

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

Chapter 11
Case No. 12-51502-659
(Jointly Administered)

Objection Deadline:
March 28, 2013 at 4:00 p.m.
(prevailing Central Time)

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

Hearing Location:
Courtroom 7 North

DECLARATION OF GREGORY B. ROBERTSON IN 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**”).¹

2. I submit this declaration 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

¹ For convenience, I use the term “Patriot” to refer to both the “Debtors” and the “Obligor Companies,” as defined below.

“**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 Patriot 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**”).²

3. Since 2010, I have served as counsel to Patriot regarding labor issues, including in connection with its dealings with the UMWA. In addition, I serve as one of Patriot’s lead negotiators and labor counsel with respect to Patriot’s Proposals. This declaration summarizes the principal contacts and negotiations that Patriot has had with the UMWA to date in connection with the Proposals.

4. 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.

² As discussed in greater detail below, Patriot has made four proposals. 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, dated November 15, 2012 (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 made revisions to its Original Proposal (the “**Second Proposal**”). On February 19, 2013, shortly after the UMWA made its second counterproposal, Patriot made revisions to the Second Proposal (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 Proposal**”). For the sake of convenience, I refer to the Original 1113 Proposal, as modified by the Second Proposal and the Third Proposal, as the “**1113 Proposal**,” and the Original 1114 Proposal, as modified by the Second Proposal, the Third Proposal, and the Fourth Proposal, as the “**1114 Proposal**.”

The Fourth Proposal, which makes discrete revisions to and incorporates the Third Proposal, is at issue in this motion. True and correct copies of the Third and Fourth Proposals are attached hereto as Exhibit 1 and 2, respectively. True and correct copies of the Original Proposal and the Second Proposal are attached hereto as Exhibits 3, 4, and 5.

I. Overview

5. Most of the parties to these bankruptcy cases understand that Patriot's labor and retiree healthcare costs are unsustainable and must be modified if Patriot is to survive. The business plan developed by Patriot and its advisors provides a path to reorganization that contemplates significant modifications to wages and benefits for active employees and to retiree healthcare for Patriot's retirees and their families. Patriot worked for several months to develop proposals that are narrowly tailored to obtain the relief that is needed for Patriot to successfully reorganize.

6. To be sure, the Proposals would impose changes that are painful for Patriot's active employees and retirees. At the same time, the Proposals would bring the wage and benefit packages for Patriot's unionized employees into line with the wage and benefit packages received by the non-union employees working for Patriot. The Proposals are not only necessary, they are reasonable.

7. Patriot has bargained in good faith with the UMWA for more than four months. During that time, Patriot has taken part in twelve formal negotiation sessions, for a total of approximately forty-five hours of formal negotiation. Patriot and its advisors have also taken part in dozens of conference calls, hundreds of e-mail exchanges, and have worked tirelessly to respond to the UMWA's many requests for information. Patriot continues to bargain in good faith and has scheduled further negotiation sessions with the UMWA, even while this motion is pending.

8. Patriot has also supplied the UMWA with information necessary to evaluate the Proposals. As discussed in detail below, the UMWA's advisors have advanced eight formal sets of information requests, plus dozens of subparts. Additionally, the UMWA and its advisors have

made further requests for information during meetings, by e-mail, or on telephone calls. In total, the UMWA has made more than two hundred detailed requests for information, and Patriot has provided the UMWA with approximately 43,000 pages of responsive information. These materials go far beyond what is necessary to evaluate Patriot's Proposals.

9. Patriot's extensive efforts to comply with the UMWA's requests and to respond to the UMWA's stated concerns about the Proposals must be viewed in context. With each additional day of negotiations, Patriot's cash position becomes worse. Indeed, Patriot continues to honor all of its obligations to UMWA-represented employees and to retirees and therefore continues to pay wages and benefits at the same level that caused Patriot to file for bankruptcy relief. Similarly, in an effort to reach a consensual resolution, Patriot has made substantial concessions to the UMWA in its successive proposals. In other words, Patriot demonstrated significant movement in its efforts to reach a consensual resolution.

10. Unfortunately, the UMWA failed to acknowledge for months that Patriot needs substantial modifications to the CBAs and to its retiree healthcare benefits. In February, the UMWA purported to offer Patriot \$150 million in annual savings, implicitly acknowledging that Patriot must secure such savings in order to survive. However, Patriot and its advisors have evaluated the UMWA's counterproposals and have concluded that they provide savings that amount to less than ten percent of the needed amount in 2014. Patriot made subsequent proposals to respond to the UMWA's stated concerns, but the UMWA rejected those proposals as well.

11. Thus, while Patriot reluctantly comes to the Court for relief, it does so knowing that it has negotiated in good faith, has provided the UMWA with all of the information necessary to consider the Proposals, and has rejected the Proposals without good cause.

II. Patriot Communicated with the UMWA Extensively During the Early Stages of These Chapter 11 Cases

12. From the beginning of these bankruptcy cases, Patriot has communicated with the UMWA as part of a continuing effort to keep the UMWA informed about important developments. I understand that these pre-proposal communications included, but were not limited to, the following:

(a) On Monday, July 9, 2012, Bennett K. Hatfield, Patriot's current President and Chief Executive Officer, contacted Cecil Roberts, International President of the UMWA, to inform Mr. Roberts about the bankruptcy filing.

(b) Later that day, Dale Lucha, Patriot's Vice President of Human Resources, contacted Mike Caputo, the UMWA International District 31 Vice President. Mr. Lucha informed Mr. Caputo about the bankruptcy filing and engaged in a dialogue with Mr. Caputo about the effect of the filing on Patriot's employees and retirees.

(c) Mr. Lucha then called Steve Earle, the UMWA International District 12 Vice President. Mr. Lucha informed Mr. Earle about the bankruptcy filing and again answered questions about the effect of the filing on Patriot's employees and retirees.

(d) Later that evening, Mr. Lucha called Joe Carter, the UMWA International District 17 Vice President. Mr. Lucha left a voice message on Mr. Carter's cellular phone and on his home phone.

(e) On Tuesday, July 10, 2012, Mr. Lucha called Mr. Carter at his office, where he reached Mr. Carter and informed him about the bankruptcy

filing. Mr. Lucha also answered questions about the effect of the filing on Patriot's employees and retirees. Mr. Lucha and Mr. Carter also discussed the status of the Guyan Memorandum of Understanding (the "**Guyan MOU**"), a labor agreement that was set to expire in October 2012. Mr. Carter proposed renewing the Guyan MOU.

(f) On Monday, July 16, 2012, Mr. Lucha spoke to Mr. Caputo about various grievance issues. Mr. Lucha and Mr. Caputo agreed to try to work to resolve the grievances so that Patriot's employees and management would remain focused on safety and productivity.

(g) Later that day, Mr. Lucha spoke with Mr. Carter about a possible extension of the Guyan MOU. Mr. Lucha explained that an extension could benefit both Patriot and the UMWA so that they would not have to address an expiring contract during the chapter 11 reorganization process.

(h) On Thursday, July 19, 2012, Mr. Lucha returned a call from Mr. Carter, who asked further questions about the bankruptcy cases. Mr. Lucha said that Patriot had not yet developed a proposal relating to concessions needed from the UMWA, that management would develop a proposal as expeditiously as possible, and that management would ask for a meeting with UMWA officials in the future. Mr. Lucha and Mr. Carter also discussed the Guyan MOU.

(i) On Monday, July 23, 2012, Mr. Lucha called Mr. Carter. Among other topics, Mr. Lucha explained that Patriot had not completed its deliberation and analysis relating to needed concessions from the UMWA. Mr. Lucha also proposed an extension to the Guyan MOU through December 31, 2012.

(j) On Friday, August 17, 2012, Mr. Hatfield called Mr. Roberts to schedule a meeting to discuss the challenges that Patriot is facing and how Patriot expects the process will unfold over the coming months. They scheduled a one-on-one meeting for Tuesday, August 21.

(k) On Tuesday, August 21, 2012, Mr. Hatfield and Mr. Roberts had an in-person meeting. During that meeting, they addressed: the increasingly weak state of the coal markets, including the further deterioration since Patriot's bankruptcy filing; the risk that Patriot would have to liquidate if its cost structure were not reduced materially; that Patriot expected to reduce wages and benefits for non-union workers; and Patriot's presentation of a labor proposal, which Patriot then hoped would be ready in September. In addition, Mr. Roberts asked several questions regarding potential litigation against Peabody.

(l) On Monday, September 10, 2012, Mr. Hatfield and Mr. Roberts had another in-person meeting. During that meeting, Mr. Hatfield explained that developing the proposals proved to be particularly complicated due to severe coal market deterioration, which had presented challenges to Patriot's July business plan. Mr. Hatfield stated that he hoped Patriot would be ready to present a proposal to the UMWA by the end of the month. Mr. Hatfield and Mr. Roberts also addressed: Patriot's difficult cash position; the fact that a failure to secure timely and substantial labor cost reductions could lead to Patriot's liquidation; and the venue hearing that was scheduled for the next day. In addition, Mr. Roberts again raised questions about potential litigation against Peabody during this discussion.

Patriot and the UMWA engaged in other conversations between July 2012 and November 15, 2012, when Patriot presented its Original Proposal to the UMWA.

III. Patriot Supplied Relevant Information to the UMWA in a Timely Fashion

13. Throughout this process, Patriot believed that it was important to share information with the UMWA, to develop tailored and reasonable proposals for modifications to the CBAs and retiree health benefits, and to engage in frequent dialogue with the UMWA.

14. Patriot has provided the UMWA with nearly 43,000 pages of information to facilitate the UMWA's review of the Proposals. The information that Patriot has made available to the UMWA includes:

- information concerning Patriot's business plans;
- information concerning Patriot's liquidity;
- information concerning Patriot's assets;
- information concerning Patriot's capital expenditures;
- information concerning Patriot's cash management;
- other financial information, including lists of Patriot's vendors and customers;
- general business information, such as coal supply agreements and coal transportation agreements;
- information relating to employee and retiree benefits, including lists of retirees;
- presentations made to Patriot's lenders;
- information relating to Patriot's pension plans;
- information relating to Patriot's environmental obligations;
- information relating to Patriot's pre-petition and post-petition debt;

- various agreements, including Patriot’s operating agreements and formation agreement; and
- information relating to Patriot’s healthcare benefits plans.

As described in further detail below, Patriot has supplied additional information and analysis in response to numerous requests from the UMWA and its advisors.

A. Stipulated and So-Ordered Protective Order (October 2012)

15. On August 8, 2012, in anticipation of sharing Patriot’s sensitive business information with the UMWA, Patriot’s counsel sent a proposed stipulated protective order to counsel for the UMWA. Over the next few weeks, Patriot and the UMWA continued to negotiate the language of the stipulated protective order.

16. On Wednesday, October 3, 2012, Patriot and the UMWA entered into the Stipulated Protective Order, which was so-ordered by the Honorable Shelley C. Chapman of the United States Bankruptcy Court for the Southern District of New York on Tuesday, October 9, 2012. Any person that receives information designated as “confidential” under the Stipulated Protective Order must execute a statement agreeing to be bound by the order. An unsigned version of that statement is contained in Appendix A of the Stipulated Protective Order. A true and correct copy of the Stipulated Protective Order is attached hereto as Exhibit 6.

B. The Data Room (August - October 2012)

17. Beginning in the late summer of 2012, Patriot and its advisors began to compile information that they would make available to the UMWA during the Section 1113/1114 process. While Patriot understood that it would take time to compile a comprehensive set of proposals that addressed Patriot’s long-term business needs, Patriot was determined to provide the UMWA with relevant information in advance of making its proposals so that the UMWA

would be positioned to begin the bargaining process once the proposals were made. Accordingly, Patriot advised counsel for the UMWA on multiple occasions that Patriot was setting up a web-based electronic data room (the “**Data Room**”) to facilitate such information sharing.

18. I understand that on Monday, October 15, 2012, counsel for Patriot advised counsel for the UMWA that Patriot was making the Data Room accessible to the UMWA and its professionals. I also understand that counsel for Patriot requested that individuals who wanted to access the Data Room sign Appendix A of the Stipulated Protective Order prior to accessing the Data Room.

19. I understand that over the next forty-eight hours, Patriot received executed copies of Appendix A from individuals associated with the UMWA and its advisors. I also understand that as of Wednesday, October 17, 2012, Patriot had provided Data Room access to six individuals from the UMWA, six individuals from the PricewaterhouseCoopers LLP (“**PwC**”) team that provides advisory services to the UMWA, and four individuals from the law firm of Kennedy, Jennik & Murray, P.C., then counsel to the UMWA. By Thursday, December 6, 2012, Patriot had provided Data Room access to thirteen individuals from the UMWA, eleven individuals from PwC, and seven individuals from law firms representing the UMWA, including the UMWA’s subsequently-retained outside counsel.

20. The materials made available to the UMWA and its advisors in mid-October 2012 included information relating to each of the categories identified in paragraph 14 above. Indeed, as of mid-October 2012, the Data Room already contained more than 1,100 megabytes of data, or approximately 11,000 pages of material.

C. The UMWA's Pre-Proposal Data Requests (October 2012)

21. The UMWA and its advisors began to request information from Patriot even before receiving the Proposals. These requests took the form of written and oral requests from PwC, and written and oral requests from the UMWA. As described in further detail below, Patriot and its advisors compiled responsive information in a timely fashion and made the information available to the UMWA and its advisors.

22. On Tuesday, October 9, 2012, counsel for the UMWA requested a list of UMWA retirees whose benefits are paid for by Patriot and on Monday, October 22, 2012, counsel for the UMWA requested a list of UMWA retirees whose benefits are paid for by Peabody Energy Corporation ("**Peabody**"), Patriot's former parent company. Patriot prepared a response to these requests and posted the information to the Data Room on Wednesday, October 24, 2012.

23. On Wednesday, October 31, 2012, PwC issued the first of multiple written requests for information from Patriot (the "**First Request**"). The First Request included nine demands, excluding numerous sub-parts. The information requested by PwC included:

- complex-level quarterly financial statements for fiscal years 2009 through 2011;
- entity-level quarterly financial statements for fiscal years 2009, 2010, 2011, and 2012 year-to-date;
- labor and labor-related expenses for each legal entity broken out by union, non-union, and contractor for the first quarter of 2010 through the third quarter of 2012 (including data pertaining to wages, regular, overtime, 1974 pension contribution, 401(k) contribution, and any other remuneration);
- complete list of all SG&A/corporate overhead expenses for fiscal years 2010, 2011, 2012 year-to-date including the detail and explanation of how corporate overhead expenses were allocated to each legal entity;

- all restructuring initiatives undertaken since 2010 at both the corporate and legal entity level (including data pertaining to targeted savings, savings realized, date/period implemented, and cost to implement);
- a full and complete census showing each individual union employee (including data pertaining to date of birth, date of hire, base salary, other compensation, hours worked, OPEB plan information, health plan information, and life insurance information);
- seven mortality tables referenced in the 2012 OPEB report;
- complete withdrawal tables for the four groups referenced in the 2012 OPEB report; and
- complete disability tables for the two groups referenced in the 2012 OPEB report.

A true and correct copy of the First Request is attached hereto as Exhibit 7.

24. Patriot prepared responses to the First Request and posted the information to the Data Room on a rolling basis. Patriot posted a majority of this information to the Data Room by November 15, 2012 and fully responded to the First Request on or about November 20, 2012, with the exception of one subpart of one request, for which responsive material was created and supplied to the UMWA on December 10, 2012. On December 19, 2012, Patriot informed PwC that it considered its response to the First Request complete. (See Exhibit 8 (status report, dated December 19, 2012).)

