

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:)	
)	
	)	Chapter 11
PATRIOT COAL CORPORATION, <i>et al.</i>,	)	Case No. 12-51502-659
	)	(Jointly Administered)
)	
Debtors.	)	Objection Deadline:
	)	April 12, 2013 at 4 p.m. CST
)	
	)	Hearing Date:
	)	April 29 to May 3, 2013 at 10 a.m.
	)	CST each day
)	
	)	Hearing Location:
	)	Courtroom 7 North

OBJECTION OF THE UNITED MINE WORKERS OF AMERICA 1974 PENSION TRUST AND THE UNITED MINE WORKERS OF AMERICA 1993 BENEFIT PLAN TO THE DEBTORS' MOTION TO REJECT COLLECTIVE BARGAINING AGREEMENTS AND TO MODIFY RETIREE BENEFITS
PURSUANT TO 11 U.S.C. §§ 1113, 1114 OF THE BANKRUPTCY CODE

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The United Mine Workers of America 1974 Pension Trust (“1974 Plan”)¹ and the United Mine Workers of America 1993 Benefit Plan (“1993 Plan”) (collectively, the “UMWA Plans” or “Plans”), by and through their undersigned counsel, submit this Objection to Patriot Coal Corporation (“Patriot”) and its subsidiaries’ (collectively, the “Debtors”) *Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 of the Bankruptcy Code* (“1113/1114 Motion”) [ECF No. 3214] and Memorandum of Law (“Brief”) in support thereof [ECF No. 3219], and state as follows:²

PRELIMINARY STATEMENT

1. The Debtors have failed to meet their burden to satisfy the requirements of Sections 1113 and 1114 of the Bankruptcy Code in two critical ways, and this Court should deny the 1113/1114 Motion.³ First, the Debtors have failed to show that the proposed modifications are necessary to permit a successful reorganization. The Debtors have failed to consider alternatives that would enable them to remain in the Plans, and have not shown that their desired changes tie into a broader restructuring effort that will enable them to emerge from this bankruptcy proceeding as a viable organization. Instead, the proposed modifications will result in a nearly \$1 billion withdrawal liability claim for which each of the 99 Debtors is jointly and severally liable, and which may preclude the Debtors’ ability to reorganize.

2. Despite the significant risk of these proposals to the Plans, their beneficiaries and, ultimately, the Debtors’ own future, the Debtors have completely excluded the UMWA Plans from negotiations. Thus, the Debtors cannot show that the proposed modifications treat all parties, including the Plans, fairly and equitably. The Debtors have not shown that there is a

¹ The 1974 Pension Plan is a member of the Official Committee of Unsecured Creditors (“UCC”). In connection with this Motion, the 1974 Pension Plan is acting on its own behalf and not as a representative of the UCC.

² Pursuant to an Order dated April 5, 2013 [ECF No. 3547], this Court granted the Plans authority to intervene in these matters.

³ Capitalized terms used herein without definition have the same meaning as those in the 1113/1114 Motion.

shared sacrifice among all parties; instead, the Debtors seek cost savings on the backs of their unionized workforce and retirees, using methods that would further erode – and impose further administrative burdens upon – the already precarious financial positions of the Plans.

3. As the Debtors have not met their burden, this Court should deny the Debtors' 1113/1114 Motion, and in particular, reject the Debtors' request to cease contributions to and completely withdraw from the Plans.

BACKGROUND

4. The Plans are multiemployer pension and retiree health benefit plans to which the Debtors are obligated to contribute pursuant to collective bargaining agreements ("CBAs"). *See* Declaration of Dale Stover ("Stover Decl.") (attached hereto as Exhibit A) ¶ 7. Here, because the Plans are multiemployer plans, the proposed relief will harm participants and beneficiaries who are employed by or retired from many other employers, placing burdens on numerous other parties that the Plans have a duty to protect.

5. The UMWA Health and Retirement Funds (the "Funds") are a group of seven multiemployer employee benefit plans and trusts that provide benefits to certain retired mine workers. *Id.* ¶ 5. The Funds are jointly administered by a single staff under administrative services agreements with the 1974 Plan, which serves as master administrative entity. *Id.* Each plan was established separately and has its own board of trustees, eligibility requirements and plan of benefits. *Id.*

6. The 1974 Plan and 1993 Plans are collectively bargained under an agreement between the UMWA and Bituminous Coal Operators' Association, Inc. ("BCOA"), entitled the National Bituminous Coal Wage Agreement ("NBCWA") of 2011. *Id.* ¶ 7.

A. The 1974 Plan

7. The 1974 Plan, established by the NBCWA of 1974, provides pension benefits to approximately 93,000 eligible participants and beneficiaries who are retired or disabled former hourly coal production employees and their eligible surviving spouses. *Id.* ¶ 9. These participants and beneficiaries include individuals eligible under the 1974 Plan and the UMWA 1950 Pension Plan, which merged into the 1974 Plan effective June 30, 2007. *Id.*

8. Five debtor-in-possession entities, all of which are wholly owned subsidiaries of Patriot Coal Corporation, are currently operating and obligated pursuant to collective bargaining agreements (“CBAs”) to contribute to the 1974 Plan: Heritage Coal Co.; Eastern Associated Coal, LLC; Apogee Coal Co., LLC; Hobet Mining, LLC; and Highland Mining Company, LLC (collectively the “Debtors”). *Id.* ¶ 10.⁴

9. The most recent NBCWA, known as the 2011 NBCWA, continues in effect until December 31, 2016 and sets forth the contribution obligations of contributing employers to the 1974 Plan, benefit levels owed to the 1974 Plan’s beneficiaries and participants, and eligibility requirements, among other substantive terms. *Id.* ¶ 16.

10. Contributions payable to the 1974 Plan are governed by what is referred to as the “Evergreen Clause.” *Motion to Intervene by the 1974 Plan and 1993 Plan* [ECF No. 3444] ¶ 3; 1974 Plan Document (attached as Exhibit 1 to the Stover Decl.).⁵ Unlike the typical collectively

⁴ The following Debtors are also parties to CBAs with the UMWA, but do not currently have any employees and therefore do not have any current obligation to contribute to the Plans: Colony Bay Coal Company, Mountain View Coal Company, LLC, Pine Ridge Coal Company, LLC, and Rivers Edge Mining, Inc.

⁵ The Evergreen Clause reads as follows:

Any Employer who employed any participant eligible for coverage under, or who received or receives benefits under the 1974 Pension, or any Employer who was or is required to make, or who has made or makes contributions to the 1974 Pension Plan and Trust, is obligated and required to comply with the terms and conditions of the 1974 Pension Plan and Trust, as amended from time to time, including, but not limited to, making contributions required under the National Bituminous Coal Wage Agreement of 1978, as amended from time to time,

bargained contribution, individual employers that are bound by the terms of the Evergreen Clause do not have the authority to negotiate a modification or termination of their separate obligations to contribute to the 1974 Plan because of the multiemployer nature of the mutual promises contained in the clause. *See* Stover Decl. ¶ 12. Thus, the UMWA and Patriot do not have the authority to negotiate a modification or termination of the Debtors' obligation to contribute to the 1974 Plan. For over twenty-five years, the 1974 Plan has engaged in litigation enforcing the Evergreen Clause contained in its Plan documents, and in particular, to create and maintain uniform contribution requirements for all employers participating in the 1974 Plan in order to provide retirement benefits to their employees. *Id.*⁶

11. The Debtors' current annual contribution to the 1974 Plan is approximately \$20.9

and any successor agreements thereto, including, but not limited to, the National Bituminous Coal Wage Agreement of 2011.

See 1974 Plan Document art. XX § (B)(16) [attached to the Stover Decl. as Exhibit 1].

⁶ Among the first of those suits was filed in 1988 when the Pittston Company ("Pittston") and certain other employers stopped making contributions to the 1974 Plan and to other UMWA benefit trusts ("the Trusts"). *See In re UMWA Employee Benefit Plans Litigation*, 782 F. Supp. 658, 659-60 & n660 n.1-4 (D. D.C. 1992) (listing cases). After those cases were filed, Pittston and other employers entered into collective bargaining agreements with the UMWA purporting to terminate the employers' obligations to contribute to the Trusts. *See id.* at 662-63. The Trusts – including the 1974 Plan – sought to enforce those employers' pre-existing Evergreen Clause obligations to continue making contributions to the Trusts at the rates required under the 1988 NBCWA and any successor agreements thereto, even though those employers' individual collective bargaining agreements provided for the termination of such a contribution obligation. The district court granted summary judgment to the Trusts based on "voluminous evidence of the negotiating history of the evergreen clause." *Id.* at 667. The court held that the clause:

was intended to ensure that all participating employers would contribute equally to the Trusts and would not be permitted to withdraw from participation and leave the burden for funding the pensions and health benefits of retired miners to the remaining participating employers.

Id.

On appeal by the employers, the Court of Appeals for the D.C. Circuit affirmed summary judgment. *United Mine Workers 1974 Pension Plan v. Pittston Co.*, 984 F.2d 469 (D.C. Cir. 1993). The Court of Appeals held that the Evergreen Clause constituted an agreement by each employer that had incorporated the Plan document in a collective bargaining agreement "to make continuing contributions to the trusts; and this obligation included an agreement to make contributions at rates specified in subsequent NBCWAs, without regard to whether the employer was still a party to the subsequent agreements." *UMWA 1974 Pension v. Pittston Co.*, 984 F.2d 469 (D.C. Cir. 1993), *Id.* at 474. The court further held:

The language of the relevant provisions in the applicable trust and collective bargaining agreements unambiguously obliges signatory employers to contribute to the trusts at the rates specified in the current NBCWA, irrespective of the employer's failure to sign that NBCWA.

Id. at 473. In addition, the court held that employers that have incorporated the Evergreen Clause cannot modify those contribution obligations through "non-NBCWA labor agreements." *Id.* at 475.

million. Stover Decl. ¶ 17. The Debtors' projected contributions from now through 2016 total \$73.7 million. *Id.* During the first two years of the current NBCWA, the Debtors contributed approximately 17.2% of all of the contributions received by the 1974 Pension Plan from all employers. *Id.* ¶ 18. Only one controlled group of employer companies contributed significantly more than the Debtors contributed. *Id.*

12. Although the 1974 Plan's aggregate benefit payments are large, the individual pensions are quite modest, with the majority of beneficiaries receiving less than \$500 per month and over 80% receiving a monthly pension of less than \$800 a month. *Id.* ¶ 14.

13. Pursuant to Section 305(b)(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the 1974 Plan's enrolled actuary certified the Plan to be in Seriously Endangered Status for the plan years beginning in July 1, 2011 and July 1, 2012. *Id.* ¶ 13. The July 1, 2012 certification is based on an estimated funding percentage of 72.6% and an expected accumulated funding deficiency within the next six years after the current plan year. *Id.* At the end of 2006, prior to the financial markets' collapse of 2008-09, the 1974 Plan was 93% funded, defined as assets as a percentage of projected liabilities. *Id.* The 1974 Plan's investments were well diversified, and continue to be so, but the sharp market declines during 2008-09 caused a precipitous drop in the Plan's assets at precisely the same time as the demographics of its beneficiary population required the 1974 Plan to pay out benefits at approximately \$650 million per year, near its projected peak rate of payments. *Id.*

14. Given the Plan's immediate need for cash to pay benefits, it is unlikely to have sufficient time to recoup losses from the financial crisis through prudent investment. *Id.* ¶ 15. Nor can the Plan recover its funding status through increased contributions because the number of retirees receiving benefits is approximately 10-12 times the number of active employees

whose hours worked in the industry are the basis for employer contributions to the Plan. *Id.*

15. If the Debtors terminate their obligation to contribute to the 1974 Plan, or permanently cease their covered operations, and, thus, withdraw from the 1974 Plan, a significant loss of funding will result, which will exacerbate the 1974 Plan's seriously endangered financial status. *Id.* ¶ 19. This, in turn, may affect the benefit levels of future retirees, and, if the loss of funding causes the 1974 Plan to become insolvent, would reduce the pension benefits provided to approximately 93,000 eligible beneficiaries. *Id.* The Pension Benefit Guaranty Corporation ("PBGC") guarantees payment of a portion of the 1974 Plan's benefits; however, if the 1974 Plan were forced to call upon that guarantee, the vast majority of beneficiaries would have their already modest pensions reduced. *Id.*

16. If the Debtors were to cease all covered operations or otherwise permanently terminate their obligation to contribute to the 1974 Plan, they would be liable for approximately \$959 million in withdrawal liability, representing their proportionate share of unfunded vested pension liabilities. *See* 29 U.S.C. § 1381(a)-(b)(1) (Section 4201 of ERISA); Stover Decl. ¶ 20. This \$959 million liability would be joint and several among each of the ninety-nine Debtors. 29 U.S.C. § 1381(a)-(b)(1). Any amount payable to the 1974 Plan with respect to the Debtors' withdrawal liability obligations is due in a lump sum and cannot be paid in installments, nor reduced to reflect the discounted present value of such installments. *See* 29 U.S.C. § 1399(c)(5) (ERISA Section 4219(c)(5)) ("In the event of a default, a plan sponsor may require immediate payment of the outstanding amount of an employer's withdrawal liability, plus accrued interest...") (emphasis added); Additional Definitions of Default ("Additional Definitions"), UMW 1974 Pension Plan (attached to the Stover Decl. as Exhibit 3); March 4, 2013 Letter from D. Allen to T. Mayer (provided to the Debtors via e-mail on March 15, 2013) (attached

hereto as Exhibit B).

17. The Trustees of the 1974 Plan have defined default as, among other things, “insolvency”; any “assignment, pledge, mortgage or hypothecation by the employer of property to an extent which the Trustees determine to [be] material”; “bankruptcy”; and “the employer’s engaging in a transaction which has a principal purpose the evasion or avoidance of withdrawal liability.” Stover Decl. ¶ 28. The Debtors meet this definition of default, and therefore, by the terms of the 1974 Plan, are unable to discount or pay in installments their withdrawal liability claim. Thus, the withdrawal liability creates a significant, immediate burden upon the Debtors’ reorganization at the moment of its triggering that cannot be pushed off. The Debtors nonetheless “hope[]” to negotiate an agreement with the 1974 Plan to pay the claim in installments over time, *see* Deposition of Bennett K. Hatfield (“Hatfield Dep.”) (relevant portions of which are attached hereto as Exhibit C) at 160:24-161:19, and have revised their 1113/1114 Proposals accordingly, *see also* Apr. 10, 2013 Revised 1113/1114 Proposals (“Revised 1113/1114 Proposal”) [ECF No. 3583] at Tab A, p. 6 and Tab B, p. 6. This “hope” is directly contrary to the 1974 Plan’s default rules and entirely speculative. In any event, because a hearing date was already set at the time the Debtors made the Revised Proposal, the Revised Proposal has no bearing on whether the relief sought in the 1113/1114 is necessary, fair, and equitable. *See Teamsters Airline Div. v. Frontier Airlines*, No. 09-343, 2009 WL 2168851, at *11 (S.D.N.Y. July 20, 2009) (“[T]he timing clause in subsection (b)(1) limits review of a debtor’s disclosure effort to the time period ‘prior to filing an application seeking rejection.’”)

