy of his
9 deposition?

10 MR. MARTIN: Well, I have it up on the screen if
11 that's just as good.

12 THE WITNESS: Okay.

13 MR. MARTIN: I thought this might be faster. I'm
14 happy to do it how ever you prefer.

15 THE COURT: We've probably given everybody else a
16 copy.

17 MR. MARTIN: Okay. Happy to do that. May I approach?

18 THE COURT: You may. Thank you. Thank you.

19 BY MR. MARTIN:

20 Q. Refer you to page 97, Mr. Cobin, of your deposition. And
21 specifically, begin with line 9. The question was:

22 "Is there any other reason why you changed the input from
23 2.5 to 2.75?"

24 "A. I discussed it with Jack Rogers. I asked him which is
25 better in his opinion, long-term assumption, two and a half,

1 2.75 or anything else and he thought it was" -- the transcript
2 says 7.75 but I assume that was 2.75.

3 "Q. What was the reason for his opinion?

4 "A. He is an economist and he reads a lot and that's his
5 opinion. I didn't get a statement from him.

6 "Q. You don't know the basis for his opinion?

7 "A. Right.

8 "Q. You just heard it from him that that's his opinion,
9 correct?

10 "A. Yes."

11 Was that truthful testimony?

12 A. Yes.

13 Q. Mr. Cobin, you haven't considered the effect of the
14 Affordable Care Act on medical costs trends, is that correct?

15 A. That's correct.

16 Q. Would you agree that if the Affordable Care Act will
17 reduce medical cost trends, your analysis would have to be
18 changed, correct?

19 A. Under that assumption, yes.

20 Q. Would you agree that one purpose of the Act is to bend the
21 health care cost curve down?

22 A. I have seen reports that currently health care costs are
23 on their way back up and largely because of the Affordable Care
24 Act.

25 Q. You believe that there will be a short-term bump up in

1 medical cost trends as a result of the Affordable Care Act, is
2 that correct?

3 A. I'm not really sure. So the answer to your question is I
4 don't know.

5 Q. Well --

6 A. So I don't know if it's headed up or headed down or just
7 don't take it into account yet because it's too early to tell.

8 Q. I will grant you that it's too early to tell. And that's
9 why the question that I asked you was the intent of the Act is
10 to bend the cost curve down, correct?

11 A. The intent of the Act was to cover the uninsured
12 population. Originally, when the Affordable Care Act was being
13 developed, that was the original intent and they wanted to go
14 to a single payor system to effect that. They did not wind up
15 with a single payor system. Therefore, in my opinion, it's
16 very unlikely that the cost curve will be bent down.

17 Q. Okay. But the intent of the Act is to bend the cost curve
18 down, correct?

19 MR. PERILLO: Asked and answered.

20 THE COURT: I don't know.

21 A. I think I was clear in my answer.

22 THE COURT: Just a second. I'll sustain the
23 objection. I think he's already asked and answered the
24 question.

25 MR. MARTIN: Okay, Your Honor. I'll move on.

1 Q. Mr. Cobin, another factor that's critical to calculating
2 retiree health care liabilities at the discount rate, correct?

3 A. Yes.

4 Q. The discount rate is used to calculate the present value
5 of the future benefit payments over all future years, correct?

6 A. Correct.

7 Q. You used the same discount rate that the company used,
8 correct?

9 A. Yes.

10 Q. That discount rate is 4.33 percent, correct?

11 A. Yes.

12 Q. That is a conservative rate that's based on the expected
13 return of investment in high quality bonds, is that correct?

14 A. It's -- I don't know if I would label it conservative.
15 It's a rate that is required for use by the GASB using high
16 quality investments. There's a range of reasonableness in
17 determining what rate to use. So I wouldn't label it
18 conservative. It's within the range of reasonableness.

19 Q. But it is based on the expected return on high quality
20 bonds, correct?

21 A. Yes.

22 Q. If you use the higher discount rate as part of the
23 calculation, the size of the liability would go down, correct?

24 A. Yes.

25 Q. And you agree that an investment manager investing assets

1 of the proposed VEBA could achieve a return on assets that is
2 higher than 4.33 percent, correct?

3 A. Yes.

4 Q. And if that were to be the case, it would be appropriate
5 to use that higher expected return as the discount rate in
6 estimating the liability, is that correct?

7 A. As long as they're with sufficient funds and it was
8 returning that higher yield then yes.

9 Q. And if that higher discount rate were used then both your
10 estimation of the retiree health care liability and the
11 company's estimation would be reduced, correct?

12 A. Mine would be reduced. The Mercers valuation was for
13 accounting purposes only. The company used that valuation for
14 funding but the intent was for accounting. So if you went back
15 to Mercer and said what you just asked me, they might have a
16 different response.

17 Q. That's a good point. That for purposes of accounting,
18 they would have to use the more conservative rate, is that
19 correct?

20 A. Yes.

21 Q. I'd like to turn now to Medicare Part D and, specifically,
22 your discussion in paragraph 8 of your declaration. This is
23 your analysis of the company's Medicare Part D reimbursements.

24 A. Yes.

25 Q. Do you recall that?

1 A. Yes.

2 Q. You think -- or your claim that the company understated
3 its retiree health care liability by using a Medicare Part D
4 reimbursement level that equates to 1500 dollars per person, is
5 that correct?

6 A. Yes.

7 Q. And you think the number should be 1284 dollars, is that
8 correct?

9 A. Yes.

10 Q. And seven percent of the increase between 1.45 billion and
11 1.79 billion comes from that analysis, correct?

12 A. That's right.

13 Q. You never asked Mercer whether 1500 dollars is, in fact,
14 the number they use in their model, is that correct?

15 A. They use twenty-one percent.

16 Q. That's not the question I asked.

17 A. My understanding is that their model takes an input of a
18 percentage and not a dollar amount. So it was pointless to ask
19 that question.

20 Q. Well, do you know what the percentage equates to in dollar
21 terms?

22 A. The twenty-one percent equates to 1500 dollars.

23 Q. Under your calculation, correct?

24 A. Under my calculation.

25 Q. Would it surprise you to learn that, under Mercer's

1 calculation, in their model, it equates to 1,069 dollars?

2 A. That would surprise me. I don't see how that's possible.

3 Q. Okay. But if it is, that part of your analysis no longer

4 applies, correct?

5 A. They'd have to show me their calculations. We -- I don't

6 understand that.

7 Q. I'm sure you don't. We've discussed that the accounting

8 standard that governs the estimation of retiree health care

9 liabilities is FAS 106, correct?

10 A. Correct.

11 Q. And we've discussed that you agree that Patriot calculated

12 its liability in compliance with FAS 106, correct?

13 A. Yes.

14 Q. You're very familiar with FAS 106, correct?

15 A. Yes.

16 Q. You know that FAS 106 requires the use of explicit

17 assumptions --

18 A. Yes.

19 Q. -- each of which individually represents "the best

20 estimate of a particular future event to measure the expected

21 post-retirement benefit obligation". Correct?