IV. Patriot Prepared Its Proposals in Good Faith, Continued to Supply Relevant Information to the UMWA in a Timely Fashion, Met and Conferred with the UMWA at Reasonable Times, and Negotiated in Good Faith

25. Following the Petition Date, Patriot conducted a review of all of its expenses and legacy liabilities. Patriot's then-Senior Vice President and Chief Financial Officer, Mark N. Schroeder, discussed this challenge in his First Day Declaration:

[t]he Debtors' business has reached the point of unsustainability absent utilization of the tools presented by chapter 11. In recent

years, the demand for coal has decreased, in large part because alternative sources of energy have become increasingly attractive to electricity generators in light of declining natural gas prices and more burdensome environmental and other governmental regulations. At the same time, the Debtors' liabilities have been increasing as the Debtors face sharply rising costs to comply with such regulations and because of unsustainable labor-related legacy liabilities. . . . The Debtors have substantial and unsustainable legacy costs, primarily in the form of medical benefits and pension obligations.

(Declaration of Mark N. Schroeder Pursuant to Local Bankruptcy Rule 1007-2, dated July 9, 2012 [ECF No. 4], at ¶¶ 21, 33.)

26. To address this challenge, Patriot and its advisors prepared a complex business plan with the goal of determining the level of savings that would be required for Patriot to survive and reorganize as a viable, competitive business. As set forth in the declaration of Paul P. Huffard, Senior Managing Director of Blackstone Advisory Services L.P. ("**Blackstone**"), that business plan ultimately provided that Patriot must realize labor and retiree healthcare savings of approximately \$150 million per year.

27. Patriot worked for months to prepare proposals for the UMWA that would yield the necessary savings. During that time, Patriot conferred repeatedly with its advisors at Blackstone and AP Services LLC ("**Alix**"), as well as with legal counsel, to accomplish this difficult task. In so doing, Patriot was mindful to seek only the savings that were necessary, and used its non-union wages and benefits programs as a benchmark for reasonableness and fairness.

28. In November 2012, Patriot completed its work on an initial set of proposals for modifications of the CBAs pursuant to Section 1113 and of retiree benefits pursuant to Section 1114. Patriot prepared careful and precise proposals, and completed them promptly notwithstanding: (1) the complicated nature of the restructuring; and (2) the severe downturn in

the coal markets that followed Patriot's filing, which required significant revisions to Patriot's business plan and required substantial reconsideration of, among other things, what Patriot could actually afford in active labor and retiree healthcare costs.

29. It is my understanding that Mr. Hatfield contacted Mr. Roberts to begin formal negotiations at that time. Starting with the initial meeting on November 15, 2012, Patriot has worked continuously to reach a consensual resolution with the UMWA regarding necessary modifications to the CBAs and to retiree benefits.

A. The Initial Meeting (November 15, 2012)

30. The initial meeting commenced at approximately 8:00 a.m. on November 15, 2012. Six individuals attended the meeting on behalf of the UMWA: Mr. Roberts; Brian Sanson, Deputy Director of Research; Art Traynor, UMWA Staff Attorney; Joe Carter, International District 17 Vice President; Steve Earle, International District 12 Vice President; and Mike Caputo, International District 31 Vice President. 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.

31. During this initial meeting, Mr. Hatfield, Mr. Lucha, Mr. Waller, and I provided an overview of: (1) coal market conditions; (2) Patriot's historical financial performance; (3) Patriot's restructuring; (4) Patriot's business plan; (5) Patriot's Original Proposal; and (6) a proposed timeline for addressing Section 1113/1114 issues. To facilitate this discussion, Patriot and its advisors prepared a 36-slide PowerPoint presentation, copies of which were distributed at the meeting (the "**November 15 Presentation**"). A true and correct copy of the November 15 Presentation is attached hereto as Exhibit 9.

32. The initial meeting lasted approximately three and one-half hours. At the end of the meeting, Patriot provided the UMWA with the Original Proposal and related documents, as described in detail below. The participants tentatively scheduled the next meeting for Thursday, November 29, 2012 in Charleston, West Virginia.

B. The Original Proposal (November 15, 2012)

33. Following the initial meeting, Patriot posted copies of the Original Proposal and related documents to the Data Room. The posted materials, which were supplied to the UMWA's representatives during the initial meeting, included: (1) the November 15 Presentation; (2) the Original 1113 Proposal; (3) the Original 1114 Proposal; and (4) a document quantifying the savings associated with the Original Proposal (the "**Original Savings Summary**"). A true and correct copy of a letter from Mr. Hatfield to Mr. Roberts, which accompanied the Original Proposal, is attached hereto as Exhibit 10.

1. The Original 1113 Proposal

34. In the Original 1113 Proposal, Patriot proposed modifications to the CBAs that would bring UMWA wage and benefit packages in line with non-union wage and benefit packages. As noted above, a true and correct copy of the Original 1113 Proposal is attached hereto as Exhibit 4.

35. The proposed modifications, which are necessary for Patriot's reorganization and are consistent with the benefits available to Patriot's non-union workforce, include:

- ***Adjustments to wage increases:*** Certain wage increases scheduled to take effect in 2013 and future years would be eliminated or reduced. (Ex. 4 (Tab A at 3; Tab B at 2; Tab C at 2-3).)
- ***Adjustments to wage rates:*** Wage rates for certain union pay grades would be reduced so that they equaled or exceeded rates paid at mines

operated by Patriot's non-union subsidiaries. (Ex. 4 (Tab A, Attachment 1; Tab B, Attachment 1; Tab C, Attachment 1).)

- ***Adjustments to overtime, double time, triple time, and premium pay:*** Certain provisions concerning overtime, double time, triple time, and premium pay would be modified. (Ex. 4 (Tab A; at 3 Tab B at 3; Tab C at 2).)
- ***Changes to pension contributions:*** Patriot's obligation to make certain pension contributions would be eliminated. Instead of these payments, Patriot would contribute 6 percent of gross hourly wages to a 401(k) or similar plan. (Ex. 4 (Tab A at 3; Tab B at 2; Tab C at 3).)
- ***Changes to paid time off:*** The number of holidays, vacation days, and sick or personal days would be reduced. (Ex. 4 (Tab A at 2-4; Tab B at 2-4; Tab C at 2-3).)
- ***Changes health benefits:*** Health benefits for Patriot's active employees would be modified to bring them in line with benefits available to Patriot's non-union employees. (Ex. 4 (Tab A at 4; Tab B at 4; Tab C at 4).) The availability of extended (or post-termination) healthcare coverage would also be reduced. (Ex. 4 (Tab A at 4; Tab B at 4; Tab C at 4).)
- ***Modifications to work rules:*** Work rules contained in certain of the CBAs would be modified. (Ex. 4 (Tab A at 2, 5; Tab B at 2, 4-5; Tab C at 3).)
- ***Termination of certain CBAs:*** Four of Patriot's unionized subsidiaries have no employees. The Original 1113 Proposal would terminate these CBAs. (Ex. 4 (Tab D).)

As described below, Patriot made subsequent proposals to the UMWA that improved upon the terms of the Original 1113 Proposal. Further detail concerning the Proposals and the amount of savings that Patriot expects to realize from these modifications is set forth in the declaration of Dale Lucha, dated March 14, 2013.

2. The Original 1114 Proposal

36. In the Original 1114 Proposal, Patriot proposed to transition responsibility for retiree healthcare to a Voluntary Employee Beneficiary Association – or a “VEBA.” As noted above, a true and correct copy of the Original 1114 Proposal is attached hereto as Exhibit 5.

37. The Original 1114 Proposal includes the following elements:

- ***No modification of benefits for certain retirees:*** Benefits for Coal Act retirees would not be modified. In 2012 alone, the relevant Debtors spent approximately \$14 million on healthcare for Coal Act retirees. (Ex. 5, at 1-2.)
- ***Creation of a VEBA trust:*** Patriot would no longer provide retiree health benefits directly for non-Coal Act retirees, but would facilitate the creation of a Voluntary Employees Beneficiary Association trust, or a “VEBA.” A VEBA is a vehicle that employers use to offer retirees a dedicated source of funding for future medical benefits.
- ***Administration of the VEBA:*** The UMWA Funds (or the UMWA itself) would have full control over the VEBA. Patriot would provide initial funding to the VEBA and would work closely with the UMWA to ensure a rapid and successful transition to this new mechanism. (Ex. 5, at 2.)
- ***Funding of the VEBA:*** Funding for the VEBA would come from three distinct sources. First, Patriot would provide \$10 million in funds to the VEBA between April 1, 2013 and July 1, 2013. Second, the UMWA would be entitled to an unsecured claim against Patriot’s estate, which could take the form of equity in the emerging enterprise and could be monetized by the UMWA – even before emergence – to provide a source of funding for the VEBA. Third, should market conditions improve, further contributions could be made to the VEBA under a profit-sharing plan established by Patriot. Under the proposed arrangement, certain Debtors would agree to contribute to the VEBA an amount equal to 10 percent of net income earned by Patriot above \$75 million in 2015 and an amount equal to 10 percent of net income earned by Patriot above \$150 million in 2016 and subsequent years. Such contributions would be subject to certain conditions, including an annual cap and an aggregate cap. The profit-sharing component would allow the UMWA to share in any upside should Patriot’s financial performance improve in years to come. (Ex. 5, at 2.)

As described below, Patriot made subsequent Proposals to the UMWA that improved upon the terms of the Original 1114 Proposal. Further detail concerning the amount of savings that Patriot expects to realize from these modifications are set forth in the declaration of Dale Lucha, dated March 14, 2013.

3. The Savings Summary

38. Patriot prepared a document quantifying the savings associated with the Original 1113 Proposal and made that document available to the UMWA and its advisors. The document: (1) sets forth the proposed changes to the various CBAs; and (2) quantifies anticipated savings associated with the Original 1113 Proposal. In so doing, the Original Savings Summary matches each proposed change to savings attributable to that change. A true and correct copy of the Original Savings Summary is attached hereto as Exhibit 11.

39. The Original Savings Summary also compares the proposed changes to the wages and benefits available to Patriot's non-union employees. This comparison illustrates the parity between the proposed changes and the benefits available to Patriot's non-union workforce.

40. On December 6, 2012, Patriot supplied the UMWA with a revised version of the savings summary, which corrected one calculation (the "**Revised Savings Summary**"). Like the earlier version, the Revised Savings Summary matches each proposed change to savings attributable to that change. A true and correct copy of the Revised Savings Summary is attached hereto as Exhibit 12.

41. These savings are discussed in the declaration of Dale Lucha, dated March 14, 2013.

C. The UMWA's Subsequent Requests for Information and Related Communications (November 15, 2012 - December 3, 2012)

42. The UMWA and its advisors continued to request information from Patriot after Patriot presented the Original Proposal to the UMWA on November 15, 2012. Patriot and its advisors continued to gather responsive information in a timely fashion and continued to post this information to the Data Room on a rolling basis – and often within a day or two of receiving the request – so that the UMWA and their advisors could review the information.

43. On Monday, November 19, 2012, PwC issued its second written request for information from Patriot (the “**Second Request**”), which included an additional 11 demands, excluding numerous subparts. The information requested by PwC included:

- an excel version of Patriot's business plan reflected in the Original Proposal;
- an excel version of Patriot's business plan that does not contemplate Section 1113/1114 savings;
- a list of all actions taken by Patriot to conserve cash, including date implemented, cash savings by year and cost to implement;
- further detail regarding post-filing cash savings initiatives referenced in the November 15 Presentation;
- detailed regarding all proposed savings related to corporate positions and non-unionized mines assumed in the business plan;
- copies of any diligence reports or solvency opinions prepared in connection with Patriot's spin-off from Peabody and other transactions involving Magnum Coal Company (“**Magnum**”) and Arch Coal, Inc. (“**Arch**”);³

³ Prior to October 31, 2007, Patriot and a number of its subsidiaries were wholly-owned subsidiaries of Peabody, the world's largest private-sector coal company, and their operations were a part of Peabody's. On October 31, 2007, Patriot was spun off from Peabody through a dividend of all outstanding shares of Patriot. On July 23, 2008, Patriot acquired Magnum. Prior to its acquisition by Patriot, Magnum acquired certain assets of Arch. The UMWA has commenced a lawsuit against Peabody and Arch relating to these two transactions, Lowe et al. v. Peabody Holding Company, LLC et al., No. 2:12-6925 (S.D.W.Va.), and as discussed in further detail in

- data concerning wages, pension contributions, 401(k) contributions, and other remuneration for union employees, non-union employees, and contractor employees for each quarter from 1Q 2009 through the present and projections through 2016;
- for each mine, a summary of total labor costs for 2010, 2011, and year-to-date 2012 (including data pertaining to straight time wages and total number of straight time hours worked, overtime wages and total number of overtime hours worked, other wage payments, paid time off payments, broken out by vacation, holiday, sick time, personal time, or other pertinent categories, hours worked for which contributions into the various UMWA multiemployer pension and health and welfare funds were required, and total amounts paid into each such fund, etc.);
- summary plan descriptions for current active employee benefits (both union and non-union) and for the newly-implemented healthcare plan for Patriot's non-union employees;
- a full and complete census showing each individual union employee (including data pertaining to date of birth, date of hire, base salary, other compensation, hours worked, OPEB plan information, health plan information, and life insurance information); and
- employee benefit and compensation plans/policies Fringe/ P&L costs (e.g., retirement, health and welfare, other incentive compensation, deferred compensation, paid time off) for non-union employees, including as a percentage of pay.

A true and correct copy of the Second Request is attached hereto as Exhibit 13.

44. Patriot and its advisors prepared responses to the Second Request and posted the information to the Data Room on a rolling basis. Patriot posted a majority of this information to the Data Room by December 3, 2012 and had substantially responded to these requests on or about December 12, 2012. On December 19, 2012, Patriot informed PwC that it considered its response to the Second Request substantially complete, with one outstanding piece of information still to be developed. (See Exhibit 8 (status report, dated December 19, 2012).)

paragraphs 43, 54, 57, 63, 84, 108, 113, and 138 *infra*, the UMWA has requested a significant amount of information relating to these two transactions and the related claims.

45. On Tuesday, November 20, 2012, Mr. Roberts sent a letter to Mr. Hatfield. In that letter, Mr. Roberts wrote:

On November 15, 2012, you presented us with your proposed modifications pursuant to Sections 1113 and 1114 of the Bankruptcy Code. The proposed modifications contemplate enormous changes for Patriot's employees, retirees and their families. Please encourage your advisors to ensure that all information and diligence requests are provided to PricewaterhouseCoopers in the most timely manner possible.

A true and correct copy of this letter is attached hereto as Exhibit 14.

46. On Wednesday, November 21, 2012, Mr. Hatfield responded to Mr. Roberts' letter, assuring Mr. Roberts that Patriot had responded to the UMWA's requests as expeditiously as possible and would continue to do so. Mr. Hatfield further wrote that:

[a]s you know, Patriot opened a data room for the UMWA a month before delivering the proposals, more than 11,000 pages of data have already been produced, and we have been working cooperatively with your advisors at Pricewaterhouse Coopers (PwC) and your attorneys for some time. Indeed, we received new information requests from PwC shortly before receiving your letter; the data room already contains certain information responsive to PwC's requests and we immediately began working to gather and produce the remainder.

Mr. Hatfield encouraged Mr. Roberts to contact him if the UMWA had any concerns about the flow of information from Patriot to the UMWA. A true and correct copy of this letter is attached hereto as Exhibit 15.

