

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 DALE F. LUCHA
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

Dale F. Lucha declares pursuant to 28 U.S.C. § 1746:

1. I am Vice President of Human Resources of Patriot Coal Services, LLC.
2. I incorporate by reference my initial declaration, dated March 14, 2013 [ECF No. 3223], in support of the motion of Patriot Coal Corporation and its affiliated debtors (collectively, "**Patriot**" or the "**Debtors**") 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 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**").¹ I submit this declaration to describe certain aspects of the UMWA's Third Counterproposal, dated March 27, 2013, and to respond to certain arguments set forth in the UMWA's objection to the Debtors' Motion.

3. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge, my review of relevant documents, my opinion based upon experience, knowledge, and information concerning the operations of Patriot, and information provided to me by employees working under my supervision. 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, I have been actively involved in the development of the Proposals and in the negotiations with the UMWA concerning the Proposals. Since March 14, 2013, Patriot has participated in additional negotiation sessions, received a revised counterproposal from the UMWA (the "**Third Counterproposal**"), and has delivered further revised proposals to the UMWA. For a detailed description of the negotiating sessions,

¹ 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**"). For the sake of convenience, Patriot refers 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**").

the Third Counterproposal, and the Post-Application Proposal, see the Reply Declaration of Gregory B. Robertson, dated April 23, 2013.

II. The UMWA's Third Counterproposal

5. The UMWA delivered the Third Counterproposal to Patriot on March 27, 2013. This declaration describes certain cost savings associated with the UMWA's proposed modifications to Patriot's collective bargaining agreements ("CBAs").² For the cost savings associated with other aspects of the UMWA's Third Counterproposal, please see the Reply Declaration of Paul P. Huffard, dated April 23, 2013.

6. The Third Counterproposal miscalculates certain of the purported savings. In particular, the UMWA overstates savings associated with the de minimis supervisor work provision, active employee medical changes, and production flexibility proposal.

(a) *De minimis supervisor work provision:* The Third Counterproposal includes a provision similar to a provision contained in Patriot's 1113 Proposal that would permit supervisors to "perform work of a classified nature as long as such work does not exceed one hour." (Robertson Reply Decl. Ex. 81 at § IV(C)(4).) The Third Counterproposal, however, provided that such work may be performed only "if agreed to in advance by the local union." (*Id.*) The UMWA estimates that this proposal would save Patriot approximately \$2.6 million in 2013, and \$5.2 million per year in 2014, 2015 and 2016. (*Id.*) It is my understanding that the UMWA calculated these cost savings by assuming that Patriot would reduce miner hours worked if this provision is implemented. That assumption is incorrect. As described in my initial declaration, this modification is critically important and will increase efficiency but is difficult to value because Patriot does not anticipate reducing miner hours worked if this provision is

² For a detailed description of Patriot's CBAs, please refer to my initial declaration. (Lucha Decl. ¶¶ 7-10.)

implemented. (Lucha Decl. ¶ 61.) Rather, supervisors would continue to perform their supervisory duties and only perform de minimis work of a classified nature.

(b) ***Changes to Active Employee Medical:*** The Third Counterproposal retained the provisions found in earlier UMWA counterproposals related to active employee healthcare but proposed to modify Patriot's health plan to require employees to purchase prescription drugs from in-network pharmacies. The UMWA estimates that, together, its proposed modifications to the active employee medical provisions would save Patriot approximately \$1.4 million in 2013, and \$2.9 million in each of the years 2014, 2015 and 2016, along with "additional savings in each of these years if the parties can implement modifications to Patriot's health plan to provide that active employee beneficiaries shall purchase prescription drugs from in-network pharmacy vendors approved by the plan administrator." (Robertson Reply Decl. Ex. 81 at § IV(D).)

According to Patriot's provider, CVS Caremark, "there were no 'out of network' claims processed" for active union employees. Accordingly, Patriot does not anticipate any cost savings from the new in-network pharmacy provision in the Third Counterproposal. A true and correct copy of the Caremark analysis of this provision, dated April 11, 2013, is attached hereto as Exhibit 8. Furthermore, as described in detail in my initial declaration, according to the estimates of Mercer, Patriot's long-time healthcare consultant, the UMWA's proposed modifications to active employee healthcare would save Patriot only \$1.9 million per year, whereas the changes proposed in Patriot's 1113 Proposal are expected to save an average of approximately per year. (Lucha Decl. ¶¶ 48, 87.)

(c) ***Revised Production Flexibility Proposal:*** In the Third Counterproposal, the UMWA altered its production flexibility proposal in response to Patriot's argument that its original 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. The UMWA relied on “Patriot’s own conclusions as to the approximate gains that would result from . . . implementation [of this provision],” but stated that “if more widely accepted pricing forecasts were substituted for the conservative pricing forecasts incorporated in Patriot’s conclusions reflected below, the EBITDA improvement at these two complexes would be significantly greater and more of the Company’s complexes would be able to produce additional tons at a profit.” (Robertson Reply Decl. Ex. 81 at § IV(C)(1).)