B. The 1993 Plan

18. The 1993 Plan covers a limited group of retirees who are considered “orphans” because, among other things, their last signatory employer is no longer in business and they are not otherwise covered and receiving benefits under the Coal Act. Stover Decl. ¶ 31. In the 2011

NBCWA, the signatory Debtors, other than Highland Mining Co., agreed to contribute to the 1993 Plan at the rate of \$1.10 per hour worked. Highland Mining Co. agreed to continue in effect its obligation to contribute at the rate required by the 2007 NBCWA, \$0.50 per hour. *Id.*

19. Under the 2011 NBCWA and each NBCWA since 1978, signatory employers have agreed to provide benefits, through individual employer plans, for their active employees and eligible retirees for whom they are the last signatory operators, at an agreed level of benefits provided in the NBCWA. *Id.* ¶ 29. Beginning with the 1993 NBCWA, signatory operators expressly agreed to provide lifetime benefits to their own eligible retirees who retire during the term of the NBCWA, and have also agreed to contribute to the 1993 Plan for the purpose of providing health care benefits to “orphan” retirees whose last signatory operators are no longer in business and who otherwise satisfy the eligibility requirements of the 1993 Plan. *Id.* ¶31.

20. There are approximately 11,000 beneficiaries receiving health benefits from the 1993 Plan, 3,000 of which enrolled after December 31, 2006. *Id.* ¶ 37. Those 3,000 beneficiaries depend solely on contributing employers such as the Debtors for benefits. *Id.*

21. The Debtors’ current annual contribution to the 1993 Plan is approximately \$3.7 million, out of total 2012 contributions of \$22.6 million. *Id.* ¶ 38. Through the remaining term of the 2011 NBCWA (through December 31, 2016), Patriot is expected to contribute an estimated \$12.8 million to the 1993 Plan. *Id.* ¶ 38.

22. The eligibility requirements for the 1993 Plan are set out in Article IX(2) of the UMWA 1993 Benefit Plan Agreement and Declaration of Trust Document and the NBCWAs. *Id.* ¶ 32. Under Article IX(1) of the 1993 Plan Document, the level of benefits to be received by eligible retired miners and their families from the 1993 Plan is determined by the Trustees “based on what it is estimated the [1993 Plan] can provide without undue depletion or excessive

accumulation,” within additional constraints spelled out in the 1993 Plan. *Id.* ¶ 34.

23. The 1993 Plan will suffer material harm under the Debtors’ 1113/1114 Motion in two ways. First, benefits payable to approximately 3,000 of the 1993 Plan’s orphan beneficiaries are funded solely by fixed contributions from contributing employers. *Id.* ¶ 39. Currently, Patriot is responsible for approximately 16.2% of the contributions paid to the 1993 Plan. *Id.* If these contributions cease, current projections show that the 1993 Plan will not have sufficient assets to provide benefits to these orphan beneficiaries, which will result in the reduction or termination of their benefits. *Id.* ¶¶ 40-41. These orphan beneficiaries have no representation in this proceeding other than by the 1993 Plan itself.

24. Second, if the Debtors not only cease contributions to the 1993 Plan, but also cease to provide health benefits to their retired employees and their families (approximately 10,400 individuals) – whether due to the termination of benefits or the underfunding of an alternative vehicle intended to pay for such benefits – the negative impact on the 1993 Plan could be so great that benefit levels would be reduced to a small fraction of their present level. *Id.* ¶ 42. The Debtors’ retirees might apply to be enrolled in the 1993 Plan for their benefits. *Id.* If the signatory Debtors are determined by the Trustees to be “no longer in business,” and otherwise satisfy the eligibility requirements of the 1993 plan, the retirees would be eligible to be enrolled in the 1993 Benefit Plan. *Id.* Such a determination would cause the pool of 1993 Plan beneficiaries who were enrolled after December 31, 2006 to more than quadruple at the same time the only funds available to provide benefits for such beneficiary group – employer contributions – are drastically cut. *Id.* Benefits available from the 1993 Plan similarly would require drastic reduction. *Id.*

25. If the Debtors were to cease contributions to the 1993 Plan, this would mean a

loss of approximately 16.2% of the 1993 Plan's contribution revenue, which is the only means of funding the remaining three years of benefits for nearly 3,000 beneficiaries receiving health benefits from the 1993 Plan. *Id.* ¶ 39. This loss of contribution income would almost certainly require the Trustees of the 1993 Plan to reduce benefits for these retirees and their families significantly, even without account for the potential eligibility of the Debtors' retirees. *Id.*

C. The VEBA Proposal

26. The Debtors' 1114 Proposal provides for the creation of a Voluntary Employee Beneficiary Association ("VEBA") to be administered by the UMWA Funds (or alternatively, by the UMWA itself). *See* Brief at 52 ("[T]he UMWA Funds would have full control over the use of the funds in the VEBA as well as eligibility, administration, participation, program designs, and benefit levels."). The Debtors have not engaged in any discussions with the UMWA Funds regarding administration of the VEBA, and it is far from clear that the UMWA Funds would agree to do so for numerous reasons including but not limited to those discussed below.

27. The Debtors propose to fund the VEBA with a "\$15-million lump-sum." They suggest millions of dollars of purely hypothetical sources of future income, such as the UMWA's unsecured claim against the Debtors, which *could* take the form of equity in the reorganized enterprise and *could* be monetized by the UMWA, or that further contributions *could* be made under a profit-sharing plan, should the Debtors return to profitability. *See* Brief at 52. The effort of monetizing those sources, and the risks attendant thereto, would fall to the entity administering the VEBA – as proposed, the Plans. Administering a VEBA would impose significant additional risks and responsibilities on the UMWA Funds. Those burdens currently belong to the Debtors, who guaranteed in the 2011 NBCWA that they would provide retiree healthcare for their own retirees. *See* 2011 NBCWA (relevant portions of which are attached as Exhibit 4 to the Stover Decl.). Those benefits must "be guaranteed during the term of this

Agreement by that Employer at levels set forth in such plan.” *Id.* at art. XX § (c)(3)(i). The Debtors’ 1114 Proposal thus attempts to shift its obligations onto the UMWA Funds.

D. The Debtors’ Refusal to Engage the Plans or Consider Alternatives

28. Despite the significant interests and impact of the Plans on the requested Sections 1113 and 1114 relief, the Debtors have refused to engage the Plans in any meaningful negotiations about whether the requisite cost savings can be achieved without doing the indelible harm to the Plans and their beneficiaries that will surely follow if the Debtors withdraw from the 1974 Plan or cause their beneficiaries to lose health benefits and potentially be enrolled in the 1993 Plan. Indeed, the Debtors have not only ignored meaningful cost-savings options that might enable them to remain in the Plans on a long-term basis,⁷ they have also ignored the important role that the Plans should take in these proceedings. The Plans reached out to the Debtors to express their desire to participate in these proceedings in early November 2012. *See* Nov. 8, 2012 Letter to D. Schiabe from J. Goodchild (attached hereto as Exhibit D). After six weeks of negotiations, the Debtors finally granted the Plans access to materials relating to the 1113/1114 negotiations, provided that the Plans obtain any such information through the UMWA’s representatives. *See* Dec. 21, 2012 E-mail from E. Moskowitz to F. Perillo and J. Goodchild (attached hereto as Exhibit E). Access to this information was meaningless, however, as the Debtors refused to permit the Funds a participatory role in these negotiations.

29. The Debtors’ unwillingness to engage shows a lack of foresight with respect to these Chapter 11 cases. The 1974 Plan easily holds the most significant joint and several claim in the Debtors’ Chapter 11 cases.⁸ In the 1113/1114 Motion, the Debtors stated that they sought

⁷ *See Declaration of Perry Mandarinino in Opposition to the Debtors’ 1113/1114 Motion (“Mandarinino Decl.”)*, dated April 3, 2013 at ¶¶ [REDACTED].

⁸ The UMWA holds a claim in excess of \$1 billion, but it is arguably assertable only against those Debtors that are parties to CBAs. The holders of the Debtors’ guaranteed unsecured senior notes can assert claims only against their

to treat the withdrawal liability as a general unsecured claim – but said nothing beyond that. *See* Brief at 47. In their Revised Proposal, the Debtors state that they will negotiate to pay the claim in installments; barring agreement, they acknowledge that the 1974 Plan has a joint and several unsecured claim. *See* ECF No. 3583 at Tab A, p. 6 and Tab B, p. 6.

30. The Debtors have engaged in no discussions with the 1974 Plan over ways to preclude their withdrawal from the 1974 Plan. In addition, despite their stated intent to reach agreement with the 1974 Plan over treatment of withdrawal liability (assuming that they do withdraw), [REDACTED]

[REDACTED]

[REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Thus, the ability of the Debtors to reorganize with a nearly \$1 billion claim against each estate is highly questionable, and any such efforts would inevitably lead to a difficult, time-consuming, costly and decidedly uncertain litigation over the availability to the Debtors of the extraordinary remedy of substantive consolidation.

direct obligors and guarantors, which excludes the unionized debtors. *See, e.g., Motion of Aurelius Capital Mgmt. & Knighthead Capital Mgmt. for Entry of an Order Directing the Appointment of a Chapter 11 Trustee* [ECF No. 3423] ¶¶ 2-3, 14.

SECTIONS 1113 AND 1114

A. Statutory Framework

31. Section 1113 of the Bankruptcy Code was enacted in response to the United States Supreme Court's decision in *NLRB v. Bildisco & Bildisco*, in which the Court held a debtor-in-possession could unilaterally reject a collective bargaining agreement without negotiations. 465 U.S. 513, 534 (1984). This holding "sparked intense congressional debate" regarding the circumstances under which a bankrupt employer may reject its collective bargaining obligations. *In re Century Brass Prods., Inc.*, 795 F.2d 265, 266 (2d Cir. 1986).

32. Section 1113 proscribes a debtor's ability to unilaterally reject CBAs, *see In re Century Brass Prods., Inc.*, 795 F.2d 265, 266 (2d Cir. 1986), and codifies procedural safeguards to ensure debtors do not "misus[e] the bankruptcy law in collective bargaining." *Truck Drivers Local 807, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am. v. Carey Transp. Inc.*, 816 F.2d 82, 87 (2d Cir. 1987). These safeguards are "aimed at facilitating consensual modifications to collective bargaining agreements" within a finite period of time. *In re Nw. Airlines Corp.*, 346 B.R. 307, 320 (Bankr. S.D.N.Y. 2006) (emphasis added). Section 1113 is designed to "encourage solution of the employer's labor problems through collective bargaining rather than by means of the debtor's unilateral action and recourse to the bankruptcy court." *In re K&B Mounting, Inc.*, 50 B.R. 460, 465 (Bankr. N.D. Ind. 1985). The statute is "sensitive to the national policy favoring collective bargaining agreements." *In re Horsehead Indus., Inc.*, 300 B.R. 573, 583 (Bankr. S.D.N.Y. 2003) (quoting *Wheeling-Pittsburgh Steel Corp. v. United Steelworkers of Am., AFL-CIO-CLC*, 791 F.2d 1074, 1089 (3d Cir. 1986) (internal quotations omitted)).

33. Section 1114 was enacted as part of the Retiree Benefits Bankruptcy Protection Act of 1988. 11 U.S.C. § 1114; *In re Family Snacks, Inc.*, 257 B.R. 884, 896 (8th Cir. B.A.P.

2001); *In re Ionosphere Clubs, Inc.*,

34. 515, 520 (Bankr. S.D.N.Y. 1991). It is “the exclusive provision relating to the modification or termination of retiree benefits” that provides “a statutory scheme to insure that retirees are adequately represented” in the rejection process through a “committee of retired persons.” *In re Ionosphere Clubs, Inc.*, 134 B.R. at 519. This committee serves to protect retirees, whose interests may be separate from current employees under Section 1113. *Id.*

35. Sections 1113 and 1114 have similar requirements. Under Section 1113, a debtor-in-possession may only reject a collective bargaining agreement if it complies with both the procedural and substantive requirements of the statute. Specifically, a debtor is required to:

(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, subject to subsection (d)(3), the representative of the employees with such relevant information as is necessary to evaluate the proposal.

11 U.S.C. § 1113(b)(1)(A)-(B); *see also id.* § 1114(f)(1)(A)-(B).

36. Further, Section 1113 requires that the trustee “meet, at reasonable times, with the authorized representative [of the union] to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement.” *Id.* § 1113(b)(2); *see also id.* § 1114(f)(2).

37. Section 1113 states that a debtor may reject a collective bargaining agreement only upon a determination by the Bankruptcy Court 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.

Id. § 1113(c); *see also id.* § 1114(g).⁹

38. Courts in this Circuit have combined the operative provisions of Section 1113(b) and (c) into a nine-prong test. *See In re Am. Provision Co.*, 44 B.R. 907, 909 (Bankr. D. Minn. 1984).¹⁰ “[T]he debtor bears the burden of persuasion by the preponderance of the evidence on all nine elements.” *Id.*; *see also In re Jefley, Inc.*, 219 B.R. 88, 92-93 (Bankr. E.D. Pa. 1998). Failure to meet its burden as to any one element is sufficient to defeat a motion under Section 1113. *In re K&B Mounting, Inc.*, 50 B.R. at 467 (debtor must prove “all nine elements have been satisfied”) (citation omitted) (emphasis added).

39. “The requirements for modification of retiree benefits [under 11 U.S.C. § 1114] are . . . substantially the same as the requirements for rejection of collective bargaining agreements, so *American Provision’s* nine-part analysis is equally appropriate.” *In re Horizon Natural Resources Co.*, 316 B.R. 268, 281 (Bankr. E.D. Ky. 2004); *see also In re Horsehead*

⁹ Section 1114(g) contains language (1) prohibiting an order by the court that provides for modifications to a level lower than the modifications in the proposal the court found to be in compliance with Section 1114; (2) allowing an authorized representative to apply to the court to increase retiree benefits after entry of the order of modification so long as the increase complies with § 1114(g)(3); and (3) allowing the trustee and the authorized representative to make more than one motion for modification under Section 1114. *See* 11 U.S.C § 1114(g).

¹⁰ Specifically, the Debtor must prove the following nine elements:

1. The debtor in possession must make a proposal to the Union to modify the collective bargaining agreement.
2. The proposal must be based on the most complete and reliable information available at the time of the proposal.
3. The proposed modifications must be necessary to permit the reorganization of the debtor.
4. The proposed modifications must assure that all creditors, the debtor and all of the affected parties are treated fairly and equitably.
5. The debtor must provide to the Union such relevant information as is necessary to evaluate the proposal.
6. Between the time of the making of the proposal and the time of the hearing on approval of the rejection of the existing collective bargaining agreement, the debtor must meet at reasonable times with the Union.
7. At the meetings the debtor must confer in good faith in attempting to reach mutually satisfactory modifications of the collective bargaining agreement.
8. The Union must have refused to accept the proposal without good cause.
9. The balance of the equities must clearly favor rejection of the collective bargaining agreement.

In re Am. Provision Co., 44 B.R. at 909.

Indus., Inc., 300 B.R. at 583; *In re Ionosphere Clubs, Inc.*, 134 B.R. at 520.

