

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 12-51502-659  
(Jointly Administered)

Hearing Date:

April 29, 2013 at 10:00 a.m.  
(prevailing Central Time)

Hearing Location:

Courtroom 7 North

Re: ECF Nos. 3214, 3326, 3585, 3586,  
3605, 3606, 3608, 3609, 3610, 3616,  
3617, 3618, 3623, 3624

REPLY DECLARATION OF GREGORY B. ROBERTSON  
IN FURTHER SUPPORT OF THE DEBTORS' MOTION TO REJECT  
COLLECTIVE BARGAINING AGREEMENTS AND  
TO MODIFY RETIREE BENEFITS PURSUANT TO 11 U.S.C. §§ 1113, 1114

Gregory B. Robertson declares pursuant to 28 U.S.C. § 1746:

1. I am an attorney admitted to practice under the laws of the Commonwealth of Virginia. I am a member of the law firm of Hunton & Williams LLP, co-counsel to Patriot Coal Corporation ("**Patriot**") and those of its subsidiaries that are debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**").<sup>1</sup>

2. I incorporate by reference my prior declaration, dated March 14, 2013 [ECF No. 3220], in support of the Debtors' motion pursuant to 11 U.S.C. § 1113 and 11 U.S.C. § 1114 (the "**Motion**") for an order: (1) authorizing those Debtors (the "**Obligor Companies**") that are

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<sup>1</sup> For convenience, I use the term "Patriot" to refer to both the "Debtors" and the "Obligor Companies," as defined below.

signatories to collective bargaining agreements with the United Mine Workers of America (the “**UMWA**”) to reject such collective bargaining agreements; (2) implementing the terms of the Debtors’ section 1113 proposal (the “**1113 Proposal**”); (3) authorizing the Debtors to terminate retiree benefits for certain of their current retirees; and (4) implementing the terms of the Debtors’ section 1114 proposal (the “**1114 Proposal**” and, together with the 1113 Proposal, the “**Proposals**”).<sup>2</sup> I submit this declaration to describe the negotiations between Patriot and the UMWA that have taken place since the Motion was filed on March 14, 2013.

3. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge, experience, and review of relevant business records and information. If called upon to testify, I would testify competently to the facts set forth in this declaration.

#### **I. Overview**

4. As described in my initial declaration, Patriot bargained in good faith with the UMWA for four months before filing the Motion. In particular, Patriot developed proposals that were narrowly tailored to obtain relief that would enable Patriot to successfully reorganize.

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<sup>2</sup> Patriot has made multiple proposals to the UMWA in an effort to seek a consensual resolution. On November 15, 2012, Patriot made its original proposal to modify the CBAs pursuant to 11 U.S.C. § 1113 (the “**Original 1113 Proposal**”) and its original proposal to modify retiree benefits pursuant to 11 U.S.C. § 1114 (the “**Original 1114 Proposal**,” and together with the Original 1113 Proposal, the “**Original Proposal**”). On January 17, 2013, shortly after the UMWA made its first counterproposal, Patriot provided the Second 1113 Proposal and the Second 1114 Proposal (together, the “**Second Proposal**”). On February 19, 2013, shortly after the UMWA made its second counterproposal, Patriot provided the Third 1113 Proposal and the Third 1114 Proposal (together, the “**Third Proposal**”). On February 27, 2013, Patriot made further revisions to the 1114 Proposal in response to certain points raised by the UMWA (the “**Fourth 1114 Proposal**” and together with the Third 1113 Proposal, the “**Pre-Application Proposal**”). On April 10, 2013, shortly after the UMWA made its third counterproposal, Patriot provided the Fourth 1113 Proposal and the Fifth 1114 Proposal, and on April 23, 2013, Patriot provided the Fifth 1113 Proposal (together, the “**Post-Application Proposal**”). True and correct copies of the Fourth 1113 Proposal and the Fifth 1114 Proposal are attached hereto as Exhibit 72 and a true and correct copy of the Fifth 1113 Proposal is attached hereto as Exhibit 73.

For the sake of convenience, I refer to the Original 1113 Proposal, as modified, as the “**1113 Proposal**,” and the Original 1114 Proposal, as modified, as the “**1114 Proposal**” (together with the 1113 Proposal, the “**Proposals**”).

After delivering the Proposals, Patriot participated in twelve negotiation sessions and delivered three revised proposals, each of which included additional concessions to the UMWA. These concessions forced Patriot to forego needed savings, but Patriot viewed them as necessary to reach a consensual resolution with the UMWA, a result that it continues to work to achieve. Patriot and its advisors also took part in dozens of conference calls and hundreds of e-mail exchanges, and worked diligently to respond to the UMWA's many requests for information.

5. Patriot has continued to negotiate in good faith after the filing of the Motion. Since March 14, 2013, Patriot has participated in two negotiation sessions, is participating in one more later this week, has delivered two revised proposals, and has made substantial concessions, such as: (i) agreeing to grant the UMWA a 35 percent direct equity stake in the reorganized enterprise; (ii) agreeing to grant royalty contributions to the UMWA on every ton of coal produced; (iii) deferring the transition of retiree healthcare to the VEBA for six months; (iv) deferring the modification of the collective bargaining agreements for two months; (v) committing to work to find a way for Patriot to make annual payments to the UMWA 1974 Pension Trust (the "**1974 Pension Plan**"); and (vi) agreeing not to withdraw from the 1974 Pension Plan if the UMWA and the 1974 Pension Plan agree to certain conditions. Patriot and its advisors also have participated in numerous meetings, conference calls, and e-mail exchanges with the UMWA and its advisors at PricewaterhouseCoopers ("**PwC**"). Additionally, Patriot has continued to supply requested information to the UMWA. Patriot has provided approximately 5,000 pages of additional information to the UMWA, it has facilitated a two-day long site visit during which the UMWA's advisors visited multiple mines and attended meetings with Patriot's finance and operations teams, and it has made all six of its witnesses available for depositions.