The UMWA miscalculated the increased revenue associated with these provisions. First, Patriot’s analysis assumes the implementation of the UMWA’s wage freeze and overtime proposals in its calculation of the increased revenue associated with this provision. Accordingly, the UMWA double counts the cost savings associated with the wage freeze and overtime provisions, as the UMWA includes these values as independent cost savings in its analysis. (Robertson Reply Decl. Ex. Ex. 81 at §§ IV(A) & IV(C)(2); Traynor Decl. Ex. T at p. 9.) Not assuming the implementation of the wage freeze and overtime provisions, Patriot would lose money from the UMWA’s revised production flexibility proposal. A copy of Patriot’s revised analysis, showing the revenues associated with the UMWA’s proposal in absence of these provisions, is attached hereto as Exhibit 9. Second, the UMWA uses the EBITDA value, not the cash impact, of increased production. (Robertson Reply Decl. Ex. 81 at § IV(C)(1); *see also* Lucha Decl., Ex. 5 (estimating the EBITDA and cash impact of implementing this provision).) The EBITDA value does not take into account contributions to the 1974 Pension Plan and other funds, which would be required under the UMWA’s Third Counterproposal.

IV. Responses to UMWA Arguments

Work Rule Modifications

7. The UMWA argues that Patriot inappropriately seeks non-economic concessions, providing only “absenteeism and tardiness” as examples. The economic nature of Patriot’s proposed work rule modifications is clear. Patriot estimates average annual cost savings of approximately [redacted] from these modifications. (Lucha Decl. ¶¶ 52-57.)

8. Patriot has proposed to modify the number of unexcused absences that an individual can take during a specific period of time because unexcused absences result in either: (a) paying overtime for someone else to work another shift to fill in for the absent employee; (b) not operating the equipment and losing production; or (c) carrying additional employees on the payroll to compensate for absences; or (d) some combination of the above.

9. The problem with unexcused absences is acute at certain mining complexes. For example, Federal No. 2, a union operation, had approximately 2,000 unexcused absences in 2012. In other words, Federal No. 2 averages seven unexcused absences per work day among its 400-person workforce, which has resulted in production slow-downs. Significantly, UMWA-represented employees now qualify for up to 47 days of paid time-off per year, as well as excused absences. (Lucha Decl. ¶ 43.) The unexcused absences at issue are on top of the paid time-off and on top of the excused absences. The 2011 National Bituminous Coal Wage Agreement (“NBCWA”)³ currently allows an employee ten unexcused absences during a 360-day period with no consequences.

³ For a detailed description of the NBCWA and Patriot’s “Me Too” agreements, please refer to my initial declaration. (Lucha Decl. ¶ 7.)

10. Patriot's proposed attendance policy is similar to the policy in effect at its non-union operations, where employees have much lower rates of unexcused absences. For example, in 2012, Dodge Hill (a non-union mine) had zero unexcused absences and Midland Trail (another non-union mine) had a rate of unexcused absences that was almost seven times better than the rate at Federal. Overall, Patriot's non-union operations had a rate of unexcused absences that was four times better than the rate at its union operations in 2012, even though non-union employees have significantly less paid time-off than union employees.

Safety Records

11. Notwithstanding the UMWA's assertions, Patriot's data show that its non-union mines had better safety records in both 2011 and 2012 than its union mines.

12. Patriot evaluates two primary indicia of safety. The first is the "Incidence Rate," which is the number of incidents – or "reportable events" pursuant to Title 30 of the Code of Federal Regulations – per 200,000 man-hours. Generally speaking, there are two types of reportable events: medical injuries (injuries that require medical treatment) and lost time (injuries that prevent an employee from reporting for a scheduled shift). In 2011, Patriot's union operations had an incidence rate of 3.03 and Patriot's non-union operations had an incidence rate of 2.15. Thus, incidence rates at union operations were 41 percent higher. In 2012, Patriot's union operations had an incidence rate of 2.94 and Patriot's non-union operations had an incidence rate of 2.17. Thus, incidence rates at union operations were 35 percent higher.

13. The second measure of safety is violations per inspection day or "VPID." In 2011, the VPID for Patriot's union operations was 0.89. The VPID for Patriot's non-union operations was 0.87. VPID at union operations was 2 percent higher. In 2012, the VPID for Patriot's union operations was 0.76. The VPID for Patriot's non-union operations was 0.70.

VPID at union operations was 8.6 percent higher. A true and correct copy of Patriot's 2011-2012 safety records by union and non-union operations is attached hereto as Exhibit 10.

Gateway CBAs

14. The UMWA asserts that the Gateway CBAs⁴ cover “formerly non-union operations,” and that “[t]he critical factor in the UMWA’s agreement to [the Gateway CBAs] was that they provided work to miners who had vested pensions or retiree care from other work.” (UMWA Objection at 48.) The UMWA also asserts that wages at the Gateway Eagle Mine are \$3.50 per hour higher than under the NBCWA. (UMWA Objection at 49.) These assertions are incorrect.