B. The Proposed Modifications Must Be Necessary

40. The third *American Provision* factor requires that the proposals be “necessary to permit the reorganization of the debtor.” *In re Am. Provision Co.*, 44 B.R. at 909; *see also* 11 U.S.C. § 1113(b)(1)(A). The debtor must prove that its proposal “contains necessary, but not absolutely minimal, changes that will enable the debtor to complete the reorganization process successfully.” *In re Valley Steel Prods. Co., Inc.*, 142 B.R. 337, 341 (Bankr. E.D. Mo. 1992) (quoting *Carey Transp.*, 816 F.2d 82 at 90).

41. The Court must “look[] into the debtor’s ultimate future and estimat[e] what the debtor needs to attain financial health.” *Assoc. of Flight Attendants-CWA, AFL-CIO v. Mesaba Aviation, Inc.*, 350 B.R. 435, 449 (D. Minn. 2006) (quoting *Carey Transp.*, 816 F.2d at 89) (“*Mesaba IP*”). The goal is not just that the proposals are necessary to permit the reorganization of the debtor, but that the proposals are necessary to permit a successful reorganization, “one from which the debtor emerges as an economically viable operation.” *Id.* at 449 (quoting *In re Mile Hi Metal Sys., Inc.*, 899 F.2d 887, 893 (10th Cir. 1990)); *see also In re Express Freight Lines, Inc.*, 119 B.R. 1006, 1014 (Bankr. E.D. Wisc. 1990) (“We also believe that ‘successful reorganization’ means continuing beyond the immediate future.”).

42. Proving necessity requires that a debtor “justify the particular modifications in light of a general scheme” of reorganization. *In re Fiber Glass Indus., Inc.*, 49 B.R. 202, 206 (Bankr. N.D.N.Y. 1985). “To be necessary to the reorganization, the modifications must be related to the debtor’s financial condition.” *Id.* (citation omitted).

43. Necessity is “the most fundamental requirement for rejection of a collective bargaining agreement.” *In re Pinnacle Airlines Corp.*, 483 B.R. 381, 406 (S.D.N.Y. 2012) (internal citation and quotation omitted) (emphasis added). Indeed, courts have found that

debtors have failed to satisfy their burden of necessity in a number of circumstances, including:

- where other cost saving measures are available, *In re Express Freight Lines, Inc.*, 119 B.R. at 1015-17;
- where the proposed modifications are overreaching, *see In re AMR Corp.*, 477 B.R. 384, 432-33 (Bankr. S.D.N.Y. 2012); *In re Pinnacle Airlines Corp.*, 483 B.R. at 406 (“[T]he Court is unwilling to hold, that a necessity that exists as a general matter supports a proposal that goes beyond the demonstrated necessity.”); *In re Mile Hi Metal Sys., Inc.*, 899 F.2d at 893 (“Of course, the debtor may not overreach under the guise of proposing necessary modifications.”); and
- where the debtor fails to justify necessity, *see In re Fiber Glass Indus., Inc.*, 49 B.R. at 206 (“No evidence was offered by the debtors as to how the precise figure of \$130,000 was keyed into an overall plan of reorganization.”) (emphasis added).

44. According to the majority of courts, the Debtors must show that each component of their proposal is necessary. *See In re Mile Hi Metal Sys., Inc.*, 899 F.2d at 892 n.8 (majority of courts evaluate necessity of each item of debtors’ proposal); *see also In re AMR Corp.*, 477 B.R. at 394 (denying a debtor’s motion to reject where, although change is necessary for the debtor’s reorganization, two of the elements in the debtor’s proposal were not necessary and were not justified as such); *In re Valley Kitchens, Inc.*, 52 B.R. 493, 497 (Bankr. S.D. Ohio 1985) (denying a debtor’s motion to reject where proposal contains components that are not necessary to permit reorganization); *In re Fiber Glass Indus., Inc.*, 49 B.R. at 206 (denying a debtor’s motion to reject where debtor did not justify how particular modifications were necessary for the overall scheme of reorganization).¹¹

¹¹ The Debtors instead suggest that the Court must evaluate the “total impact” of the 1113 Proposal. Brief at 67. They rely on *In re Appletree Mkts., Inc.*, 155 B.R. 431, 441 (Bankr. S.D. Tex. 1993), and *In re Horsehead Indus.*, 300 B.R. at 588, for the proposition that the Court must address the “total impact” of their proposal and evaluate it “as a whole.” These cases, in turn, rely upon *In re Royal Composing Room, Inc.*, 848 F.2d 345 (2d Cir. 1988). Put in its proper context, however, *Royal Composing Room* does not require that this Court only assess the totality of the 1113 Proposal here. In *Royal Composing Room*, the Court of Appeals for the Second Circuit held that “where a union refuses to negotiate in order to obtain a different combination of modifications, it may not challenge the particular combination or any vital element, contained in the debtor’s proposal.” 848 F.2d at 349. This holding merely emphasizes a policy that requires parties to negotiate those provisions that they believe are most important:

45. Accordingly, each component must be necessary to enable the Debtors to achieve reorganization and, as Debtors emphasize in their Brief, long-term viability. *See* Brief at 66 (citing *In re Mile Hi Sys., Inc.*, 899 F.2d at 893; *Carey Transp.*, 816 F.2d at 89); *see also Mesaba II*, 350 B.R. at 449-50 (standard for necessity is “designed to prevent the debtor from quickly falling into liquidation or another Chapter 11 proceeding by ensuring that it can compete following its reorganization . . . a debtor should come forward close to the top of the heap in strength, rather than at the bottom”) (internal citation and quotation omitted).

C. The Proposed Modifications Must Treat All Parties Fairly and Equitably

46. The fourth *American Provision* factor mandates that “all creditors, the debtor and all of the affected parties are treated fairly and equitably.” *In re Am. Provision Co.*, 44 B.R. at 908-09; *see also* 11 U.S.C. § 1113(b)(1)(A). This requires the debtor to prove it is “spread[ing] the burden of saving the company to every constituency while ensuring that all sacrifice to a similar degree.” *Carey Transp.*, 816 F.2d at 90 (citation omitted).

47. While a “similar” degree does not necessarily mean “identical,” *see In re Delta Air Lines*, 342 B.R. 685, 698 (Bankr. S.D.N.Y. 2006), a “wide disparity in treatment” between the parties affected by the proposed modification can render a proposal unfair and inequitable. *See id.* at 699 (proposal does not treat parties fairly and equitably where flight attendants union is required to contribute twice its pro rata share of cost cuts as compared to other unions); *see also In re Pinnacle Airlines Corp.*, 483 B.R. at 416 (denying 1113 motion where pilots’ union is not

“If the union believes that a vital part of the proposal is unacceptable, it should enter into good faith negotiations aimed at moderating that element, or at substituting a measure less offensive to the union but achieving comparable savings for the debtor.” *Id.* Here, the Debtors do not argue that the union has refused to negotiate; rather, they admit that they “engaged in regular communication” with the UMWA since filing the bankruptcy petition. Brief at 57; Robertson Decl. [ECF No. 3220] ¶ 12. Accordingly, under the circumstances here, Royal Composing Room and its progeny permit consideration of the necessity of particular components of the 1113 Proposal. For the reasons set forth below, the Debtors have not shown that the components of the proposal seeking withdrawal from and elimination of contributions to the Plans are necessary.

treated fairly as to other stakeholders).¹²

48. To be fair and equitable, “cost-cutting burdens [must be] shared among affected parties – and that to the extent some groups are asked to contribute more than others, the different contribution levels [must be] justified under the circumstances.” *In re Pinnacle Airlines Corp.*, 483 B.R. at 408. Fair and equitable treatment can also require that, where contractual obligations are rejected, the affected parties be given “appropriate profit sharing” such as “issuance of equity” or “a share in the fruits of any profits that [the union’s] sacrifice might entail” to “avoid[] windfalls to others.” *Id.* at 416; *see also Express Freight*, 119 B.R. at 1017.

OBJECTION

49. The Debtors’ 1113/1114 Motion should be denied because the Debtors have failed to show that their proposal is necessary to permit successful reorganization. The Debtors have not shown how the desired modifications to the Plans are tied a broader restructuring that will permit a successful reorganization and make the Debtors’ viable in the long-term. Rather, the evidence suggests that the Debtors have not considered the implications of the proposals and the challenges they will create for reorganization.

50. Second, the Debtors’ proposal does not treat all parties fairly and equitably. The proposal places a disproportionate financial and administrative burden on both the Plans and their beneficiaries. These burdens and risks are not shared among all parties.

¹² Courts, including courts in this Circuit, have routinely rejected proposals under Sections 1113 and 1114 that fail to satisfy the “fair and equitable” prong, particularly where those proposals are shown to favor management at the expense of other constituencies. *See, e.g., In re Jefley, Inc.*, 219 B.R. at 94 (denying 1113 motion where there is “potential for more sacrifice on the part of management”); *In re Lady H. Coal Co., Inc.*, 193 B.R. 233, 241-43 (Bankr. S.D. W.Va. 1996) (denying 1113 motion where the debtor structured the transaction “to attempt to minimize such liabilities [to management] at the cost of the rights of the represented employees”); *In re Pierce Terminal Warehouse, Inc.*, 133 B.R. 639, 647-58 (Bankr. N.D. Iowa 1991) (denying 1113 motion where the debtor provided no evidence that non-union employees were asked to make similar concessions as union employees); *In re Ind. Grocery Co., Inc.*, 136 B.R. 182, 195 (Bankr. S.D. Ind. 1990) (denying 1113 motion where the debtor failed to show management and other creditors are bearing an “equitable burden” in the reorganization); *In re Express Freight Lines, Inc.*, 119 B.R. at 1017 (denying 1113 motion where concessions by management and former employees were more favorable than union concessions); *In re K&B Mounting, Inc.*, 50 B.R. at 468 (denying 1113 motion where proposal only affected the unionized employees).

A. The Debtors Have Not Shown that the 1113 Proposal is Necessary to the Debtors' Reorganization.

51. The Debtors have not shown that their proposals, and, in particular, their request to completely withdraw from the Plans, is necessary to for them to emerge from post-bankruptcy as a viable entity into the future. Rather, the Debtors have been so focused on the cash savings that withdrawal assertedly would afford that they have failed to consider the broader impact of the proposal. Withdrawal from the 1974 Plan is not necessary and would result in approximately \$959 million in withdrawal liability under Section 4201 of ERISA. Stover Decl. ¶ 20. This withdrawal liability is joint and several against each of the Debtors, and payable immediately as one lump sum. *Id.* ¶ 10 and Exs. 1 & 3 thereto; Ex. B. The resulting reorganization would almost certainly require substantive consolidation of the Debtors' estates, an extraordinary remedy that may not be available here, and which would certainly be contested by various of the Debtors' creditor constituencies in a lengthy, expensive litigation. Absent a substantive consolidation, the Debtors would be challenged to restructure even their healthiest operations in the face of the withdrawal liability claim. Therefore, the withdrawal liability claim significantly impacts the ability of the Debtors to reorganize. [REDACTED].

52. Despite this, each iteration of the Debtors' 1113 Proposal has included the same treatment with respect to the Plans: complete withdrawal from the 1974 Plan and the 1993 Plan and effective termination of health benefits. *See* Third 1113 Proposal (Feb. 19, 2013) ("Third 1113 Proposal") (attached as Ex. 2 to Robertson Decl.), art. XX ¶ 1; First 1113 Proposal (Nov. 15, 2013) (attached as Ex. 4 to Robertson Decl.), art. XX ¶ 1. In making these proposals, the Debtors have failed to meaningfully avoid withdrawal or account for the withdrawal claim. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. These failures significantly undercut their ability to meet their burden of showing that their proposal to withdraw from the Plans is necessary to permit successful reorganization.

53. The Debtors have also refused to engage the Plans in any meaningful negotiations about alternative ways to achieve the requisite cost savings. For weeks, while negotiations were underway, the Debtors resisted providing relevant information to the Plans, and then excluded the Plans from negotiations. *See* Exs. D & E. Nor have the Debtors considered an alternative solution that realizes the necessary cost savings, but avoids withdrawal liability and honors the Debtors' obligations to retirees. *See* Mandarino Decl. ¶ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

54. Because Section 1113 is designed to “encourage solution of the employer’s labor problems through collective bargaining rather than by means of the debtor’s unilateral action and recourse to the bankruptcy court,” *see In re K&B Mounting*, 50 B.R. at 465, the Debtors cannot claim the necessity of unilateral modifications without first engaging the Plans in the process and addressing the withdrawal liability, which will significantly impact Debtors’ reorganization and long-term viability. *See In re Fiber Glass Industries, Inc.*, 49 B.R. 202 at 206 (denying Section 1113 motion because the debtors failed to “justify the particular modifications in light of a general scheme. . . . No evidence was offered by the debtors as to how the precise figure [] was keyed into an overall plan of reorganization.”) (emphasis added).

55. Ceasing contributions to, and withdrawing from, the Plans is an unnecessary

measure that fails to ensure – and may in fact threaten – the Debtors’ long-term viability, while at the same time harming the Plans, their beneficiaries, and other contributing employers.¹³ Therefore, the Debtors have failed to establish this “most fundamental” element of necessity. *See In re Pinnacle Airlines Corp.*, 483 B.R. at 406 (citations omitted) (emphasis in original).

B. The Requested Relief is Not Fair and Equitable under Section 1113(b)(1) or Section 1114(f)(1).

1. *The Section 1113 Proposal Does Not Treat All Parties Fairly and Equitably.*

56. The Debtors’ 1113 Proposal should also be rejected because it does not “assure that all creditors, the debtor and all of the affected parties are treated fairly and equitably.” *See* 11 U.S.C. 1113(b)(1)(A), 1114(f)(1)(A); *In re American Provision Co.*, 44 B.R. at 909. This requirement “forces the debtor to spread the hurt.” *In re Horsehead Indus., Inc.*, 300 B.R. at 584. “The burden of saving the debtor must be borne through sacrifice to a similar degree by every constituency.” *Id.*; *see also In re Century Brass Prods., Inc.*, 795 F.2d at 273; *In re Pinnacle Airlines Corp.*, 483 B.R. at 388 (finding modest profit-sharing on behalf of union employees inequitable in light of “windfall” other parties might receive if debtor is revitalized).

57. Here, the Debtors have not shown that the burden is borne through sacrifice to a similar degree by every constituency. The Plans understand and agree that this does not require a dollar-for-dollar reduction in each party’s packages, however, the “impact of rejection” upon the Plans cannot be “out of proportion to the hardship imposed upon the debtors.” *In re Cook United, Inc.*, 50 B.R. 561, 564 (Bankr. N.D. Ohio 1985).

58. Just weeks before seeking relief from their obligations to the Plans, the Debtors filed a *Motion for Authority to Implement Compensation Plans* [ECF No. 2819], which seeks to compensate “critical salaried employees in operations, management, finance, human resources,

¹³ Several such employers have objected to the 1113/1114 Motion. *See* Objections of Ohio Valley Coal Company [ECF No. 3326]; Drummond Company, Inc. [ECF No. 3585]; Energy West Mining Co. [ECF No. 3586].

legal, engineering and sales.” *Id.* ¶ 20. The Annual Incentive Plan (“AIP”) and Critical Employee Retention Plan (“CERP”) collectively would award a maximum of nearly \$7 million to management-level and certain upper mine-level employees. *Id.* ¶¶ 22, 28-30.