6. Patriot continues to prefer a negotiated resolution that would both preserve meaningful benefits for UMWA-represented employees and retirees and would provide Patriot with the cash savings it needs to survive in the short term and emerge in the long term as a competitive enterprise. For that reason, Patriot has negotiated in good faith and has worked tirelessly to achieve a consensual resolution. Unfortunately, however, the parties have been unable to reach consensus and Court-ordered relief is necessary.

## **II. Patriot Has Continued to Bargain in Good Faith**

7. Prior to filing the Motion, Patriot participated in twelve negotiating sessions. At the end of the twelfth meeting, Patriot and the UMWA scheduled another negotiating session for Friday, March 15, 2013. At the twelfth meeting, and a number of times thereafter, members of Patriot's negotiating team, including Chief Executive Officer Bennett K. Hatfield, explained that Patriot likely would have to file its Motion before the next negotiating session. However, Mr. Hatfield made clear that Patriot would continue to negotiate with the UMWA during the pendency of the Motion in the hopes of reaching a consensual resolution.

8. The thirteenth meeting commenced at approximately 8:45 a.m. on Friday, March 15, 2013, one day after the Motion was filed. Four individuals attended the meeting on behalf of the UMWA: Cecil Roberts, International President of the UMWA; Art Traynor, UMWA Staff Attorney; Brian Sanson, Deputy Director of Research; and Grant Crandall, UMWA General Counsel. Four individuals attended the meeting on behalf of Patriot: Mr. Hatfield; Dale Lucha, Vice President of Human Resources; Eric Waller, Senior Counsel at Patriot; and me. One of Patriot's advisors from Blackstone Advisory Services L.P. ("**Blackstone**") also attended the meeting.

9. During the thirteenth meeting, the representatives addressed the following issues, among others:

- the UMWA's position that Patriot could increase revenue by increasing the amount of coal sold, and Patriot's repeated requests for market demand data supporting that position;
- Patriot's proposed withdrawal from the multi-employer pension plan and the potential liability associated with such a withdrawal;
- the UMWA's agreement that retiree healthcare could be transferred to a VEBA, Patriot's inability to secure \$1 billion in funding for the UMWA's proposed VEBA, and recommendations from Patriot's advisors concerning how funds could be provided to the VEBA in the near term;
- the UMWA's forthcoming counterproposal, which the UMWA represented would be ready early the following week, and would include requirements that Patriot hire from UMWA panels of laid-off workers, an automatic snapback in 2016, and suggestions about how Patriot could trim additional costs from its planned expenditures; and
- upcoming site visits to Patriot mines, which the UMWA's advisors at PwC had delayed multiple times.

At the end of the meeting, Mr. Hatfield recommended that the parties schedule additional negotiating sessions, and stated that the Patriot team would be available on March 28, March 29, April 2, or April 3. Mr. Roberts tentatively agreed to meet on April 2, 2013, although the meeting was ultimately rescheduled for April 3, 2013.

10. The thirteenth meeting lasted approximately three hours and thirty minutes.

11. During the meeting, the UMWA made additional requests for information from Patriot (the "**Fifteenth Request**"). The Fifteenth Request included approximately eight demands for information, including:

- evidence that Peabody Energy Corporation ("**Peabody**") sought to evade pension withdrawal liability;
- analysis concerning pension withdrawal issues;
- a comprehensive list of items that Patriot requested from the UMWA and that, from Patriot's perspective, remained outstanding;
- analysis concerning possible investment scenarios;

- analysis concerning possible timelines for providing funds to the VEBA; and
- updated information concerning salaried-to-hourly employee ratios.

These requests were made orally by the UMWA.

12. Patriot and its advisors prepared responses to the Fifteenth Request and posted the information to the Data Room on a rolling basis.

13. On Friday, March 15, 2013, Patriot also provided the UMWA and its advisors with two status reports, one that logged the status of Patriot's requests to the UMWA and to PwC, and another that logged the status of the UMWA's requests to Patriot. The status reports reflected that many of Patriot's requests remained unaddressed, and had been open since they were first made in January or February. Among the open items were requests for information relating to the purported savings attributable to the UMWA's counterproposals. By contrast, the status reports reflected that Patriot had provided documents responsive to the UMWA's requests, had scheduled calls or e-mails to address certain of the UMWA's requests, and had provided specific written responses to the UMWA's requests where appropriate. True and correct copies of the transmittal e-mail and attached status report are attached hereto as Exhibit 74.<sup>3</sup>

14. I understand that on that same day, Patriot's advisors worked to confirm a two-day long site visit by PwC. I understand that Patriot's advisors agreed to schedule mine tours at the Hobet surface mine at the Corridor G mining complex, the Blue Creek underground mine at

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<sup>3</sup> In my prior declaration, I identified multiple status reports prepared by Patriot and its advisors. These reports were prepared for the purpose of logging the status of responses to outstanding information requests. I inadvertently neglected to reference one set of status reports in my prior declaration. For the sake of ensuring that the record is accurate and complete, true and correct copies of the omitted transmittal e-mail and attached status reports, dated January 4, 2013, are attached hereto as Exhibit 75.