22 A. Yes.

23 Q. And a particular future event would include future medical

24 cost trends, correct?

25 A. Yes.

1 Q. And so, FAS 106 requires the best estimate of those future
2 medical cost trends, is that correct?

3 A. Yes.

4 Q. But you think when calculating a claim in this bankruptcy,
5 we should use the medical cost trend assumptions that you
6 devised, is that correct?

7 A. Yes.

8 Q. So something less than the best estimate, is that correct?

9 A. No. There are two different issues. Shall I explain?

10 Q. Please.

11 A. Yes. The use of accounting assumptions while the
12 accounting profession and the financial statement indicates use
13 of best estimate -- when those assumptions are reviewed,
14 accountants will look at materiality of that assumption. I've
15 done many of these reviews and accountants will say, well, if
16 they were to use a different assumption that you think is more
17 appropriate, will the liability change materially or not. And
18 if it's not material then it's okay. So there's a big range of
19 reasonableness based on materiality. And materiality varies a
20 lot from client to client and the size of the plan.

21 Secondly, actuaries have different opinions as to what's a
22 best estimate. When the Affordable Care Act was promulgated,
23 there was hope that medical costs would decrease quickly as you
24 had indicated. And therefore, assumptions that graded down
25 quickly at that point in time were thought to be not

1 unreasonable. Maybe it will really happen. Now, a couple of
2 years later, it hasn't happened. It doesn't look like it's
3 going to happen and actuaries are now changing these
4 assumptions back to a longer term grading period.

5 So it varies from year to year as to what's a best
6 estimate. No one has a crystal -- this is the most difficult
7 assumption and there is no crystal ball.

8 Q. But at any point in time, GAAP requires a company to use
9 the best estimate not a reasonable estimate, is that correct?

10 A. Yes.

11 Q. Mr. Cobin, are you aware that in January 2013, PwC
12 delivered a calculation of the company's retiree health care
13 claim that assumed a grade down period of sixteen years?

14 A. Yes. That was our initial -- we did several estimates.
15 This one we saw the grading period of six years. That was an
16 immediate red flag that that is not a good assumption; it's not
17 a reasonable assumption for settling this obligation. And so,
18 we tested various assumptions prior to settling on the final
19 assumption.

20 Q. The company's assumptions are a seven percent initial
21 trend rate grading down to an ultimate rate of five percent by
22 2019, is that correct?

23 A. Yes.

24 Q. You're familiar with Exxon, correct? The company?

25 A. I know of Exxon, yes.

1 Q. Exxon is an audit client of your firm,
2 PricewaterhouseCoopers, correct?

3 A. I wasn't aware of that but I'll take your word for it.

4 Q. Will you take my word also that there -- for purposes of
5 their financial statements, they use a five percent initial
6 trend rate grading down to 4.5 percent by 2015?

7 A. I'm sure that that's true but I don't know what the
8 benefit plan is. They may have a fixed dollar amount in which
9 case the trend assumption is not material at all.

10 Q. But everybody is trying to figure out the best estimate of
11 what the cost trend is going to be in the future. That cost
12 trend applies to Exxon. It applies to Patriot. It applies to
13 you. It applies to me, correct?

14 A. The trend assumption is specific to the plan of benefits.
15 If you have a plan of benefits -- a plan of benefit that
16 provides full coverage similar to the Patriot plan, that
17 requires one type of trend assumption. If you have a plan that
18 has cap benefits or just a fixed income benefit, that requires
19 a different type of trend assumption. I haven't seen Exxon's
20 plan.

21 Q. Medical cost trends are going to grow at the rate they're
22 going to grow, isn't that correct?

23 A. I was trying to answer the question about Exxon. If --
24 for example, if Exxon provides 1500 dollars a year for
25 benefits, that does not require a trend assumption unless it's

1 deemed to grow -- that 1500 dollars grows by, let's say, the
2 medical component of GDP. And that could be why they used five
3 and a half grading down to four and a half or whatever they did
4 use. That would be a very reasonable assumption in that
5 situation.

6 Q. They use a shorter grading period than Patriot does,
7 correct?

8 A. Yes.

9 Q. And your grade down period is sixty-two years, correct?

10 A. Yes.

11 Q. Let's turn next to your second opinion, Mr. Cobin. In
12 paragraph 4b, you state your opinion that -- and I'll quote it:
13 "A survey of other VEBAs created in the context of bankruptcy
14 proceedings indicates that the typical VEBA is funded at a
15 level of between 57% and 83% of the value of the retirees'
16 claims." Did I read that correctly?

17 A. Yes.

18 Q. And you compared the VEBA proposed by Patriot to certain
19 other bankruptcy related VEBAs, is that correct?

20 A. This was just meant to indicate what has resulted in other
21 bankruptcy proceedings. That's all.

22 Q. You're getting ahead of me, Mr. Cobin.

23 A. I was trying to answer your question.

24 Q. You compared the VEBA proposed by Patriot to certain other
25 bankruptcy related VEBAs, correct?

1 A. I don't know what you mean by comparing VEBA. There is no
2 VEBA right now.

3 Q. Okay. You pulled together a set of bankruptcy related
4 VEBAs that you analyzed in your declaration, correct?

5 A. Yes.

6 Q. You found those VEBAs by doing a Google search, correct?

7 A. Our associates -- we have a team -- found that information
8 through various searches including a Google search, yes.

9 Q. Turn to page 117 of your deposition, Mr. Cobin.

10 A. Yes.

11 Q. Look at line 9. "So you did a Google search for
12 bankruptcy related VEBAs, is that correct?"

13 A. We did. That was part of the search, yes. It wasn't the
14 only search, yes.

15 Q. Well, let's go up because I asked you for all the bases
16 for the VEBAs that you set forth in your deposition. And, line
17 5, I said "You did a search?"

18 "A. On the internet, yes. Spoke to the union. The union knew
19 of certain documents, yes."

20 I said:

21 "Q. So you did a Google search for the bankruptcy related
22 VEBAs, is that correct?"

23 Your answer was: "Yes."

24 A. So that's two sources right there, the union and the
25 Google.

1 Q. But, in fact, all of the VEBAs in your declaration come
2 from a single publication, isn't that correct?

3 A. I don't know if it's a single publication. I think we had
4 more than one.

5 Q. Please, tell me which ones they are.

6 A. I don't have it in front of me.

7 Q. Well, you have, in Appendix B, your list of documents that
8 you relied on.

9 A. Yes.

10 Q. And you also have the paragraphs where you discuss your
11 analysis of the VEBAs. But maybe we can cut this short by me
12 just asking you, and maybe this will refresh your recollection,
13 that all of the VEBAs that are in your chart in paragraph 19 of
14 your declaration come from the AARP publication that's set
15 forth in Appendix B to your declaration, correct?

16 A. Yes, that's correct.

17 Q. You've never previously done any analysis of bankruptcy
18 related VEBAs, correct?

19 A. That's correct.

20 Q. And you don't consider your set of VEBAs in the chart in
21 paragraph 19 to be representative or comprehensive of
22 bankruptcy related VEBAs, correct?