59. Anticipating backlash from their decision to pursue management bonuses, the Debtors argue that the bonuses are “modest” and “necessary to retain key employees.” Brief at 83. Moreover, they argue that any challenge to such compensation is “misplaced” because Patriot’s non-union employees “have been forced to accept” significant cuts as well. *Id.* But the Debtors cannot ignore the “disproportionate burden” placed on its unionized employees who “at least perceive[] that top management [is] not doing its fair share in taking cuts,” *see In re Cook United, Inc.*, 50 B.R. at 564-65, particularly where, as here, the total proposed “modest” bonuses exceed the Debtors’ annual contributions to the 1993 Plan. Stover Decl. ¶ 38 (\$3.7 million in 2012). Furthermore, the Debtors fail to address [REDACTED]

[REDACTED]

See Mandarino Decl. ¶¶ [REDACTED]. This suggests that the Debtors are reorganizing on the backs of their unionized employees and retirees – the very constituencies who can least afford the cuts being foisted upon them. *See id.* ¶ [REDACTED]

[REDACTED].¹⁴

60. Here, the Debtors’ “modest” bonus proposals – to be supplemented with tens of millions of dollars in exit and future bonuses – cannot be fair and equitable in light of a total elimination of contributions to the Plans, and the significant resulting harm to the Plans and their

¹⁴ *In re Indiana Grocery*, 136 B.R. 182 (Bankr. S.D. Ind. 1990), is particularly on point here. There, a debtor’s top management sought bonuses and no reduction in salaries while, at the same time, the debtor sought to reject its collective bargaining agreements. 136 B.R. at 190. These bonuses were “part of a program promised to [debtor’s] executives” and were allegedly necessary to retain them. *Id.* The court found that the debtor’s proposal inequitable because the debtor “failed to show that its top management and its creditors are shouldering a fair share of the burden of reorganization,” and denied the debtor’s § 1113 motion. *Id.* at 196.

ability to provide benefits. *See* Stover Decl. ¶¶ 19, 39. The Debtors' termination of contributions and withdrawal will result in a 17.2% loss of funding to the 1974 Plan and a 16.2% loss of funding to the 1993 Plan, *id.* ¶¶ 18, 39, placing a severe strain on the Plans. The 1974 Plan is already in Seriously Endangered Status and is unable to recoup its losses through prudent investment or increased contributions; therefore, the Debtors' withdrawal will hasten the insolvency of the 1974 Plan. *Id.* ¶¶ 13. Ultimately, the Debtors' proposals will inevitably cause a reduction in the level of health benefits to 3,000 current beneficiaries of the 1993 Plan and, likely, will threaten the pension benefits of approximately 93,000 beneficiaries under the 1974 Plan. *Id.* ¶¶ 19, 39. In fact, the proposal puts the cost of the Debtors' relief on the persons least able to bear cuts in their pensions and health benefits, given the high proportion of 1974 Plan pensioners whose pensions are less than \$200 or \$500 monthly. *Id.* ¶ 14. The Debtors' proposal thus fails to "spread the burdens of saving the company to every constituency while ensuring that all sacrifice to a similar degree." *See In re Century Brass Prods., Inc.*, 795 F.2d at 273; *see also In re K&B Mounting, Inc.*, 50 B.R. at 464.

2. The VEBA Proposal Places a Disproportionate Burden on the Plans.

61. Finally, the Debtors propose to create the VEBA, through which their retirees will receive "a dedicated source of funding for future medical benefits." Brief at 51. Without engaging in any discussions with the Plans, the Debtors have proposed that "Patriot would cede control of the VEBA to the UMWA Funds . . . (or to the UMWA itself)" and that "the UMWA Funds would have full control over the use of the funds in the VEBA as well as eligibility, administration, participation, program designs, and benefit levels." *Id.* at 52. Pursuant to the terms of the 2011 NBCWA, however, the Debtors guaranteed that they would directly provide health benefits to their own retirees extending through the term of the NBCWA. *See* 2011

NBCWA at art. XX § (c)(3)(i). The Debtors' attempt to shift their obligation onto the UMWA Funds, without the Funds' consent, is neither fair nor equitable.

62. The proposed funding of the VEBA magnifies this point. The Debtors seek to fund the VEBA with a "\$15-million lump-sum," as well as other purely hypothetical potential sources of future income, including the UMWA's claim and potential revenue-sharing rights. *See* Brief at 52. In reality, however, "Patriot spent \$65.3 million in 2012 to provide healthcare benefits to non-Coal Act UMWA retirees," and admits those costs are "projected to increase further in future years." *See* Lucha Decl. [ECF No. 3223] ¶ 69.

63. Thus, the VEBA will very quickly experience a severe funding shortfall. *See Declaration of Elliott I. Cobin in Opposition to the Debtors' 1113/1114 Motion*, dated April 3, 2013, ¶ [REDACTED]

[REDACTED]. Accordingly, the administrator of the VEBA – whether the UMWA Funds or another party – will be saddled with the administrative burden of trying to monetize the UMWA's claim or to seek alternative liquidity for the VEBA. The Debtors can only speculate that these claims can be liquidated, or that their revenue-sharing proposal will ever yield sufficient proceeds to fund the VEBA. *See* Mandarino Decl., ¶ 48-54.¹⁵

CONCLUSION

64. The Debtors have failed to meet their burden as to two critical elements of the statutes. Moreover, the Debtors have failed to engage the Plans in *any* meaningful negotiation, yet ask this Court to saddle the Plans with significant administrative and financial burdens. For the reasons set forth above, the UMWA Plans respectfully request that this Court deny the Debtors' 1113/1114 Motion.

¹⁵ More likely, the VEBA will fail, which could result in an influx of retirees seeking to enroll in the 1993 Plan for their benefits. The Plans take no position at this time as to whether such benefits would be available.

Dated: April 12, 2013

Respectfully submitted,

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1974 Pension Trust and the United Mine Workers
of America 1993 Benefit Plan*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was filed on April 12, 2013 using the Court's CM/ECF system and that service will be accomplished by operation of that system upon all counsel of record, which includes counsel for all core parties.

/s/ Edward L. Dowd, Jr.

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:)
) **Case No. 51502**
Patriot Coal Corporation et al.,)
) **Chapter 11**
Debtors.) **Jointly Administered**

**DECLARATION OF DALE STOVER IN SUPPORT OF THE OBJECTION
OF THE UNITED MINE WORKERS OF AMERICA 1974 PENSION TRUST AND THE
UNITED MINE WORKERS OF AMERICA 1993 BENEFIT PLAN TO THE DEBTORS'
MOTION TO REJECT COLLECTIVE BARGAINING AGREEMENTS AND TO
MODIFY RETIREE BENEFITS PURSUANT TO SECTION 11 U.S.C. §§ 1113, 1114**

I, Dale Stover, hereby declare:

1. I am over eighteen years of age. I have been employed since January 2, 1980 by the United Mine Workers of America Health & Retirement Funds (the "UMWA Funds").
2. I submit this declaration in support of the Objection of the United Mine Workers of America 1974 Pension Trust (the "1974 Plan") and the United Mine Workers of American 1993 Benefit Plan (the "1993 Plan" and together with the 1974 Plan, the "Plans") to the Motion of Patriot Coal Corporation and its affiliated debtors to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. § 1113 and 11 U.S.C. § 1114 (the "1113/1114 Motion").
3. Since November 3, 2003, I have held the position of Director of Finance and General Services (previously Comptroller) of the UMWA Funds. As Director of Finance and General Services, and formerly as Comptroller, my responsibilities include monitoring the payments made by the contributing employers to the

UMWA Funds – including the Plans – and taking steps to ensure contributing employers’ compliance with their contractual contribution obligations.

4. Except as otherwise indicated herein, all facts set forth in this declaration are based upon my personal knowledge, my review of relevant documents, my opinion based upon experience, knowledge and information concerning the Plans, and information provided to me by employees working under my supervision. If called upon to do so, I would testify competently to the facts set forth in this declaration.

A. The UMWA Funds

5. The UMWA Funds is a group of seven multiemployer employee benefit plans and trusts which provide benefits to certain retired mine workers. The UMWA Funds are jointly administered by a single staff under administrative services agreements with the 1974 Plan, which serves as master administrative entity. Each plan was established separately and has its own board of trustees, eligibility requirements and plan of benefits.
6. Two of the seven UMWA Funds, the United Mine Workers of America 1992 Benefit Plan and the United Mine Workers of America Combined Benefit Fund, were established under the Coal Industry Retiree Health Benefit Act, 26 U.S.C. §§ 9701 *et seq.* (the “Coal Act”).
7. The other five UMWA Funds are collectively bargained under an agreement between the UMWA and Bituminous Coal Operators’ Association, Inc. (“BCOA”), entitled the National Bituminous Coal Wage Agreement (“NBCWA”) of 2011. The 1974 Plan, the United Mine Workers of America

Retiree Bonus Account Trust, and the United Mine Workers of America Cash Deferred Savings Plan of 1988 each provide certain benefit payments to eligible retired coal miners and other beneficiaries. The 1993 Plan and the United Mine Workers of America Prefunded Benefit Plan provide health benefits to certain retired mine workers and their eligible family members.

B. The 1974 Plan

8. The 1974 Plan is a multiemployer pension plan that was established by the NBCWA of 1974.
9. The 1974 Plan provides pension benefits to approximately 93,000 eligible participants and beneficiaries who are retired or disabled former hourly coal production employees and their eligible surviving spouses. It is a successor to the UMWA Welfare and Retirement Fund of 1950, which grew out of the 1946 Krug-Lewis Agreement between the government of the United States and the UMWA that first established the bituminous coal industry's health and retirement system. This population of participants and beneficiaries includes individuals eligible under the 1974 Plan and the UMWA 1950 Pension Plan, which merged into the 1974 Plan effective June 30, 2007.
10. Five (5) debtor-in-possession entities, all of which are wholly owned subsidiaries of Patriot Coal Corporation, are currently operating and obligated pursuant to collective bargaining agreements ("CBAs") to contribute to the 1974 Plan: Heritage Coal Co.; Eastern Associated Coal, LLC; Apogee Coal Co., LLC; Hobet Mining, LLC; and Highland Mining Company, LLC (collectively the

“Debtors”).¹ The Debtors, plus any other commonly owned entities, are jointly and severally liable for the withdrawal liability described below.

11. Contributions payable to the 1974 Plan are governed by what is referred to as the “Evergreen Clause,” which was first added to the 1974 Plan’s governing documents in 1978. The operative language of the clause reads as follows:

Any employer who employed any participant eligible for coverage under, or who received or receives benefits under, the 1974 Pension Plan, or any Employer who was or is required to make, or who has made or makes contributions to the 1974 Pension Plan and Trust, is obligated and required to comply with the terms and conditions of the 1974 Pension Plan and Trust, as amended from time to time, including, but not limited to, making contributions required under the National Bituminous Coal Wage Agreement of 1978, as amended from time to time, and any successor agreements thereto, including, but not limited to, the National Bituminous Coal Wage Agreement of 2011.

See 1974 Plan Document, art. XII § (B)(16), attached hereto as Exhibit 1.

12. The Evergreen Clause has been repeatedly renegotiated by the BCOA and UMWA, and incorporated by reference as part of the 1974 Plan’s documents in every NBCWA since 1978, including the NBCWAs of 1981, 1984, 1988, 1993, 1998, 2002, 2007 and 2011. For over twenty-five years, the 1974 Plan has engaged in litigation to enforce the Evergreen Clause contained in its Plan documents, and in particular, to create and maintain uniform contribution requirements for all employers participating in the 1974 Plan in order to provide retirement benefits to their employees. Individual employers that are bound by the terms of the Evergreen Clause do not have the authority to negotiate a modification or termination of their separate obligations to contribute to the 1974

¹ Upon information and belief, the following co-debtors are also parties to CBAs with the UMWA, but do not currently have any employees and therefore do not have any current obligation to contribute to the Plans: Colony Bay Coal Company, Mountain View Coal Company, LLC, Pine Ridge Coal Company, LLC, and Rivers Edge Mining, Inc.

Plan because of the multiemployer nature of the mutual promises contained in the clause.

13. Pursuant to section 305(b)(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), the 1974 Plan’s enrolled actuary certified the 1974 Plan to be in Seriously Endangered Status for the plan years beginning July 1, 2011 and July 1, 2012. The July 1, 2012 certification is based on an estimated funding percentage of 72.6% and an expected accumulated funding deficiency within the next six (6) years after the current plan year. At the end of 2006, prior to the financial markets’ collapse of 2008-09, the 1974 Plan was 93% funded, defined as assets as a percentage of projected liabilities. The 1974 Plan’s investments were well diversified, and continue to be so, but the sharp market declines during 2008-2009 caused a precipitous drop in the 1974 Plan’s assets at precisely the same time as the demographics of its beneficiary population required the 1974 Plan to pay out benefits at approximately \$650 million per year, near its projected peak rate of payments.
14. Although the 1974 Plan’s aggregate benefit payments are large, the individual pensions are quite modest, with majority of beneficiaries receiving less than \$500 per month and over 80% receiving a monthly pension of less than \$800 a month. Specifically, of the approximately 93,000 beneficiaries:
 - 22,795 (24.5%) receive a monthly pension of less than \$200 per month;
 - 34,256 (36.8%) receive a monthly pension of between \$200 and \$500 per month; and

- 18,133 (19.5%) receive a monthly pension of between \$500 and \$800 per month.

Only about 1.5% of the 1974 Fund's beneficiaries receive a monthly check greater than \$2,000.

15. Given the 1974 Plan's immediate need for cash to pay benefits, it is unlikely to have sufficient time to recoup its losses from the financial crisis through prudent investment. Moreover, the 1974 Plan cannot recover its funding status through increased contributions, because the number of retirees receiving benefits is approximately 10-12 times the number of active employees whose hours worked in the industry are the basis for employer contributions to the 1974 Plan.
16. The most recent NBCWA, known as the 2011 NBCWA, continues in effect until December 31, 2016 and sets forth the contribution obligations of contributing employers to the 1974 Plan, benefit levels owed to the 1974 Plan's beneficiaries and participants, and eligibility requirements, among other substantive terms.
17. The Debtors' current annual contribution to the 1974 Plan is approximately \$20.9 million, and the Debtors are projected to contribute another estimated \$73.7 million through 2016. This projection is based upon an assumption that hours worked by industry employers will decline at the rate of 5% per year over the course of the 2011 NBCWA. Industry sources, including the UMWA and BCOA, as well as the UMWA Funds' staff, have recommended that the 1974 Plan's actuaries adopt this rate of decline as an assumption in preparing the 1974 Plan's valuations, and they have adopted it. This projection assumes that the Debtors will continue to participate in the 1974 Plan.

