UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re	**Chapter 11**
	Case No. 12-51502-659
PATRIOT COAL CORPORATION, *et al.*,	**(Jointly Administered)**
Debtors.[1]	**Hearing Date: April 10, 2013**
	Hearing Time: 10:00 a.m. (Central)

OBJECTION TO MOTION TO REJECT COLLECTIVE BARGAINING AGREEMENTS AND TO MODIFY RETIREE BENEFITS PURSUANT TO 11 U.S.C. §§ 1113, 1114 OF THE BANKRUPTCY CODE

The Ohio Valley Coal Company and The Ohio Valley Transloading Company (collectively "Ohio Valley Coal") file this objection ("Objection") to the Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. § 1113, 1114 of the Bankruptcy Code [Docket No. 3214] ("Rejection Motion") filed by Patriot Coal Corporation, *et al.* (collectively, "Debtors" or "Patriot") and in support hereof states as follows:

I. PRELIMINARY STATEMENT

Ohio Valley Coal and Patriot are affected in many ways by the same adverse coal market over the last few years and through today. It is clear that whatever financial gains Patriot made, it was based on the mines that produced a product for the metallurgical market. The mines producing thermal product were likely never profitable. When Peabody and Arch "spun-off" Patriot and Magnum, the purpose was clearly to isolate liabilities into a company that could not survive in the long term.

By their Rejection Motion, the Debtors seek to reject certain collective bargaining agreements and terminate retiree benefits for certain retirees in order to implement new, less

[1] The Debtors are the entities listed on Schedule 1 attached to the Rejection Motion. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' Chapter 11 petitions.

onerous labor and retiree proposals. The Debtors go to great lengths in the Rejection Motion, and more specifically in the corresponding memorandum of law [Docket No. 3219] ("Rejection MOL"), to describe the tremendous financial burdens associated with their labor and retiree obligations. The Debtors describe in detail the negotiation process with the UMWA[2], their purported compliance with sections 1113 and 1114 of the Bankruptcy Code and the financial drivers for their proposed modifications.

What the Debtors fail to account for in the Rejection Motion (and apparently throughout the processes leading up to its filing) is the source of the very legacy liabilities from which the Debtors now seek relief – the Peabody Energy Corporation and Arch Coal, Inc. ("Arch") to Magnum Coal Company ("Magnum") to Patriot spin-off and related pre-bankruptcy transactions (collectively, the "Transactions"). The 2007 spin-off of Patriot from Peabody ("2007 Spin-off") imposed on the Debtors a significant portion of Patriot's unionized labor and represented retiree liabilities, as well as substantial environmental liabilities, aggregating in the hundreds of millions of dollars. Patriot maintains that these very liabilities, in the context of current market conditions, were impetuses for the Debtors' bankruptcy filings and the Rejection Motion. Patriot, however, ignores the value of potential claims arising from or relating to the Transactions in its 1113/1114 arguments in support of the Rejection Motion and, in fact, appears to have dismissed the relevance of such potential claims over the protestations of its negotiating counterpart, the UMWA.

Ohio Valley Coal submits that Patriot cannot satisfy the requirements of sections 1113 or 1114 of the Bankruptcy Code without providing the UMWA complete information in Patriot's possession relating to potential litigation claims against Peabody and/or Arch/Magnum and without taking into account in its reorganization projections the potential value of these claims and their impact on Patriot's overall financial status. A proposal to the UMWA that does not

[2] Capitalized terms that are defined in this Objection have the meaning ascribed to them in the Rejection MOL.

address the impact of potential recoveries from Peabody (and/or Arch/Magnum) or afford the UMWA all information available to Patriot relating to those claims justifies denial of the extraordinary relief sought by Patriot in the Rejection Motion. Peabody and Arch/Magnum sought through the Transactions to rid themselves of marginally profitable UMWA represented mines that primarily were metallurgical coal producing mines. At the same time, Patriot took on hundreds of millions of dollars of represented employee and retiree obligations and environmental liabilities through the acquisition of mines that only could falter during an inevitable negative turn in the coal markets. Fundamental to any forced concessions by organized labor and its retirees should be participation by Peabody and Arch because their spin-offs, doomed to failure, created the very liabilities that are addressed in 1113/1114 relief sought by Patriot.