47. On the same day, Patriot's advisors provided the UMWA and its advisors with two status reports that included notations about whether Patriot had responded to the each item in the First Request and the Second Request. In transmitting the status reports, one of Patriot's advisors, Kenneth A. Hiltz, indicated that Patriot has "nearly completed posting data in response to the 10/31/12 requests, and the data room already contains information responsive to several of

the 11/19/12 requests.” Mr. Hiltz also sought clarification from PwC on a number of the requests and offered to schedule a meeting with the UMWA’s advisors. A true and correct copy of the transmittal e-mail and the attached status reports is attached hereto as Exhibit 16.

48. I understand that on Monday, November 26, 2012, PwC asked to schedule a call to discuss the various data requests and Mr. Hiltz participated in a call on behalf of Patriot. I also understand that during that call, PwC thanked Patriot for posting responsive information and requested a functional version of Patriot’s business plan model.⁴

49. Later that evening, PwC clarified certain items in the First Request and Second Request and documented its request for a “functioning version of the [Debtors’] business plan model.” A true and correct copy of this e-mail is attached hereto as Exhibit 17.

50. Patriot’s investment bankers prepared a functional business plan model in response to PwC’s request and on Monday, December 3, 2012, Patriot made the functional model available to the UMWA and its advisors. Counsel for Patriot also offered to set up an in-person meeting to demonstrate the model. A true and correct copy of this transmittal e-mail is attached hereto as Exhibit 18.

51. On Wednesday, November 28, 2012, Patriot’s advisors provided updated status reports to PwC to accurately log the state of Patriot’s response to the First Request and the Second Request. True and correct copies of the transmittal e-mail and attached status reports are attached hereto as Exhibit 19.

⁴ Patriot and its advisors and the UMWA and its advisors alternatively refer to the functional business plan model as a “working” model, a “dynamic” model, or a “live” model. For the sake of simplicity, I refer to this as a “functional” business plan model. Such a model allows Patriot and its advisors to see the impact of making adjustments to Patriot’s capital structure.

**D. The Second and Third Meetings and Related Communications
(November 29, 2012 - December 3, 2012)**

52. It is my understanding that on Monday, November 26, 2012, Mr. Roberts and Mr. Hatfield confirmed that the second meeting would be held on Thursday, November 29, 2012 in Charleston, West Virginia at 9:00 a.m. I also understand that they confirmed that Patriot and the UMWA would meet for a third time on Monday, December 3, 2012 at 1:00 p.m..

53. The second meeting commenced at approximately 9:00 a.m. on November 29, 2012. Three individuals attended the meeting on behalf of the UMWA: Mr. Roberts, Mr. Sanson, and Mr. Traynor. Four individuals attended the meeting on behalf of Patriot: Mr. Hatfield, Mr. Lucha, Mr. Waller, and me.

54. During the second meeting, the UMWA representatives sought information concerning the following topics, among others:

- whether Patriot may have unknowingly paid benefits for certain retirees when the obligation in fact belonged to Peabody, the documents that govern such obligations, and data requests relating thereto;
- the UMWA's pursuit of claims against Peabody relating to the October 2007 spin-off;
- the prospect for increased UMWA participation in Patriot's mines;
- the reasons why Patriot had below-market coal supply contracts, some of which Patriot acquired through the Peabody spin-off or through the Magnum acquisition;
- coal market conditions, including the fact that demand for metallurgical coal had declined because of Chinese production;
- how the VEBA arrangement would operate and when retirees could receive payments from the VEBA;

- how the profit-sharing arrangement would operate and how the UMWA could value the unsecured claim that could add value to the VEBA;
- the UMWA's request for solvency opinions relating to the spin-off and the Arch transaction and Patriot's concern about the confidentiality and relevance of these materials; and
- various other topics not directly related to the Original Proposal, such as Patriot's Medicare Advantage Plan and the Coal Act prescription drug formulary.

The UMWA representatives also stated that they were pleased with the progress of the information sharing by Patriot to date. At the meeting, Mr. Hatfield requested that the UMWA make a counteroffer in response to the Original Proposal, but Mr. Roberts would not commit to providing one, noting that he wanted to evaluate the lists of retirees before the UMWA would furnish a counteroffer.

55. The second meeting lasted approximately four hours.

56. The third meeting commenced at approximately 1:10 p.m. on Monday, December 3, 2012. Three individuals attended the meeting on behalf of the UMWA: Mr. Roberts, Mr. Sanson, and Mr. Traynor. Four individuals attended the meeting on behalf of Patriot: Mr. Hatfield, Mr. Lucha, Mr. Waller, and me.

57. During the third meeting, the UMWA representatives raised the following issues, among others:

- the functional business plan model, which Patriot provided to the UMWA and its advisors that day, and Patriot's offer to set up a meeting so that PwC could review the model with Patriot's advisors;
- further questions about the list of retirees to whom Patriot pays retiree benefits, the grounds for Patriot's obligations, whether certain obligations properly belong to Peabody and not to Patriot, and whether Peabody and Patriot disputed their respective obligations after the spin-off;

- the UMWA's request for due diligence and solvency opinions relating to the spin-off and to the Arch transaction, and Patriot's concerns with respect to such materials;
- an item-by-item discussion of the status of Patriot's responses to PwC's written data requests, which was nearly complete;
- how the UMWA could value its unsecured claim and whether Patriot had indicated that the claim would be entitled to some sort of administrative priority; and
- whether Patriot considered commencing litigation against Peabody and Arch relating to prior transactions.

Mr. Roberts also indicated during this meeting that he believed that it was inevitable that Patriot will move for relief under Sections 1113 and 1114, that the Court will have to decide whether to grant the motion, and only then will the UMWA be in a position to potentially accept the modifications or dispute them.

58. At the end of the third meeting, both Mr. Hatfield and I reiterated that Patriot's preference was to reach a consensual resolution, that Patriot is consuming cash at an unsustainable rate, and that the coal market continues to worsen, which means that time is of the essence. Mr. Hatfield again asked when Patriot could expect a counterproposal. Mr. Roberts indicated that he needed to confer with the UMWA's advisors at PwC about a time frame.

59. The third meeting lasted approximately two and one-half hours.

E. Further Requests for Information and Communications about the Proposals (November 29, 2012 - December 14, 2012)

60. After the second meeting, the UMWA and its advisors continued to request information from Patriot and, again, Patriot gathered the information and made it available to the UMWA in a timely fashion and on a rolling basis.

61. On Friday, November 30, 2012, PwC issued its third written request for information from Patriot (the “**Third Request**”). The information requested by PwC included an additional ten requests. These requests included:

- an indicator separating employees into four pertinent bargaining unit buckets (*i.e.*, 2011 Gateway Eagle CBA, Other Gateway arrangements, Highland labor agreement, 2011 Apogee, Eastern Heritage and Hobet CBA);
- hours worked for the 1974 pension contributions, 1993 benefit trust contributions, service payment, retiree bonus contribution, and inexperienced miner payment in the previously produced census file;
- an indicator for pension opt-out in the previously produced census file;
- a break-out, for 2013 through 2016, of budgeted headcount and hours for the four pertinent bargaining units and an indicator of the projected savings over the same period;
- wages for employees with job grades of S6 or U6;
- wage rates for non-union surface mines, preparation plants, and surface facilities for deep mines and rates used to calculate the savings in previously produced savings summary;
- support for projected savings during 2013-2016 for “Retiree Bonus Contributions” in previously produced savings summary;
- support for projected savings during 2013-2016 for “Health Care” and “Extended Health Care” in previously produced savings summary, including layoff rates and projected COBRA premiums;
- support for projected savings during 2013-2016 for “Work Rules” in previously produced savings summary, including backup; and
- the name and date of birth of retirees, disabled retirees and surviving spouses who were acquired by Patriot as part of the Peabody transaction.

A true and correct copy of the Third Request is attached hereto as Exhibit 20.

62. Patriot and its advisors prepared responses to the Third Request and posted the information to the Data Room on a rolling basis. Patriot posted a majority of this information to the Data Room by December 6, 2012 and had fully responded to these requests on or around December 15, 2012. On December 19, 2012, Patriot informed PwC that it considered its response to the Third Request complete. (See Exhibit 8 (status report, dated December 19, 2012).)

63. Mr. Roberts also transmitted a letter to Mr. Hatfield on November 30, 2012. Despite prior in-person statements from Mr. Roberts and from the UMWA's advisors that the UMWA was satisfied with the pace and nature of the information sharing, Mr. Roberts wrote:

the Union is unable to fully analyze, much less respond meaningfully, to Patriot's initial bargaining proposal unless and until your team shares the critical analytical materials we have requested, such as, but not limited to: the dynamic business model that contains all supporting schedules and underlying assumptions; a break-out of historical employee costs by mine; details regarding administration of the retiree medical liability assumption agreements associated with the 2007 Peabody-Patriot spinoff; and, diligence reports and solvency opinions addressing the Peabody spinoff and subsequent acquisition of the Magnum operations.

Mr. Roberts also commended Mr. Hatfield for his "commitment to fully investigate the Peabody spinoff and Magnum acquisition so as to determine the value of any potential claim against these entities, which we agree is vital to ascertaining the necessity of any modifications to retiree healthcare and other [labor] commitments. . . ." A true and correct copy of this letter is attached hereto as Exhibit 21.⁵

⁵ Mr. Hatfield responded to this letter and clarified the many inaccuracies therein on Friday, December 7, 2012, as discussed in paragraphs 75 and 95 herein.

64. Notwithstanding Mr. Roberts' letter, Patriot continued to respond to the information requests issued by the UMWA and its advisors. For example, on Monday, December 3, 2012, one of Patriot's advisors at Alix, Joseph Mazzotti, provided further information in response to the Third Request. A true and correct copy of the e-mail from Mr. Mazzotti is attached hereto as Exhibit 22.

65. I understand that on Monday, December 3, 2012, Patriot's counsel also received a call from the UMWA, advising Patriot that it had retained new counsel – Frederick Perillo of the Previant Law Firm in Milwaukee, Wisconsin. I also understand that Patriot's counsel indicated that he would like to set up an introductory call with Mr. Perillo and planned to provide the Previant Law Firm with access to the Data Room.

66. I understand that on Tuesday, December 4, 2012, one of the UMWA's advisors at PwC made a telephonic request for a mapping of the coal price forecast in Patriot's business model to complexes. Patriot and its advisors compiled this information and posted it to the Data Room on December 7, 2012.

67. On the same day, Mr. Hiltz contacted the UMWA's advisors with a written status update. Mr. Hiltz wrote that:

Over the past several weeks, we have made significant additions to the data room in response to PwC's information requests. I anticipate that by Wednesday evening, we will have completed our responses to your October 31 and November 19 data requests. I understand that in addition to the written requests that I have received from you, there have been oral indications of interest in various pieces of information that have been discussed at the negotiating sessions but not reduced to writing or any formal process. I want to make sure that we are not missing any of these requests as we work to complete our information response. Would you please have someone review the information loaded to the data room against your data needs and revert with any outstanding items?

Mr. Hiltz again offered to provide assistance to PwC in connection with its review and testing of the functional business plan model. He wrote that “[t]o the extent there is interest in a meeting, we would like to schedule that session as soon as possible so that we can continue to move the overall process forward.” A true and correct copy of this e-mail is attached hereto as Exhibit 23.

68. Later that day, the UMWA’s advisors responded to Mr. Hiltz’s e-mail. It is my understanding that PwC expressed interest in scheduling a call to ask questions about the functional business plan model and stated that “the need for [solvency opinions] was discussed with Ben Hatfield in meetings over the past week and he agreed those reports are relevant to the union for purposes of evaluating the 1113/1114 proposal.” A true and correct copy of this e-mail is attached hereto as Exhibit 24.

69. In response to this e-mail, counsel for Patriot responded that PwC’s e-mail did not accurately reflect Patriot’s position as to the relevance of solvency opinions and that “[g]iven the legal issues concerning this request, it is best discussed further among counsel, which we would like to do promptly. We have reached out to the Union’s new counsel (also cc-d here) to open that line of communication and will discuss on our call.” A true and correct copy of this e-mail is attached hereto as Exhibit 25.

70. The parties engaged in further discussions about the solvency opinions on December 4, 2012. Mr. Traynor, counsel to the UMWA and one of its representatives in the negotiations again pushed for solvency opinions:

The value of [any potential claim against Peabody or Arch] is self-evidently relevant to the necessity of Patriot’s proposals, which I can assume is the reason Mr. Hatfield and Mr. Robertson each stated that Patriot’s objection to our request for the solvency opinions does not concern their relevance, but only confidentiality and privilege concerns.

A true and correct copy of this e-mail is attached hereto as Exhibit 26.

71. Late that evening, counsel for Patriot responded to Mr. Traynor, indicating that it did not believe the solvency opinions were relevant but proposing a compromise solution:

For the avoidance of doubt, the Debtors do not concede the legal point that five-year-old solvency opinions constitute information that the Union must receive in order to evaluate whether the Debtors' proposals are necessary to the reorganization today. . . . That said, the Debtors may be prepared to produce the requested materials in the event confidentiality and privilege issues can be addressed, which is why we would like to discuss the matter further with counsel; we are happy to have that discussion with you directly or with Fred Perillo. . . .

As for your comments about potential claims against Peabody or Arch, you are correct in noting that such potential claims belong to the estate. But speculation about the eventual value of such potential claims cannot be a factor in the information sharing that is required under 1113/1114. . . .

A true and correct copy of this e-mail is attached hereto as Exhibit 27.

72. On Wednesday, December 5, 2012, in response to the e-mail from Patriot's counsel, Mr. Traynor responded that he would review Patriot's arguments but requested that Patriot deliver a privilege log in the interim. Patriot's counsel responded shortly thereafter that he would consider the privilege log request and again proposed a compromise solution. A true and correct copy of this e-mail is attached hereto as Exhibit 28.

73. On Thursday, December 6, 2012, PwC sent Patriot two documents that purported to log the status of Patriot's responses to the UMWA's information requests. Although the reports contained certain inaccuracies, it indicated that Patriot's response to most of the items raised in the Second Request and the Third Request was "complete" and Patriot's response to other items was "partially complete." True and correct copies of the transmittal e-mail and attached status reports are attached hereto as Exhibit 29.

74. On Friday, December 7, 2012, Patriot's advisors provided revised status reports to PwC to accurately log the state of Patriot's response to the First Request, Second Request, and Third Request. In so doing, Patriot provided additional responsive information to PwC and corrected certain inaccuracies in PwC's status updates from the previous day. True and correct copies of the transmittal e-mail and attached status reports are attached hereto as Exhibit 30.

75. On Friday, December 7, 2012, Mr. Hatfield responded to Mr. Roberts about a number of outstanding issues, including the sufficiency of Patriot's information sharing and the UMWA's request for the solvency opinions. As to the sufficiency of Patriot's productions of responsive information, Mr. Hatfield wrote:

As you know, and as you and your advisors have repeatedly affirmed to us in our negotiating sessions, Patriot has been extremely cooperative in responding to the UMWA's broad information requests. Among the more than 13,500 pages of material Patriot has already produced to the UMWA, Patriot has shared each of the items identified in your letter that are arguably relevant to the 1113/1114 process. Specifically, Patriot has shared (1) the dynamic version of their business model (and have already participated in discussions with your advisors about the model), *see* data room at 1.2.2.3; (2) a break-out of historical costs by mine complex and entity, *see* data room at 1.2.11.1 and 1.2.11.3; and (3) details regarding administration of the retiree medical assumption agreements associated with the 2007 spin-off, *see* data room at 1.3.6.25-27 and 1.3.6.5-10.

As to the UMWA's request for solvency opinions, Mr. Hatfield wrote:

I have suggested that our attorneys discuss this request with one another, and I understand those discussions have begun. As I advised you during our most recent negotiating session, requests for documents concerning the 2007 spin-off may be relevant to the UMWA's lawsuit against Peabody, but such materials do not constitute information that the UMWA requires in order to evaluate whether the modifications proposed by Patriot are necessary to the reorganization. . . . Indeed, Patriot is concerned that the focus of the UMWA's questions during our negotiating sessions has been around Peabody and the 2007 spin-off, and there

have been relatively few questions concerning the terms of Patriot's proposals which are at issue in this process.