Additionally, in my prior declaration, I identified a letter from Mr. Roberts to Mr. Hatfield, dated January 30, 2013, as Exhibit 55, and a set of status reports, dated February 27, 2013, as Exhibit 56. The electronically filed versions of these exhibits were reversed, so that the January 30, 2013 letter was erroneously filed as Exhibit 56, and the February 27, 2007 status reports were erroneously filed as Exhibit 55.

the Midland Trail mining complex, and the Panther underground mine. I also understand that Patriot's advisors agreed to set up meetings for the UMWA's advisors with Patriot's finance and operations teams during the site visit. Although Patriot wanted to schedule the site visit at an earlier time, I understand that Patriot agreed to schedule the site visit on March 27, 2013 and March 28, 2013 to accommodate PwC's schedule.

15. On Tuesday, March 19, 2013, PwC issued a written request for data concerning Patriot's capital expenditures (the "**Sixteenth Request**"). The Sixteenth Request included eight additional demands (excluding subparts):

- Patriot's budgeted and actual capital expenditures for 2006 to 2008 (annual) and 2009 to 2011 (line item detail);
- documentation of Patriot's capital budgeting process for the following projects: the rebuilding and upgrading of existing machinery; the purchase of new equipment to expand existing equipment or to replace existing equipment; the reconstruction or expansion of existing mines; and government and safety-related projects;
- detailed budget cost build-up estimates for certain Capital Expenditure Authorizations and line items;
- a listing of project descriptions and rationale for each production expansion project contained in Patriot's five-year capital expenditure budget;
- an explanation of Patriot's policy on how it acquires machinery (*e.g.*, purchased new, purchased used, leased);
- confirmation of whether leased machinery and equipment contains purchase buyout options at various times during the lease and a description of how the buyout option price is calculated;
- clarification of previously provided data; and
- clarification of asset types.

A true and correct copy of the Sixteenth Request is attached hereto as Exhibit 76.

16. On Wednesday, March 20, 2013, Patriot's advisors participated in a conference call with PwC to discuss preliminary responses to the Sixteenth Request and logistics relating to the upcoming site visit. Thereafter, Patriot and its advisors prepared further responses to the Sixteenth Request and posted the information to the Data Room on a rolling basis.

17. Also on Wednesday, March 20, 2013, PwC issued another written request for data (the "**Seventeenth Request**"). The Seventeenth Request included eleven additional demands (excluding numerous subparts):

- "all potential evidence" relating to certain potential claims against Peabody and Arch Coal, Inc. ("**Arch**");
- consolidating balance sheets drillable for the periods ended December 2012 and January 2013;
- an excel version of Exhibit A to Patriot's 503(b)(9) report, dated February 27, 2013, which logged the value of goods received by Patriot within 20 days of the Petition Date;
- complete financial statements (including mine-level P&Ls) and other supporting detail relating to Patriot's January 2013 liquidity outlook;
- a break-out and the supporting detail of certain categories of claims by legal entity and complex, including: secured claims; administrative claims; priority claims; estimated unsecured claims; OPEB liability; and ARO liability; in addition, any analysis concerning: (i) "mapping" claims from legal entity to complex; and (ii) allocating claims and/or value to complexes and legal entities;
- written responses to multiple questions concerning funding of the VEBA and the enterprise value of a reorganized Patriot;
- detail of all post-petition intercompany balances by legal entity;
- minutes from all board meetings for Patriot Coal Corporation;
- data necessary to value the retiree healthcare claim for the Peabody-Assumed Group;
- specific support for the assertion that retirees in the VEBA will be able to avail themselves of benefits provided by the new federal healthcare

legislation, the Patient Protection and Affordable Care Act (“PPACA”); and

- extensive historical financial data, including: (i) historical annual capital expenditures on an overall company basis from 2006 through 2008; (ii) historical annual Repair and Maintenance expense amounts on an overall company basis from 2006 through 2009; (iii) historical year-end property, plant, and equipment balances for the years 2006 through 2011 on a cost basis and on a net book value basis; and (iv) sample Capital Expenditure Authorizations for projects greater than \$500,000.

As is apparent from the descriptions above, many of these demands were exceedingly broad, many were not relevant to the Proposals, and some requested information for years when Patriot did not yet exist. A true and correct copy of the Seventeenth Request, which is incorrectly dated March 19, 2013 on the face of the document, is attached hereto as Exhibit 77, and a true and correct copy of a document prepared in response to the UMWA’s request for information about the PPACA is attached hereto as Exhibit 78.

18. I understand that counsel for Patriot contacted counsel for the UMWA, noting that the Seventeenth Request included very broad demands for information, that the demands could have been made months earlier, and that the demands were inconsistent with the UMWA’s representation to the Court at a chambers conference earlier that week that document discovery had been thorough and was nearly complete. I also understand that counsel for the UMWA later advised Patriot that the UMWA declined to withdraw or modify the Seventeenth Request.

19. Notwithstanding the UMWA’s unreasonable position, Patriot and its advisors prepared responses to the Seventeenth Request and posted the information to the Data Room on a rolling basis.

20. As of Friday, March 22, 2013, the UMWA had not provided a revised counterproposal despite the fact that the UMWA had represented that one would be supplied to Patriot during the first part of the week of March 18, 2013.

21. On Monday, March 25, 2013, Mr. Waller wrote a letter to Mr. Traynor, in which he responded to the UMWA's call for a list of Patriot information requests to which the UMWA and its advisors had failed to respond. Mr. Waller identified numerous open items, including items that were central to assessing the viability of the UMWA's counterproposals. First, Mr. Waller explained that the UMWA had yet to provide market analysis concerning coal sales, which was necessary to evaluate the UMWA's argument that increased coal production would yield millions in additional revenue:

Patriot has made multiple requests for the UMWA to provide its market analysis regarding potential coal sales. Although this has been discussed at several meetings, it is our understanding that the analysis is still being prepared. . . . However there was no market analysis or any other information to ascertain how the UMWA arrived at the prices that were presented.