The Rejection Motion should be denied because Patriot cannot ignore the express requirements of sections 1113 and 1114 of the Bankruptcy Code. It is patently unfair for the Debtors permanently to shift the legacy costs assumed under the Transactions from themselves to non-debtor employer participants in multi-employer pension plans ("MEEPs"), and create painful cuts for thousands of families, while treating as irrelevant the very transaction that created the massive liabilities on Patriot's balance sheet. Patriot should be required to address claims against its predecessors because they are material to the 1113/1114 deliberations and any restructuring of Patriot.

II. ADDITIONAL BACKGROUND

A. The UMWA 1974 Pension Plan

1. Ohio Valley Coal is a creditor[3] of the Debtor, Pine Ridge Coal Company, and a participating employer in the UMWA 1974 Pension Plan ("1974 Pension Plan"). Accordingly, Ohio Valley Coal should rightfully be recognized as an "affected party" and, therefore, an

[3] On March 19, 2013, The Ohio Valley Coal Company acquired Claim No. 2805 of Top Notch Custodial Care, Inc.

interested party to the Rejection Motion under section 1113 of the Bankruptcy Code. See 11 U.S.C. § 1113(d)(1). The 1974 Pension Plan, a multi-employer pension plan established under the National Bituminous Coal Wage Agreement ("NBCWA") of 1974, provides pension benefits to eligible represented mine workers who retire or become totally disabled as a result of mine accidents and to eligible surviving spouses of mine workers. Ohio Valley Coal, like Patriot, contributes to the 1974 Pension Plan to fund pension benefits to its employees and retirees. Patriot is not only an employer participant in the 1974 Pension Plan, but also is actually the second largest contributor to the 1974 Pension Plan.

2. Ohio Valley Coal's contributions to the 1974 Pension Plan not only fund pension benefits for its employees and retirees, but also help satisfy the unfunded vested pension benefits of current and former employees of companies that have withdrawn from the 1974 Pension Plan and failed to satisfy their contribution and withdrawal liability obligations to the 1974 Pension Plan. If a participating employer withdraws from the 1974 Pension Plan, that withdrawal has an adverse pecuniary impact upon the 1974 Pension Plan itself, as well as other non-debtor participating employers such as Ohio Valley Coal. Employees and retirees with accrued benefits under the 1974 Pension Plan also are harmed by such withdrawal.

B. The Rejection Motion and Declaratory Judgment Action

3. On March 14, 2013, the Debtors filed the Rejection Motion accompanied by the Rejection MOL. By the Rejection Motion, Rejection MOL and accompanying declarations [Docket Nos. 3220-3225] (collectively, "Rejection Pleadings"), the Debtors seek, among other relief, to (a) reject certain collective bargaining agreements, (b) terminate retiree benefits for certain retirees, (c) obtain court approval of new labor and retiree arrangements with their employees and retirees, and (d) terminate participation in multi-employer pension plans.

4. In connection with the relief sought in the Rejection Pleadings, the Debtors seek, *inter alia*, to withdraw from the 1974 Pension Plan. Ohio Valley Coal is an unaffiliated non-debtor employer participant in the 1974 Pension Plan.

5. On March 14, 2013, the Debtors also commenced an adversary action ("Dec Action") against Peabody Holding Company, LLC and Peabody Energy Corporation (collectively, "Peabody") seeking a declaration that Peabody remains liable for certain retiree benefits that Patriot likewise seeks to avoid through the Proposals. Specifically, the Debtors seek a declaration that under Section 1(d) of the NBCWA Individual Employer Plan Liabilities Assumption Agreement, dated October 22, 2007, by and between Patriot, Peabody Coal Company, LLC and Peabody that Peabody is liable for certain retiree obligations of Patriot. Thus, the relief sought in the Dec Action inextricably is tied to the relief sought in the Rejection Motion.

III. OHIO VALLEY COAL'S OBJECTION

6. Ohio Valley Coal objects to the relief sought in the Rejection Motion on the following grounds: (a) the potential impact of recoveries from Peabody and/or Arch/Magnum have not been taken into account in Patriot's negotiations with the UMWA and must be in order to satisfy the requirements of sections 1113, (b) Patriot is not entitled to a windfall from litigation claims against Peabody and/or Arch/Magnum to the detriment of its employees, retirees and other affected parties, and (c) Patriot's proposed implementation of management bonus programs during these cases suggests that the proposed modifications in the Proposals may not be "necessary" to the Debtors' reorganization efforts, or fair and equitable.

A. A Potential Challenge to the 2007 Spin-off Should be Considered in Deliberations Associated with Patriot's Rejection of Certain CBAs and Termination of Retiree Benefits.