A true and correct copy of this letter is attached hereto as Exhibit 31.

76. On Monday, December 10, 2012, PwC issued its fourth written request for information from Patriot (the "**Fourth Request**"). The Fourth Request sought an additional five items, including:

- any analysis or schedule prepared by Patriot and/or its advisors that detail creditor recoveries and Plan of Reorganization structures;
- any analysis quantifying the value of the allowed unsecured claims against Patriot's estate;
- any valuation materials prepared by Patriot and/or its advisors in support of the requested analyses;
- a copy of Patriot's "Bank Plan," including all financial statements and assumptions; and
- copies of alternative Section 1113 and 1114 proposals developed and evaluated by Patriot prior to November 15th.

A true and correct copy of the Fourth Request is attached hereto as Exhibit 32.

77. Patriot and its advisors prepared responses to the Fourth Request and posted the information to the Data Room on a rolling basis. Patriot provided PwC with the July "Bank Plan" by e-mail on December 11, 2012. Because Patriot had never performed any of the analyses or developed the "alternative" proposals referred to in the requests, there were no further responsive materials to post. On December 19, 2012, Patriot informed PwC that it considered its response to the Fourth Request complete. (See Exhibit 8 (status report, dated December 19, 2012).)

78. I understand that on Monday, December 10, 2012, the parties also continued their discussions about the solvency opinions. Mr. Perillo, counsel for the UMWA, further argued

that the UMWA was entitled to the solvency opinions. Mr. Perillo concluded that “[w]ithout this information, we do not believe we can fully evaluate your requests.” (See Exhibit 33.)

79. On Tuesday, December 11, 2012, Mr. Roberts sent a letter to Mr. Hatfield that was inconsistent with the previous day’s telephone call and that misconstrued the record to date.

Mr. Roberts wrote:

When you finally provided to us on November 15, 2012 the extremely broad overview of your business plan along with your proposals, very little meaningful data had been provided to us in the data room or otherwise. The records generated when material is posted to the data room and the correspondence between our analysts reflect that the bulk of the information necessary to analyze your business plan and proposals has only been provided in the several weeks since our first meeting. . . .

Please do not misconstrue our affirmation of your cooperation with necessary information exchange as a suggestion that your obligation to provide full and complete information has been satisfied. It has not. . . .

Our analysts at PWC have requested and followed-up on information you have provided. Once they receive the information requested, they begin the analyses we ask them to perform.

A true and correct copy of this letter is attached hereto as Exhibit 34.⁶

80. That evening, Patriot’s advisors provided updated status reports to PwC to accurately log the state of Patriot’s response to the Fourth Request, which PwC had sent the previous day. In supplying the status report, Mr. Mazzotti stated that:

In addition to the requests reflected in all of the written information requests submitted by PwC, there have been several requests made orally at meetings and on conference calls. We have made every effort to be responsive to these additional requests, and have posted files to the data room in response. For clarity, it would be helpful if you would set forth any such

⁶ Mr. Hatfield responded to this letter on Monday, December 17, 2012, as discussed in paragraph 90 herein.

additional requests in writing and indicate whether any remain outstanding at this time.

True and correct copies of the transmittal e-mail and attached status report are attached hereto as Exhibit 35.

81. On Wednesday, December 12, 2012, Patriot furnished copies of the requested solvency opinions to the UMWA and its advisors. In transmitting the opinions, Patriot's counsel again noted Patriot's concern about the relevancy of these opinions, questioned the UMWA's reluctance to issue a subpoena for the materials, but indicated that Patriot had no desire to delay negotiations or to create an impediment to a negotiated solution. A true and correct copy of this e-mail is attached hereto as Exhibit 36.

82. Later that day, PwC issued its fifth written request for information from Patriot (the "**Fifth Request**"). The Fifth Request included three additional demands (excluding numerous subparts):

- running various scenarios of the business plan based on specific assumptions;
- identifying information for specific retirees to whom Patriot pays retiree benefits (including name, social security number, date of birth, date of employment, date of employment (if any) with other NBCWA signatories, last day worked, total credited service, etc.); and
- the source of information underlying Patriot's summary of certain retiree issues and access to Patriot personnel familiar with these issues.

A true and correct copy of the Fifth Request is attached hereto as Exhibit 37.

83. Patriot and its advisors prepared responses to the Fifth Request and posted the information to the Data Room on a rolling basis. Patriot posted a majority of this information to the Data Room by December 21, 2012 and had fully responded to these requests by on or about January 4, 2013.

84. On Thursday, December 13, 2012, notwithstanding Patriot's provision of the solvency opinions, Mr. Perillo sent an e-mail to counsel for Patriot, stating that he understood that Patriot would complete an investigation into the conduct of Peabody and Arch before the 1113/1114 process was complete. Mr. Perillo continued:

Mr. Hatfield advised the union bargainers that Patriot's investigation into the value of the fraudulent conveyance claims would be concluded prior to the completion of the sec. 1113 proceedings. My clients interpreted this statement to mean that the information would be available to both of us (to UMWA and to Patriot) during these proceedings. This conclusion makes sense to us. . . . Will you in fact complete the investigation of these claims soon?

Mr. Perillo also requested any analysis or document prepared related to potential plans of reorganization and creditor recoveries. A true and correct copy of this e-mail is attached hereto as Exhibit 38.⁷

85. On the same date, PwC issued its sixth written request for information from Patriot (the "**Sixth Request**"). The Sixth Request included eight additional demands (excluding subparts):

- narrative regarding intercompany allocation (the different methodologies and rationale behind differences at multiple locations);
- examples of intercompany allocation at the mine and complex level;
- contract-level detail that supports the 2013 revenue forecast;
- mine-by-mine forecasts, analysis, and schedules that support the complex level projections;
- employee break-out of SGA-Salaries, SGA-Stock Options, and SGA-Incentive Comp-Salaried for each year of the forecast;

⁷ Counsel for Patriot responded to this e-mail on Sunday, December 16, 2012, as discussed in paragraph 87 herein.

- break-out of “Outside Services” for each mining complex;
- detail regarding the Management Annual Incentive Compensation Plan, including performance goals and targets for fiscal years 2011, 2012, and 2013, and payments made under the plan in fiscal year 2011 and 2012; and
- explanation of the “Other” complex-level worksheet included in the business plan.

A true and correct copy of the Sixth Request is attached hereto as Exhibit 39.

86. Patriot and its advisors prepared responses to the Sixth Request and posted the information to the Data Room on a rolling basis. Patriot posted a majority of this information to the Data Room by December 19, 2012. On that date, Patriot informed PwC that it considered its response to the Sixth Request complete, with the sole exception of information about the Management Annual Incentive Compensation Plan, which was still being developed. (See Exhibit 8 (status report, dated December 19, 2012).)

87. On Sunday, December 16, 2012, counsel for Patriot responded to Mr. Perillo’s December 13, 2012 e-mail. He first addressed the issue of the timing of Patriot’s investigation of any fraudulent conveyance claims:

[Y]our account of the December 3 meeting is inaccurate (nor would your version of the meeting make sense), and the Debtors have not taken any “inconsistent positions.” More fundamentally, you are confusing the timing and pace of the investigation on the one hand, with the question of whether to ascribe a “value” to potential claims against Peabody for purposes of reducing the savings amount reflected in the 1113/1114 proposals, on the other hand. As is typical in bankruptcy mega-cases, an investigation into fraudulent conveyance and other claims must be done carefully and thoroughly, and will take months to complete. . . . [T]he Debtors once again request that the Union deliver a counterproposal so the negotiations can advance.

Patriot's counsel then addressed the UMWA's request for analysis related to potential plans of reorganization and creditor recoveries. In so doing, counsel indicated that Patriot had not yet prepared such analyses, but noted that "the Debtors would be happy to arrange a meeting with the Union and its advisors to discuss whatever information about these topics is known at this point, and to discuss the many contingencies that would have an impact on any such analyses."

A true and correct copy of this e-mail is attached hereto as Exhibit 40.

88. On Monday, December 17, 2012, Mr. Perillo responded to Patriot's counsel's earlier e-mail, and in so doing, accused Patriot of backtracking on its commitment to value fraudulent conveyance claims before the conclusion of the 1113/1114 process, a statement that was wholly inconsistent with Mr. Roberts' position three days earlier. Mr. Perillo then asserted that no counterproposal would be forthcoming, stating:

suffice it to say that our negotiators have already explained to you the projected timing of our responses given the amount of material that needs to be studied and the magnitude and import of the issues under discussion. Regrettably, your unwillingness to come forward on the two issues I mentioned in my message of Thursday hampers this effort. I understand your response however, and the consequences of your response will be decided at another time by the court.

A true and correct copy of this e-mail is attached hereto as Exhibit 41.

89. Later that afternoon, Patriot's counsel expressed concern about the statement that "the consequences of your response will be decided at another time by the court":

This suggests that you believe litigation is inevitable and certain. To be clear, the Debtors do not believe litigation among our clients is certain and we remain hopeful that the two sides will reach a consensual deal to save the company. I hope the Union shares this view, though your statements and those of Mr. Roberts suggest otherwise.

Patriot's counsel also expressed confusion about Mr. Perillo's statement about Patriot's "unwillingness to come forward" on the issues raised in his e-mail, reminding Mr. Perillo that Patriot had provided a significant amount of information to the UMWA, were continuing to do so, and continued to express willingness to meet at the UMWA's convenience. Patriot's counsel again requested a counterproposal from the UMWA so that negotiations could continue. A true and correct copy of this e-mail is attached hereto as Exhibit 42.

90. That same day, Mr. Hatfield wrote to Mr. Roberts, reiterating the fact that Patriot was in a dire financial position and that the parties needed to negotiate in a timely fashion for Patriot to avoid liquidation. Mr. Hatfield then responded on an item-by-item basis to each example of information that Patriot purportedly failed to provide to the UMWA:

As Patriot has explained to PwC, there are no "analyses of the unsecured claim" that could be used as a funding source for the VEBA, because any such analysis would be impossible at this early date in the Chapter 11 proceedings. . . .

Patriot has provided the solvency opinions related to the spin-off transaction, and has undertaken to search for other related materials, even though it remains our position that such information has no conceivable relevance to the 1113/1114 process. We hope and expect that this will take the issue off the table and prevent it from being a further distraction in our negotiations. . . .

As we have also explained to PwC, Patriot did not prepare any "alternative 1114 proposals." As I have previously explained, the struggle for Patriot was not in choosing between alternative retiree healthcare options, but rather in finding a proposal that would avoid Patriot having to eliminate retiree healthcare altogether given the severe contractions in the coal market. Patriot's 1114 proposal reflects its best effort to avoid that undesirable alternative.

In sum, Mr. Hatfield responded that the UMWA's accusations were groundless but that Patriot remained willing to engage in conversations to assist the UMWA with its review of the Original Proposal. Mr. Hatfield again encouraged the UMWA to provide a counterproposal:

For some time now, therefore, the Union has had the information necessary to respond meaningfully to Patriot's proposals. Attempting to justify further delay by suggesting that Patriot was dilatory in preparing its proposals is both unproductive and inaccurate. Patriot in fact acted promptly in delivering its proposals to the Union just four months after the bankruptcy filing in light of the enormous restructuring tasks facing the Company and its advisors in that period. Indeed, as you well know, the downturn in the coal markets worsened severely after Patriot filed for bankruptcy, which materially altered our business plan and required substantial reconsideration of, among other things, what Patriot could actually afford in active labor and retiree healthcare costs. It is time for us to get to work. . . . Patriot has proposed a solution to that problem, and we have provided – and will continue to provide – the information that the Union reasonably needs to evaluate that proposal. But this process cannot be successful unless the Union engages Patriot's proposals on a substantive and timely basis. I am hopeful that the Union will be prepared to do so at our meeting on December 18, 2012. Once again, Patriot requests that the Union deliver a counterproposal as soon as possible.

A true and correct copy of this letter is attached hereto as Exhibit 43.

**F. Efforts to Schedule Additional Negotiating Sessions
(December 4-11, 2012)**

91. During the course of this information sharing, the UMWA and Patriot sought to schedule a follow-up meeting to discuss the Original Proposal. In light of the importance of seeking a timely and consensual resolution, Patriot sought to schedule another meeting shortly after the December 3, 2012 meeting.

92. I understand that on Tuesday, December 4, 2012, Mr. Roberts' assistant offered only two dates for a follow-up meeting: Tuesday, December 11, 2012 or Tuesday, December 18,

2012. I had a pre-existing conflict on December 11, 2012 but was very concerned about waiting until December 18 for the next meeting given the time-critical nature of this effort.

93. I understand that later that day, in response to the proposed dates, Mr. Hatfield's assistant called Mr. Roberts' assistant and offered to meet on multiple dates before December 18, 2012, as well as on December 18.

94. I understand that on Wednesday, December 5, 2012, Mr. Hatfield and Mr. Roberts spoke about Patriot's interest in scheduling a meeting earlier than December 18, 2012 and that Mr. Roberts resisted meeting before December 18. It is also my understanding that Mr. Roberts stated that: (1) the UMWA cannot make progress in analyzing the Original Proposal or developing a counterproposal until PwC completes its review of the functional business plan model; (2) the UMWA would not respond to Patriot's Original Proposal or offer any counterproposals until PwC has presented a report on the model to the UMWA; and (3) Mr. Roberts expected that PwC would need at least ten days from the date the functional model had been made available to complete its presentation to the UWMA.

95. On Friday, December 7, 2012, Mr. Hatfield responded to Mr. Roberts about a number of outstanding issues, including the sufficiency of Patriot's information sharing, as discussed in paragraph 75 above, the need for a counterproposal, and Patriot's desire to schedule a timely negotiation session. As to the need for a counterproposal, Mr. Hatfield wrote that:

While Patriot understands and appreciates that the proposals were thorough and complex, we are at the point where it would be appropriate for the UMWA to make a counterproposal if our negotiations are to advance.

In our discussion on Wednesday, December 5, you advised me that the UMWA would be unable to make a counterproposal until at least 10 days after PwC received the dynamic version of Patriot's business plan and made a presentation to the UMWA. Based on

discussions with PwC, we do not even know if that timetable is achievable for the UMWA. Indeed, when we raised this issue with PwC today, they were unaware that the timing of a counterproposal was contingent on their review of the model, or that a 10 day timetable – or any timetable – had been discussed. In any event, please treat this letter as a request for a counterproposal from the UMWA as soon as possible and in any event by next week, which would mark a month since Patriot delivered its proposals.

Finally, Mr. Hatfield indicated that he was disappointed in the limited number of near-term dates offered for negotiating sessions and noted that the “risk of waiting until December 18 to continue our negotiations is that it will leave very little room before the holidays for progress to be made.”

A true and correct copy of this letter is attached hereto as Exhibit 31.

96. I understand that on Monday, December 10, 2012, Mr. Roberts called Mr. Hatfield about scheduling the next negotiation session. It is also my understanding that Mr. Roberts: (1) stated that the UMWA is waiting for the PwC analysis and presentation on the functional business plan model before making a counterproposal; (2) acknowledged that Patriot has been working diligently to respond to the UMWA’s information requests; and (3) noted that the information produced by Patriot is complex and difficult to absorb. I understand that Mr. Roberts confirmed that the next meeting would be held on Tuesday, December 18, 2012 in Charleston, West Virginia and explained that, although the UMWA did not expect to offer a counterproposal on December 18, 2012, the UMWA could offer “concepts” that could be incorporated into a counterproposal.