23 MR. PERILLO: I'm going to object. That's a compound
24 question representative and compre -- I'm sorry --
25 representative and comprehensive were added into the same

1 question.

2 MR. MARTIN: I will pick one of them, Your Honor.

3 THE COURT: All right. Please rephrase the question.

4 Q. Mr. Cobin, you don't consider the set of VEBAs in the
5 chart in paragraph 19 to be comprehensive, correct?

6 A. I don't know if it is or it isn't. We relied on the AARP
7 document.

8 Q. Turn to page 117 again of your declaration --
9 deposition -- excuse me.

10 A. Yes.

11 Q. We'll pick up where we just left off, I think. Bottom,
12 thank you. Line 24, Mr. Cobin.

13 A. Yes.

14 "Q. So how do you know that this set of VEBAs is
15 representative of the broader set of bankruptcy related VEBAs?
16 You can't conclude that, can you, Mr. Cobin?

17 "A. I don't have a comprehensive set of VEBAs, right."

18 That was truthful testimony, wasn't it?

19 A. That's correct.

20 Q. So going back to paragraph 4b of your declaration, where
21 you're talking about the funding level of a "typical VEBA in
22 bankruptcy proceedings". Do you see that?

23 A. Yes.

24 Q. You don't have a basis for that opinion, do you Mr. Cobin?

25 A. Typical based on the AARP set of VEBAs.

1 Q. Thank you. You claim in your declaration that the funding
2 for the VEBA is inadequate, correct?

3 A. Yes.

4 Q. But for purposes of your analysis, you assume that the
5 only contribution to the VEBA was fifteen million dollars,
6 correct?

7 A. No. The purpose of our analysis was to indicate what we
8 believe to be a more realistic view of the liability, the 1.79
9 billion compared to 1.4 billion. That was the purpose of our
10 analysis regardless of how it's funded.

11 Q. Turn to page 125 of your deposition, please.

12 A. Yes.

13 Q. Are you there?

14 A. Yes.

15 Q. Line 8. The question was:

16 "For purposes of your declaration as drafted as we are
17 looking at it today, you have assumed that the only funding is
18 fifteen million dollars, correct?

19 "A. Yes."

20 Was that truthful testimony?

21 A. Yes. At that point in time, I wasn't aware of any other
22 funding.

23 Q. For purposes of your declaration as it's now before the
24 Court, you didn't consider contributions from profit-sharing,
25 correct?

1 A. That's correct.

2 Q. Or contributions as a result of royalty payments, correct?

3 A. That's correct.

4 Q. Or the value of an unsecured claim or an equity stake in
5 the reorganized company, is that correct?

6 A. That's correct.

7 Q. Your declaration assumes facts that are contrary to the
8 proposals actually exchanged between the parties and currently
9 being evaluated by the Court, isn't that correct?

10 A. I was indicating my opinion about the VEBA. And that is,
11 if fifteen -- if only fifteen million dollars is ceded and
12 those other items that you mentioned are really far into the
13 future, then the VEBA is not sustainable. Fifteen million
14 dollars is only two and a half months of paid claims. So it
15 really -- the VEBA is -- will be a nonentity after two and a
16 half months unless it receives greater initial funding. That
17 was the purpose of my statement.

18 Q. And you were assuming, for purposes of your declaration,
19 that the only contribution to the VEBA was fifteen million
20 dollars. We established that, correct?

21 A. Yes.

22 Q. I'd like to turn next to your third opinion, Mr. Cobin.
23 This concerns the proposed health plan for active union
24 employees, correct?

25 A. Yes.

1 Q. Turn to paragraph 4c of your declaration, please.

2 A. Yes. I'm there.

3 Q. In the first sentence, you claim that the proposed health
4 plan is "inadequate because it failed to take into account the
5 higher long-term cost of medical treatment for UMWA miners",
6 correct?

7 A. Yes.

8 Q. Now you said for purposes of this declaration, you were
9 also evaluating Mr. Terry's declaration, is that correct?

10 A. Yes.

11 Q. Mr. Terry's declaration is Joint Exhibit 158. Would you
12 please put that in front of you?

13 A. I have it.

14 Q. You have it?

15 A. Yes.

16 Q. Could you maybe move the binders so that you're facing the
17 microphone. The court reporter will thank us as will those in
18 the back of the courtroom.

19 Mr. Cobin, please turn to paragraph 14 of Mr. Terry's
20 declaration.

21 A. Yes.

22 Q. Would you read that aloud, please?

23 A. "The proposed healthcare plan for Patriot's UMWA-
24 represented employees is comprehensive. It covers general
25 medical and drug expenses, such as doctor visits, hospital

1 stays, emergency room visits, prescription drugs, and
2 therapeutic and restorative treatments."

3 Q. You agree with Mr. Terry, correct?

4 A. It does cover all that, yes.

5 Q. Please turn to paragraph 17, Mr. Cobin.

6 A. Yes.

7 Q. Would you read that aloud?

8 A. "In sum, all major categories of health services are
9 covered by the proposed plan."

10 Q. You agree with Mr. Terry in that paragraph, too, isn't
11 that correct?

12 A. Yes.

13 Q. Turn to paragraph 18.

14 A. Yes.

15 Q. Please read that.

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

21 Q. You agree with Mr. Terry again, correct?

22 A. Yes.

23 Q. Please turn to paragraph 21 of Mr. Terry's declaration.

24 A. Yes.

25 Q. And please read that aloud.

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

6 Q. You agree with Mr. Terry, correct?

7 A. I think it's a misleading statement. Truthful but
8 misleading.

9 Q. Turn to page 140 of your deposition, please. At line 24.
10 The question I asked you at your deposition was the same one I
11 just asked you:

12 "Please read paragraph 21.

13 "A. Okay.

14 "Q. Do you disagree with anything in paragraph 21?

15 "A. No."

16 Was that truthful testimony?

17 A. Yes, but it's misleading.

18 Q. Turn to paragraph 26 of Mr. Terry's declaration, please.

19 A. Paragraph 2 -- I'm sorry -- repeat that, please.

20 Q. Paragraph 26.

21 A. Oh. Mr. Terry's.

22 Q. And just to preface this, that last paragraph was
23 discussing the cost sharing features of the proposed plan. I'd
24 like to start with the premium requirements of the proposed
25 plan which are addressed in paragraph 26.

1 A. Yes.

2 Q. Please read it aloud.

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

14 Q. You agree with Mr. Terry, correct?

15 A. It's a truthful statement but again misleading.

16 Q. Turn to page 141 of your deposition, Mr. Cobin.

17 A. Yes.

18 Q. Beginning at line 10, I asked you this question:

19 "Turn next to paragraph 26, please, which includes a
20 reference to Figure 1.

21 "A. Okay.

22 "Q. Do you disagree with anything in paragraph 26?

23 "A. No."

24 Was that truthful testimony at the time?

25 A. Yes. It's -- Mr. Terry's statement is a true statement

1 but again misleading because he's comparing it to national
2 averages and not to comparable companies.