Second, Mr. Waller explained that the UMWA had provided no support for the purported cost savings attributable to other portions of its counterproposals:

Patriot also asked the UMWA to provide support for the proposed cost savings that the UMWA envisions through its proposals. Notably, the UMWA has projected cost savings incurred by working 10-hour shifts and elimination of "daily" overtime in both its January 8, 2013 and February 5, 2013 counterproposals. Although the UMWA has provided its conclusions for these savings, no supporting calculations or assumptions that underlie these conclusions have been provided.

Mr. Waller identified numerous other open items in response to the UMWA's request, including items relating to proposed modifications to active healthcare coverage. A true and correct copy of the letter from Mr. Waller to Mr. Traynor is attached hereto as Exhibit 79.

22. On Wednesday, March 27, 2013, Mr. Hatfield sent an e-mail to Mr. Traynor, in which he asked about the status of the UMWA's counterproposal, which had not been supplied to Patriot. In that e-mail, Mr. Hatfield stated:

During our March 15 meeting, you orally shared portions of a draft UMWA counter to Patriot's revised proposals for relief under both sections 1113 and 1114 of the Bankruptcy Code. At the conclusion of that discussion, you stated that the proposal was still undergoing revision but the UMWA anticipated finalizing and sending the revised counterproposal to Patriot "early next week." At this point on March 27, twelve days have elapsed and Patriot has not yet received that revised counterproposal, nor have we received any communication updating us as to when you expect it to be finalized and delivered.

If you anticipate finalizing such a counter in the near term, it would make our next 1113/1114 meeting (on April 3) much more productive if Patriot could receive the document in a timeframe that allows sufficient opportunity for advance evaluation and analysis. An update on your plans in that regard would be greatly appreciated.

A true and correct copy of the e-mail from Mr. Hatfield to Mr. Traynor is attached hereto as Exhibit 80.

23. A few hours later, Mr. Traynor supplied a revised counterproposal (the "**Third Counterproposal**") to Mr. Hatfield via e-mail. A true and correct copy of the Third Counterproposal is attached hereto as Exhibit 81.

24. The Third Counterproposal contained many of the same provisions concerning active employee benefits as the prior two counterproposals. For example, the Third Counterproposal included the following provisions:

- **Definition of "Patriot"**: The UMWA retained its expansive definition of "Patriot." Under the counterproposal, the UMWA asserted that retiree healthcare liabilities "are and will continue to be treated as a corporate-wide responsibility," as opposed to a liability that resides with signatory debtors only. (Ex. 81 at § I(B).)
- **Prohibition of increased compensation, bonuses, or benefits**: The UMWA retained the provision that would bar increased compensation, bonuses, or benefits to non-union employees. Under the Third Counterproposal, Patriot would be obligated to request the consent of the UMWA before increasing compensation, bonuses, or benefits. (Ex. 81 at § I(G)(1).)

- ***Adjustment to overtime and certain work rules:*** The UMWA retained the provision pursuant to which overtime would be paid only after “the employee works beyond 40 hours per week.” Again, the UMWA clarified that “[t]his proviso shall not apply to Saturday work past 8 hours or any work on Sunday . . . [or] to holidays.” The UMWA also proposed to allow certain work crews to be changed out “where the employer can demonstrate a substantial economic need for such change.” (Ex. 81 at § IV(C)(2)-(3).)
- ***De minimis supervisor work:*** The UMWA retained the provision that would temporarily permit supervisors to “perform work of a classified nature as long as such work does not exceed one hour and is agreed to in advance by the local union.” (Ex. 81 at § IV(C)(4).)
- ***Automatic snapback in 2016:*** The UMWA retained the provision that requires an automatic snap-back on December 1, 2016. However, the UMWA eliminated the “equitable snap-back” provision, which would have enabled the UMWA to commence an arbitration process one time per year to question the ongoing need for the changes. (Ex. 81 at § II.)

The Third Counterproposal also included certain newly proposed modifications to the CBAs:

- ***Revised Production Flexibility Proposal:*** The UMWA altered its production flexibility proposal in response to Patriot’s conclusion that the UMWA’s production flexibility proposal was not economically viable. The UMWA limited its proposal to the Highland and Rocklick complexes and for the years 2014 through 2016. As explained in further detail in the Reply Declaration of Dale Lucha, dated April 23, 2013, the UMWA miscalculated the savings associated with its revised production flexibility proposal. (Ex. 81 at § IV(C)(1).)
- ***Changes to Active Employee Medical:*** The UMWA made one further proposed modification to the active employee medical provisions, which was a proposal to modify Patriot’s health plan to require employees to purchase prescription drugs from in-network pharmacies. The UMWA did not attribute any savings to this additional modification. (Ex. 81 at § IV(D)(6).)
- ***Changes to Patriot’s business plan.*** The UMWA proposed three categories of changes to Patriot’s five-year business plan. First, the UMWA proposed reducing SG&A expenses, such as the elimination of stock option programs and incentive compensation programs, and the reduction of expenses for outside service providers. Second, the UMWA proposed reducing operating expenditures, such as the elimination of bankruptcy-related cushions (*e.g.*, increased allocation for workers compensation) and modifying the salary-to-hourly personnel ratio. Third, the UMWA proposed reducing capital

expenditures. These changes were proposed without any explanation of the underlying assumptions. (Ex. 81 at § V.)