18. During the first two years of the current NBCWA, the Debtors contributed approximately 17.2% of all of the contributions received by the 1974 Plan from all employers. Only one controlled group of employer companies contributed significantly more than the Debtors contributed.
19. If the Debtors terminate their obligation to contribute to the 1974 Plan, or permanently cease their covered operations, and, thus, withdraw from the 1974 Plan, a significant loss of funding will result, which will exacerbate the 1974 Plan's seriously endangered financial status. This, in turn, may affect the benefit levels of future retirees, and, if the loss of funding causes the 1974 Plan to become reorganized or insolvent, would reduce the pension benefits provided to approximately 93,000 eligible beneficiaries. The Pension Benefit Guaranty Corporation (the "PBGC") guarantees the payment of a portion of the 1974 Plan's benefits; however, if the 1974 Plan were forced to call upon that guarantee, the vast majority of the 1974 Plan's beneficiaries would have their already modest pensions reduced.
20. Under Section 4201 of ERISA, upon their withdrawal from a multiemployer pension plan, previously contributing employers are immediately liable for their proportionate share of the 1974 Plan's unfunded vested pension liabilities. If the Debtors were to cease all covered operations or otherwise permanently terminate their obligation to contribute to the 1974 Plan, the Debtors would be liable for approximately \$959 million in withdrawal liability.
21. In addition, as a result of the loss of funding caused by the Debtors' withdrawal, and assuming the Debtors' withdrawal liability is not paid in full, the share of the

1974 Plan's unfunded liabilities attributable to each of the remaining employers that contribute to the 1974 Plan would be proportionally increased.

22. I have calculated the Debtors' \$959 million withdrawal liability, assuming the Debtors were to withdraw from participation in the 1974 Plan in the plan year ending June 30, 2013, based on the withdrawal liability provisions of Article XIV of the 1974 Plan Document. *See* Ex. 1 art. XIV. The Debtors' withdrawal liability is its share of the 1974 Plan's unfunded vested benefits ("UVBs") that are allocable to it. To determine the amount of withdrawal liability allocable to a withdrawing employer, the 1974 Plan uses a modified version of the "rolling-five" method of allocation. This method was specifically approved for use by the 1974 Plan by the PBGC on June 20, 2003.
23. To calculate liability for a withdrawal in the plan year ending June 30, 2013, the 1974 Plan's unfunded vested benefits as of June 30, 2012 are multiplied by a fraction, as follows:
 - a) The numerator of the fraction is the total number of hours worked by the employer's employees in classified work under the collective bargaining agreement, which form the contribution base units of the employer's required contributions to the 1974 Plan, for the five years ended June 30, 2012. The total of the Debtors' contribution base units for the five year period is 21,715,372.41 hours.
 - b) The denominator of the fraction is the total number of hours worked by employees of all non-construction employers participating in the 1974 Plan for the same period. This denominator is 113,682,000.00 hours. This denominator

has been adjusted by subtracting the number of any contribution base units of employers which withdrew from the 1974 Plan during that five year period. *See* Ex. 1 at art. XIV § C.

24. As set forth in the 1974 Plan's Actuarial Valuation Report, as of June 30, 2012, the 1974 Plan's unfunded vested benefits for the non-construction segment of the 1974 Plan as of June 30, 2013 are \$5,107,362,000. A copy of the 1974 Plan's Actuarial Valuation Report, as of June 30, 2012, is attached hereto as Exhibit 2. This amount has been adjusted by the value of all outstanding claims for withdrawal liability which can reasonably be expected to be collected from employers withdrawing on or before June 30, 2004. The unfunded vested benefits are calculated using the PBGC annuity rate plus 1%, as set forth on page 59 of the 1974 Plan's valuation report.
25. On November 16, 2004, the Trustees of the 1974 Plan adopted a method for calculating the 1974 Plan's unfunded vested benefits based on the PBGC's published annuity interest rates plus 1% along with PBGC's expense assumptions which, in consultation with the 1974 Plan's actuaries, the Trustees of the 1974 Plan determined reflected market interest rates for annuities. The method is applicable to withdrawals that occur on or after July 1, 2004. The effect of the change in the applicable interest rate method was an overall reduction in the 1974 Plan's unfunded liability from the method previously used.
26. The Debtors' allocable share of the unfunded vested benefits is calculated by multiplying the 1974 Plan's unfunded vested benefits times the fraction set forth above representing the Debtors' share of contribution base units for the five year

period. Assuming a complete withdrawal prior to July 1, 2013, the Debtors' total withdrawal liability would be \$959,662,366.85.

27. As permitted under ERISA and Article X.1 of the 1974 Plan Document as then in effect, on August 29, 1983, the Trustees supplemented the definition of "default" with respect to a withdrawn employer as set forth in the 1974 Plan Document. The supplemental definitions of default were mailed to the signatory employers on October 21, 1983. A copy of the letter to signatory employers enclosing the supplemented definition is attached hereto as Exhibit 3.² Such definition remains in effect.

28. The Trustees of the 1974 Plan have defined default as, among other things, "insolvency," any "assignment, pledge, mortgage or hypothecation by the employer of property to an extent which the trustees determine to [be] material"; "bankruptcy"; and "the employer's engaging in a transaction which has a principal purpose the evasion or avoidance of withdrawal liability." *See* Ex. 3 at 11-13. Such a default would cause the entire amount of the withdrawn employer's withdrawal liability obligation to become immediately due and owing. *See* Ex. 1 at art. XIV § G.

C. The 1993 Plan

29. Pursuant to the 2011 NBCWA, and each predecessor NBCWA since 1978, signatory employers agreed to directly provide benefits, through individual employer plans, for their active employees, as well as lifetime benefits for eligible retirees for which such employer is the last signatory operator, at an

² The difference in Article numbers referenced in Exhibits 1 and 3 is because there was a different version of the Plan Document in effect at the time these default definitions were adopted.

agreed level of benefits provided in the NBCWA. *See* 2011 NBCWA at art. XX §§ (c)(3)(i) & (10) (“Health Care”), relevant portions of which are attached hereto as Exhibit 4. The Debtors provide health benefits to nearly 6,000 non-Coal Act pensioners (i.e. primary beneficiaries, retired mineworkers or surviving spouses receiving pensions). Including an estimated number of eligible dependents for each primary beneficiary, the Debtors are liable for providing lifetime healthcare benefits to approximately 11,000 non-Coal Act beneficiaries.

30. The same debtor-in-possession entities obligated to contribute to the 1974 Plan are currently operating and obligated to contribute to the 1993 Plan: Heritage Coal Co.; Eastern Associated Coal, LLC; Apogee Coal Co., LLC; Hobet Mining, LLC; and Highland Mining Co., LLC.
31. The 1993 Plan covers a limited group of retirees who are considered “orphans” because, among other things, their last signatory employer is no longer in business and such retirees are not otherwise covered and receiving benefits under the Coal Act. Pursuant to the 2011 NBCWA, and each predecessor NBCWA since 1993, signatory operators agreed to contribute to the 1993 Plan for the purpose of providing health care benefits to “orphan” retirees who meet the Plan’s eligibility requirements. *See* Article IX(2) of the UMWA 1993 Benefit Plan Agreement and Declaration of Trust, amended and restated as of July 1, 2011 (the “1993 Trust Document”), attached hereto as Exhibit 5. In addition to supporting the benefits of eligible “orphan” retirees, the payment of the required contributions to the 1993 Plan under the NBCWA ensures that, in the event that a contributing employer eventually satisfies the “no longer in business test” under

the 1993 Plan's governing documents and otherwise meets the requirements of the 1993 Plan, its otherwise eligible retirees will be eligible to receive benefits from the 1993 Plan. In the 2011 NBCWA, the signatory Debtors, other than Highland Mining Co., agreed to contribute to the 1993 Plan at the rate of \$1.10 per hour worked. Highland Mining Co. agreed to continue in effect its obligation to contribute at the rate required by the NBCWA of 2007, \$0.50 per hour. Ex. 4 at art. XX § (d).

32. The Trustees of the 1993 Plan make eligibility decisions for the 1993 Plan. The eligibility rules for the 1993 Benefit Plan are set out in Article IX(2) of the 1993 Trust Document, *see* Ex. 5 at 7-9, and the applicable NBCWA. Retirees who apply to receive their health benefits from the 1993 Plan are determined eligible if, in addition to individually meeting criteria relating to age and retirement date, work history and pension eligibility, their last employer signatory to the Wage Agreement, among other things, is "no longer in business" according to the following criteria:

- the employer must have been obligated to contribute to the 1993 Plan and must have actually contributed to the 1993 Benefit Plan at the standard rate;
- the employer must be obligated to contribute at the standard rate on the date when the employer is first considered to be "no longer in business;"
- the employer must have ceased all mining operations and ceased employing individuals under the applicable NBCWA, with no reasonable expectation that such operations will start up again; and
- the employer and any of its successors and assigns and any related division,

subsidiary or parent corporation (regardless of whether they have signed a wage agreement) must meet the test for being “financially unable to provide the retiree health benefits.” *See* Ex. 5 at 8.

33. To determine if the foregoing test is met, the Fund’s staff and the Trustees consider all of the relevant facts and circumstances, including whether the employer has ceased all business activity and is financially unable to provide the benefits to its eligible retirees. The initial report regarding eligibility is contained in a Business Status Investigation conducted by the Funds' field auditors.
34. Under Article IX(1) of the 1993 Plan’s Trust Document, the level of benefits to be received by eligible retired miners and their families from the 1993 Plan is determined by the Trustees “based on what it is estimated the [1993 Plan] can provide without undue depletion or excessive accumulation,” within additional constraints spelled out in the 1993 Plan. *Id.* at 6-7.
35. The 1993 Plan thus only provides benefits that can be supported by its assets and income. The health benefits as currently provided from the 1993 Plan are significantly below the level of benefits mandated by the Coal Act. For example, the Coal Act Plans require co-pays of \$5 for physician visits, have no deductible, and an annual out of pocket maximum of \$100 per family, while the 1993 Benefit Plan requires a co-pay of \$20 for physician visits and an annual out of pocket maximum of \$400 per family for physician office visits and an annual out of pocket maximum of \$1,600 per family for hospitalizations. For drug benefits, the Coal Act plans require a \$5 co-pay for a 30-day supply at a participating area pharmacy, with an annual out-of-pocket maximum of \$50 per family, whereas

the 1993 Benefit Plan requires a \$15 co-pay, with an annual out-of-pocket maximum of \$600 per family.

36. The 1993 Benefit Plan relies on two main sources of funding. It is my understanding that beneficiaries receiving benefits from the 1993 Plan as of December 31, 2006 are funded by annual transfers mandated by statute in the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1232, as amended by the Tax Relief and Health Care Act of 2006. Benefits for the remaining beneficiaries are paid for out of the collectively bargained contributions from signatory employers.
37. To the extent that funding is not available to the 1993 Benefit Plan, the Trustees would be required to lower the benefits to meet the amount of funding available. At present, there are approximately 11,000 beneficiaries receiving health benefits from the 1993 Plan, which includes retired miners and their family members. Approximately 8,000 of the 1993 Benefit Plan's enrolled population were receiving their health benefits from the 1993 Plan as of December 31, 2006. There are approximately 3,000 beneficiaries who enrolled after that date. For these 3,000 beneficiaries, the 1993 Benefit Plan depends solely on contributing employers such as the Debtors.
38. The Debtors represent one of the largest employer groups contributing to the 1993 Plan. In 2012, the Debtors contributed approximately \$3.7 million to the 1993 Benefit Plan, out of total contributions that year of \$22.6 million. Through the remaining term of the 2011 NBCWA, the Debtors would be expected to contribute an estimated \$12.8 million to the 1993 Plan.

39. If the Debtors were to cease contributing to the 1993 Plan, this would mean a loss of approximately 16.2% of the 1993 Plan's contribution revenue, which is the only means of funding the benefits for approximately 3,000 beneficiaries receiving health benefits from the 1993 Plan. This loss of contribution income would almost certainly require the Trustees of the 1993 Plan to reduce benefits for these retirees and their families significantly.
40. The Funds' independent consulting actuaries most recent annual update of projections of net assets available to pay benefits for the 1993 Plan, produced in August of 2012, set out four possible scenarios with alternative combinations of assumed future contribution income and future beneficiary population levels for that portion of the Plan's population enrolled after December 31, 2006. Under three of the four scenarios, a loss of the expected contributions from the Debtors under the current agreements (approximately \$12.8 million, or 16.2% of all employer contributions) would result in insufficient asset levels well before the end of the term of the current NBCWA that would force the Trustees to impose a significant reduction in benefits for the population of beneficiaries currently covered by the Plan and enrolled after December 31, 2006.
41. Under the fourth "optimistic" scenario, the actuaries projected sufficient net assets to sustain current benefits despite the loss of Debtors' contributions, but we know now that the assumptions underlying this optimistic scenario are contrary to actual experience observed during the months since the projections were made. The post-2006 enrolled beneficiary population is already greater by 250 people than the population projected in the optimistic scenario, and that

scenario includes an assumption that contributions will decline at a rate of 2% per year, an assumption contrary to observed production and contribution trends in the industry that make an assumption of a 5% decline more reasonable. Neither the 2% nor the 5% decline assumptions, however, takes into account the possibility that major signatory employers such as the Debtors' signatory subsidiaries will cease contributing to the 1993 Plan during the term of the 2011 NBCWA.

42. If the Debtors not only cease contributions to the 1993 Plan, but also cease to provide health benefits to their retired employees and their families (approximately 10,400 individuals) – whether due to the termination of benefits or the underfunding of an alternative vehicle intended to pay for such benefits – the negative impact on the 1993 Plan could be so great that benefit levels would be reduced to a small fraction of their present level. The Debtors' retirees might apply to be enrolled in the 1993 Plan for their benefits. If the signatory Debtors are determined by the Trustees to be “no longer in business” and their retirees are determined to be eligible for benefits from the 1993 Plan, such a determination could cause the pool of 1993 Plan beneficiaries who were enrolled after December 31, 2006 to more than quadruple at the same time the only funds available to provide benefits for such beneficiary group – employer contributions – are drastically cut. Benefits available from the 1993 Plan similarly would require drastic reduction.
43. The Funds' staff has estimated the effect upon the health care benefits of the 1993 Plan beneficiaries enrolled after December 31, 2006 if the Debtors were to

cease making contributions and if the beneficiaries covered by the Debtors' single employer health care plans were enrolled in the 1993 Plan. These estimates are based upon the per-beneficiary expense levels derived from the report of the Funds' health care actuaries as of August 2012, and the assumptions for contribution and population levels were drawn from the optimistic scenario provided by the actuaries at that time and described above. The estimates are therefore conservative. If approximately 10,400 beneficiaries from the Debtors' plans were enrolled in the 1993 Plan, the Funds estimate that this would force a reduction in benefits from present levels of approximately 80%. If Peabody Energy Company is required to assume the obligation to provide benefits to those beneficiaries retired from some of the Debtors who are covered in an assumption agreement between that company and the Debtors, then a smaller number, approximately 6,200 would seek coverage from the 1993 Plan. The Funds' staff estimates that the effect of enrollment of this number of new beneficiaries would force a reduction of benefits of approximately 72%.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: April 12, 2013


Dale Stover

EXHIBIT 1

UNITED MINE WORKERS OF AMERICA 1974 PENSION PLAN
EFFECTIVE DECEMBER 6, 1974

ARTICLE I - INTRODUCTION

Pursuant to Article XX of the National Bituminous Coal Wage Agreement of 1974, the United Mine Workers of America 1974 Pension Plan (hereinafter sometimes referred to as the “1974 Pension Plan” or the “Plan”) provides pension benefits as hereinafter set forth. The Plan is effective as of December 6, 1974 (the “effective date”) and, as amended March 27, 1978, April 29, 1980, June 7, 1981, October 1, 1984, February 1, 1988, February 1, 1991, January 16, 1992, December 16, 1993, August 16, 1996, January 1, 1998, January 1, 2002, June 27, 2003, December 18, 2003, January 1, 2007, June 30, 2007, and July 1, 2011, the provisions of the Plan are set forth below. The 1974 Pension Plan and Trust is a continuation of the benefit program established under the UMWA Welfare and Retirement Fund of 1950, and effective June 30, 2007, is the surviving plan following the merger of the Plan and the United Mine Workers of America 1950 Pension Plan (hereinafter referred to as the “1950 Pension Plan.”)