**G. The Fourth Meeting and Related Communications
(December 18, 2012)**

97. The fourth meeting commenced at approximately 9:00 a.m. on Tuesday, December 18, 2012. Three individuals attended the meeting on behalf of the UMWA: Mr. Roberts, Mr. Sanson, and Mr. Traynor. Four individuals attended the meeting on behalf of Patriot: Mr. Hatfield, Mr. Lucha, Mr. Waller, and me.

98. During the fourth meeting, the UMWA representatives raised the following issues, among others:

- the list of retirees to whom Patriot pays retiree benefits, the grounds for Patriot's obligations, whether certain obligations properly belong to Peabody and not to Patriot, and demands for documents relating to these issues;
- the UMWA's request for additional data, including: (i) information on Patriot's capital expenditures and profitability on a mine-by-mine basis, notwithstanding the fact that Patriot compiles this information in the ordinary course on a complex-by-complex basis;⁸ and (ii) drafts of "alternative" 1113/1114 proposals, which we yet again explained did not exist;
- the UMWA's belief that Peabody and Arch are "good targets" for a lawsuit and that Patriot should pursue claims against those entities;
- "concepts" that the UMWA anticipates will show up in to-be-developed counterproposals, such as: employment protection guarantees; a deferred time frame for the implementation of the retiree healthcare modifications so that UMWA-represented retirees can take advantage of helpful changes in federal law that will take effect in 2014; and alterations to the 1113 Proposal, including reduction or elimination of healthcare premiums and restoration of vacation days; and
- the time frame for a counterproposal, which we again requested and which the UMWA indicated would be unavailable before January.

⁸ As detailed in the declaration of Bennett K. Hatfield, Patriot conducts mining operations at eleven active mining complexes. A mining complex can include one or more active mines. As a result, I understand that the UMWA was requesting data on capital expenditures and profitability that were displayed in a more detailed fashion.

Throughout the fourth meeting, the UMWA representatives made numerous statements indicating that they believed litigation was inevitable.

99. At the end of the fourth meeting, Mr. Hatfield asked how quickly the parties could meet again and, in response, Mr. Roberts stated that the UMWA would not be ready to meet again until early January. Mr. Roberts stated that his assistant would contact Patriot with suggested dates.

100. The fourth meeting lasted approximately four hours.

**H. Efforts to Schedule Additional Negotiating Sessions
(December 18-21, 2012)**

101. Following the fourth meeting, Mr. Roberts did not call to offer dates for the next negotiating session.

102. I understand that, because the UMWA did not contact Patriot as promised, Mr. Hatfield's assistant contacted Mr. Roberts' assistant on Thursday, December 20, 2012 and suggested that the parties meet on Friday, January 4, 2013, Monday, January 7, 2013, or Tuesday, January 8, 2013. I also understand that Mr. Hatfield's assistant indicated that Patriot would be happy to meet at any site that was convenient for Mr. Roberts and the UMWA, including at the UMWA's headquarters in Triangle, Virginia or at Patriot's offices in St. Louis, Missouri or Charleston, West Virginia.

103. I understand that on Friday, December 21, 2012, Mr. Roberts' assistant called Mr. Hatfield's office, indicated that the UMWA would like to meet on the last date offered – January 8, 2013 – and that the UMWA preferred to meet at its headquarters. It is my understanding that Patriot confirmed that it remained available to meet at the requested time and location.

**I. Further Requests for Information and Communications about the Proposals
(December 17, 2012 - January 7, 2013)**

104. On Tuesday, December 18, 2012, the UMWA directly requested the following information from Patriot (the “**Seventh Request**”):

- information concerning Medicare Part C, including list of in-network pharmacies, list of in-network physicians, explanation of steps taken to ensure that the networks comply with Coal Act standards, and detail of savings associated with Medicare Advantage;
- information concerning Patriot’s 2013 prescription formulary;
- respective responsibility of Peabody, Arch, and Patriot for retiree healthcare costs; and
- a list of all retirees for whom Patriot became responsible after December 31, 2007, and an explanation of why they were assumed (including date of birth, date of hire, responsible entity, date added, and reason added).

Unlike the written requests from PwC, the Seventh Request was made orally by the UMWA. The UMWA did not follow up with a written request for this information.

105. Patriot and its advisors prepared responses to this request and posted the information to the Data Room on a rolling basis. Patriot posted a majority of this information to the Data Room by December 28, 2012 and had fully responded to these requests by on or about January 31, 2013.

106. On Wednesday, December 19, 2012, Patriot’s advisors provided updated status reports to PwC to accurately log the state of Patriot’s response to the written data requests that PwC had made to date. In transmitting the reports, Mr. Mazzotti stated that Patriot regarded its response to the First Request, the Second Request, the Third Request, and the Fourth Request as complete, with the exception of one item from the Second Request, “which does not yet exist, but will be provided as soon as possible.” Mr. Mazzotti also stated that PwC had made a number

of oral requests and asked if PwC “would set forth any such oral requests in writing and indicate whether any remain outstanding at this time.” True and correct copies of the transmittal e-mail and attached status reports are attached hereto as Exhibit 8.

107. On Friday, December 21, 2012, PwC replied to Patriot’s status reports and indicated that “we will go through the documents you have posted over the past 2 days and let you know if we have any follow-up questions or clarifications.” In its response, PwC asked for clarification of one item and did not otherwise flag any problems with Patriot’s responses or with the accuracy of Patriot’s status reports. A true and correct copy of this e-mail is attached hereto as Exhibit 44.

108. Later that day, Mr. Roberts sent a letter to Mr. Hatfield. Notwithstanding Mr. Roberts’ repeated representations that the UMWA was satisfied with Patriot’s provision of information, and notwithstanding the fact that the UMWA’s advisors had expressed similar satisfaction – as recently as that very day – Mr. Roberts took the position in this letter that there were “significant problems with the ongoing and essential process for information exchange. These concerns were unfortunately only amplified by your statements suggesting that we may not be entitled to certain critical information, including mine-by-mine data and additional materials relating to the Peabody spinoff and Magnum acquisition.” Mr. Roberts listed a number of items to which Patriot purportedly failed to respond. As detailed in Mr. Hatfield’s later response, see ¶ 109 *infra*, Mr. Roberts’ statements in this letter were misleading because either: (1) Patriot had in fact provided relevant information; (2) this represented the first request for such information, so Patriot could not have responded earlier; or (3) Patriot had already explained that no such information existed. A true and correct copy of Mr. Roberts’ letter is attached hereto as Exhibit 45.

109. On Friday, December 28, 2012, Mr. Hatfield responded to Mr. Roberts' letter dated December 21, 2012, primarily to correct misstatements Mr. Roberts' letter. Mr. Hatfield wrote, in relevant part:

You write that I have suggested the UMWA “may not be entitled to certain critical information.” That characterization of my statements is simply wrong. As you know, Patriot has responded to every one of the scores of formal and informal information requests submitted by the UMWA. While I have (accurately) noted that a number of the UMWA’s requests seek *irrelevant* information, Patriot has been extremely cooperative in providing data to the UMWA. Moreover, you write that various requests have been “repeatedly made,” that you have presented requests “multiple times,” and that there has been “inexcusable delay” in the Company’s response. This is also not true. As detailed below, several of your “repeated” requests were made for the first time in your letter. And as your advisors have forthrightly acknowledged, the Company has responded promptly to the UMWA’s requests, often posting data within hours of receiving an email or call from PwC seeking information. Finally, your assertion that the “concepts” you finally shared at our December 18 meeting were met with “immediate and seemingly reflexive rejection” is also incorrect. As I and others on our team explained at the meeting – and I am noting here again – Patriot will carefully review and consider any counterproposal offered by the UMWA. But rather than providing the requested counterproposal, you elected to respond with “concepts” – and in that process made statements that incorrectly described several business issues underlying Patriot’s proposal. I provided feedback on those points only for benefit of helping the UMWA understand that the referenced positions were not arbitrary and indeed provide financial relief that is critically needed for Patriot to become viable.

Mr. Hatfield then explained why each complaint raised by the UMWA was misleading. Mr. Hatfield again urged the UMWA for a counterproposal, stating that:

I appreciate that at our most recent meeting, you provided for the first time high-level “concepts” that “might be included in a framework for agreement.” . . . [B]ut as we discussed, “concepts” cannot substitute for written counterproposals, which is what Patriot needs if our negotiations are to advance. If the UMWA decides not to deliver counterproposals seriously addressing the

issues before us on or before our next meeting on January 8th, especially while escalating the rhetoric with inflammatory messages urging members to “battle” against Patriot, then I have grave concerns about the UMWA’s commitment to a successful outcome.

A true and correct copy of Mr. Hatfield’s letter is attached hereto as Exhibit 46.

110. On Wednesday, January 2, 2013, PwC sent Patriot two documents that purported to log the status of Patriot’s responses to the Fifth Request and Sixth Request. Like PwC’s prior status reports, these reports contained certain inaccuracies. Nevertheless, PwC indicated that Patriot’s response to multiple items was “complete.” PwC also included certain follow-up requests in these status reports. True and correct copies of the transmittal e-mail and attached status reports are attached hereto as Exhibit 47.

111. On Friday, January 4, 2013, Patriot’s advisors posted additional materials to the Data Room in response to the Fifth Request and Sixth Request, which also corrected certain inaccuracies in PwC’s status updates from the previous day.

J. The Fifth Meeting, the First Counterproposal, and the Second Proposal (January 8-17, 2013)

112. The fifth meeting commenced at approximately 9:30 a.m. on Tuesday, January 8, 2013. Three individuals attended the meeting on behalf of the UMWA: Mr. Roberts, Mr. Sanson, and Mr. Traynor. Four individuals attended the meeting on behalf of Patriot: Mr. Hatfield, Mr. Lucha, Mr. Waller, and me.

113. During the fifth meeting, the representatives addressed the following issues, among others:

- the status of Patriot’s responses to the UMWA’s and PwC’s information requests;

- Patriot's position that it had provided a functional business plan model to the UMWA, and its willingness to continue to work with the UMWA and its advisors to improve its understanding of the operability and functionality of that model;
- the UMWA's request for additional information about disputes between Patriot and Peabody concerning the spin-off;
- the UMWA's requests for clarification about various documents and data posted to the Data Room; and
- the UMWA's request that Patriot explore renegotiation of its DIP financing.

Additionally, for the first time since negotiations began in November, the UMWA presented a counterproposal (the "**First Counterproposal**"). A true and correct copy of the First Counterproposal is attached hereto as Exhibit 48.

114. During the fifth meeting, the UMWA made its eighth request for information from Patriot (the "**Eighth Request**"). The Eighth Request included ten additional demands (excluding subparts):

- clarification regarding the functional business plan model;
- documents relating to disputes with Peabody concerning retiree healthcare;
- information regarding retiree medical costs and Patriot's prescription drug formulary;
- information regarding the Huff Creek and Buffalo mountain mining complexes;
- information concerning costs at the Cub Branch mine;
- clarification about previously provided documents concerning capital expenditures;
- documents concerning wage changes, including non-UMWA hourly wage adjustments;

- information regarding Patriot's efforts to renegotiate its DIP financing or obtain alternate financing;
- supplemental information concerning staffing ratios; and
- information concerning training personnel costs at the Rocklick mining complex.

These requests were made orally by the UMWA negotiators at the fifth meeting.

115. Patriot and its advisors prepared responses to the Eighth Request and posted the information to the Data Room on a rolling basis. Patriot posted a majority of this information to the Data Room by January 16, 2013.

116. The fifth meeting lasted approximately three hours, excluding the hour that we spent in the middle of the meeting privately reviewing the terms of the First Counterproposal.

117. The First Counterproposal rejected Patriot's Original Proposal in its entirety. Instead of Patriot's proposed modifications to the CBAs and retiree healthcare, the First Counterproposal contained two pages of proposed, nominal "concessions" to Patriot. The UMWA's proposed modifications to the CBAs included:

- ***A freeze on wages of active union employees:*** The First Counterproposal included a provision that would freeze the wages of active UMWA-represented employees "until the company emerges from its temporary liquidity crisis." This wage freeze, however, was coupled with a provision that would prohibit Patriot from granting any increase in pay or benefits to any personnel, including management, non-union employees, and independent contractors. (Ex. 48 at §§ I(G)(1), IV(A).)
- ***Scheduling flexibility:*** The First Counterproposal proposed a modification to allow UMWA workers to work a greater number of hours per week. The UMWA asserted that such flexibility would result in approximately 60 extra production days per year at UMWA-represented mines and that such additional production would result in hundreds of millions of dollars in additional revenue. (Ex. 48 at § IV(B)(1).) The First Counterproposal does not specify how this analysis can be reconciled with the fact that Patriot has had to reduce

coal production by approximately 6 million tons in 2012 because it cannot sell the additional coal at a profit.

- ***Adjustment to overtime and certain work rules:*** In connection with this scheduling flexibility, the UMWA proposed that “overtime shall not be paid until the employee works beyond 40 hours per week” but 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. 48 at § IV(B)(2)-(3).)
- ***De minimis supervisor work:*** The First Counterproposal included a 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. 48 at § IV(C).)

The First Counterproposal contemplated the ongoing provision of retiree health care benefits, subject to the following modest cash-saving provisions:

- ***Generic prescription drug formulary:*** The First Counterproposal contemplated the implementation of a generic prescription drug formulary, accompanied by a \$10 surcharge on brand-name prescription drugs when a retiree needs an off-formulary prescription. (Ex. 48 at § IV(D)(1).)
- ***Mandatory mail order for prescriptions:*** The UMWA also proposed a mandatory mail-order program, which would be coupled with a new \$5 co-payment for mail-order prescription refills. A \$10 surcharge would apply to prescriptions filled at a retail pharmacy. (Ex. 48 at § IV(D)(2).)
- ***Emergency healthcare co-pays:*** The First Counterproposal included a proposed \$200 co-payment for emergency room visits. (Ex. 48 at § IV(D)(3).)
- ***Changes to durable equipment network:*** The UMWA also agreed to adopt the UMWA Funds’ durable equipment network. That network includes vendors who supply medical equipment, diabetic supplies, and other supplies at negotiated rates to beneficiaries of certain UMWA Funds benefit plans. (Ex. 48 at § IV(D)(4).)
- ***Changes to Coal Act benefits:*** Even though Patriot proposed no changes to benefits available to Coal Act retirees, the First

Counterproposal contemplated that Patriot would implement a Participating Provider List or “PPL” for Coal Act beneficiaries. A PPL is a network of physicians, hospitals, pharmacies, and other providers. Beneficiaries pay less for visits to physicians on the PPL, and less for prescriptions provided by physicians on the PPL, than for out-of-PPL visits and prescriptions. (Ex. 48 at § IV(D)(5).)

- **Modifications to spousal coverage:** The UMWA proposed to make Patriot’s health plans secondary to any plan sponsored by the employer of a spouse or other such beneficiary; notwithstanding this provision, Patriot would have to reimburse the spouse or beneficiary for premium costs of the alternative health coverage. (Ex. 48 at § IV(D)(6).)

The First Counterproposal does not include proposed cash savings associated with health care for active employees, pension benefits, or any other categories of costs.

118. The First Counterproposal also included a series of terms which were designed to protect UMWA members, would result in no cash savings to Patriot, and which would hinder Patriot in its efforts to compete going forward. These provisions included:

- **Snap-back provision:** A provision that would result in the automatic reduction of any concessions made by the UMWA when Patriot’s so-called “Net Operating Profit” reaches one percent or greater for two consecutive quarters. The automatic snap-back does not account for Patriot’s need to repay principal and interest to its lenders and does not account for Patriot’s need to make certain capital expenditures to remain a viable competitor. (Ex. 48 at § II.)
- **Dispute resolution:** Additional provisions that enable the UMWA to raise disputes about the ongoing need for any concessions made by the UMWA. (Ex. 48 at §§ II(6)-(7), III.)
- **Job security and work opportunities:** Several provisions intended to “enhance[] [] work jurisdiction and job security provisions for represented employees in exchange for any changes that would limit or reduce their current or future compensation.” Among other things, these provisions included an obligation that Patriot hire UMWA-represented employees for every position in newly opened operations. (Ex. 48 at § IV(E).)