7. An asset as significant as the claims against Peabody and/or Arch/Magnum relating to the Transactions is far too significant to be excluded from an analysis under sections 1113 or 1114 of the Bankruptcy Code; as such, the Transactions are integrally linked to the current problems that have required Patriot to seek section 1113 and 1114 relief.

8. The Bankruptcy Code provides that a court shall approve an application for rejection of a collective bargaining agreement *only* if the court finds that –

> (1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (b)(1);
> (2) the authorized representative of the employees has refused to accept such proposal without good cause; and
> (3) the balance of the equities clearly favors rejection of such agreement.

11 U.S.C. § 1113(c).

9. The Bankruptcy Code provides that, after filing a petition and before filing an application seeking rejection of a collective bargaining agreement, a debtor must

> (A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and
>
> (B) provide . . . the representative of the employees with such relevant information as is necessary to evaluate the proposal.

11 U.S.C. § 1113(b)(1).

10. The Eighth Circuit judges an application to reject a CBA under § 1113 against the following nine factor test:

> (1) the debtor make a proposal to modify the CBA;
> (2) the proposal be based on the most complete and reliable information available at the time of the proposal;
> (3) the proposed modifications are necessary to permit reorganization of the debtor;
> (4) the modifications assure that all creditors, the debtor, and all other affectedpartiesare treated fairly and equitably;
> (5) the debtor provides to the union such relevant information as is necessary to evaluate the proposal;
> (6) the debtor meets at reasonable times with the union between the time of the proposal and the time of the hearing on the proposal;
> (7) the debtor negotiates with the union in good faith at these meetings;
> (8) the union refuses to accept the debtor's proposal without good cause; and
> (9) the balance of equities clearly favors rejection of the agreement.

In re Family Snacks, Inc., 257 B.R. 884, 892 (8th Cir. B.A.P. 2001) (citations omitted). In terms of burden of proof, the "debtor bears the burden of persuasion by the preponderance of the evidence on all nine elements . . ." Id.

11. The standards used in section 1113 of the Bankruptcy Code for rejection of collective bargaining agreements are nearly identical to those in section 1114 of the Bankruptcy

Code. In re Family Snacks, Inc., 257 B.R. at 896. Therefore, they are not restated herein.

12. Reading the Rejection Pleadings, it appears that Patriot improperly has taken the position that potential litigation claims against Peabody and/or Arch/Magnum and their corresponding value are "irrelevant" to the section 1113 and 1114 processes. See Rejection MOL at 72-74; see also 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 [Docket No. 3220] ("Robertson Declaration") at ¶ 71 ("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 . . ." (referencing an email from Patriot's counsel to counsel to the UMWA)).

13. Ohio Valley Coal submits that potential litigation claims against Peabody and/or Arch/Magnum may have value that exceeds the $150 million in cost savings sought by the Debtors through the Rejection Motion. Although litigation claims like those that may exist against Peabody and/or Arch/Magnum are unliquidated, their import and relevance to the Debtors' reorganization cannot be dismissed summarily from the context of 1113/1114 negotiations.

14. Under the Bankruptcy Code, Patriot's Proposals to the UMWA are required to include terms necessary to permit the reorganization of the Debtors. Section 1129 of the Bankruptcy Code, and in particular, the "best interests of creditors" test under 11 U.S.C. § 1129(a)(7), "requires an estimation of value of all of bankruptcy estate's assets, including such hard to determine values as disputed and contingent claims, potential disallowance of claims, probability of success and value of causes of action held by estate,[4] and potential avoidance claims. In re Affiliated Foods, Inc., 249 B.R. 770, 788 (Bankr. W.D. Mo. 2000). In the instant

[4] While not addressed in the Rejection Pleadings, it is important to note that the unwinding of the 2007 Spin-off is likewise a possibility.

matter, the Proposals are premised on a stand-alone reorganization of the Debtors. The Debtors seek to strip and ultimately discharge substantial liabilities that Patriot assumed under the Transactions. It is therefore axiomatic that any reorganization of the Debtors and restructuring of their obligations to the UMWA and its retirees must account for the impact of potential claims against Peabody and/or Arch/Magnum.