Except to the extent otherwise required by the Employee Retirement Income Security Act of 1974 (“ERISA”) or other applicable law, governmental rule or regulation, and except to the extent that the 1974 Pension Plan or 1974 Pension Trust specifically provides otherwise, or as required by the context, all amendments to the 1974 Pension Plan effective as of July 1, 2011, pursuant to the authority contained in Article XII herein, shall be given only prospective application commencing on July 1, 2011, and shall have no retroactive application whatsoever. The amendments effective as of July 1, 2011, shall not be deemed to be an approval or disapproval by the parties to any action or failure to act by any Trustee or Trustees for any period prior to July 1, 2011. The terms and provisions of the 1974 Pension Plan in effect as of June 30, 2011, shall continue in effect and shall be applicable only to circumstances or events which occurred prior to July 1, 2011, and which are not governed by the amendments adopted as of July 1, 2011.

Section A Definitions

(1) “Wage Agreement” means the National Bituminous Coal Wage Agreement of 1974, as amended from time to time and any successor thereto, including, but not limited to, the National Bituminous Coal Wage Agreement of 2011. Any reference in this Plan to the Wage Agreement or to the bituminous coal wage agreement then in effect shall also refer (a) to the Sub-bituminous and Lignite Agreement and the National Coal Mine Construction Agreement with respect to any period for which such agreements provide that pension benefits shall be made available pursuant to this Plan or a predecessor plan established under the bituminous coal wage agreement, and (b) with respect to any period prior to the 1950 Bituminous Coal Wage Agreement, to any collective bargaining contract between the United

Mine Workers of America and any employer in the bituminous coal industry, and (c) solely for the purposes of determining who is required to make contributions to, and receive benefits under, the 1974 Pension Trust, any other collective bargaining contract entered into between the United Mine Workers of America and any Employer in the bituminous coal industry, which contract provides that contributions shall be made to or benefit payments made from this Plan or the 1950 Pension Plan.

(2) “Employer” means an employer who is signatory to the Wage Agreement, or, with respect to prior periods, was signatory to the bituminous coal wage agreement then in effect.

(3) “Construction Employer” means an Employer that is signatory to the National Coal Mine Construction Agreement of 1984, as amended from time to time and any successor thereto; or is signatory to any other collective bargaining contract with the United Mine Workers of America which provides that contributions shall be made to the 1974 Pension Trust or the United Mine Workers of America 1985 Construction Workers Pension Trust for construction work related to the development, expansion or alteration of coal mines, provided that substantially all the employees, with respect to whom the employer has an obligation to contribute, perform construction work related to the development, expansion or alteration of coal mines, including the erection of tipples and preparation plants and other facilities placed in, on or around the coal mines, sinking of shafts, slopes, drifts or tunnels and all other such coal-related work that is performed under a Wage Agreement. In the case of a Construction Employer which is a single trade or business and which is also signatory to a Wage Agreement other than a Wage Agreement described in the preceding sentence, the Construction Employer shall be treated as an Employer other than a Construction Employer with respect to its employees or operations for which it has an obligation to contribute to the Plan pursuant to such Wage Agreement.

(4) “1950 Participant” means any person who qualifies for a pension benefit pursuant to the eligibility rules set forth in Article VIII.

(5) “1974 Participant” means any person who is employed in a classified job for an Employer after the effective date, other than a New Inexperienced Miner hired on or after January 1, 2012 or an Electing Miner (except as otherwise specifically provided for in Article II. C and D herein), and any person entitled to receive pension benefits under the Plan; provided, however, that any person who is not employed in a classified job for an Employer on the effective date shall not become a participant until such person completes at least 1,000 hours (or 800 hours worked on the weekend/holiday crew of a signatory Employer as provided in Appendix C of the 2011 NBCWA) of Credited Service within a 12-month period after the effective date, or unless such person is subject to the provisions of Article II.F.(3) of the Plan.

(6) “Participant” means a 1950 Participant or a 1974 Participant.

(7) “1950 Pensioner” means any person who is receiving a pension pursuant to Article VIII of this Plan.

(8) “1974 Pensioner” means any person who is receiving a pension pursuant to Article II of this Plan.

(9) “Pensioner” means a 1950 Pensioner or 1974 Pensioner.

(10) “1950 Pension Trust” means the trust established pursuant to the National Bituminous Coal Wage Agreement of 1974 to fund the 1950 Pension Plan.

(11) “1974 Pension Trust” means the trust established pursuant to the National Bituminous Coal Wage Agreement of 1974 to fund this Plan.

(12) “Trustees” means the Trustees of the 1974 Pension Trust, who shall be named fiduciaries pursuant to Section 402 of ERISA and the Plan Administrator, as that term is defined in that Act; provided, however, that the 1974 Pension Trust may be amended to designate other or additional named fiduciaries under said Trust and the Plan.

(13) For a 1974 Participant, “Credited Service” means signatory and nonsignatory service determined pursuant to Article IV. For a 1950 Participant, “Credited Service” means signatory and nonsignatory service determined pursuant to Article X.

(14) “Hour of Service” shall mean, with respect to a 1974 Participant, each hour for which the 1974 Participant is directly or indirectly paid or entitled to be paid by the Employer (a) for the performance of duties or (b) on account of a period of time during which no duties are performed due to vacation, holiday, illness, sickness and accident, incapacity, layoff, bereavement, jury duty, military duty or leave of absence; or (c) time spent performing contractual obligations such as safety inspections and mine committee work, even though such time off is not paid for by the Employer, provided that:

(1) except for hours of service credited on account of a period during which a 1974 Participant is eligible to receive benefits under Article IV(B)(3), no more than 501 hours of service shall be credited to a 1974 Participant on account of a single continuous period during which the 1974 Participant performed no duties;

(2) no credit shall be given for payments made or due under a plan maintained solely for the purpose of complying with the applicable worker’s compensation or unemployment compensation or disability insurance laws or payments which solely reimburse a 1974 Participant for medically related expenses incurred by the 1974 Participant; and

(3) hours of service shall be credited for back pay for the period for which such back pay was awarded, irrespective of mitigation of damages, either awarded or agreed to by the Employer to the extent such back pay represents payment for hours which are required to be taken into account. However, no hours of service shall be credited for back pay if such hours were previously credited. The determination of hours of service for reasons other than the performance of duties shall be made in accordance with the applicable rules of the regulations prescribed by the Secretary of Labor under 29 C.F.R. Part 2530.200b-2(b).

(15) “UMWA” or “Union” shall mean the United Mine Workers of America.

(16) “Hours Worked” shall mean (a) each hour for which an employee who is a 1974 Participant is paid, or entitled to payment, for the performance of duties for the Employer during the calendar year, and (b) hours for which back pay, irrespective of mitigation of damages, is awarded or agreed to by an Employer, to the extent that such award or agreement is intended to compensate an Employee for periods which the Employee would have been engaged in a performance of duties for the Employer. Time spent performing contractual obligations such as safety inspections and mine committee work and periods of time when the 1974 Participant is eligible to receive sickness and accident benefits shall be included as hours worked.

(17) “Construction Industry Service” means, with respect to a 1974 Participant,

(a) all periods of service after June 20, 1985 with a Construction Employer that involves work related to the development, expansion or alteration of coal mines; and

(b) all periods of signatory and nonsignatory service before July 1, 1985, if the 1974 Participant’s last such service before July 1, 1985 was for a Construction Employer.

(18) “Electing Miner” means a 1974 Participant who has irrevocably chosen to opt out of the 1974 Pension Plan pursuant to the provisions of Article XXB(d)7 of the 2011 NBCWA.

(19) “New Inexperienced Miner hired on or after January 1, 2012” refers to a miner described in Article XX(3A) of the National Bituminous Coal Wage Agreement of 2011.

(20) “Supplemental Pension Contributions” shall mean the contributions to the United Mine Workers of America Cash Deferred Savings Plan of 1988 as described in Article XXB (d) of the 2011 NBCWA. “Years of Supplemental Pension Contributions” shall mean the

number of years an Electing Miner or a New Inexperienced Miner hired on or after January 1, 2012 has received Supplemental Pension Contributions to the United Mine Workers of America Cash Deferred Savings Plan of 1988. "Supplemental Pension Contribution Hours" shall mean the number of Supplemental Pension Contribution hours received by an Electing Miner or a New Inexperienced Miner hired on or after January 1, 2012 for the United Mine Workers of America Cash Deferred Savings Plan of 1988.

B. When Retirement Occurs

For the purposes of this Plan, in the case of any Participant, retirement shall be considered to occur on the last day of credited service, within the meaning of Article IV or Article X, whichever is applicable, provided that on such day he was eligible for an immediate or deferred pension under this Plan or under the 1950 Pension Plan.

C. Attainment of Age

For the purposes of this Plan, a Participant shall be deemed to have attained an age as of 12:01 A.M. on the respective anniversary date of the Participant's birth.

ARTICLE II – ELIGIBILITY OF 1974 PENSIONERS

A. Age 55 Retirement

Any 1974 Participant who (a) has at least 10 years of signatory service or at least twenty years of credited service, including the required amount of signatory service as set forth in Article IV(C)(6), and (b) has attained the age of 55 years (but not the age of 62) prior to retirement shall be eligible to retire on or after July 1, 2011, and shall upon his retirement (hereinafter "Age 55 Retirement") be eligible for a pension.

B. Normal Retirement

(1) Any 1974 Participant shall be eligible to retire on or after July 1, 2011, and shall upon his retirement (hereinafter "Normal Retirement") be eligible for a pension, provided such 1974 Participant has attained the normal retirement date which shall be the earlier of --

(a) a 1974 Participant's attainment of age 62 years and completion of at least 10 years of signatory service or at least 20 years of credited service, including the required amount of signatory service as set forth in Article IV(C)(6), or

(b) the later of --

- (i) the time a 1974 Participant attains age 65, or
- (ii) the 5th anniversary of the time the 1974 Participant became employed in signatory service.

(2) In determining the time the 1974 Participant became employed in signatory service (for purposes of Article II(B)(1)(b)(ii)), any employment of a 1974 Participant in signatory service who is not entitled to a pension under Article II (A) or (E) (Age 55 Retirement or Deferred Vested Retirement) shall be disregarded if it precedes a period of consecutive one-year breaks in signatory service and the number of consecutive one-year breaks in signatory service equals or exceeds the greater of

- (a) five, or
- (b) the aggregate number of years of signatory service before such breaks.

In addition to the foregoing, any employment prior to a period of consecutive one-year breaks in signatory service shall be disregarded unless the 1974 Participant completes 1,000 hours (or 800 hours worked on the weekend/holiday crew of a signatory Employer as provided in Appendix C of the 2011 NBCWA) of signatory service within a 12-month period after the breaks in signatory service. Such aggregate number of years of signatory service before any period of consecutive one-year breaks in signatory service shall be deemed not to include any years of signatory service not required to be taken into account under this subparagraph by reason of any prior break in signatory service. For purposes of Article II(B)(1)(b)(ii), a year of signatory service shall be calculated on the basis of a calendar year and in the manner specified in Article IV; a break in signatory service shall be defined in accordance with the terms of Article II(G)(3); and nonclassified signatory service shall be disregarded unless it immediately precedes or follows classified signatory service with the same Employer.

C. Disability Retirement

A 1974 Participant who (a) has at least 10 years of signatory service prior to retirement, and (b) becomes totally disabled as a result of a mine accident occurring on or after July 1, 2011, shall, upon retirement (hereinafter “Disability Retirement”), be eligible for a pension while so disabled. A 1974 Participant shall be considered to be totally disabled only if by reason of such accident such 1974 Participant is subsequently determined to be eligible for Social Security Disability Insurance Benefits under Title II of the Social Security Act or its successor.

Effective January 1, 2012, (i) a New Inexperienced Miner first hired on or after January 1, 2012 who becomes permanently and totally disabled as a result of mine accident occurring on or after January 1, 2012 and has received Supplemental Pension Contributions for at least 10 years, and (ii) an Electing Miner who becomes permanently and totally disabled as a result of a mine accident occurring on or after his opt-out date and has received 1974 Pension Plan credit hours and Supplemental Pension Contribution Hours which, when combined, total at least 10 years, are eligible upon termination of employment for a Disability Retirement pension while so disabled. A New Inexperienced Miner first hired on or after January 1, 2012 and an Electing Miner shall be considered totally disabled only if by reason of such accident such New Inexperienced Miner or Electing Miner is subsequently determined to be eligible for Social Security Disability Insurance Benefits under Title II of the Social Security Act or its successor.

When a 1974 Participant, New Inexperienced Miner first hired on or after January 1, 2012 or Electing Miner who has been receiving a disability pension under this Section C recovers sufficiently to become ineligible for Social Security disability benefits or is disqualified because of earnings, the Trustees shall implement procedures to determine the 1974 Participant's, such New Inexperienced Miner's or Electing Miner's ability to perform classified work in the industry. The continuance of a disability pension shall be based on medical evidence that supports the 1974 Participant's, such New Inexperienced Miner's or Electing Miner's inability to be employed in classified work in the industry.

If such 1974 Participant, New Inexperienced Miner first hired on or after January 1, 2012 or Electing Miner is medically certified as able to perform classified work in the industry, he will no longer be eligible for a disability pension.

D. Minimum Disability Retirement

Any 1974 Participant who (a) has less than 10 years of signatory service prior to retirement and (b) becomes totally disabled as a result of a mine accident occurring on or after July 1, 2011, shall, upon retirement (hereinafter "Minimum Disability Retirement") be eligible for a pension while so disabled. A 1974 Participant shall be considered to be totally disabled only if by reason of such accident such 1974 Participant is subsequently determined to be eligible for Social Security Disability Insurance Benefits under Title II of the Social Security Act or its successor.