119. Finally, the First Counterproposal included a provision concerning the establishment of a litigation trust, which would have the right to commence and pursue all litigation on behalf of Patriot. A committee – comprised of two members appointed by the UMWA, two members appointed by certain UMWA Funds, and one member appointed by the Committee of Unsecured Creditors – would oversee the litigation trust. (Ex. 48 at § IV(F).)

120. The UMWA did not calculate the cash savings associated with the First Counterproposal. In order to evaluate the First Counterproposal, Patriot personnel and Patriot’s advisors calculated the cash savings, which amount to approximately \$6.4 million in 2013, approximately \$13.1 million in 2014, and approximately \$15.5 million in 2015. These proposed savings, which are discussed in detail in the declaration of Dale Lucha, fell far short of the amount necessary to permit Patriot’s reorganization.

121. Patriot also requested information from the UMWA and PwC to help Patriot further evaluate the First Counterproposal and the assumptions that underlie that proposal. To that end, on Friday, January 11, 2013, Patriot issued a request for information and data (“**Patriot’s First Data Request**”). In Patriot’s First Data Request, Patriot sought, among other things:

- support for the UMWA’s assertions that: Patriot has overstated the severity of its liquidity problem; Patriot’s coal pricing assumptions are overly conservative; and that Patriot could saving millions if it were to emerge from bankruptcy in June 2013;
- valuation of the savings associated with the First Counterproposal;
- support for the UMWA’s projection of increased revenue from additional production;
- detail regarding the UMWA’s healthcare proposals; and

- further clarification regarding various elements of the First Counterproposal.

A true and correct copy of Patriot's First Data Request is attached hereto as Exhibit 49. The UMWA provided a partial response to Patriot's First Data Request on Friday, January 18, 2013.

122. On Tuesday, January 15, 2013, the UMWA issued another request for information from Patriot (the "**Ninth Request**"). In the Ninth Request, the UMWA made approximately 100 detailed requests for healthcare utilization data, which included: mail-order prescription drug usage and costs; pharmacy usage and costs; top-50 brand-name drugs by cost and by number of prescriptions; total prescriptions per member per year; pharmacy reimbursement per prescription; and ingredient cost per prescription. Patriot informed the UMWA that some of the requested data could be extracted from Patriot's systems, whereas other data was maintained by third-party administrators. A true and correct copy of the Ninth Request is attached hereto as Exhibit 50.

123. Patriot and its advisors prepared responses to the Ninth Request and posted the information to the Data Room on a rolling basis. Patriot posted a majority of this information to the Data Room by January 17, 2013 and had fully responded to these requests by on or about January 23, 2013. The only materials that remained outstanding as of January 28, 2013 were certain materials that the third-party administrators concluded were proprietary and confidential pursuant to their agreements with Patriot. Patriot provided status reports concerning its responses to the Ninth Request on a rolling basis. (See Exhibit 51 (status report, dated March 1, 2013).)

124. On Wednesday, January 16, 2013, Patriot's advisors provided updated status reports to PwC to accurately log the state of Patriot's response to the Eighth Request. True and

correct copies of the transmittal e-mail and attached status report are attached hereto as Exhibit 52.

125. In the week after the UMWA provided its counterproposal, Patriot worked to evaluate the First Counterproposal, and after concluding that the savings opportunities in the First Counterproposal fell far short of what was necessary, Patriot developed its Second Proposal. As noted above, a true and correct copy of the Second Proposal is attached hereto as Exhibit 3.

126. On Thursday, January 17, 2013, Patriot provided the Second Proposal to the UMWA. These revisions represented substantial movement by Patriot, which would realize approximately \$20 million less in savings in 2013 than under the Original Proposal. Although the concessions would make it more difficult for Patriot to successfully reorganize, Patriot believed that a consensual resolution was critical for Patriot and its estates. A true and correct copy of the cover letter accompanying the Second Proposal is attached hereto as Exhibit 53.

127. The Section 1113 component of the Second Proposal modified certain aspects of Patriot's Original 1113 Proposal, including:

- responding to the UMWA's concerns about geographic limitations by providing that any agreement reached with the UMWA would apply to any mining complex that later becomes subject to collective bargaining rights; and
- responding to the UMWA's concerns about work opportunities by providing that three of five employees hired by certain Obligor Companies would be UMWA-represented employees.

The Section 1114 component of the Second Proposal modified certain aspects of Patriot's Original 1114 Proposal, including:

- deferring the transition from the current retiree health coverage to the VEBA until June 1, 2013 to provide for additional time for the VEBA to be established and administered;
- increasing the initial contribution from \$10 million to \$15 million and making the contribution in a lump sum, rather than in installments;
- raising the annual cap associated with the profit-sharing mechanism to \$40 million from \$20 million, and applying the profit-sharing mechanism to 2014; and
- agreeing to the UMWA's proposed distribution of any recoveries from those entities (but noting that it was premature to implement a litigation trust).

**K. The Sixth Meeting and Related Communications
(January 18, 2013 - January 30, 2013)**

128. The sixth meeting commenced at approximately 8:30 a.m. on Friday, January 18, 2013. Three individuals attended the meeting on behalf of the UMWA: Mr. Roberts, Mr. Sanson, and Mr. Traynor. Four individuals attended the meeting on behalf of Patriot: Mr. Hatfield, Mr. Lucha, Mr. Waller, and me.

129. During the sixth meeting, the representatives addressed the following issues, among others:

- the various sources of funding for the VEBA, including the profit-sharing component and the unsecured claim;
- the difficulty in placing a value on any claim that the UMWA will receive in the bankruptcy and the UMWA's position that it will need to know the claim value before it can fully evaluate Patriot's Proposals;
- Patriot's functional business plan model and Patriot's repeated offer to help PwC understand how to work with the business plan model;
- the UMWA's First Counterproposal, including its proposal to add production days, the value of such additional production, and its requested snap-back provision;

- the UMWA's concerns about successorship rights;
- Patriot's First Data Request, and the status of the UMWA's responses thereto; and
- various specific questions pertaining to Patriot's operations and costs.

Patriot also provided additional copies of the Second Proposal to the UMWA during the sixth meeting.

130. During the sixth meeting, the UMWA made its tenth request for information from Patriot (the "**Tenth Request**"). The Tenth Request included twelve additional demands (excluding subparts):

- information concerning the value of the UMWA's bankruptcy claim;
- clarification concerning Patriot's position on whether the Proposals eliminate successorship;
- clarification concerning Patriot's position on Peabody's obligations should Patriot and the UMWA reach an agreement;
- clarification concerning operations at the Hobet mining complex;
- clarification regarding various capital expenditures by complex;
- information concerning the "North Run" mine;
- information concerning Peabody's ownership interests, if any, in surface mines in the Rocklick mining complex;
- a breakdown of coal supply agreements between Patriot affiliates and Peabody affiliates;
- information on equipment leases with Peabody that were not previously provided to the UMWA;
- information concerning the Buck Fork mine;
- a list of all equipment moves between mines for a six-year period; and
- information concerning the operations of the Huff Creek mine.

These requests were made orally by the UMWA negotiators at the sixth meeting.

131. Patriot and its advisors prepared responses to the Tenth Request and posted the information to the Data Room on a rolling basis. Patriot posted a majority of this information to the Data Room by January 30, 2013. On January 30, 2013, Patriot informed PwC that it considered its response to the Tenth Request complete. (See Exhibit 54.)

132. The sixth meeting lasted approximately four hours.

133. I understand that on Thursday, January 24, 2013, personnel from Patriot, Patriot's advisors, and PwC met in St. Louis, Missouri. Seven people participated on behalf of Patriot: Paul Schnapp, Joel Collins, Brian Mangels, and Kent Hartsog of Patriot; Adam Schlesinger and Zach Mitschrich of Blackstone; and Mr. Mazzotti of Alix. Adam Rosen and David Ihn participated from PwC. I understand that during the meeting, Patriot's advisors: again explained the functional business plan, process systems, and model; described how Patriot and its advisors update Patriot's business plan model and analyze different scenarios and assumptions; and provided PwC with access to Patriot's St. Louis-based budgeting and planning system. I also understand that Patriot and its advisors reiterated that they would be happy to work with PwC to run any specific scenarios should PwC be unable to do so on its own. The meeting lasted approximately three and a half hours.

134. I understand that on that same day, Mr. Roberts and Mr. Hatfield discussed scheduling additional negotiating sessions. I also understand that Mr. Hatfield expressed his concern that the short negotiating sessions had not allowed sufficient time to advance the negotiations in light of the dire nature of the situation. It is my understanding that Mr. Hatfield proposed meeting for multiple, full-day sessions. Mr. Roberts agreed to meet for full-day sessions on January 31, February 5, and February 6.

135. On Wednesday, January 30, 2013, Patriot's advisors provided a status report to PwC to log the state of Patriot's response to the Tenth Request. In so doing, Patriot provided additional responsive information to PwC. True and correct copies of the transmittal e-mail and attached status report are attached hereto as Exhibit 54.

136. Later that day, Mr. Roberts sent a letter to Mr. Hatfield, which misrepresented various issues, including the information that Patriot had provided to the UMWA and Patriot's willingness to examine the propriety of Peabody's actions. Additionally, in an effort to build the record for litigation, Mr. Roberts asserted for the first time the position that Patriot "made the unusual decision not to use a dynamic model for modeling of your business plan, proposals, pricing forecasts, and production forecasts" (as contrasted to his prior position that PwC could not fully manipulate Patriot's functional business plan model). A true and correct copy of the letter from Mr. Roberts is attached hereto as Exhibit 55.

**L. The Seventh, Eighth, and Ninth Meetings and Related Communications
(January 31, 2013 - February 8, 2013)**

137. The seventh meeting commenced at approximately 8:45 a.m. on Thursday, January 31, 2013. Three individuals attended the meeting on behalf of the UMWA: Mr. Roberts, Mr. Sanson, and Mr. Traynor. Four individuals attended the meeting on behalf of Patriot: Mr. Hatfield, Mr. Lucha, Mr. Waller, and me.

138. During the seventh meeting, the representatives addressed the following issues, among others:

- Patriot's request for a counterproposal from the UMWA that would confer the requisite savings;
- Patriot's responses to the UMWA's data requests, including its extensive responses to detailed requests for healthcare utilization data;

- Patriot's projected capital expenditures, including its need to purchase certain equipment to comply with federal regulations;
- the parties' divergent views on coal pricing forecasts;
- Patriot's functional business plan model, with Patriot reiterating that it would do whatever it could to facilitate PwC's use of the model, and confirming that the UMWA has the same capabilities as Patriot itself;
- the evaluation of a possible unsecured claim, and different assumptions that underlie Patriot's and the UMWA's respective calculations of Patriot's total retiree healthcare liabilities;
- the investigation into Peabody and whether it acted improperly in connection with the spin-off; and
- the misstatements in Mr. Roberts' January 30, 2013 letter.

139. The seventh meeting lasted approximately five and one-half hours, including one hour when Patriot, the UMWA, and their respective advisors participated in a conference call about the valuation of the UMWA's unsecured claim, and excluding two hours when Patriot and the UMWA each participated in conference calls with their respective advisors.

140. During the seventh meeting, the UMWA made other requests for information from Patriot (the "**Eleventh Request**"). The Eleventh Request included eight additional demands:

- additional medical claim history information from third-party administrator Caremark;
- complete medical claims data for Patriot beneficiaries for 2009;
- medical claims data for 2007-2008 for Patriot beneficiaries (excluding Magnum employees);
- final capital expenditures for 2012 and projected capital expenditures for 2013;
- detailed information concerning the UMWA's specific questions on capital expenditures;

- amount of tonnage sold to Peabody through coal supply agreements and loaded for Peabody at the Wells complex;
- questions concerning coal reserves at Buck Fork and Hill Fork mines; and
- additional documents relating to retirees that the UMWA believes are Peabody's responsibility.

These requests were made orally by the UMWA negotiators at the seventh meeting.

141. Patriot and its advisors prepared responses to the Eleventh Request and posted the information to the Data Room on a rolling basis. Patriot posted a majority of this information to the Data Room by February 14, 2013. On February 27, 2013, Patriot informed PwC that it considered its response to the Eleventh Request complete. (See Exhibit 56.)

142. I understand that, following the seventh meeting, Patriot and its advisors, and the UMWA and its advisors, participated in a number of meetings, conference calls, and e-mail exchanges concerning the valuation of a possible unsecured claim that the UMWA would receive against the estates.

143. On Monday, February 4, 2013, Patriot's advisors provided status reports to PwC to accurately log the status of Patriot's response to the Eleventh Request. In so doing, Patriot provided additional responsive information to PwC. True and correct copies of the transmittal e-mail and attached status reports are attached hereto as Exhibit 57.

144. The eighth meeting commenced at 9:00 a.m. on Tuesday, February 5, 2013. Three individuals attended the meeting on behalf of the UMWA: Mr. Roberts, Mr. Sanson, and Mr. Traynor. Four individuals attended the meeting on behalf of Patriot: Mr. Hatfield, Mr. Lucha, Mr. Waller, and me.

145. During the eighth meeting, the representatives addressed the following issues, among others:

- the misstatements in Mr. Roberts' January 30, 2013 letter;
- the status of Patriot's responses to the UMWA's data requests, including its responses to the UMWA's extensive requests for healthcare utilization data;
- the ongoing evaluation of the possible size of the UMWA's unsecured claim;
- the historical importance of retiree healthcare to coal miners; and
- the possibility of the UMWA providing notice to the National Labor Relations Board that they may strike, as required under a court order.

The UMWA also presented its second and, to date, final counterproposal (the "**Second Counterproposal**") at the eighth meeting and the representatives spent a significant amount of time discussing the concepts included in the Second Counterproposal. A true and correct copy of the Second Counterproposal is attached hereto as Exhibit 58.

146. The eighth meeting lasted approximately three and one-half hours, excluding approximately two and one-half hours we spent reviewing the Second Counterproposal mid-day.

147. The Second Counterproposal, which rejected Patriot's Second Proposal in its entirety, was similar to the First Counterproposal, but included several additional provisions.

The additional proposed modifications to the CBAs included:

- **Modifications to active healthcare coverage:** The UMWA proposed modifications to active healthcare coverage that corresponded to those proposed for retirees in the First Counterproposal. (Ex. 58 at § IV.D.)
- **Scheduling flexibility:** The Second Counterproposal included the same provision concerning scheduling flexibility, which was intended to facilitate increased production. However, the Second Counterproposal included assertions concerning the savings the UMWA believed Patriot could realize from the increased production.

As described in the declaration of Dale Lucha, Patriot's own analyses demonstrate that additional scheduling flexibility will not enable Patriot to save any money in the near term. (Ex. 58 at § IV.C.)