3 Q. Turn next to paragraph 30 and Figure 2 of Mr. Terry's
4 declaration.

5 A. Yes.

6 Q. Sorry, Mr. Cobin. I'm catching up to you. Now you've
7 noted, Mr. Cobin, that, as Mr. Terry did, that the sole feature
8 of the proposed health plan is less generous than the national
9 average is coverage for brand name drugs, is that correct?

10 A. Yes.

11 Q. Please turn to paragraph 33 of Mr. Terry's declaration.

12 A. I have it.

13 Q. Are you there?

14 A. Yes.

15 Q. Please read that aloud.

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

1 Q. Do you disagree with anything in paragraph 33?

2 A. No.

3 Q. Now as we discussed earlier, your claim in paragraph 4c of
4 your declaration is that the proposed plan for active employees
5 is "inadequate". Is that correct?

6 A. Yes.

7 Q. The proposed plan for active union miners is the same plan
8 currently available to nonunion miners. Is that correct?

9 A. Yes.

10 Q. You've not suggested any changes to the proposed plan that
11 would make it more adequate, to use your word, is that correct?

12 A. I have not been asked to do so.

13 Q. While you have Mr. Terry's declaration in front of you,
14 let's turn briefly to the proposed VEBA. Ask you to turn to
15 paragraph 48 of Mr. Terry's declaration.

16 A. I have it.

17 Q. Please read that aloud.

18 A. "The VEBA proposal is positioned squarely in the middle of
19 the pack, in that without any additional funding, beyond the
20 initial fifteen million, Patriot retirees are among the forty-
21 nine percent, and assuming future funding, Patriot retirees are
22 among the fifty-one percent. The Towers Watson survey shows
23 that the emerging norm among U.S. employers is to eliminate
24 employer support for retiree healthcare benefits, forty-nine
25 percent of employers today, and increasing to seventy-nine

1 percent in the future."

2 Q. Thank you, Mr. Cobin. Is there anything you disagree with
3 in paragraph forty-eight?

4 A. Again, I think it's misleading because he's comparing it
5 to national averages and not comparable companies.

6 Q. Comparing what?

7 A. The VEBA proposal, basically eliminating retiree
8 healthcare. That may be the norm, or the trend, among U.S.
9 employers, but not necessarily among mining companies and other
10 companies engaged in, let's say, dangerous activities.

11 Q. We can do this again, Mr. Cobin, but will you agree with
12 me that when I asked you that question at your deposition, your
13 answer was "no"?

14 A. Again, based on the chart and -- and the comparison to
15 U.S. employers, that's true.

16 Q. Okay. We'll do it again. Please turn to page 144 of your
17 deposition. I'm at line 12. I asked you the same question
18 then that I asked you today. The question was:

19 "Q. Read paragraph 48, please.

20 "A. Okay.

21 "Q. Anything you disagree with in paragraph 48?

22 "A. No."

23 Was that truthful testimony, Mr. Cobin?

24 A. As it's written, it's truthful.

25 MR. MARTIN: I have nothing further, Your Honor.

1 THE COURT: All right. Thank you. Mr. Perillo, do
2 you have any redirect?

3 MR. PERILLO: I do, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. PERILLO:

6 Q. Good morning, Mr. Cobin.

7 A. Good morning.

8 Q. Let's go to the last issue we have been discussing first.
9 Why do you disagree with Mr. Terry regarding his assessment of
10 the adequacy of the healthcare plan?

11 A. Of the active-employee healthcare plan?

12 Q. Yes, the last thing you were just discussing.

13 A. Because it will shift a large burden of cost to the active
14 coalminers.

15 Q. And why is that important?

16 A. The union has negotiated a comprehensive package of
17 benefits, including salary, pension, and healthcare. And this
18 is -- this is one of the benefits that was negotiated. If they
19 had negotiated a lesser level of healthcare, then, presumably,
20 something else would increase.

21 Q. You answered a series of questions from Mr. Martin by
22 noting that paragraphs in Mr. Terry's declaration were
23 literally true but misleading. Why are they misleading?

24 A. Mr. Terry's declaration reads like a textbook. Everything
25 in it is true, but it's not really pertinent to the proceedings

1 here. So if we were to take any one of his statements and
2 superimpose it upon the issues at hand, we very quickly realize
3 that it's either not applicable or very misleading.

4 Q. Why isn't it fair to compare a coalminer's healthcare to
5 the healthcare of a typical postal worker or office secretary
6 or store clerk?

7 A. Well, coal miners' health is really related to their
8 occupation, as evidenced by the Black Lung Act of the federal
9 government. Coal miners typically need much more healthcare
10 because of their occupation than the average U.S. employee.
11 Therefore, they should have a higher level of healthcare
12 benefits.

13 Q. All right, I want to turn to the first question about the
14 valuation of the size of the retiree liability. You're an
15 actuary, sir?

16 A. Yes.

17 Q. Is this the sort of thing actuaries do?

18 A. Yes.

19 Q. How would you become aware of the company's calculation of
20 what the liability would be?

21 A. I was provided with their evaluation reports for 2012 and
22 13.

23 Q. Is that posted in the data room?

24 A. Yes.

25 Q. And who performed those calculations for the company?

1 A. Mercer.

2 Q. And did you use Mercer's trend rate of seven percent?

3 A. Yes.

4 Q. Did you use their ultimate trend of five percent?

5 A. Yes.

6 Q. And use their discount rate?

7 A. Yes.

8 Q. So in what way do you differ from Mercer, then?

9 A. It was really the grading period. Mercer starts with
10 seven percent, initial trend rate, and grades down over six
11 years to five percent. I don't think there's any actuary that
12 I know of that would look at this plan of benefits, and the
13 current economy, and say that we expect medical cost increases
14 to be at five percent in six years and be maintained at that
15 level thereafter.

16 Q. Mr. Martin asked you some questions about GAP, and best
17 estimates, and so forth. Is there a required method to -- that
18 actuaries must use under general accounting standards, to
19 compute retiree liability?

20 A. No. The -- well, the methodology -- there are really
21 several things going on. There is a required methodology in
22 terms of the actual calculation. But there is no required
23 methodology for each -- or for any of the assumptions -- in
24 developing any of the assumptions. So one actuary's
25 estimate -- best estimate, and the employer's best estimate of

1 any assumption, can and will differ wildly from someone else's.

2 Q. You had a colloquy with Mr. Martin about the difference
3 between calculating this liability in this case and in general
4 for purposes of a financial statement. Do you recall that
5 discussion?

6 A. Yes.

7 Q. Please explain to the Court why you need a different
8 method to value a retiree liability than might typically be
9 used for the creation of a financial statement.

10 A. The ongoing liability for an employer that's in the
11 financial statement -- if any one of the assumptions turns out
12 not to be, let's say, accurate, then in future years, that
13 assumption will be changed, and there's either a gain or loss
14 in the spreadsheet -- in the -- in the financial statement as a
15 result. So it's an automatic true-up over time. However, for
16 this -- these proceedings, the company is interested in
17 settling the obligation, taking it off of their financial
18 statement, and in settling an obligation, we need to develop,
19 really, a best estimate of the liability because there is no
20 future recourse to change that liability.