15. First, two of the four mines covered by the Gateway CBAs – the Farley Eagle Mine and the Campbell’s Creek No. 10 Mine – had been contractor-operated mines that were covered by “Me Too” agreements to the NBCWA. Second, Patriot’s records reflect that only one-third of the individuals employed under the Gateway CBAs have vested benefits from prior work at Patriot. Third, although there once was a \$3.50 per hour variance between wages under the Gateway CBAs and wages under the NBCWA, wages at the Gateway Eagle mine are currently only \$1.00 per hour higher than under the NBCWA.

Incentive Compensation

16. The UMWA contends that certain incentive compensation is not available to unionized employees. (UMWA Objection at 16.) That is incorrect.

17. Both UMWA-represented employees and non-union employees are eligible for mine-level incentive compensation. Currently, these incentive programs enable employees to

⁴ For a detailed description of the negotiation and terms of the Gateway CBAs, please refer to my initial declaration. (Lucha Decl. ¶¶ 8-10.)

earn compensation based on performance in comparison with safety and MSHA VPID targets. There are some limited exceptions to this parity. One example is that the UMWA-represented employees at Federal *declined* to participate in the mine-level incentive plan. For that reason, they earned no incentive compensation.

18. With the limited exception described above, union and non-union employees have the same capacity to earn incentive compensation; the differences in earned incentive compensation are therefore driven by actual performance.

Staffing Ratios

19. The UMWA claims that Patriot can secure _____ in cash savings by eliminating supervisors to adjust its “top-heavy” management structure. (UMWA Objection at 14, 30.)

20. In my opinion, Patriot is as leanly staffed as possible and cannot terminate supervisors at its non-union mines while still operating safely. Patriot continually reevaluates staffing levels and has recently made significant non-union labor cuts.

21. To support its argument, the UMWA claims that Patriot’s union mines have a “ratio of 1 to 4.3 supervisors to workers,” whereas its non-union mines have a ratio of 1 supervisor to 2.9 workers. (UMWA Objection at 30.) Based on my review of the records that the UMWA’s expert claims he relied upon for this evaluation, it appears that the UMWA concluded that all salaried employees are “supervisors.” (Mandarino Decl. ¶¶ 26-27 & Appendix B.). This is incorrect.

22. As Patriot has repeatedly informed the UMWA, salaried employees include secretaries, human resources personnel, information technology personnel, safety technicians and other non-managerial positions. Patriot does not view these individuals as “supervisors.”

23. Furthermore, a few positions – such as “firebosses” and certain electricians – are salaried positions at non-union mines but hourly positions at union mines, which may create an appearance of skewed ratios. Certain mines may also have different ratios of hourly to salaried employees because of the size or type of the mine.

24. In any case, the correct analysis of the supervisor to hourly employee ratio at Patriot’s union and non-union mines does not depict a “top-heavy management structure.” Patriot’s union mines have a ratio of 1 supervisor to 4.8 hourly employees, and its non-union mines have a ratio of 1 supervisor to 4.4 hourly employees. A true and correct copy of the data depicting the number of supervisors and hourly employees at Patriot’s mines is attached hereto as Exhibits 11A and 11B.

25. Finally, the national survey upon which the UMWA relies is an inappropriate benchmark for comparing the ratio of Patriot’s supervisors to hourly employees. First and foremost, the survey does not even provide data for supervisors. It only provides data for hourly and salaried employees. Furthermore, national statistics cannot readily be applied as benchmarks, as they do not account for the type or geology of the mine, both of which are important factors in determining appropriate supervisory staffing. For example, certain mines use mining equipment that requires a greater number of hourly employees than mining equipment used at other mines, which results in differing supervisor to hourly employee ratios at those mines. In any event, Patriot’s current ratio of salaried to hourly workers is comparable to the West Virginia and Kentucky industry average reflected in the national survey that UMWA references. As stated above, any mine-to-mine differences reflect variations driven by size, type or geology of the mine, or worker classification.

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

Dated: Charleston, West Virginia
April 23, 2013

/s/ Dale F. Lucha
Dale F. Lucha

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 DALE F. LUCHA 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 Dale F. Lucha 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 (i) counsel for the 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 and will be made available for inspection at the hearing.¹

- 1-7. Attached to Declaration of Dale F. Lucha, dated March 14, 2013
8. Letter from C. Sanders to M. Luna, dated April 11, 2013
9. Evaluation of UMWA Counteroffer, dated April 9, 2013 (*filed under seal*)
10. 2011-2012 Safety Statistics
- 11A. Ratio of Supervisory to Hourly Employees at All Facilities (*filed under seal*)
- 11B. Ratio of Supervisory to Hourly Employees by Union and Non-Union Facilities

¹ Certain of the Exhibits have been redacted to protect highly confidential and sensitive information. Unredacted copies of these Exhibits will be provided to the Service Parties, counsel for the United States Trustee and the Court.

Dated: April 23, 2013
New York, New York

Respectfully submitted,

/s/ Elliot Moskowitz

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