With regard to retiree healthcare, the Second Counterproposal included the following provisions:

- ***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 \$1 billion. The VEBA would not apply to future retirees, nor would it apply to current retirees whose benefits are being paid for by Peabody. As to the latter group, the UMWA proposal appeared to assume that those retirees would continue to receive benefits from Peabody at their present level. (Ex. 58 at § IV.B.)
- ***Agreement to a rights offering:*** To fund the VEBA, the UMWA proposed that Patriot undertake a rights offering of at least \$750 million, with a guarantee of \$600 million of proceeds going to the VEBA. As described in further detail in the Declaration of Paul P. Huffard, as structured, the rights offering proposal could not be implemented. (Ex. 58 at § IV.B.1.)
- ***Agreement to loan \$400 million:*** As a further source of funding, Patriot would issue the UMWA a \$400 million secured note to fund the VEBA. Like conducting the rights offering, issuing this secured note would undermine Patriot's efforts to reorganize. As described in further detail in the Declaration of Paul P. Huffard, this note would strain Patriot's balance sheet and would increase Patriot's cost of all borrowing. (Ex. 58 at § IV.B.1.)
- ***Value of an unsecured claim:*** Beyond the \$1 billion, the UMWA would still be entitled to an unsecured claim. (Ex. 58 at § IV.B.1.)
- ***Agreement to profit sharing with annual minimums:*** Under the Second Counterproposal, the VEBA would also be funded by an annual profit-sharing contribution in an amount equal to 7.5 percent of EBITDA, subject to certain guaranteed minimums that would rise from \$3.8 million in 2013 to \$15 million in 2016. As described in further detail in the Declaration of Paul P. Huffard, this profit-sharing arrangement is excessive, based on unreasonable metrics, and threatens to further destabilize Patriot. (Ex. 58 at § IV.B.2.)

The Second Counterproposal does not include support for the purported savings associated with its various provisions. However, the UMWA asserted that the Second Counterproposal would provide Patriot with an average of \$150 million in savings per year.

148. The Second Counterproposal also included new terms which were designed to protect UMWA members, would result in no cash savings to Patriot, and which would hinder Patriot in its efforts to compete going forward. These provisions included:

- ***Definition of Patriot:*** Although only ten of the Debtors have obligations under the CBAs, the UMWA expanded the definition of Patriot to state that retiree healthcare liabilities “are and will continue to be treated as a corporate-wide responsibility,” as opposed to a liability that resides with the signatory debtors only. (Ex. 58 at § I.B.)
- ***Automatic snap-back provision:*** In the Second Counterproposal, the UMWA sought an automatic snap-back on December 1, 2016. Put differently, the snap-back would end the concessions on December 1, 2016, more than two years earlier than the provision in Patriot’s 1113 Proposal. Additionally, if a new collective bargaining agreement were not negotiated by that date, the Second Counterproposal provides that Patriot would restore wages and benefits to their pre-1113 levels pending the negotiation of a new contract. (Ex. 58 at § II.A.)

The Second Counterproposal also included the same onerous terms from the First Counterproposal, including the prohibition on compensation increases and provisions requiring Patriot to hire UMWA-represented personnel for all open positions.

149. Finally, the Second Counterproposal included a revised provision concerning the establishment of a litigation trust, which would have the right to commence and pursue all litigation on behalf of Patriot. The updated provision requires Patriot to make a \$15 million contribution to the litigation trust following its emergence from bankruptcy. The revised provision also alters the composition of the litigation trust committee, so that it would be comprised of three members appointed by the UMWA and two members appointed by the

Committee of Unsecured Creditors (as opposed to two members appointed by the UMWA, two members appointed by certain UMWA Funds, and one member appointed by the Committee of Unsecured Creditors). (Ex. 58 at § IV.F.)

150. The proposed savings associated with the Second Counterproposal, which are discussed in detail in the declaration of Dale Lucha, again fell far short of the amount necessary to permit Patriot's reorganization.

151. During the eighth meeting, Patriot requested information from the UMWA and PwC to help Patriot further evaluate the Second Counterproposal and the assumptions that underlie that proposal ("**Patriot's Second Data Request**"). In Patriot's Second Data Request, Patriot sought, among other things:

- the UMWA's market analysis concerning future coal sales;
- the data that supports the purported savings from the Second Counterproposal, including backup for the savings relating to increased production;
- the UMWA's view on pension withdrawal liability;
- the data that supports the purported medical cash savings from the Second Counterproposal;
- the data that supports the purported savings associated with the changes to spousal coverage; and
- the court order that requires the UMWA to provide the National Labor Relations Board with notice at least 60 days before calling a strike.

152. The UMWA provided a partial response to Patriot's Second Data Request by February 8, 2013. Certain key requests, including the UMWA's coal market forecasts that presumably served as the basis for the UMWA's production revenue calculations, remain outstanding.

153. The ninth meeting commenced at 10:30 a.m. on Wednesday, February 6, 2013. Three individuals attended the meeting on behalf of the UMWA: Mr. Roberts, Mr. Sanson, and Mr. Traynor. Four individuals attended the meeting on behalf of Patriot: Mr. Hatfield, Mr. Lucha, Mr. Waller, and me.

154. During the ninth meeting, the representatives addressed the following issues, among others:

- the ongoing discussions among Patriot's advisors and the UMWA's advisors about the valuation of the UMWA's claim and about the rights offering concept included in the Second Counterproposal;
- the problems with the UMWA's assumptions concerning the value of increased coal production;
- Patriot's concern with regard to the previous snap-back provision proposed by the UMWA;
- Patriot's need to modify its pension obligations, a significant expense that the UWMA left untouched in both of its counterproposals;
- Patriot's concern with the structure and parameters of the rights offering, and its willingness to help the UMWA monetize an unsecured claim through an appropriate process; and
- the UMWA's need to notify the National Labor Relations Board that its members may strike.

155. The ninth meeting lasted approximately two hours.

156. During the eighth and ninth meetings, the UMWA made additional requests for information from Patriot (the "**Twelfth Request**"). The Twelfth Request included five demands:

- data supporting Patriot's calculations of savings associated with the First Counterproposal;
- confirmation concerning when Patriot would complete its review of documents concerning which retirees Peabody assumed;
- data concerning double-time hours;

- pharmacy network information for the non-UMWA population and medical utilization data for the non-UMWA population; and
- information concerning Patriot's current PPL discounts.

These requests were made orally by the UMWA.

157. Patriot and its advisors prepared responses to the Twelfth Request and posted the information to the Data Room on a rolling basis. Patriot posted a majority of this information to the Data Room by February 14, 2013. On February 27, 2013, Patriot informed PwC that it considered its response to the Twelfth Request complete. (See Exhibit 56.)

158. I understand that on Thursday, February 7, 2013, Mr. Hatfield and Mr. Roberts spoke to schedule upcoming meetings. They agreed that the representatives would meet on February 15 in Charleston, West Virginia; on February 19 in Charleston; and on March 4 at the UMWA's headquarters in Triangle, Virginia. I understand that Mr. Roberts reported that he was unavailable to meet with Patriot during the week of February 25.

159. On Friday, February 8, 2013, Patriot's advisors provided status reports to PwC to log the state of Patriot's response to Patriot's First Data Request and Patriot's Second Data Request. The status reports made clear that a number of Patriot's requests remained unaddressed. Open items included Patriot's requests for data concerning the savings associated with the UMWA's counterproposals generally and production flexibility more specifically. Because of the high value that the UMWA attributed to increased coal sales and related cash savings, Patriot's advisors again requested that the UMWA provide its market and pricing assumptions and noted that the request had been made multiple times. True and correct copies of the transmittal e-mail and attached status reports are attached hereto as Exhibit 59.

160. Also on Friday, February 8, 2013, Mr. Hatfield provided a written response to Mr. Roberts' January 30, 2013 letter. In this response, Mr. Hatfield again addressed the misstatements made by Mr. Roberts. First, Mr. Hatfield reiterated Patriot's position that increased coal production would not yield savings for Patriot in the near term due to the poor market conditions, which have forced Patriot to close or idle mines. Second, Mr. Hatfield explained again that Patriot has provided the UMWA with three ways to model changes in Patriot's business outlook and noted, yet again, that "Patriot has withheld nothing from the UMWA and provided it with the same 'dynamic' model that Patriot continues to use." Third, Mr. Hatfield assured the UMWA that Patriot is in regular contact with its DIP lenders and "do[es] not believe it is possible to obtain replacement DIP Financing on comparable terms at this time, particularly with our labor negotiations unresolved." Fourth, Mr. Hatfield disputed Mr. Roberts' characterization of Patriot's concerns about Peabody, and reassured Mr. Roberts that "Patriot intends to press Peabody to honor its obligations to continue to pay for retiree healthcare." Finally, Mr. Hatfield noted that Patriot has supplied information to the UMWA on a timely basis and requested that the UMWA do the same. A true and correct copy of this letter is attached hereto as Exhibit 60.

161. I understand that in the days after the ninth meeting, Patriot and its advisors continued to work with the UMWA and its advisors to evaluate the Second Counterproposal, including by focusing on claim monetization opportunities for the UMWA.

**M. The Tenth, Eleventh, and Twelfth Meetings and Patriot's Third Proposal
(February 11, 2013 - March 4, 2013)**

162. On Thursday, February 14, 2013, Patriot's advisors provided status reports to PwC to: (1) log any open item that had been requested by PwC or the UMWA; and (2) log

Patriot's response to the Twelfth Request. In so doing, Patriot provided additional responsive information to the UMWA and indicated that other materials had been uploaded to the Data Room. True and correct copies of the transmittal e-mail and attached status reports are attached hereto as Exhibit 61.

163. That same day, PwC issued another request for information from Patriot (the "**Thirteenth Request**"). The Thirteenth Request included three additional demands (excluding subparts):

- certain medical plan documents and data relating to the beneficiaries of these plans and costs associated therewith;
- mine level prices and production data for 2011 and 2012; and
- sales data for 2011 and 2012, including type of coal, originating mine, sulfur content, ash content, and other data.

A true and correct copy of the Thirteenth Request, incorrectly dated February 12, 2013, is attached hereto as Exhibit 62.

164. Patriot and its advisors prepared responses to the Thirteenth Request and posted the information to the Data Room on a rolling basis. Patriot posted a majority of this information to the Data Room by February 20, 2013. On February 27, 2013, Patriot informed PwC that it considered its response to the Thirteenth Request complete. (See Exhibit 56.)

165. The tenth meeting commenced at approximately 9:00 a.m. on Friday, February 15, 2013. Five individuals attended the meeting on behalf of the UMWA: Mr. Roberts, Mr. Sanson, and Mr. Traynor, as well as Perry Mandarino and Adam Rosen of PwC. Six individuals attended the meeting on behalf of Patriot: Mr. Hatfield, Mr. Lucha, Mr. Waller, and me, as well as Paul Huffard and Adam Schlesinger of Blackstone.

166. During the tenth meeting, the representatives addressed the following issues, among others:

- the rights offering concept, how it would work mechanically, and timing to conclude a rights offering;
- other ways that the UMWA wanted Patriot to fund the \$1 billion VEBA, including by issuing a \$400 million secured note, which would be convertible to equity in a reorganized Patriot;
- the efforts to value the UMWA's unsecured claim, the assumptions underlying the valuations, and the efforts among Patriot, the UMWA, and their respective advisors to reach an agreement on this issue;
- Patriot's pension liabilities and the issues that will arise if Patriot does not withdraw from the pension plan;
- the possible pursuit of claims against Peabody;
- Patriot's data requests, and the requests that remained outstanding; and
- the production-related savings that the UMWA assumes Patriot will realize under the Second Counterproposal, and Patriot's analysis that indicates that such savings are unlikely to materialize in 2013 or 2014.

The first portion of the meeting also involved Patriot's advisors and the UMWA's advisors, who facilitated the discussion about the rights offering.

167. The tenth meeting lasted approximately four hours.

168. As discussed above, in the weeks after the UMWA provided its Second Counterproposal, Patriot and its advisors worked to evaluate the counterproposal. After thorough evaluation of the Second Counterproposal, Patriot concluded that the UMWA's savings estimates were not supportable and that certain mechanisms in the Second Counterproposal would hinder Patriot's efforts to successfully emerge from bankruptcy. As a result, Patriot developed its Third Proposal. Each of the revisions included in the Third Proposal was crafted to respond directly to the UMWA's stated concerns. As noted above, a true and correct copy of the

Third Proposal is attached hereto as Exhibit 2 and a true and correct copy of the accompanying cover letter is attached hereto as Exhibit 63.

169. Patriot provided the Third Proposal to the UMWA on Tuesday, February 19, 2013, at the beginning of the eleventh meeting. The Third Proposal modified certain aspects of Patriot's Original 1113 Proposal, including:

- providing that UMWA-represented employees will receive a wage increase in the event that a similarly-situated non-union employee receives a wage increase to a level that is higher than the UMWA-represented employee;
- including specific language that recognizes successorship; and
- providing that the entities that are parties to the CBAs will work with the UMWA to develop methods that allow Patriot subsidiaries to recognize the UMWA at future operations at specific mines.

The Third Proposal also modified certain aspects of Patriot's Original 1114 Proposal, including:

- further extending the VEBA transition date to July 1, 2013, which would provide the UMWA with additional time to set up the VEBA and monetize a claim;
- including a detailed mechanism by which Patriot would quickly reach agreement with the UMWA as to the amount and treatment of the UMWA's unsecured claim, followed by an accelerated process in which the parties cooperate to monetize the claim;
- increasing the annual profit-sharing cap to \$75 million from \$40 million, and increasing the lifetime aggregate cap to \$300 million from \$200 million; and
- responding to the UMWA's concerns about Peabody avoiding its contractual obligations to the retirees for whom they pay healthcare costs (the "**Peabody-Assumed Group**") by providing that Patriot will seek a judicial determination that Peabody is not relieved of its obligations to the Peabody-Assumed Group. The provision is structured such that the 1114 Proposal would exclude the Peabody-Assumed Group should the Court rule in Patriot's favor.

170. Additionally, in responding to the Second Counterproposal, Patriot again explained its concerns with the UMWA's proposed rights offering. As described in further detail in the Declaration of Paul P. Huffard, the UMWA's proposed mechanism was unworkable, which is why Patriot proposed an alternate claim monetization procedure that had been applied successfully in other bankruptcy cases.

171. The eleventh meeting commenced at approximately 9:20 a.m. on Tuesday, February 19, 2013. Three individuals attended the meeting on behalf of the UMWA: Mr. Roberts, Mr. Sanson, and Mr. Traynor. Four individuals attended the meeting on behalf of Patriot: Mr. Hatfield, Mr. Lucha, Mr. Waller, and me.

172. During the eleventh meeting, the representatives addressed the following issues, among others:

- Patriot's Third Proposal, including the claim monetization process, and the UMWA's request that Patriot prepare a presentation about how that process would work;
- the profit-sharing mechanism in the 1114 Proposal, and Patriot's position that this feature was intended to provide the UMWA with upside should Patriot's market forecasts prove too conservative;
- Patriot's concerns about the rights offering mechanism proposed by the UMWA;
- Patriot's suggestion about how to address the Peabody-Assumed Group in the context of the 1113/1114 process;
- ongoing discussions about the possible valuation of the UMWA's unsecured claim; and
- Patriot's data requests, including the outstanding requests for supporting detail on the UMWA's savings estimates.

173. The eleventh meeting lasted approximately three hours, excluding about one and one-half hours when the UMWA was evaluating Patriot's Third Proposal.

174. On Thursday, February 21, 2013, PwC supplied Patriot with certain materials in response to Patriot's data requests. Among the materials were certain documents that purported to justify the cash savings attributed to the UMWA's counterproposals. However, PwC failed to provide detail regarding its calculation of cash savings associated with additional coal production.

175. I understand that, after Patriot delivered its Third Proposal, Patriot's counsel and the UMWA's counsel had a number of discussions about the Peabody-Assumed Group and the provision in the Third Proposal relating to those retirees. In particular, I understand that Patriot's counsel and the UMWA's counsel participated in a conference call on Friday, February 22, 2013 to discuss the operation of the provision. At the end of the call, Patriot's counsel indicated that Patriot would clarify and modify the provision.