15. The Debtors have an obligation to provide the UMWA with reliable information necessary to analyze a proposal. In re Century Brass Products, Inc., 795 F.2d 265, 273 (2d Cir. 1986); In re Horsehead Industries, Inc., 300 B.R. 573, 584 (Bankr. S.D.N.Y. 2003). It is inappropriate to dismiss this potentially significant asset in the restructuring as irrelevant. On the Petition Date, the Declaration of Mark N. Schroeder Pursuant to Local Bankruptcy Rule 1007-2 made clear that relief from represented labor and its retirees was a significant component of its restructuring [Docket No. 4] ("Schroeder Declaration"). The existence of potentially significant claims against Peabody and/or Arch/Magnum, and the UMWA's focus on them were no less apparent.

B. It is Patently Unfair to Permit Patriot to Potentially Reap a Windfall While Other Affected Parties are Harmed.

16. The possibility of Patriot or reorganized Patriot reaping a multi-million dollar windfall from litigation claims against Peabody and/or Arch/Magnum after (i) stripping its employees and retirees of bargained-for funds and benefits upon which they rely to live and (ii) strapping non-debtor participants to MEPPs with its pension liabilities patently is unfair. Accordingly, the Debtors' Proposals (as presented in the Rejection MOL) cannot satisfy the statutory requirements of sections 1113 of the Bankruptcy Code.

17. Section 1113 clearly and expressly requires that a debtor assure the court that "all creditors, the debtor and all affected parties are treated fairly and equitably. The purpose of this provision, according to Century Brass, see 795 F.2d at 273, "is to spread the burden of saving the company to every constituency while ensuring that all sacrifice to a similar degree."

Truck Drivers Local 807, Int'l Broth. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am. v. Carey Transp. Inc., 816 F.2d 82, 90 (2d Cir. 1987). The burden of saving any debtor must be borne through sacrifice to a similar degree by *every* constituency. Century Brass Prods., Inc., 795 F.2d at 273 (emphasis added); Horsehead, 300 B.R. at 584 (citing Carey Transp. Inc., 816 F.2d 82, 90 (2d Cir. 1987)).

18. The Proposals, if approved, will not treat all creditors and affected parties, such as Ohio Valley Coal, fairly and equitably as required under the Bankruptcy Code. It is no secret that both the Debtors and the Official Committee of Unsecured Creditors are investigating potential causes of action against Peabody and/or Arch/Magnum. See Rejection MOL at 17. It is likewise no secret that at least the UMWA (and presumably other parties) view an action against Peabody as a potentially significant source of recovery. If Patriot were to recover significant amounts from litigation against Peabody and/or Arch/Magnum *after* obtaining the relief sought in the Rejection Motion, those harmed by that relief, including Ohio Valley Coal, would receive patently unfair treatment in contravention of sections 1113 and 1114 of the Bankruptcy Code.

19. To illustrate, by the Rejection Motion, the Debtors seek "authority to withdraw from participation in the 1974 Pension Plan." Declaration of Dale F. Lucha in Support of The Debtors' Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 [Docket No. 3223] ("Lucha Declaration") at ¶ 35. The complete withdrawal of the Debtors from the 1974 Pension Plan assuredly will have a serious and deleterious financial impact on the 1974 Pension Plan. Patriot is the second largest contributor to the 1974 Pension Plan and, if it is relieved of any further contributions to the 1974 Pension Plan, those contributions will be required to be funded by the remaining participating employers, including Ohio Valley Coal.

20. If, as requested in the Motion, Patriot's withdrawal liability is treated as a general unsecured claim (and therefore likely paid in substantially less than full dollars), it will be the

remaining 1974 Pension Plan participating employers, including Ohio Valley Coal, that will eventually be responsible for funding and underfunded portion of vested pension benefits of current and former employees of the Debtors.

21. Ohio Valley Coal and other participating employers in the 1974 Pension Plan almost certainly will be subject to future plan contribution increases due to the shortfall in funding to the 1974 Pension Plan that will occur as a result of Patriot's withdrawal. On September 26, 2012, the enrolled actuary for the 1974 Pension Plan certified to the U.S. Department of the Treasury that the 1974 Pension Plan is in "Seriously Endangered Status" for the plan year beginning July 1, 2012. See Exhibit A, 2012 Notice of Zone Status, attached hereto. Similar actuarial certifications of "Seriously Endangered Status" were issued for the 1974 Pension Plan for plan years beginning July 1, 2010 and July 1, 2011. See Exhibits B and C, 2010 and 2011 Notices of Zone Status, attached hereto. Because the 1974 Pension Plan is in seriously endangered status, Federal law required the 1974 Pension Plan to adopt a funding improvement plan, including increased contributions and/or modifications. The 1974 Pension Plan assuredly will require increased contributions from Ohio Valley Coal and additional employers if the Debtors withdraw from the 1974 Pension Plan.