21 Q. Have you, in fact, seen in your experience, that companies
22 do that true-up periodically to adjust where their assumptions
23 have understated the liability?

24 A. Absolutely. I've been doing these valuations since the
25 late 1980s, before the statement was promulgated, and we've

1 seen a true-up of the medical trend assumption periodically,
2 typically every three or four years. And in fact, on a
3 conference call, Mercer indicated that they had revised the
4 trend assumption for Patriot periodically as well.

5 Q. And what happens when that revision takes place?

6 A. Typically, there's a loss on the financial statement.

7 Q. Does the VEBA have that option?

8 A. No, it does not.

9 Q. Why did you use the Getzen model?

10 A. I want something to support a longer-term trend. So
11 rather than just indicating that medical costs will grade down
12 half a percent a year, or a third a percent a year over long
13 period of time, I wanted something to support an assumption, or
14 that assumption. And the Getzen model was prepared by an
15 economist, under the supervision of the Society of Actuaries,
16 so it has a solid foundation. And that's why I chose to use
17 it.

18 Q. Now, did Mercer use the Getzen model in this case?

19 A. No.

20 Q. Do you know whether or not the -- Mercer uses the Getzen
21 model in other cases?

22 A. They do.

23 Q. I want you to go to Exhibit 253, I believe it is. This is
24 the spreadsheet, or model page, that you looked at earlier.

25 A. Yes.

1 Q. Now, if we go to box 1 up on top, we -- did you make any
2 inputs into that box?

3 A. I know we lowered the initial trend rate. In the Getzen's
4 model I think it starts higher than seven percent. We lowered
5 it to the Mercer assumption.

6 Q. And so those four sevens in there, those are all from --
7 right from Mercer?

8 A. Yes.

9 Q. And did you vary anything --

10 A. Oh, I'm sorry. Not the four sevens; the initial seven for
11 2013 is from Mercer, not for 2014 and 15.

12 Q. The -- in the second box, did you vary any of those
13 inputs?

14 A. No.

15 Q. In the third box, did you vary any of those inputs?

16 A. Yes.

17 Q. What did you do?

18 A. We changed the CPI from two-and-a-half to 2.75, and we
19 changed the long-term growth of GDP from 1.7 percent to two-
20 and-a-half percent.

21 Q. Now, Mr. Martin asked you about your colloquy with your
22 colleague, Mr. Rodgers regarding the CPI. How did you
23 determine to vary the GDP number?

24 A. Same way. we looked at historical GDP growth over the
25 last, I think, fifty or sixty years and did an average over

1 varying lengths of time and noticed that GDP has generally
2 grown in the three percent range, has recently decreased, but
3 in the last -- it's starting to increase again. Last year was
4 2.2 percent, the average over the last two years was 2.1
5 percent. So it's on its way back up. And as the current
6 administration is intent on bringing manufacturing back into
7 the United States, as that happens, I think it's reasonable to
8 assume that GDP will increase beyond the assumption, greater
9 than two-and-a-half percent that we're assuming.

10 Q. Did you use any other sources besides your conversation
11 with Jack Rodgers?

12 A. Conversation and the data from the government accounting
13 office.

14 Q. I'd like you to go to your deposition, to page 98.

15 MR. MARTIN: Objection, Your Honor. I'm not sure how
16 he can use this. It's hearsay for him.

17 MR. PERILLO: I'm trying to refresh the witness's
18 recollection.

19 MR. MARTIN: You haven't even asked him a question to
20 ask him if he needs to have his recollection refreshed.

21 MR. PERILLO: I just did. I asked him about what
22 other sources he considered, and he has omitted a source he
23 considered. I'm going to try to refresh his recollection --

24 THE COURT: All right, I'll overrule --

25 MR. PERILLO: --as to that source.

1 THE COURT: -- I'll overrule the objection.

2 BY MR. PERILLO:

3 A. Page 98?

4 Q. Yes.

5 A. Okay, yes.

6 Q. I direct your attention to the second half of the page.

7 A. Yes.

8 Q. Please review it silently.

9 A. Yes.

10 Q. Does that refresh your recollection as to another source

11 you may have considered?

12 A. Yes, thank you.

13 Q. What other source did you consider?

14 A. I do work for a branch of the federal government, the

15 Department of Defense, and they have been using two-and-a-half

16 percent long-term growth of GDP.

17 Q. Thank you, sir. Are the -- is the Getzen model, that we

18 have here before us in Exhibit 253, formula-driven or hard-

19 coded?

20 A. No, it's formula-driven.

21 Q. And what does that mean, as opposed to being hard-coded?

22 What does it mean that it's formula-driven?

23 A. Well, it means it's dynamic. When you put an assumption

24 in it -- the results change. If it were -- if it weren't -- if

25 it were not formula-driven then it wouldn't change.

1 Q. And so when you vary these inputs, the Getzen model then
2 produces a result?

3 A. Yes.

4 Q. And you use that result to come up with the proposed
5 liability?

6 A. We did.

7 Q. Why did you not vary the discount rate, as Mr. Martin
8 suggested?

9 A. Because currently the VEBA is not funded, so it would be
10 presumptuous of us to estimate a expected rate of return.

11 Q. With respect to the discussion of Medicare, Part D, how
12 did you come up with the 1,284-dollar number that appears in
13 your declaration?

14 A. We translated the twenty-one percent from Mercer into
15 1,500 dollars, simply by applying twenty-one percent to
16 their -- to the cost, their per capita cost, as stated in their
17 valuation. So we knew that it was 1,500 dollars. Secondly, we
18 looked at the actual Part D reimbursements -- I think it was
19 either five or six years of reimbursements -- and calculated
20 what that represents in terms of per-person reimbursement. And
21 for 2012, it was exactly 1,200 dollars, and we trended that
22 forward by seven percent to 2013, to get 1,284.

23 Q. Is that 1,200-dollar number based on hard data from
24 Patriot?

25 A. Yes.

1 Q. During your colloquy with Mr. Martin, he discussed with
2 you whether your sample of VEBAs was representative, or
3 comprehensive. I'll ask you this: Did you find any VEBAs that
4 you omitted?

5 A. No.

6 Q. And are you aware of any VEBAs for retiree healthcare in a
7 company comparable to Patriot that you didn't include?

8 A. Not in terms of bankruptcy proceedings. We're talking
9 about VEBAs in bankruptcy proceedings. So I'm not aware of any
10 others.

11 Q. Earlier in the trial, there's been some testimony that
12 the -- one of the company's advisors, Blackstone, has now
13 computed a different enterprise value from the one that Mr.
14 Martin questioned you about in your deposition that you
15 mentioned previously today. If I were to tell you that those
16 values produced --

17 MR. MARTIN: I'm objecting, Your Honor. This isn't
18 addressed in his declaration, where he assumes only fifteen
19 million dollars is contributed to the VEBA. He has not
20 evaluated the most recent proposal that includes the equity
21 stake. If he wants to testify to it, he'd be adding to his
22 declaration. And we've agreed that that's not the way we're
23 proceeding here.