176. On Tuesday, February 26, 2013, PwC transmitted two status reports that purported to log the status of the UMWA's response to Patriot's First Data Request and Patriot's Second Data Request. In those documents, which included multiple errors, PwC indicated that it had not yet provided support for its production-related cash savings, but stated that it needed information from Patriot before it could provide such support. PwC did not explain how it could not provide its assumptions when the UMWA's counterproposals included specific, albeit unsupported, numbers associated with the purported production-related cash savings. A true and correct copy of the transmittal e-mail and the attached status reports is attached hereto as Exhibit 64.

177. On Wednesday, February 27, 2013, Patriot supplied the Fourth Proposal to the UMWA. The Fourth Proposal incorporated the terms of the Third Proposal and modified the provision of the 1114 Proposal concerning the Peabody-Assumed Group. As noted above, a true

and correct copy of the Fourth Proposal is attached hereto as Exhibit 1 and a true and correct copy of the accompanying cover letter is attached hereto as Exhibit 65.

178. Later that day, PwC issued another request for information from Patriot (the “**Fourteenth Request**”). The Fourteenth Request included fifteen additional demands for highly-detailed information:

- access to “life of mine” plans for each mine;
- process flow diagrams for each mine;
- historical performance, including yield, of each mine;
- major equipment listing by mine (including asset serial number, manufacturer, model, and year of manufacture);
- overview of maintenance programs for all major equipment types;
- identification of the type of maintenance software or method used for tracking or predicting maintenance work;
- identification of any equipment maintenance programs performed by outside companies;
- list of major equipment that will be retired and/or replaced for each mine over the next five years;
- list of major equipment that will be added to each mine over the next five years;
- breakdown of 1113 and 1114 savings by legal entity, mine, and complex, and any analysis prepared that “rolls up” the savings from the legal entity level to the mine/complex level;
- forecasted balance sheet by legal entity, mine, and complex for fiscal years 2013 through 2016;
- forecasted PMO cash costs and expenses by legal entity, mine, and complex for fiscal years 2013 through 2016;
- five-year history of major capital expenditures, repairs, and maintenance by location;

- forecasted allocation of SG&A by legal entity, mine, and complex for fiscal years 2013 through 2016; and
- forecasted ARO cash spend by legal entity, mine, and complex for fiscal years 2013 through 2016.

A true and correct copy of the Fourteenth Request is attached hereto as Exhibit 66.

179. Patriot and its advisors prepared responses to the Fourteenth Request and posted the information to the Data Room on a rolling basis. Patriot posted a majority of this information to the Data Room by March 1, 2013. On March 8, 2013, Patriot informed PwC that it considered its response to the Fourteenth Request complete. (See Exhibit 67.)

180. On Thursday, February 28, 2013, Mr. Roberts sent a letter to Mr. Hatfield in which the UMWA rejected Patriot's Third Proposal (but ignored the modification in the Fourth Proposal). Mr. Roberts stated that the Third Proposal was not "a meaningful counterproposal" and that "[e]xecution of a section 1113 and 1114 agreement is contingent upon a shared understanding of the value and sources of cash and other contributions to the VEBA." Mr. Roberts also included a list of additional questions relating to the now-rejected Third Proposal. A true and correct copy of the letter from Mr. Roberts is attached hereto as Exhibit 68.

181. On Friday, March 1, 2013, Patriot's advisors provided a status report to PwC to log the state of Patriot's response to the Fourteenth Request. In so doing, Patriot provided additional responsive information to PwC. Patriot also provided a status report logging the UMWA's responses to Patriot's First Data Request and Patriot's Second Data Request, noting that many of Patriot's requests remained unaddressed, including Patriot's requests for information supporting the purported cash savings attributable to the UMWA's counterproposals. True and correct copies of the transmittal e-mails and attached status reports are attached hereto as Exhibit 69.

182. The twelfth meeting commenced at approximately 9:00 a.m. on Monday, March 4, 2013. Three individuals attended the meeting on behalf of the UMWA: Mr. Roberts, Mr. Sanson, and Mr. Traynor. Two of the UMWA's advisors from PwC also attended. Four individuals attended the meeting on behalf of Patriot: Mr. Hatfield, Mr. Lucha, Mr. Waller, and me. Three of Patriot's advisors from Blackstone also attended the meeting, one of them by telephone.

183. During the twelfth meeting, the representatives addressed the following issues, among others:

- the UMWA's rejection of Patriot's Third Proposal;
- the possible valuation of the UMWA's unsecured claim, and Patriot's proposal to help the UMWA monetize its claim in an expeditious manner;
- the need for Patriot to secure 1113 and 1114 savings before it could begin to seek exit financing; and
- the various options relating to Patriot's withdrawal from the 1974 Pension Plan, or other ways to reduce Patriot's obligations relating thereto.

At the twelfth meeting, Blackstone presented information to the UMWA concerning claim valuation, and the prompt monetization of the UMWA's claim.

184. The eleventh meeting lasted approximately four hours

185. On Friday, March 8, 2013, PwC provided status reports to Patriot's advisors that purported to log the status of the UMWA's responses to Patriot's First Data Request and Patriot's Second Data Request. Although the status reports contained certain inaccuracies, PwC acknowledged that it still had failed to produce information relating to future coal sales and cash

savings relating thereto. True and correct copies of the transmittal e-mail and attached status reports are attached hereto as Exhibit 70.

186. Later that day, Patriot's advisors provided PwC with a status report to log the status of Patriot's responses to a number of outstanding requests. The status report reflected that Patriot had provided complete responses to the vast majority of the UMWA's voluminous requests. True and correct copies of the transmittal e-mail and attached status report are attached hereto as Exhibit 67.

187. On Tuesday, March 12, 2013, the UMWA's advisors participated in a conference call with Patriot's advisors concerning the UMWA's projections associated with increased production, a centerpiece of its counterproposals. Although this call was scheduled more than a week earlier, the UMWA's advisors again failed to provide the assumptions that underlie their production-related savings.

188. On Wednesday, March 13, 2013, Mr. Hatfield wrote in response to Mr. Roberts' February 28, 2013 letter. In the letter, Mr. Hatfield again explained why the UMWA's Second Counterproposal was unrealistic:

While I appreciate that the UMWA has implicitly recognized that Patriot is unable to sustain such benefits and that a VEBA structure is appropriate, the UMWA's proposal does not afford Patriot any relief if it relies upon unrealistic assumptions of funding availability. As we have discussed, the UMWA's VEBA proposal was conditioned on Patriot funding it with \$1 billion, including \$600 million in cash and a \$400 million interest bearing promissory note. These conditions, as well as the corporate governance aspects of the UMWA's proposal, made the VEBA proposed by the UMWA impossible to achieve in its suggested form.

Mr. Hatfield also stated that Patriot needed to request relief from the Court, but looks forward to continuing to negotiate:

As we have said at the bargaining table and in our other correspondence, Patriot needs to move forward in the absence of a negotiated resolution. We are burning cash at an unsustainable rate and require the changes set forth in our proposals to survive and preserve jobs. I look forward to our meeting on March 15, 2013 and I am hopeful we will be able to make progress even as Patriot proceeds in the Bankruptcy Court.

A true and correct copy of the letter is attached hereto as Exhibit 71.

N. The Current State of the Negotiations

189. As discussed above, the UMWA rejected each of Patriot's proposals, notwithstanding the fact that it recognizes that Patriot needs to secure approximately \$150 million in annual savings as soon as possible.

190. As of today's date, the UMWA appears unwilling to reach a consensual resolution. Among other things, the UMWA continues to make requests for information that either already has been produced, does not exist, is irrelevant to this process, or that should have been sought five months ago when Patriot opened the data room and shared its business plan with the UMWA. The UMWA appears to be "playing out the clock," rather than seriously engaging Patriot on its proposals.

191. By March 2013, Patriot had negotiated with the UMWA for nearly four months, and its delegation participated in nearly forty-five hours of formal negotiations.

192. During that four-month period, the UMWA and its advisors had issued more than a dozen sets of requests for information, which included nearly 200 demands, excluding numerous subparts, and numerous requests made during phone calls or by e-mail. Patriot responded to virtually all of the UMWA's requests, ultimately producing nearly 43,000 pages to the UMWA, including data that Patriot regularly maintained and data and information that Patriot specifically compiled in response to the UMWA's requests.

V. Conclusion

193. Based on the facts described above, I believe that Patriot has negotiated in good faith. As described in detail above, Patriot has been an active participant in negotiations for four months. During that time, Patriot has participated in twelve formal negotiation sessions, which spanned nearly forty-five hours. Patriot and its advisors also participated in dozens of conference calls, exchanged hundreds of e-mails, and devoted significant time to respond to the UMWA's information requests. Patriot has also crafted detailed proposals that included significant concessions in response to the UMWA's concerns. By contrast, the UMWA refused to even make a counterproposal until after more than two months of negotiations. Even then, the UMWA's First Counterproposal provided Patriot with no more than ten percent of the needed cash savings in 2014 and 2015.

194. Based on the facts described above, I believe Patriot has provide the UMWA with relevant information as is necessary to evaluate the Proposals. Patriot provided nearly 11,000 pages of information to the UMWA even before the negotiations formally commenced. Thereafter, Patriot responded to more than 200 requests for information from the UMWA and its advisors, and ultimately shared nearly 43,000 pages of information with the UMWA. This included information concerning, among other things, Patriot's assets, liabilities, capital expenditures, and business plans. Patriot also provided information not directly relevant to the negotiations, such as solvency opinions from five-year old transactions.

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

Dated: Richmond, Virginia
March 14, 2013

/s/ Gregory B. Robertson
Gregory B. Robertson

ALL EXHIBITS
FILED UNDER SEAL

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

Chapter 11

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

Objection Deadline:

**March 28, 2013 at 4:00 p.m.
(prevailing Central Time)**

Hearing Date:

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

Hearing Location:

Courtroom 7 North

**SUMMARY OF EXHIBITS TO THE DECLARATION OF GREGORY B. ROBERTSON
IN 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, referenced in the Declaration of Gregory B. Robertson in Support of the Debtors' Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114, will be made available for inspection at the hearing on the Motion or upon request of parties in interest:

1. Fourth 1113/1114 Proposal, dated February 27, 2013
2. Third 1113/1114 Proposal, dated February 19, 2013
3. Second 1113/1114 Proposal, dated January 17, 2013

4. Original 1113 Proposal, dated November 15, 2012
5. Original 1114 Proposal, dated November 15, 2012
6. Stipulated Protective Order, dated October 9, 2012
7. UMWA Information Request, dated October 31, 2012
8. Status Reports (with transmittal email), dated December 19, 2012
9. November 15 Presentation to the UMWA, dated November 15, 2012
10. Letter from B. Hatfield to C. Roberts, dated November 15, 2012
11. Original Savings Summary, dated November 15, 2012
12. Original Savings Summary - Revised, dated December 6, 2012
13. UMWA Information Request, dated November 19, 2012
14. Letter from C. Roberts to B. Hatfield, dated November 20, 2012
15. Letter from B. Hatfield to C. Roberts, dated November 21, 2012
16. Patriot Status Report (with transmittal email), dated November 21, 2012
17. Email from A. Rosen to K. Hiltz, dated November 26, 2012
18. Email from E. Moskowitz to A. Rosen, dated December 3, 2012
19. Patriot Status Report (with transmittal email), dated November 28, 2012
20. UMWA Information Request, dated November 30, 2012
21. Letter from C. Roberts to B. Hatfield, dated November 30, 2012
22. Email from J. Mazzotti to A. Rosen, dated December 3, 2012
23. Email from K. Hiltz to A. Rosen, dated December 4, 2012
24. Email from A. Rosen to J. Mazzotti, dated December 4, 2012
25. Email from E. Moskowitz to A. Rosen, dated December 4, 2012
26. Email from A. Traynor to E. Moskowitz, dated December 4, 2012
27. Email from E. Moskowitz to A. Traynor, dated December 4, 2012

28. Email from E. Moskowitz to A. Traynor, dated December 5, 2012
29. PwC Status Reports (with transmittal email), dated December 6, 2012
30. Patriot Status Reports (with transmittal email), dated December 7, 2012
31. Letter from B. Hatfield to C. Roberts, dated December 7, 2012
32. UMWA Information Request, dated December 10, 2012
33. Email from F. Perillo to E. Moskowitz, dated December 10, 2012
34. Letter from C. Roberts to B. Hatfield, dated December 11, 2012
35. Patriot Status Report (with transmittal email), dated December 11, 2012
36. Email from E. Moskowitz to F. Perillo, dated December 12, 2012
37. UMWA Information Request, dated December 12, 2012
38. Email from F. Perillo to E. Moskowitz, dated December 13, 2012
39. UMWA Information Request, dated December 14, 2012
40. Email from E. Moskowitz to F. Perillo, dated December 16, 2012
41. Email from F. Perillo to E. Moskowitz, dated December 17, 2012
42. Email from E. Moskowitz to F. Perillo, dated December 17, 2012
43. Letter from B. Hatfield to C. Roberts, dated December 17, 2012
44. Email from A. Rosen to J. Mazzotti, dated December 21, 2012
45. Letter from C. Roberts to B. Hatfield, dated December 21, 2012
46. Letter from B. Hatfield to C. Roberts, dated December 28, 2012
47. PwC Status Reports (with transmittal email), dated January 2, 2013
48. First UMWA Counterproposal, dated January 8, 2013
49. Patriot Data Request, dated January 11, 2013
50. UMWA Information Request, dated January 15, 2013
51. Patriot Status Report, dated March 1, 2013

52. Patriot Status Report (with transmittal email), dated January 16, 2013
53. Letter from B. Hatfield to C. Roberts, dated January 17, 2013
54. Patriot Status Report (with transmittal email), dated January 30, 2013
55. Letter from C. Roberts to B. Hatfield, dated January 30, 2013
56. Patriot Status Report, dated February 27, 2013
57. Status Report (with transmittal email), dated February 4, 2013
58. Second UMWA Counterproposal, dated February 5, 2013
59. Patriot Status Report (with transmittal email), dated February 8, 2013
60. Letter from B. Hatfield to C. Roberts, dated February 8, 2013
61. Patriot Status Report (with transmittal email), dated February 14, 2013
62. UMWA Information Request, dated February 14, 2013
63. Letter from B. Hatfield to C. Roberts, dated February 19, 2013
64. PwC Status Reports (with transmittal email), dated February 26, 2013
65. Letter from B. Hatfield to C. Roberts, dated February 27, 2013
66. UMWA Information Request, dated February 27, 2013
67. Patriot Status Report, dated March 8, 2013
68. Letter from C. Roberts to B. Hatfield, dated February 28, 2013
69. Patriot Status Report (with transmittal email), dated March 1, 2013
70. PwC Status Report (with transmittal email), dated March 8, 2013
71. Letter from B. Hatfield to C. Roberts, dated March 13, 2013

Dated: March 14, 2013
New York, New York

Respectfully submitted,

/s/ Elliot Moskowitz

DAVIS POLK & WARDWELL LLP

Marshall S. Huebner
Benjamin S. Kaminetzky
Elliot Moskowitz
Jonathan D. Martin
Lara Samet

450 Lexington Avenue
New York, New York 10017
(212) 450-4000
Fax: (212) 607-7983

*Counsel to the Debtors
and Debtors in Possession*

-and-

BRYAN CAVE LLP

Lloyd A. Palans, #22650MO
Brian C. Walsh, #58091MO
Laura Uberti Hughes, #60732MO

One Metropolitan Square
211 N. Broadway, Suite 3600
St. Louis, MO 63102
(314) 259-2000
Fax: (314) 259-2020

*Local Counsel to the Debtors
and Debtors in Possession*