Effective January 1, 2012, (i) a New Inexperienced Miner first hired on or after January 1, 2012 who becomes permanently and totally disabled as a result of mine accident occurring on or after January 1, 2012 and has received Supplemental Pension Contributions for less than 10 years, and (ii) an Electing Miner who becomes permanently and totally disabled as a result of a mine accident occurring on or after his opt-out date and has received 1974 Pension Plan credit hours and Supplemental Pension Contribution Hours which, when combined, total less than 10 years, are eligible upon termination of employment for a Minimum Disability Retirement pension while

so disabled. A New Inexperienced Miner first hired on or after January 1, 2012 and an Electing Miner shall be considered totally disabled only if by reason of such accident such New Inexperienced Miner or Electing Miner is subsequently determined to be eligible for Social Security Disability Insurance Benefits under Title II of the Social Security Act or its successor.

When a 1974 Participant, New Inexperienced Miner first hired on or after January 1, 2012 or Electing Miner who has been receiving a disability pension under this Section D recovers sufficiently to become ineligible for Social Security disability benefits or is disqualified because of earnings, the Trustees shall implement procedures to determine the 1974 Participant's, such New Inexperienced Miner's or the Electing Miner's ability to perform classified work in the industry. The continuance of a disability pension shall be based on medical evidence that supports the 1974 Participant's, such New Inexperienced Miner's or Electing Miner's inability to be employed in classified work in the industry.

If such 1974 Participant, New Inexperienced Miner or Electing Miner is medically certified as able to perform classified work in the industry, such 1974 Participant, New Inexperienced Miner or Electing Miner will no longer be eligible for a disability pension.

E. Deferred Vested and Special Retirement

(1) Any 1974 Participant who ceases working in a classified job for an Employer for any reason, except as provided in (2), (3), or (4) below, and who is not eligible to receive a pension under any other provision of this Article II, shall be eligible for a pension (hereinafter "Deferred Vested Pension"), upon attaining age 62, or at the election of the 1974 Participant, such 1974 Participant shall be eligible for a reduced pension beginning at any time after attaining age 55, provided

(a) the 1974 Participant's last day of Credited Service is on or after July 1, 2011, but prior to attainment of age 55;

(b) the 1974 Participant has

(i) at least 10 years of signatory service, or for a 1974 Participant with one hour of service on or after the date set by law for a five-year vesting schedule, at least 5 years of signatory service, or

(ii) at least 20 years of Credited Service as set forth in Article IV(C)(6).

(2) Any 1974 Participant who ceases working in a classified job for an Employer, who is not eligible to receive a pension under any other provision of this Article II,

shall be eligible for a pension (hereinafter “Deferred Vested Pension-Enhanced 1996”) upon attaining age 62, or at the election of the 1974 Participant, such 1974 Participant shall be eligible for a reduced pension beginning at any time after attaining age 55, calculated pursuant to Article III A(5)(b), provided:

- (a) the 1974 Participant’s last day of Credited Service is on or after July 1, 2011, but prior to attainment of age 55;
- (b) the 1974 Participant had 20 years of signatory service on the date last worked;
- (c) the 1974 Participant had been laid off and had not refused recall to the mine from which the 1974 Participant was laid off; or
- (d) he had been terminated under Article III, Section (j) of the Wage Agreement (or if the 1974 Participant had not been terminated, there had been a deterioration in physical condition which prevented the 1974 Participant from performing the 1974 Participant’s regular work as determined by a panel of three physicians, if the degree of physical deterioration is disputed by the Trustees) and was not employed in the coal industry thereafter; and
- (e) the 1974 Participant’s pension benefits are not in pay status on or before August 16, 1996.

Within a reasonable period of time after such 1974 Participant’s employment has ceased, an appropriate written notice of eligibility and other relevant data will be provided.

(3) Any 1974 Participant who, on or after July 1, 2011, ceases working in a classified job for an Employer and who is not eligible to receive a pension under any other provision of this Article II shall be eligible for a pension (hereinafter “Special Permanent Layoff Pension”), calculated pursuant to Article III A(5)(b), using the 1974 Participant’s actual Credited Service and an assumed age of 55, provided:

- (a) the 1974 Participant’s last day of Credited Service is on or after July 1, 2011, but prior to attainment of age 55;
- (b) the 1974 Participant had 20 years of signatory service as of his last day of Credited Service;
- (c) (i) the 1974 Participant was permanently laid off under circumstances in which his Employer has permanently closed the mine, or

(ii) the 1974 Participant was permanently laid off, meaning that he was on layoff status for at least 180 days, and had not refused a recall to the mine from which he was laid off;

In the case of a layoff described in (c)(i) above, the pension will be effective on the first day of the first month following both the layoff and the filing of a pension application. In the case of a layoff described in (c)(ii) above, the pension will be effective on the first day of the first month following both a period of 180 days after the layoff and the filing of a pension application.

Notwithstanding the foregoing, in the case of a 1974 Participant who earned no hours of credited signatory service during the period beginning November 1, 1997 and ending June 17, 1998, and who subsequently returned to active employment on or after June 18, 1998, in addition to meeting the requirements stated above, prior to satisfying Paragraph (4)(c), above, such 1974 Participant must either:

(d) have earned at least 250 hours of credited signatory service, or

(e) have returned to active employment as the result of a recall determined by the Trustees to have been to fill a bona fide job opening, and not for the purpose of entitling the 1974 Participant to this Special Permanent Layoff Pension benefit.

(4) Any 1974 Participant who, on or after January 1, 2003 ceases working in a classified job for an Employer shall be eligible for a pension (hereinafter "30-and-Out Pension"), calculated pursuant to Article III A(5)(b), but with no actuarial reduction on account of age, provided:

(a) the 1974 Participant's last day of Credited Service is on or after January 1, 2003; and

(b) the 1974 Participant had at least 30 years of signatory service on such last day of Credited service;

(c) if, because of a layoff, he was not actively at work as of December 31, 2001:

(i) he earned at least 250 hours of credited signatory service following his return to work, or

(ii) he returned to active employment as the result of a recall determined by the Trustees to have been to fill a bona fide job opening, and not for the purpose of entitling the 1974 Participant to this 30-and-Out Pension benefit.

F. Nonduplication

(1) A 1974 Participant shall be entitled to receive a pension under only one of the foregoing paragraphs of this Article II with respect to any retirement.

(2) Except as provided in paragraph (F)(3) of this Article II, any person whose retirement occurs on or before December 31, 1975, shall not be entitled to receive pension benefits under this Article, but shall be entitled only to receive such benefits as may be provided under Article VIII.

(3) Any person who (a) retires on or before December 31, 1975, (b) at the time of retirement is entitled to or, upon attaining age 55 would be entitled to, a pension benefit under the 1950 Pension Plan, and (c) is again employed for at least 250 hours in a classified job for an Employer after December 31, 1975, shall upon subsequent retirement (or, if later, upon attaining age 55) be eligible for a pension only under this Article and not under Article VIII, in the amount hereinafter specified. The amount of pension for a 1974 Participant described in this paragraph shall be the sum of the amount of pension to which such 1974 Participant would be entitled upon attaining age 55 under the 1950 Pension Plan prior to its merger with this Plan if he had not been employed in a classified job for an Employer after December 31, 1975, plus the excess of (i) over (ii) where (i) is the pension to which such 1974 Participant would be entitled except for this paragraph under Article III(A)(2) based upon all years of Credited Service under this Plan prior to its merger with the 1950 Pension Plan and (ii) is the pension to which such 1974 Participant would be entitled under Article III(A)(2) based solely on his Credited Service prior to December 31, 1975.

G. Employment for Vesting Purposes

(1) For purposes of this Article II and except as set forth herein, all years of classified service by a 1974 Participant with Employers signatory to the bituminous coal wage agreement then in effect shall be used for purposes of any eligibility requirement of minimum signatory service under this Article. A year of service shall be calculated on the basis of a calendar year and in accordance with the terms of Article IV(A).

Notwithstanding the foregoing, a New Inexperienced Miner first hired on or after January 1, 2012 shall not receive any vesting, signatory or credited service under the 1974 Pension Plan except as provided in Paragraphs C and D of this Article II and Article III D.

Notwithstanding the foregoing and subject to the terms of Article XX B (d)7 of the 2011 NBCWA, an Electing Miner shall continue to receive only vesting credit after the date

of his election to opt out of the 1974 Pension Plan for purposes of eligibility for vesting into pension benefits under this Article II and Article III D and, after his election, shall receive no signatory or credited service under the 1974 Pension Plan.

(2) For purposes of this Article II, years of nonclassified signatory service in the coal industry by a 1974 Participant after May 28, 1946, for Employers signatory to the bituminous coal wage agreement then in effect shall be used for purposes of any eligibility requirement of minimum signatory service provided that:

(a) the nonclassified signatory service with an Employer immediately preceded or followed classified signatory service with the same Employer;

(b) credit for nonclassified service shall not be given for any calendar year in which the 1974 Participant completed less than 1,000 hours of such service, as defined under Article I(A)(15);

(c) all years of service before age 18 shall be disregarded;

(d) all years of service performed before January 1, 1971, shall be disregarded unless the 1974 Participant completed at least three years of employment after December 31, 1970;

Provided further that, if the employee has not earned a non-forfeitable right to a pension:

(e) all years of service prior to a break in service shall be disregarded unless the employee completes 1,000 hours (or 800 hours worked on the weekend/holiday crew of a signatory Employer as provided in Appendix C of the 2011 NBCWA) of service within a 12-month period after the break;

(f) all years of service prior to any period of consecutive one-year breaks in service shall be disregarded if the number of such consecutive one-year breaks equals or exceeds the greater of (i) five, or (ii) the aggregate number of years of service before such breaks shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service.

(3) For purposes of Article II(G)(2) and II(B)(2), an employee shall incur a break in service for any calendar year in which such Employee completes not more than 500 hours (or 400 hours worked on the weekend/holiday crew of a signatory Employer as provided in Appendix C of the 2011 NBCWA) of service; provided that, in the case of an Employee who is absent from work for any period --

- (a) by reason of the pregnancy of the Employee,
- (b) by reason of the birth of a child of the Employee,
- (c) by reason of the placement of a child with the Employee in connection with the adoption of such child by such Employee, or
- (d) for purposes of caring for such child for a period beginning immediately following such birth or placement, the Employee shall be considered to have completed the hours of service which otherwise would normally have been credited to him but for such absence, subject to the limitation set forth in Article I A(15)(l). The preceding sentence shall be applicable only in the year in which the Employee's absence from work begins, if the Employee would be prevented from incurring a one-year break in service in such year solely because of the application of the preceding sentence, or in any other case, in the immediately following year. No credit will be given to an Employee pursuant to this subparagraph unless the Employee furnishes to the Trustees such timely information as they may reasonably require to establish that the absence from work is for reasons referred to in (a), (b), (c), or (d) above, and the number of days for which there was such an absence.

(4) The provisions of this paragraph shall be interpreted and construed in accordance with the requirements of ERISA and the regulations issued thereunder.

(5) Service after June 30, 1985 with a Construction Employer shall be used for purposes of paragraph G(1), only if the United Mine Workers of America 1985 Construction Workers Pension Plan grants 1974 Participants credit for the same purposes under that plan for service with Employers, other than Construction Employers, except that a year of service shall be calculated on the basis of a calendar year and in accordance with the terms of Article IV.

H. Electing Miner

An Electing Miner shall accrue no additional signatory service after his opt-out date and his opt-out date shall be his last day of credited service. An Electing Miner shall continue to earn only vesting credit from the 1974 Pension Plan for purposes of eligibility for vesting into pension benefits from the 1974 Pension Plan. Upon the retirement of an Electing Miner, the retirement benefit per month per year of service shall be the amount of the retirement benefit per month per year of service as of the Electing Miner's opt-out date. In no event will earning additional vesting credit for pension benefits pursuant to this paragraph increase the pension benefit to be paid to an Electing Miner, except for any required early retirement adjustments based on the type of pension benefit. Notwithstanding the foregoing, the disability pension for an Electing Miner shall be based on the calculation of the number of combined years he has received 1974 Pension Plan credit hours and Supplemental Pension Contribution Hours.

An Electing Miner's opt-out date shall be the last day of the month in which the Electing Miner completed the Plan's opt-out application.

ARTICLE III – 1974 PENSIONERS - AMOUNT OF PENSION AND DEATH BENEFIT

A. Retirement On or After July 1, 2011

A pension granted to a 1974 Participant who retires on or after July 1, 2011, pursuant to Article II shall consist of a pension amount payable in monthly installments provided in accordance with the provisions of this Article III as set forth below. In no event, however, shall the annual retirement benefit payable to a 1974 Participant exceed the limitation of Section 415 of the Internal Revenue Code of 1986 and any regulations promulgated thereunder.

(1) Age 55 Retirement Pension

(a) A deferred pension, commencing after attainment of age 62, computed under the provisions of paragraph 2 below; or, at the election of the 1974 Participant, (b) an immediate pension, equal to the deferred pension to which the 1974 Participant could have been eligible under (a) above had the 1974 Participant so elected, reduced by 1/4 of one percent (1%) for each full month (3 percent (3%) per year) between the date on which pension benefits began and the date on which 1974 Participant attains age 62.

(2) Normal Retirement Pension

For retirements occurring during the 2011 Wage Agreement the amount of pension for Normal Retirement shall be determined as follows:

(a) for each year of credited non-signatory service as defined herein, \$28.00 per month;

(b) for each of the first 10 years of credited signatory service earned prior to February 1, 1989, \$54.50 per month;

(c) for each year of credited signatory service in excess of 10 years but not to exceed 20 years earned prior to February 1, 1989, \$55.00 per month;

(d) for each year of credited signatory service in excess of 20 years but not to exceed 30 years earned prior to February 1, 1989, \$55.50 per month;

(e) for each year of credited signatory service in excess of 30 years earned prior to February 1, 1989, \$56.00 per month.

(f) The retirement benefit for a year of credited signatory service earned from February 1, 1989 to January 31, 1990, is \$62.00 per month.

(g) The retirement benefit for each year of credited signatory service earned from February 1, 1990 to December 16, 1993, is \$66.50 per month.

(h) The retirement benefit for each year of credited signatory service earned from December 16, 1993 is \$69.50 per month.

Proportional credit shall be allowed for any fractional years of credited service pursuant to Article IV hereof. Periods of Construction Industry Service shall be taken into account solely to determine whether the amount specified in clause (a), (b), (c), (d), or (e) is to be used in determining the amount of pension that is earned for a given period of Credited Service. In any year for which two of clauses (a), (b), (c), (d), or (e) would apply, if a 1974 Participant has both Credited Service and Construction Industry Service, the amount determined under each clause shall be equal to the amount that would be determined if Construction Industry Service in that year were considered service under this Plan, multiplied by a fraction, the numerator of which is the 1974 Participant's hours of service under this Plan for that year and the denominator of which is the sum of such hours and the 1974 Participant's hours of Construction Service for that year.

(3) Disability Retirement Pension

Subject to (4) below for a 1974 Participant whose disabling accident occurs after July 1, 2011, the pension payment shall be computed under the provisions of paragraph (2) above. In the case of a 1974 Participant who has both Construction Industry Service and Credited Service, the amount of pension under this subparagraph (3) shall be based only on the 1974 Participant's years of Credited Service and shall be determined in the same manner as under Article III.A.(2).

The disability pension for a New Inexperienced Miner first hired on or after January 1, 2012 shall be based on the calculation of his Years of Supplemental Pension Contributions. The disability pension for an Electing Miner shall be based on the calculation of the number of combined years he has received 1974 Pension Plan credit hours and Supplemental Pension Contribution Hours.