The Third Counterproposal included many of the same provisions concerning retiree benefits as the UMWA's prior two counterproposals. Such provisions included:

- **Acceptance of a VEBA:** The UMWA agreed to transition responsibility for non-Coal Act retiree healthcare to a VEBA, subject to the VEBA being funded with at least \$800 million, as detailed below. The VEBA would not apply to future retirees, nor would it apply to current retirees whose benefits are being paid for by Peabody or for whom Patriot receives reimbursement. Other than the profit-sharing arrangement, the funding mechanisms for the VEBA were revised in the Third Counterproposal. (Ex. 81 at § IV(B).)
- **No Changes to Profit-Sharing:** The UMWA made no changes to the structure of the proposed profit-sharing arrangement, including to the values of the minimum and maximum contributions. (Ex. 81 at § IV(B)(2).)

Finally, the UMWA's Third Counterproposal included certain newly proposed modifications to retiree healthcare. These additions include changes to the funding of the proposed VEBA:

- **Securing an Equity Contribution:** In lieu of the rights offering, the Third Counterproposal contemplated an equity contribution of at least \$500 million, made at a discount of 7.5 percent, and resulting in a cash contribution to the VEBA of at least \$400 million. In exchange for the funding, the investor would own at least 51 percent of the common stock of reorganized Patriot and would hold a majority of seats on the board of directors. The UMWA reserved the right to review all terms of any such equity investment. (Ex. 81 at § IV(B)(1).)
- **Issuance of Preferred Stock:** Instead of a \$400 million secured note, the UMWA proposed that Patriot issue preferred stock to the VEBA of at least \$400 million (paid-in-kind at 5 percent per annum for 18 months and then payable in cash). (Ex. 81 at § IV(B)(1).)
- **Modification of Equity Stake and Board Representation:** In the Third Counterproposal, the UMWA eliminated the requirement that it receive Class B non-voting shares and reduced its board seats from 3 to 2. (Ex. 81 at § IV(B)(1).)

25. The Third Counterproposal was accompanied by a letter from Mr. Roberts.

Unfortunately, that cover letter included numerous misstatements, as discussed in paragraph 33

below. A true and correct copy of the letter from Mr. Roberts to Mr. Hatfield is attached hereto as Exhibit 82.

26. On Friday, March 29, 2013, Patriot provided the UMWA and its advisors with two status reports, one that logged the status of Patriot's requests to the UMWA and to PwC, and another that logged the status of the UMWA's requests to Patriot. The status reports reflected that many of Patriot's requests still remained unaddressed. As further described in paragraph 21 above, the open items included requests for information relating to the purported savings attributable to the UMWA's counterproposals. By contrast, the status reports reflected that Patriot had provided documents responsive to the UMWA's requests, had scheduled calls or e-mails to address certain of the UMWA's requests, and had provided specific written responses to the UMWA's requests where appropriate. The status report also confirmed that a site visit had been scheduled for March 27 through March 29 and that Patriot and its advisors had preparatory calls with PwC on three different dates to answer questions and clarify information relating to the site visit. True and correct copies of the transmittal e-mail and attached status report are attached hereto as Exhibit 83.

27. The fourteenth meeting commenced at approximately 8:45 a.m. on Wednesday, April 3, 2013. Three individuals attended the meeting on behalf of the UMWA: Mr. Roberts; Mr. Traynor; and Mr. Sanson. Five individuals attended the meeting on behalf of Patriot: Mr. Hatfield; Mr. Lucha; Mr. Waller; Mickey Luna, Vice President of Human Resources and Employee Services; and me.

28. During the fourteenth meeting, the representatives addressed the following issues, among others:

- the snapback provision in the UMWA's Third Counterproposal, including the fact that the UMWA's recent modification to the

snapback provision represented an improvement, but that the remaining provision, which required an automatic snapback in 2016, would damage Patriot's total enterprise value and would make it more difficult for Patriot to secure exit financing;

- other provisions of the UMWA's Third Counterproposal, including: the UMWA's proposed representation on Patriot's Board of Directors, which Patriot viewed as inconsistent with seeking a new equity investment; the 24/7 production proposal, and the flaws associated with the UMWA's related savings calculation; and the proposed litigation trust, and the fact that the elimination of double recovery represented an improvement but that the funding level was unrealistic;
- the UMWA's efforts in the Third Counterproposal to challenge portions of Patriot's Five-Year Business Plan, and Patriot's position that such changes were not explained, warranted, or possible;
- various estimates of the value of a reorganized Patriot, including the difference between enterprise value and total distributable value to unsecured creditors, and the fact that the financial advisors for the Committee of Unsecured Creditors had performed analyses of total distributable value and that they disagreed with the analysis performed by the UMWA's advisors; and
- illustrations of how the VEBA could provide different levels of retiree healthcare coverage using different assumptions as to funding levels and benefit plans.

29. At the end of the meeting, Mr. Hatfield recommended that the parties meet on April 22, 2013 in Triangle, Virginia. The parties agreed to tentatively schedule the next meeting on that date and location, although thereafter the meeting was rescheduled for April 25, 2013.

30. The fourteenth meeting lasted approximately four hours and forty-five minutes, excluding time for calls during breaks in the meeting with the financial advisors for both Patriot and the Committee of Unsecured Creditors (the "**Creditors' Committee**").

31. Beginning on Friday, April 5, 2013, Patriot, the UMWA, and certain third parties began taking and defending the depositions of various witnesses in connection with the Motion. Over the next two weeks, each of Patriot's six declarants was deposed.