22. Absent modifications to the Proposals that would provide for the reinstatement of the labor and retiree benefits in the event of certain financial triggers (such as a favorable recovery from Peabody litigation), the Debtors cannot suggest that affected parties such Ohio Valley Coal will be treated fairly.

C. Patriot's Proposals Are Not Fair and Equitable

23. Patriot states that it has cut its costs "to the bone", see Rejection MOL at 36, and suggested that the $150 million in concessions set forth in the Proposals are necessary to obtain exit financing, which will in turn would allow it to emerge from bankruptcy.

24. It cannot be overlooked that Patriot has filed a motion to employ a multi-million dollar bonus program. Reconciling a management bonus motion during the pendency of the

Rejection Motion calls into question the Debtors' ability to satisfy the fair and equitable requirement of section 1113 of the Bankruptcy Code.

IV. CONCLUSION

Patriot, like all Appalachian coal producers, faces a harsh climate in which to profitably mine and sell coal. As a debtor-in-possession subject to Chapter 11 protection, Patriot must satisfy the clear requirements of sections 1113 and 1114 of the Bankruptcy Code. For the reasons set forth herein, Patriot has failed to do so. According, the relief sought in the Rejection Pleadings must be denied.

Respectfully submitted:

Date: March 19, 2013

/s/ Bonnie L. Clair
Bonnie L. Clair, #41696MO
Summers Compton Wells PC
8909 Ladue Road
St. Louis, MO 63124
Telephone: (314) 991-4999
Facsimile: (314) 991-2413
blcattymo@summerscomptonwells.com

and

McGuireWoods LLP
Leonard J. Marsico
Pa. I.D. No. 33206
Mark E. Freedlander
Pa. I.D. No. 70593
625 Liberty Avenue, 23rd Floor
Pittsburgh, PA 15222
Telephone: (412) 667-6000
Facsimile: (412) 667-6050
lmarsico@mcguirewoods.com
mfreedlander@mcguirewoods.com

Counsel to The Ohio Valley Coal Company and The Ohio Valley Transloading Company

\46606718.2
1304821

EXHIBIT A

Notice of Zone Status
United Mine Workers of America 1974 Pension Plan
EIN: 52-1050282
Plan No.: 002

This is to inform you that on September 26, 2012, the enrolled actuary for the UMWA 1974 Pension Plan ("Plan") certified to the U.S. Department of the Treasury and the plan sponsor that the Plan is in "Seriously Endangered Status" for the plan year beginning July 1, 2012. The certification of the Plan's status and this notice are required under the Pension Protection Act of 2006 ("PPA").

Under the PPA, a multiemployer plan's actuary must certify the plan's funded status for the plan year. The PPA sets forth "zones" that represent the plan's financial status: "endangered," "seriously endangered," "critical" or "neither critical nor endangered." If the plan is certified to be endangered, seriously endangered or critical, the plan sponsor must notify participants and the bargaining parties and take specific steps designed to improve the plan's financial status over a set period of time.

Seriously Endangered Status

The Plan is considered to be in Seriously Endangered Status for the plan year beginning July 1, 2012, because the actuary determined that the Plan's funded percentage is less than 80% (i.e., 72.6%) and the Plan is projected to have an accumulated funding deficiency within six plan years after the current plan year (i.e., for the plan year beginning July 1, 2018). Even though the Plan is projected to have an accumulated funding deficiency, the Plan is expected to have sufficient assets to timely pay expected benefits and expenditures during this period. Your benefit payments are not affected at this time and you will continue to receive your monthly pension payments as provided for under the Plan.

Funding Improvement Plan

When a pension plan is certified to be in seriously endangered status, Federal law requires the plan to adopt a funding improvement plan aimed at restoring the financial health of the plan. The funding improvement plan may include increased contributions to the plan and/or modifications to certain future benefit accruals. A funding improvement plan was adopted on May 25, 2012.

Where to Get More Information

For more information about this notice, you may contact the UMWA Health & Retirement Funds' Call Center toll free at 1-800-291-1425, option 3. If you would prefer to send written correspondence about this notice, you may send it to the Board of Trustees, UMWA 1974 Pension Trust, c/o Lorraine Lewis, Executive Director, 2121 K Street, NW, Suite 350, Washington, DC 20037.