24 THE COURT: Mr. Perillo?

25 MR. PERILLO: I don't believe it actually would be

1 adding to his declaration. And if you'll permit me a moment --
2 if you look at paragraph 15 of his declaration, Your Honor, Mr.
3 Cobin directly addresses the need for pending clarification to
4 the extent of the UMWA's actual recovery on its Section 1114
5 claim. And Patriot has, since Mr. Cobin prepared his
6 declaration, changed its proposal. You've allowed them to
7 present that evidence here in Court, a ruling about which I am
8 not protesting or complaining or asking reconsideration. But
9 in light of the change, I think it's fair to ask the witness
10 about the value of the changed proposal.

11 MR. MARTIN: It is completely and utterly unfair, Your
12 Honor. The proposal that Mr. Cobin had before him when he
13 prepared his declaration included profit sharing. It included
14 an unsecured claim for the union. Mr. Cobin chose to omit
15 those aspects of the proposal from his analysis. His
16 declaration, as it stands, is now before the Court. Mr.
17 Perillo now wants to supplement his declaration.

18 THE COURT: Mr. Perillo, what section of the -- what
19 paragraph did you want me to look at in the declaration?

20 MR. PERILLO: This is the second half of paragraph 15.

21 THE COURT: Okay, paragraph 15. Sorry; I'm just at
22 the wrong -- and you want to give him a different number to
23 come up, these projections of how much it's going to pay out?

24 MR. PERILLO: Based on the company's change in their
25 proposal.

1 MR. MARTIN: Your Honor, this -- he wants Mr. Cobin to
2 testify outside the scope of his declaration, outside the scope
3 of my direct -- my cross. I have no idea what's about to come
4 out of his mouth. And that, by definition, means that it's
5 beyond the scope of his declaration and beyond the scope of my
6 cross. And it's unfair.

7 MR. PERILLO: I would only add, Your Honor, the timing
8 of when the company made additional proposals was up to the
9 company. And the fact that they waited until after our experts
10 had their deadline for giving declarations shouldn't be used as
11 a sword to handicap us in our defense. That is what is being
12 done.

13 THE COURT: All right. I'll overrule the objection.
14 You can ask him that one question. I don't want to spend a
15 whole bunch of time recapitulating and recalculating.

16 BY MR. PERILLO:

17 Q. Mr. Cobin, if, using the numbers proposed by Blackstone,
18 the VEBA were to be funded with values between sixty-six
19 million and approximately 160 to 170 million, how would that
20 affect your opinion concerning the adequacy of funding for the
21 VEBA?

22 MR. MARTIN: Objection, Your Honor. I don't even know
23 where those numbers are coming from. Did you calculate those
24 numbers, or did Blackstone calculate those numbers?

25 MR. PERILLO: Those numbers were part of the

1 Blackstone presentation to the union, Your Honor. I think
2 there was testimony about that earlier this week.

3 MR. MARTIN: You think so, or you know so?

4 MR. PERILLO: I believe I heard it from the witness
5 stand yesterday.

6 MR. MARTIN: Your Honor, this is precisely the
7 precarious position we're in. But I'll withdraw the objection.
8 We're in Wonderland here, but he can answer the question.

9 BY MR. PERILLO:

10 Q. Did you understand the question, sir?

11 A. Yes; that range is equivalent to one to two years of
12 claims. So again, a very inadequate amount of additional
13 funding beyond the fifteen million.

14 MR. PERILLO: That's all that I have, Your Honor.

15 THE COURT: All right. Mr. Martin--

16 MR. PERILLO: Very quickly --

17 THE COURT: -- anything else?

18 MR. MARTIN: -- very quickly, Your Honor.

19 THE COURT: Yes.

20 RE-CROSS-EXAMINATION

21 BY MR. MARTIN:

22 Q. Mr. Cobin, you said that the principal difference between
23 your calculation and Mercer's calculation of the liability here
24 is driven by the grading period --

25 A. Yes.

1 Q. -- is that correct? Mercer's grading period is six years;
2 is that correct?

3 A. Yes.

4 Q. Your grading period is sixty-two years; correct?

5 A. Yes.

6 Q. We discussed before -- the grading period that Exxon uses
7 right now is two years; is that correct?

8 A. Yes.

9 Q. Are you familiar with a company, Alcoa?

10 A. Yes.

11 Q. They are a PWC audit client; correct?

12 A. Yes.

13 Q. Very large company; correct?

14 A. Yes.

15 Q. Their initial trend rate is six percent for 2013, grading
16 down to 4.7 percent by 2017; does that surprise you?

17 A. No.

18 Q. Rio Tinto is a global mining company; correct?

19 A. Yes.

20 Q. Also an audit client of PWC; correct?

21 A. Yes.

22 Q. They have a 6.7 percent initial trend rate, grading down
23 to 5.1 percent by 2018; correct?

24 A. If you say so; I don't know.

25 Q. Patriot's assumptions are a seven percent initial trend

1 rate, grading down to five percent by 2019; correct?

2 A. Yes.

3 Q. You said that we need to use a different medical cost
4 trend here because we're calculating a claim rather than an
5 estimation of the liability for purposes of the company's
6 financial statements; correct?

7 A. Yes.

8 Q. And you said that the liability might go up later, and so
9 we should pad it to account for that; correct?

10 A. No.

11 Q. What did you say?

12 A. I never use the word padding.

13 Q. Okay.

14 A. I don't pad.

15 Q. But you think the liability should be increased to -- in
16 today's value to account for the fact that it might increase
17 later in time?

18 A. I think the settlement should be based on a realistic view
19 of the liability. And the 1.4 million is not a realistic
20 liability.

21 Q. Because what you're speculating might happen in the
22 future; correct?

23 A. Yes.

24 Q. But as of today, that calculation of the liability in
25 today's dollars complies with GAAP, the company's calculation;

1 correct?

2 A. Yes.

3 Q. You were asked whether Mercer uses the Getzen model;

4 correct?

5 A. Yes.

6 Q. And you referenced this in your deposition; didn't you Mr.

7 Cobin?

8 A. Yes.

9 Q. After your deposition, I asked Mercer whether they're

10 familiar with anybody using the Getzen model. Would it

11 surprise you to learn that they were not familiar?

12 A. It would surprise me because I have information that they

13 do use it. I think you'd have to -- Mercer's a large

14 organization such as ours, and one actuary doesn't know what

15 other actuaries are doing. You'd have to survey all the

16 actuaries.

17 Q. You were asked some questions about your use of CPI and

18 GDP inputs in the Getzen model?

19 A. Yes.

20 Q. And you said that you relied on historical data that Mr.

21 Rodgers had referred you to; correct?

22 A. It was an indication of what we might expect in the future

23 after the economy rebounds, yes.

24 Q. Do you think Professor Getzen had that government data at

25 his disposal when he was picking the baseline assumptions when

1 he updated the model in March of 2012?