32. On Wednesday, April 10, 2013, Patriot supplied the UMWA with the Fourth 1113 Proposal and the Fifth 1114 Proposal, which contained meaningful changes in response to concerns articulated by the UMWA at the bargaining table. Patriot's Fourth 1113 Proposal included the following concessions:

- ***Delayed Implementation Date:*** Modifications to the collective bargaining agreements would commence on June 1, 2013, two months later than originally proposed. (Ex. 72 (Tab A at 1; Tab B at 1; Tab C at 1).)
- ***Commitment to Payment Stream to Multi-Employer Pension Plan:*** Patriot agreed to attempt to ensure that the 1974 Pension Plan would not receive an unsecured claim, which would have been dilutive to the UMWA and to other unsecured creditors. Instead, Patriot would commit to a payment stream that is acceptable to both Patriot and the 1974 Pension Plan or otherwise confirms to the provisions of ERISA that permit installment payments. (Ex. 72 (Tab A at 6; Tab B at 6).)

Additionally, Patriot offered the following extensive concessions in connection with the Fifth 1114 Proposal:

- ***Grant of a 35 Percent Equity Stake:*** In response to the UMWA's concerns about providing liquidity to the VEBA, Patriot agreed to grant the UMWA a direct 35 percent equity stake in the reorganized enterprise. The equity stake could be monetized, in whole or in part, generating hundreds of millions of dollars that could be contributed to the VEBA. (Ex. 72 (Tab D at 1).)
- ***Delayed Transition Date:*** In response to the UMWA's concerns about the timing of the transition of retiree healthcare to the VEBA, Patriot agreed to postpone the transition date to January 1, 2014. This modification is conditioned on the UMWA's consent to a funding mechanism through which the \$15 million designated as the initial contribution, and a \$21 million loan from the UMWA to the VEBA, would fund retiree health claims during 2013. It is my understanding that the six-month extension would allow the UMWA additional time to monetize its equity stake, establish the VEBA, and make decisions concerning the administration of the VEBA. (Ex. 72 (Tab D at 1-2).)
- ***Per-Ton Royalty Contributions:*** In response to the UMWA's concerns about the adequacy of the profit-sharing mechanism, Patriot included a royalty contribution provision pursuant to which the Obligor Companies would pay a royalty to the VEBA for every ton

produced at all existing mines, potentially yielding tens of millions of dollars for the VEBA. (Ex. 72 (Tab D at 2).)

- ***Litigation Trust Proposal and Funding:*** Patriot has accepted the UMWA's litigation trust proposal, except that the funding obligation would be reduced to a level Patriot can afford, and the appointment of members would be evenly apportioned between the UMWA and the Committee of Unsecured Creditors. (Ex. 72 (Tab D at 2).)

As described above, true and correct copies of the Fourth 1113 Proposal and the Fifth 1114 Proposal is attached hereto as Exhibit 72.

33. Mr. Hatfield sent a letter to Mr. Roberts that day, explaining the Fourth 1113 Proposal and the Fifth 1114 Proposal and responding to certain misstatements. First, Mr. Hatfield responded the UMWA's statement that Patriot's financial problems were temporary, noting that the parties' respective financial advisors disagreed on this issue and that "nothing that PwC has observed in our meetings would remotely suggest that Patriot's projections are inaccurate." Second, Mr. Hatfield challenged the assertion that Patriot promised to complete its investigation into Peabody prior to the conclusion of the 1113/1114 negotiations:

I do not believe we agreed that the review would be completed prior to conclusion of our 1113/1114 negotiations – nor do we have control over that schedule. As you know, Patriot and the Official Committee of Unsecured Creditors (the "Committee") – of which the UMWA is a member – have filed a motion pursuant to Rule 2004 to seek documents and testimony from Peabody in connection with that investigation. In any event, as you requested in our April 3 meeting, Patriot's counsel has scheduled a discussion with the UMWA's counsel to provide an update on the investigation.

Third, Mr. Hatfield reiterated that the Creditors' Committee did not support the UMWA's analysis of distributable value from the business enterprise. And fourth, Mr. Hatfield explained yet again that Patriot and its advisors have been in regular contact with the DIP lenders regarding the financing but that replacement financing would be difficult to obtain at this time. A true and correct copy of the letter from Mr. Hatfield to Mr. Roberts is attached hereto as Exhibit 84.

34. On Friday, April 12, 2013, the UMWA publicly responded to the Fourth 1113 Proposal and the Fifth 1114 Proposal, apparently for the first time. It is my understanding that Mr. Roberts stated that the proposals appeared to be a “step forward” and that the UMWA would continue to negotiate with Patriot to secure a consensual resolution. A true and correct copy of an article from the St. Louis Business Journal is attached hereto as Exhibit 85.

35. During the week of April 15, nine witnesses were deposed. I was among the individuals deposed that week.

36. It is my understanding that on Thursday, April 18, 2013, Mr. Hatfield and Mr. Roberts spoke about the upcoming negotiating session, which would take place at the UMWA’s headquarters in Triangle, Virginia. Mr. Hatfield and Mr. Roberts agreed that Blackstone and PwC should attend and that the topics would include the 35 percent equity stake and how Blackstone arrived at that figure.

37. Also on Thursday, April 18, 2013, PwC issued a written request for information about Patriot’s Fifth Section 1114 Proposal (the “**Eighteenth Request**”). The Eighteenth Request included approximately eleven demands for information, including:

- all assumptions, supporting schedules, and related analyses prepared by the Debtors and their advisors to arrive at the direct 35 percent equity stake;
- a break-out of all non-UMWA claims assumed for purposes of the proposal;
- a description of the §1113 and §1114 claim amounts that were used to arrive at the proposed “direct 35% equity stake in the reorganized enterprise”;
- all supporting schedules and analyses that explain how each of the non-UMWA claimants would be treated under the proposal;
- a definition of “reorganized enterprise”;

- a detailed break-out of which creditors (or parties) would own the remaining 65 percent of the reorganized enterprise;
- a description of governance rights that would be associated with the proposed 35 percent equity stake;
- a description of governance rights that would be associated with the proposed remaining 65 percent of the reorganized enterprise;
- clarification of the application of the royalty provisions;
- clarification of any assumptions regarding new money investments; and
- an outline of the post-emergence capital structure contemplated under the proposal.