EXHIBIT B

**Notice of Zone Status for
United Mine Workers of America 1974 Pension Plan**

This is to inform you that on September 27, 2010, the actuary for the UMWA 1974 Pension Plan ("Plan") certified to the U.S. Department of the Treasury and the plan sponsor that the Plan is in "Seriously Endangered Status" for the plan year beginning July 1, 2010. The certification of the Plan's status and this notice are required under the Pension Protection Act of 2006 ("PPA").

Under the PPA, a multiemployer plan's actuary must certify the plan's funded status for the plan year. The PPA sets forth "zones" that represent the plan's financial status: "endangered," "seriously endangered," "critical" or "neither critical nor endangered." If the plan is certified to be endangered, seriously endangered or critical, the plan sponsor must notify participants and the bargaining parties and take specific steps designed to improve the plan's financial status over a set period of time.

Seriously Endangered Status

The Plan is considered to be in Seriously Endangered Status for the July 1, 2010 plan year because the actuary determined that the Plan's funded percentage is less than 80% and the Plan is projected to have an accumulated funding deficiency by the plan year beginning July 1, 2017. Even though the Plan is projected to have an accumulated funding deficiency in the next seven years, the Plan is expected to have sufficient assets to timely pay expected benefits and expenditures during this period. Your benefit payments are not affected at this time and you will continue to receive your monthly pensions as provided for under the Plan.

Funding Improvement Plan

When a pension plan is certified to be in seriously endangered status, Federal law requires the plan to adopt a funding improvement plan aimed at restoring the financial health of the plan. The funding improvement plan may include increased contributions to the plan and/or modifications to certain future benefit accruals. You have a right to receive a copy of the funding improvement plan once it is adopted, which under federal law must occur by May 26, 2011.

Where to Get More Information

For more information about this notice, you may contact the UMWA Health & Retirement Funds' Call Center toll free at 1-800-291-1425, option 3. If you would prefer to send written correspondence about this notice, you may send it to the Board of Trustees, c/o Lorraine Lewis, Executive Director, UMWA 1974 Pension Trust, 2121 K Street, NW, Suite 350, Washington, DC 20037. Please note that the PPA requires that the Plan's funded status be reviewed and certified annually, and that the plan sponsor must annually update the funding improvement plan or any rehabilitation plan.

EXHIBIT C

Notice of Zone Status
United Mine Workers of America 1974 Pension Plan
EIN: 52-1050282
Plan No.: 002

This is to inform you that on September 28, 2011, the enrolled actuary for the UMWA 1974 Pension Plan ("Plan") certified to the U.S. Department of the Treasury and the plan sponsor that the Plan is in "Seriously Endangered Status" for the plan year beginning July 1, 2011. The certification of the Plan's status and this notice are required under the Pension Protection Act of 2006 ("PPA").

Under the PPA, a multiemployer plan's actuary must certify the plan's funded status for the plan year. The PPA sets forth "zones" that represent the plan's financial status: "endangered," "seriously endangered," "critical" or "neither critical nor endangered." If the plan is certified to be endangered, seriously endangered or critical, the plan sponsor must notify participants and the bargaining parties and take specific steps designed to improve the plan's financial status over a set period of time.

Seriously Endangered Status

The Plan is considered to be in Seriously Endangered Status for the plan year beginning July 1, 2011, because the actuary determined that the Plan's funded percentage is less than 80% (i.e., 76.5%) and the Plan is projected to have an accumulated funding deficiency within six plan years after the current plan year (i.e., for the plan year beginning July 1, 2017). Even though the Plan is projected to have an accumulated funding deficiency, the Plan is expected to have sufficient assets to timely pay expected benefits and expenditures during this period. Your benefit payments are not affected at this time and you will continue to receive your monthly pension payments as provided for under the Plan.

Funding Improvement Plan

When a pension plan is certified to be in seriously endangered status, Federal law requires the plan to adopt a funding improvement plan aimed at restoring the financial health of the plan. The funding improvement plan may include increased contributions to the plan and/or modifications to certain future benefit accruals, and it must be adopted by May 25, 2012.

Where to Get More Information

For more information about this notice, you may contact the UMWA Health & Retirement Funds' Call Center toll free at 1-800-291-1425, option 3. If you would prefer to send written correspondence about this notice, you may send it to the Board of Trustees, UMWA 1974 Pension Trust, c/o Lorraine Lewis, Executive Director, 2121 K Street, NW, Suite 350, Washington, DC 20037.