2 A. I don't know what basis he used for the baseline
3 assumptions.

4 Q. But you increased those assumptions in the Getzen model;
5 correct?

6 A. Yes.

7 Q. And the Getzen model by itself would have ballooned the
8 liability; correct? Using its baseline assumptions?

9 A. We've already established that; yes.

10 Q. And this is Getzen on steroids; correct?

11 A. No.

12 Q. Your analysis?

13 A. No. No, I did not use, for example, a three or three-and-
14 a-half percent GDP or three percent CPI, which would also not
15 be unreasonable. I used a mainstream assumption.

16 MR. MARTIN: I'm done, Your Honor.

17 THE COURT: All right. Mr. Perillo, anything else?

18 MR. PERILLO: We have nothing further for this
19 witness, Your Honor.

20 THE COURT: All right. You may step down. Thank you.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: All right, Mr. Perillo, it's about 12:30.
23 Shall we take a lunch break before we start with Mr. Mandarino?

24 MR. PERILLO: Our last witness is going to be Mr.
25 Mandarino, and he is a witness for whom we have agreed with the

1 company that the courtroom would be sealed, as it was in the
2 case of Mr. Huffard. And so -- I don't believe there will be
3 any other activity in the day that observers will want to see.
4 So perhaps Your Honor -- perhaps, Your Honor, then, it's
5 logical to do Mr. Mandarino at the end of the day. We can seal
6 the courtroom and then be done with the testimonial portion of
7 the case.

8 THE COURT: Mr. Moskowitz, I don't suppose you
9 anticipate anything else the rest of today?

10 MR. MOSKOWITZ: Correct, Your Honor.

11 THE COURT: All right. All right, then that's what
12 we'll do. I will --

13 MR. MOSKOWITZ: We have a couple of minor
14 administrative matters, but that's not material.

15 THE COURT: All right. Mr. Moskowitz, I'm sorry.
16 What --

17 MR. MOSKOWITZ: Sorry, Your Honor. I -- this may not
18 be worthy of the world's attention, but we have a few exhibits,
19 I think, that the parties are stipulating to supplement the
20 joint exhibit with, which we'll separately address with the
21 clerk, I think. And that, I think, is it.

22 THE COURT: All right. Do you all want -- so you will
23 address that with my law clerk, and that's by agreement, so
24 that shouldn't be a problem.

25 All right, then, Mr. Perillo, you don't anticipate

1 anything else then?

2 MR. PERILLO: Just closing tomorrow.

3 THE COURT: Tomorrow it will be.

4 All right, then, what I will do is, we will recess now
5 until 1:30. When we reconvene at 1:30, we will not get the
6 parties that are on the phone, and we will disconnect the feed
7 down to the fifth floor, and I will seal the courtroom, similar
8 to what we did earlier this week. And we would assume that we
9 would conclude for the day after Mr. Mandarino's testimony. I
10 hope that won't take us into the evening. And then we will
11 reconvene, then, for all parties tomorrow morning at 9 a.m.,
12 then, to take up closing arguments.

13 As I stated earlier, parties other than the debtors
14 and the UMWA, I have cut their time to ten minutes for their
15 closing although I had previously ruled -- entered an order
16 that they could have twenty minutes, but I believe they can
17 make their arguments in ten minutes or less. And then I will
18 let the debtor and the UMWA proceed at that point with no time
19 limit on their closing. All right, then, if that takes care of
20 everything, we'll be in temporary recess, then until 1:30.

21 (Recess from 12:25 p.m. until 1:45 p.m.)

22 THE CLERK: Please rise.

23 THE REPORTER: Your Honor, we are back on the record.

24 THE COURT: All right, thank you. Be seated please.

25 Okay, we are back on the record in the courtroom that has been

1 sealed. We have nobody on the phone. Our feed to 5 South has
2 been cut off; our feed to the attorney conference rooms has
3 been cut off; and the feed to the listening room on the fourth
4 floor has been cut.

5 Mr. Perillo?

6 MR. PERILLO: Just as a preliminary matter, Your
7 Honor, we have three additional joint exhibits to propose,
8 Joint Exhibits 291, 292, and 293. They are, respectively, a
9 status report on information request, dated April 22nd; a
10 response to that status update, dated April 24th; and then a
11 response to that response, submitted this morning by the
12 company, and dated May 2nd. And I would proffer those,
13 respectively, as Joint Exhibits 291, 292, and 293. And I
14 believe we have four -- three copies of each of those here at
15 the podium.

16 (Status report and two responses were hereby received into
17 evidence as Joint Exhibits 291, 292, and 293, as of this date.)

18 THE COURT: All right. I'll take two of those copies,
19 one for me and one for my law clerk.

20 MR. MOSKOWITZ: With the Court's indulgence, we'll
21 also put copies in the binders for the witnesses.

22 THE COURT: Okay, that'll be fine.

23 (Off the record conversation)

24 THE COURT: Mr. Moskowitz, do you have the copies
25 we're going to put in the book?

1 MR. MOSKOWITZ: I do, Your Honor. Just the one note
2 that I'd like to make, just for the moment, is that the first
3 of the three joint exhibits does not have the covering e-mail
4 that would have come along with it. It may not ultimately be
5 material, but I just wanted to reserve the rights of the
6 parties just to --

7 THE COURT: To add that.

8 MR. MOSKOWITZ: -- stick the covering e-mail in it.

9 THE COURT: That's fine.

10 MR. MOSKOWITZ: Okay, and --

11 THE COURT: Ms. Lovell (ph.), do we have some exhibit
12 stickers in here?

13 THE COURT: It might -- okay, why don't we mark the
14 ones that we're going to put in the book --

15 MR. MOSKOWITZ: Perfect.

16 THE COURT: -- so that the witness will know which
17 exhibit --

18 MR. MOSKOWITZ: Very wise.

19 THE COURT: No, that's fine for me, but not for the
20 witness.

21 MR. MOSKOWITZ: Or I can write it on the document, but
22 either -- you have them? Okay.

23 THE COURT: Yeah, probably just if they're blank
24 because I don't know if we have any --

25 MR. MOSKOWITZ: Sure.

1 THE COURT: -- snappy Joint Exhibit stickers. That's
2 kind of special.

3 MR. MOSKOWITZ: I'm all out. Do you have a stapler?

4 FEMALE: Stapler?

5 THE COURT: No, we don't keep -- we don't keep
6 staplers, or -- what did we need the other day? We needed
7 scissors --

8 MR. MOSKOWITZ: That's perfect. Anything that would
9 bind the document to another. Perfect.

10 THE COURT: We needed scissors.

11 MR. MOSKOWITZ: This is fine.

12 THE COURT: We had a -- we had a sheriff that needed
13 to open up an -- some evidence.

14 MR. MOSKOWITZ: I'll just --

15 THE COURT: So we don't usually keep all that stuff in
16 the courtroom. You know, it's bankruptcy court; we usually
17 kind of just --

18 MR. MOSKOWITZ: We have one copy of the cover e-mail,
19 but -- oh, we have -- you know what, in that case, we actually
20 have a full set of the initial one that you handed up front,
21 but this one has the cover e-mail, and it's all stapled. So
22 with everyone's permission, I'm just going to go ahead and
23 replace -- use this to replace what we just gave everybody.