A true and correct copy of the Eighteenth Request is attached hereto as Exhibit 86.

38. Patriot and its advisors are preparing responses to the Eighteenth Request. These responses will be discussed at the fifteenth meeting, which is scheduled for Thursday, April 25, 2013 at the UMWA's headquarters in Triangle, Virginia. It is my understanding that the fifteenth meeting will be attended by the negotiating teams and by the financial advisors for Patriot and for the UMWA so that there can be a productive conversation concerning the Post-Application Proposal, the topics in the Eighteenth Request, and other related issues.

39. On Friday, April 19, 2013, Patriot's advisors requested further information concerning the UMWA's Third Counterproposal and the purported savings associated therewith. The following day, the UMWA's advisors responded that "[a]ll information and data has already been provided." A true and correct copy of the e-mail chain is attached hereto as Exhibit 87.

40. On Tuesday, April 23, 2013, Patriot supplied the UMWA with the Fifth 1113 Proposal, which contained a meaningful change in response to concerns articulated by the UMWA and the 1974 Pension Plan and the UMWA 1993 Benefit Plan (the "**1993 Benefit Plan**," and together with the 1974 Pension Plan, the "**UMWA Funds**"). Specifically, Patriot agreed

that the Obligor Companies that currently contribute to the 1974 Pension Plan would not withdraw from the 1974 Pension Plan if the UMWA and the 1974 Pension Plan agreed to the following conditions:

- the UMWA would not take any action to increase Patriot's contribution rates above \$5.50 per hour worked prior to January 1, 2017; and
- the 1974 Pension Plan would allow Patriot: (a) to withdraw from the 1974 Pension Plan on or after December 31, 2016 if contribution rates increased above a stated threshold; and (b) to make resulting withdrawal liability payments in annual installments consistent with ERISA.

Additionally, prior versions of the Proposals included a 6 percent contribution to a 401(k) or similar plan in lieu of pension and retiree healthcare benefits for active employees. Because the Fifth 1113 Proposal contemplates continuing pension benefits for active UMWA-represented employees, Patriot would reduce the 401(k) contributions to 3 percent at operations other than those covered by the Gateway collective bargaining agreements. As described above, a true and correct copy of the Fifth 1113 Proposal is attached hereto as Exhibit 73.

41. I understand that there would be a number of benefits relating to this modification: the UMWA would benefit because the 1974 Pension Plan would not receive an unsecured claim, which would have been dilutive to the UMWA and to other unsecured creditors; the 1974 Pension Plan would benefit because it would receive a continued source of funding; and Patriot would benefit because it could avoid the uncertainty of significant future increases in contribution rates, which both threaten Patriot's ability to secure exit financing and would present additional challenges in the future.

### **III. Communications with the UMWA Funds**

42. It is my understanding that the UMWA Funds believe that they have been excluded from Patriot's negotiations with the UMWA. Although I was not directly involved in

communications with the UMWA Funds, I have communicated with co-counsel and have been advised that the following occurred in recent months.

43. I understand that on Thursday, November 8, 2012, the UMWA Funds requested that Patriot enter into a stipulated protective order to permit them to “participate in the negotiations or preparation for court proceedings under Sections 1113 and/or 1114.” A true and correct copy of the letter from counsel to the UMWA Funds is attached hereto as Exhibit 88.

44. I understand that on Friday, November 16, 2012, Patriot sent the UMWA Funds a draft confidentiality agreement. I further understand that confidentiality agreements between each of the UMWA Funds and Patriot were signed on Wednesday, November 28, 2012. A true and correct copy of the confidentiality agreement between the 1974 Pension Plan and Patriot is attached hereto as Exhibit 89 and a true and correct copy of the confidentiality between the 1993 Benefit Plan and Patriot is attached hereto as Exhibit 90.

45. I further understand that, as soon as the confidentiality agreements were signed, Patriot shared the Original Proposals with the UMWA Funds, along with the accompanying cover letter, the Original Savings Summary, and the November 15 Presentation.

46. I understand that on December 6, 2012, the UMWA Funds sent Patriot a broad request for documents and information, which sought twenty categories of documents, excluding multiple subparts, and made seven additional requests for information (together, the “**Funds’ Discovery Request**”). The Funds’ Discovery Request sought materials (including e-mails) dating back more than a decade on a wide variety of topics. Only one of the requests sought documents relating to Patriot’s participation in the UMWA Funds. A true and correct copy of the Funds’ Discovery Request is attached hereto as Exhibit 91.

47. I understand that on Tuesday, December 11, 2012, Patriot informed the UMWA Funds that the Funds' Discovery Request was overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, but offered to engage in a good-faith dialogue regarding information sharing. A true and correct copy of this response is attached hereto as Exhibit 92.

48. I understand that on Friday, December 14, 2012, the UMWA Funds informed Patriot that they would seek information from the UMWA and requested permission to do so. I also understand that on or around this date, Patriot's advisors provided an index of the Data Room to the UMWA Funds' financial advisors so that the UMWA Funds could make more tailored requests for documents. Also on or around this date, Patriot and the UMWA Funds scheduled a meeting for the following week to discuss the UMWA Funds' role in the 1113/1114 process.

49. I understand that on Tuesday, December 18, 2012, Patriot's counsel and financial advisors met with the UMWA Funds' counsel and financial advisors and discussed information sharing and the Funds' role in the 1113/1114 process. During the meeting, Patriot reiterated the concerns expressed in its response to the Funds' Discovery Request but agreed that Patriot's financial advisors would coordinate with the UMWA Funds and its advisors to help them understand the index of materials in the Data Room.

50. I understand that on Friday, December 21, 2012, Patriot authorized the UMWA to share and discuss with the UMWA Funds the information in the Data Room.

51. I understand that on Friday, March 15, 2013, Patriot received a letter from the UMWA Funds. I further understand that the letter, which was addressed to counsel for the Creditors' Committee and dated March 14, 2013, asserted that withdrawal liability, if any, could

only be paid as an unsecured claim and not in annual installments. Prior to that time, Patriot was unaware of the UMWA Funds' position concerning installment payments.

52. I understand that since March 15, 2013, Patriot has engaged in discussions with the UMWA Funds concerning their position regarding withdrawal liability.

**IV. Conclusion**

53. Over the past five weeks, Patriot and its advisors have: (i) continued to supply additional information in response to requests by the UMWA; (ii) scheduled a two-day long site visit so that the UMWA's advisors could tour Patriot mines and meet with Patriot's finance and operations personnel; and (iii) continued their good faith negotiations with the UMWA. Notwithstanding Patriot's efforts, the UMWA has rejected Patriot's First, Second, Third, and Fourth Proposals in their entirety and has not yet responded to Patriot's Post-Application Proposal.

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

Dated: Richmond, Virginia  
April 23, 2013

/s/ Gregory B. Robertson  
Gregory B. Robertson

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 12-51502-659  
(Jointly Administered)

Hearing Date:

April 29, 2013 at 10:00 a.m.  
(prevailing Central Time)

Hearing Location:

Courtroom 7 North

**SUMMARY OF EXHIBITS TO THE REPLY DECLARATION OF GREGORY B.  
ROBERTSON IN FURTHER SUPPORT OF THE DEBTORS' MOTION TO REJECT  
COLLECTIVE BARGAINING AGREEMENTS AND TO MODIFY RETIREE  
BENEFITS PURSUANT TO 11 U.S.C. §§ 1113, 1114**

Patriot Coal Corporation and its affiliated debtors (collectively, “**Patriot**” or the “**Debtors**”) respectfully submit that the following exhibits (the “**Exhibits**”), referenced in the Reply Declaration of Gregory B. Robertson in Further Support of the Debtors’ Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114. Copies of the Exhibits will be provided to counsel for the (i) United States Trustee, (ii) the Court and (iii) counsel for the United Mine Workers of America; counsel for the United Mine Workers of America 1993 Benefit Plan and the United Mine Workers of America 1974 Pension Trust; counsel to the agents for the Debtors’ postpetition lenders; counsel for the Official Committee of Unsecured Creditors; counsel for Ohio Valley Coal Company and The Ohio Valley Transloading Company; counsel for Cliffs Natural Resources Inc., Oak Grove Resources, LLC, and Pinnacle Mining Company, LLC; and counsel for Peabody Holding

Company, LLC and Peabody Energy Corporation (collectively, the “**Service Parties**”). Copies of the Exhibits will also be made available at [www.patriotcaseinfo.com/exhibits.php](http://www.patriotcaseinfo.com/exhibits.php) and will be made available for inspection at the hearing.<sup>1</sup>

- 1-71. Attached to Declaration of Gregory B. Robertson, dated March 14, 2013
72. Fourth 1113/Fifth 1114 Proposal, dated April 10, 2013
73. Fifth 1113 Proposal, dated April 22, 2013
74. Patriot Status Reports (with transmittal email), dated March 15, 2013 (*redacted*)
75. Patriot Status Reports (with transmittal email), dated January 4, 2013
76. UMWA Information Request, dated March 19, 2013 (*redacted*)
77. UMWA Information Request, dated March 20, 2013 (*redacted*)
78. Analysis Prepared in Response to UMWA Request, dated April 10, 2013
79. Letter from E. Waller to A. Traynor, dated March 25, 2013 (*redacted*)
80. Email from B. Hatfield to A. Traynor, dated March 27, 2013
81. Third UMWA Counterproposal, dated March 27, 2013
82. Letter from C. Roberts to B. Hatfield, dated March 27, 2013
83. Patriot Status Reports (with transmittal email), dated March 29, 2013 (*redacted*)
84. Letter from B. Hatfield to C. Roberts, dated April 10, 2013
85. Article from the *St. Louis Business Journal*, dated April 12, 2013
86. UMWA Information Request, dated April 18, 2013
87. Email from A. Rosen to A. Schlesinger, dated April 20, 2013
88. Letter from J. Goodchild to D. Schaible, dated November 8, 2012

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<sup>1</sup> Certain of the Exhibits have been redacted to protect highly confidential and sensitive information. Unredacted copies of these Exhibits (where not otherwise subject to a joint interest privilege) will be provided to the Service Parties, counsel for the United States Trustee and the Court.

89. Executed Confidentiality Agreement between the Debtors and the 1974 Pension Plan, dated November 28, 2012
90. Executed Confidentiality Agreement between the Debtors and the 1993 Benefit Plan, dated November 28, 2012
91. Letter from J. Goodchild to E. Moskowitz, dated December 6, 2012
92. Letter from E. Moskowitz to J. Goodchild, dated December 11, 2012

Dated: April 23, 2013  
New York, New York

Respectfully submitted,

/s/ Elliot Moskowitz

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