24 MR. PERILLO: May I have one?

25 MR. MOSKOWITZ: Yes.

1 THE COURT: Yeah, give Mr. Perillo one. 291. I'll
2 give you that back.

3 MR. MOSKOWITZ: Making this a production.

4 THE COURT: All right. Then give us all.

5 MR. MOSKOWITZ: Okay. Thank you very much.

6 THE COURT: Those are them back, and then if you give
7 us -- yeah --

8 MR. MOSKOWITZ: Should I just stick these on? That's
9 fine.

10 THE COURT: Yeah, just put them on there blank, and
11 write Joint Exhibit, whatever the number is.

12 MR. MOSKOWITZ: Reference is too official; I can't do
13 it -- yeah. I just put these all together; this is the middle
14 one.

15 THE COURT: Okay, thank you. 291, 292, 293. I have
16 them; Mr. Perillo has them; and soon the witness will have --

17 MR. MOSKOWITZ: I assure the Court I will be done with
18 this momentarily.

19 THE COURT: Take your time. It'll cut down on
20 confusion later on.

21 MR. MOSKOWITZ: Yes, yes, yes, yes. So the first one
22 is Joint Exhibit 291.

23 THE COURT: 291.

24 MR. MOSKOWITZ: Then second one is JEx 292.

25 THE COURT: Um-hum.

1 MR. MOSKOWITZ: And then JEx 293. And I will place
2 these in the witness podium.

3 THE COURT: Okay.

4 MR. MOSKOWITZ: Great. Thank you very much.

5 THE COURT: All right, Mr. Perillo, I think the gods
6 have aligned for us now. We're ready for your next witness.

7 (Testimony of Mr. Mandarino redacted)

8 THE COURT: All right. I think that concludes all of
9 our evidence. So we will be in recess until tomorrow morning
10 at 9 a.m. and we'll hear some closing arguments.

11 MR. MOSKOWITZ: Your Honor, apologies if you had gone
12 over this before, but in terms of the order or presentation
13 tomorrow is it correct that the other parties will go first
14 before the debtors and the union?

15 THE COURT: Yes.

16 MR. MOSKOWITZ: Okay.

17 THE COURT: I went over that when --

18 MR. MOSKOWITZ: Okay. My --

19 THE COURT: -- maybe you were out having breakfast
20 this morning while the rest of us were already here.

21 MR. MOSKOWITZ: I was preparing to examine Mr.
22 Mandarino.

23 THE COURT: Yes. We will let the other parties go
24 first and I told them they could only have ten minutes, not
25 twenty minutes as I had previously stated because I think that

1 will extend the process further.

2 MR. MOSKOWITZ: Yes. We --

3 THE COURT: And then after they're all done then I'll
4 ask from the debtors and the UMWA with no time limits. That
5 doesn't mean take two hours, but with no time limits to hear
6 your closing.

7 MR. MOSKOWITZ: That sounds very appropriate. Thank
8 you, Your Honor.

9 THE COURT: All right. Thank you. Any other
10 requests? Mr. Perillo, anything for the UMWA this evening?

11 MR. PERILLO: Yes, Your Honor. I hope the Court and
12 its assistants have a pleasant night.

13 MR. MOSKOWITZ: I share that wish, but I have one
14 other request quickly for the Court.

15 THE COURT: Certainly.

16 MR. MOSKOWITZ: Just a clarification because it would
17 help in our preparation. Do you anticipate that since it is
18 the debtors' motion that in oral presentations tomorrow the
19 debtors would have a brief opportunity to have the last word?

20 THE COURT: Absolutely.

21 MR. MOSKOWITZ: Thank you, Your Honor.

22 THE COURT: All right.

23 Yes, Mr. Mayer.

24 MR. MAYER: Your Honor, just briefly. I will not be
25 here tomorrow. My partner, Brad O'Neill will deliver our final

1 statement.

2 THE COURT: Oh, all right.

3 MR. MAYER: Thank you.

4 THE COURT: That'll be fine. We'll miss you tomorrow,
5 but we enjoy seeing Mr. O'Neill as well.

6 MR. MOSKOWITZ: Thank you, Your Honor.

7 THE COURT: Thank you. All right. Then we'll be in
8 recess until tomorrow morning at 9 a.m.

9 IN UNISON: Thank you, Your Honor.

10 (Whereupon these proceedings were concluded at 7:17 PM)

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I N D E X

T E S T I M O N Y

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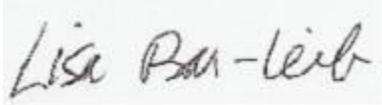
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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.



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UNITED STATES BANKRUPTCY COURT
Eastern District of Missouri
Thomas F. Eagleton U.S. Courthouse
111 South Tenth Street, Fourth Floor
St. Louis, MO 63102

In re: Debtor(s):
Patriot Coal Corporation

Case No.: 12-51502 -A659

CHAPTER 11

Notice of Filing of Transcript and of Deadlines Related to Restriction and Redaction

To: All Persons of Record at Hearing

A transcript of the proceeding held on May 2, 2013 was filed on May 6, 2013.

The following deadlines apply:

If you wish to have personal data identifiers redacted from the transcript, a *Request for Transcript Redaction* must be filed within 7 days of the date of this notice: May 13, 2013. Personal data identifiers **include: social security numbers, financial account numbers, names of minor children, and dates of birth**. If no such request is filed within the allotted time, the Court will presume redaction of personal data identifiers is not necessary.

Any party seeking redaction shall file a *Statement of Transcript Redactions* identifying the location of the personal data identifiers sought to be redacted within 21 days of the date of this notice: May 28, 2013. The party filing the statement shall serve it by regular mail upon all parties at the hearing and shall include a Certificate of Service listing the date and parties served. The *Statement of Transcript Redactions* event will be restricted from public view and cannot be served electronically through the CM/ECF system. If no *Statement of Transcript Redactions* is filed within the allotted time, the Court will presume redaction of personal identifiers is not necessary.

Any party may file a response in opposition to the Statement within 7 days of the date the Statement is filed using the *Response to Statement of Transcript Redactions* event. If a response in opposition to the Statement is filed, the Court will rule on the matter. If a hearing is needed, the Court will send notice of hearing.

If a request for redaction is filed, the redacted transcript is due within 31 days of the date of this notice: June 6, 2013.

The transcript may be made available for remote electronic access upon expiration of the restriction period, which is 90 days from the date of filing of the transcript: August 5, 2013, unless extended by court order. However, during this 90-day period the transcript is available for viewing only during normal business hours at the Clerk's office.

Any questions regarding the transcript process should be directed to Matt Parker, Director of Courtroom Services, at (314) 244-4801.

FOR THE COURT:

/s/Dana C. McWay
Clerk of Court

Dated: 5/6/13

Copies Mailed To:
Brian Walsh, 211 N. Broadway, #3600, St. Louis, MO 63102
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