(4) Minimum Disability Retirement Pension

The amount of pension for Minimum Disability Retirement shall be \$250 per month for disabilities occurring on or after July 1, 2011. In any case in which a 1974 Participant entitled to pension for Minimum Disability Retirement has both Credited Service and Construction Service, the amount of pension under this subparagraph (4) shall be equal to the amount otherwise payable under this subparagraph, multiplied by a fraction, the numerator of which is the number of years of Credited Service and the denominator of which is the sum of the number of years of Credited Service and the number of years of Construction Industry Service.

(5) Deferred Vested Pension

(a) The amount of a deferred vested pension (Article II E(1)) shall be a pension, commencing on or after attainment of age 62, computed under the provisions of Subsection A(2) of this Article III, or, at the 1974 Participant's election, between ages 55 and 62 with the pension payable reduced to its actuarial equivalent pursuant to Appendix A; provided, however, that in the case of any 1974 Participant with at least (20) years of credited service, such pension shall not be reduced to less than \$200.00 per month effective July 1, 2011.

(b) The amount of a deferred vested pension (Article II E(2)) shall be a pension, commencing on or after attainment of age 62, computed under the provisions of Subsection A(2) of this Article III, or, at the 1974 Participant's election, between ages 55 and 62 with the pension computed under the provisions of Subsection A(1) of this Article III.

B. Pension Amounts Based on Prior Plan Amendments

(1) Increases in pensions under Plan amendments effective December 16, 1993 and August 16, 1996 are not applicable to 1974 Participants whose employment was terminated prior to December 16, 1993, and who will become eligible for only a deferred vested pension (II E(1)). Increases in pensions under Plan amendments effective August 16, 1996 are not applicable to 1974 Participants whose employment was terminated on or after December 16, 1993, and whose pension benefits are in pay status on or before August 16, 1996.

(2) (a) Any 1974 Participant not described in clause (b) whose pension is in pay status as of October 31, 2011, shall be issued by November 1, 2011 a one-time single sum payment of \$580.

(b) Any 1974 Participant whose disability retirement pursuant to Article II C or D is in pay status as of October 31, 2011, shall be issued by November 1, 2011 a one-time single sum payment of \$455.

(c) Any Surviving Spouse whose benefit under Article VI is in pay status as of October 31, 2011 shall be issued by November 1, 2011 a one-time single sum payment of \$455.

(d) Any qualified surviving spouse whose benefit under Article VII is in pay status as of October 31, 2011 shall be issued by November 1, 2011 a one-time single sum payment of \$455.

(e) The one-time single sum payments provided for herein and under Article IX are not intended as an ongoing feature of this Plan, and the Plan shall have no obligation to provide payments of this type other than those expressly provided for above.

C. Application for Pension and Commencement, Suspension and Termination of Pensions

Payments of pensions shall be subject to the following:

(1) The first payment on any pension shall be made as soon as possible after an application for pension has been received and shall be for the month following the month in which the 1974 Participant retires (Article I B) and becomes eligible for a pension in accordance with Article II; provided, however, that in the case of a deferred pension pursuant to Article III(A)(1) or a deferred vested pension pursuant to Article III(A)(5) (other than a Special Permanent layoff Pension pursuant to Article II E(3)), such payment shall be for the later of (a) the month specified by the 1974 Participant in his application for pension if such month is subsequent to the month in which such 1974 Participant attains age 55, or (b) the month in which the application for pension is received, but not later than the month following the month in which such 1974 Participant attains age 62.

(2) The last payment shall be for the month in which the pensioner dies.

(3) Pension payments shall be payable on the first day of each month at the pensioner's last address of record.

(4) Pension payments shall be suspended for any month in which the pensioner is employed, subsequent to commencement of such payments, in the bituminous coal industry, in the same trade or craft (trade or craft shall mean the coal mining industry), and in the same geographic area covered by this Plan. The provisions of this paragraph shall be interpreted in accordance with any regulations issued pursuant to Sections 203(a)(3) and (B) of ERISA.

(5) Any 1974 Participant who continues to be employed by an Employer after retirement shall not be entitled to receive pension benefits under this Plan until such time as such

1974 Participant is no longer employed by an Employer; provided, however, that benefit payments shall commence not later than April 1 of the calendar year following the calendar year in which the 1974 Participant attains age 70-1/2.

D. Death Benefit

(1) Except as otherwise provided herein, a death benefit shall be paid to the named beneficiary of (a) any 1974 Pensioner (other than a 1974 Pensioner receiving a deferred vested pension based on less than 20 years of credited service or a Pensioner receiving a pension based in whole or in part on years of service credited under the terms of Article II G), (b) a New Inexperienced Miner first hired on or after January 1, 2012, who is no longer in active employment in the bituminous coal industry and who has 20 years of service as defined in Article XX(9)(c)(d) and (e) of the 2011 NBCWA, and (c) an Electing Miner who is no longer in active employment in the bituminous coal industry and who has 20 years of service as defined in Article XX(9)(c)(d) and (e) of the 2011 NBCWA, whose death occurs on or after July 1, 2011, and who meet the requirements of paragraph (2) of this section. The death benefit shall be equal to \$8,500 if the named beneficiary of such 1974 Pensioner, New Inexperienced Miner or Electing Miner described in (a), (b), and (c) above is the surviving spouse or dependent. In any other case, the death benefit shall be equal to \$7,000. Effective July 1, 2013 the death benefit shall be equal to \$10,000 if the named beneficiary of such 1974 Pensioner, New Inexperienced Miner or Electing Miner described in (a), (b), and (c) above is the surviving spouse or dependent. In any other case, the death benefit shall be equal to \$8,500. The death benefit provided under this section shall not be payable if any other death or life insurance benefit is paid on behalf of such 1974 Pensioner, New Inexperienced Miner or Electing Miner described in (a), (b) and (c) above from any other Plan maintained by an Employer. Notwithstanding any other provision herein, this Plan amendment providing for increases in the death benefit shall be effective July 1, 2013.

(2) A 1974 Pensioner, a New Inexperienced Miner first hired on or after January 1, 2012, and an Electing Miner meets the requirements of this paragraph only if he is not entitled to death benefit coverage from a plan maintained by his former Employer and he meets one of the following conditions:

(i) the 1974 Pensioner is a participant in the 1992 UMWA Benefit Plan;

(ii) the 1974 Pensioner, New Inexperienced Miner first hired on or after January 1, 2012, or Electing Miner is a participant in the UMWA 1993 Benefit Trust;

(iii) the 1974 Pensioner is a participant in an individual employer plan maintained pursuant to section 9711 of the Internal Revenue Code and whose last signatory employer ceased producing and/or processing coal prior to December 16, 1993;

(iv) the 1974 Pensioner was entitled to death benefit coverage from this Plan on June 30, 2011 (or would have been had he been retired or eligible to retire on that date); or

(v) the last signatory employer (the Employer for whom the 1974 Pensioner, New Inexperienced Miner first hired on or after January 1, 2012, or Electing Miner last worked in signatory classified employment) is a current contributor to this Plan and is signatory either to the National Bituminous Coal Wage Agreement of 2011 or to an agreement (including prior agreements, where applicable) requiring a contribution obligation with respect to this Plan that is identical to the applicable contribution obligation set forth in the National Bituminous Coal Wage Agreement of 2011 (or prior National Bituminous Coal Wage Agreements, where applicable).

(3) The death benefit provided under this section shall not be payable with respect to any 1974 Pensioner who was an eligible beneficiary of the United Mine Workers of America Combined Benefit Fund described in section 9703(f) of the Internal Revenue Code of 1986, as amended by the Coal Industry Retiree Health Benefit Act of 1992, whose death occurs on or after February 1, 1993.

(4) For purposes of this section, the term “dependent” shall mean any person described in (a) through (e), below, as of the date of death of the 1974 Pensioner, New Inexperienced Miner first hired on or after January 1, 2012, or Electing Miner. A person shall be considered to have been a dependent of a 1974 Pensioner, New Inexperienced Miner first hired on or after January 1, 2012, or Electing Miner if such 1974 Pensioner, New Inexperienced Miner or his spouse, provided over one-half of the support to such person on a regular basis.

(i) a spouse who is living with or being supported by the 1974 Pensioner, New Inexperienced Miner first hired on or after January 1, 2012, or Electing Miner;

(ii) an unmarried dependent child of the 1974 Pensioner, New Inexperienced Miner first hired on or after January 1, 2012, or Electing Miner, who has not attained age 22;

(iii) a parent of a 1974 Pensioner, New Inexperienced Miner first hired on or after January 1, 2012, or Electing Miner or of such 1974 Pensioner’s, New Inexperienced Miner’s or Electing Miner’s spouse, if the parent has been dependent upon and living in the same

household (residence) as the 1974 Pensioner, New Inexperienced Miner first hired on or after January 1, 2012, or Electing Miner, for a continuous period of at least one year;

(iv) an unmarried dependent grandchild of a 1974 Pensioner, New Inexperienced Miner first hired on or after January 1, 2012, or Electing Miner or of such 1974 Pensioner's, New Inexperienced Miner's or Electing Miner's spouse, who has not attained age 22, and is living in the same household (residence) with such 1974 Pensioner, New Inexperienced Miner or Electing Miner; and

(v) a dependent child (of any age) of a 1974 Pensioner, New Inexperienced Miner first hired on or after January 1, 2012, or Electing Miner or of such 1974 Pensioner's, New Inexperienced Miner's or Electing Miner's spouse, who is mentally retarded or who becomes disabled prior to attaining age 22, and such disability is continuous, and who is either living in the same household with such 1974 Pensioner, New Inexperienced Miner or Electing Miner, or is confined to an institution for care or treatment.

ARTICLE IV – 1974 PENSIONERS - CREDITED SERVICE

A. Nonsignatory Service

Subject to the limitations in paragraph C of this Article IV, credited service is a period during which the 1974 Participant meets the requirements of subparagraphs (1), (2), (3) or (4) below. Any credited service shall be nonsignatory service unless it qualifies as signatory service pursuant to Article IV(B) hereof.

(1) A 1974 Participant shall receive credit for a year of service for any calendar year in which he worked, subsequent to December 31, 1936, as an employee in a job classified in the then existing bituminous coal wage agreement for an employer in the coal industry for at least 1,000 hours of service, with credit given for the next lowest 1/4 year in the event any employee works less than 1,000 hours of service as follows:

750-999 hours,	3/4 year
500-749 hours,	1/2 year
250-499 hours,	1/4 year
249 hours or less,	0

With respect to any period of such service for which records of hours of service are not available or it is not feasible in light of the administrative and cost difficulties involved to compile a record

of service, an applicant shall be deemed to have worked a thousand hours of service if the employee received wages in an amount equal to the product of (i) the lesser of 125 days or 1/2 the average number of days the bituminous mines in the United States were active, multiplied by (ii) the daily basic rate paid in the bituminous coal industry for that year; provided that for any year for which information is not available as to the average number of days the mines were active, the available data for the nearest year next preceding shall be used; provided further that if an applicant earned less than the minimum amount required for a year of service, credit for service shall be given to the next lowest 1/4 year in the manner indicated with respect to hours of service.

(2) A 1974 Participant shall receive credit for a year of service for any calendar year in which the 1974 Participant worked, prior to January 1, 1937, as an employee in a job classified in the then existing coal wage agreement for an Employer in the bituminous coal industry, in a minimum of at least six (6) months during a calendar year, provided that if the applicant worked in less than six (6) months, credit for service shall be awarded to the next lowest one-fourth (1/4) year, based upon service in six (6) monthly equaling a year's service.

(3) A 1974 Participant shall receive credit for a year of service for any calendar year in which the 1974 Participant received state worker's compensation payments pursuant to an award as a result of an occupational disease or injury sustained in the mine while regularly employed in a classified job under the bituminous coal wage agreement then in effect; provided, in the case of occupational disease, the 1974 Participant had been so employed by an Employer signatory to the Wage Agreement then in effect for at least ten (10) years after May 28, 1946. Credit shall be given up to a maximum of four (4) years service credit from date of injury, or from the date of last employment in case of occupational disease, provided the 1974 Participant did not work regularly (earned at least \$200 per month) during the compensable period. Benefits awarded pursuant to the Federal Coal Mine Health and Safety Act of 1969 shall be deemed "state worker's compensation payments" within the meaning of this section, only if the miner was last regularly employed in the coal industry after the enactment date of the Act, December 30, 1969, in a classified job under the bituminous coal wage agreement then in effect, and had been so employed by an operator signatory to the agreement for at least ten (10) years after May 28, 1946. In no event shall any service be credited under this paragraph (3) with respect to periods after December 6, 1974.

(4) Effective December 12, 1994, a 1974 Participant shall receive service credit for any period of service in the military service of the United States, to the extent required by section 414(u) of the Internal Revenue Code.

B. Signatory Service

Credited signatory service is:

(1) (a) For any calendar year prior to January 1, 1978, service as defined in paragraph A(l) hereof during which a 1974 Participant worked as an employee in a classified job for an Employer signatory to the bituminous coal wage agreement then in effect.

(b) For purposes of determining eligibility for a pension (vesting) under Article II, service for any calendar year subsequent to December 31, 1977 during which a 1974 Participant works as an employee in a classified job for an Employer signatory to the bituminous coal wage agreement then in effect, computed based on hours of service as defined in Article I A(14) as follows:

Hours of Service During a Calendar Year as a Classified Employee for a Signatory Employer	Percentage of a Year of Credited Signatory Service
249 or less	0%
250 - 499	25%
500 - 749	50%
750 - 999	75%
1,000 or more	100%

Notwithstanding the foregoing, a classified Employee working on the weekend/holiday crew of a signatory Employer as provided in Appendix C of the National Bituminous Coal Wage Agreement of 2011 shall receive credit for a percentage of a year calculated in accordance with the following schedule:

Hours Worked On Weekend/Holiday Crew	Percentage of a Year of Signatory Service
less than 200	0
200-399	25%
400-599	50%
600-799	75%
800 or more	100%

A Classified Employee who earns both regular hours and weekend/holiday crew hours during a calendar year, but who earns fewer than 1,000 hours in total for the year, may combine the partial credits earned under each of the schedules shown above.

Special Rule for 1993 -- For the calendar year 1993, a classified Employee who participated in an authorized strike following expiration of the 1988 Wage Agreement, or who was laid off as a direct result of such an authorized strike, and who worked at least 500 hours will receive credit for a full year of signatory service.

(c) For purposes of determining the amount of pension, under Article III, service for any calendar year subsequent to December 31, 1977, during which a 1974 Participant works as an employee in a classified job for an Employer signatory to the bituminous coal wage agreement then in effect, computed based on hours worked as defined in Article I A(16) as follows:

Hours of Service During a Calendar Year as a Classified Employee for a Signatory Employer	Percentage of a Year of Credited Signatory Service
249 or less	0%
250 – 499	25%
500 – 749	50%
750 – 999	75%
1,000 or more	100%

Notwithstanding the foregoing, a classified Employee working on the weekend/holiday crew of a signatory Employer as provided in Appendix C of the National Bituminous Coal Wage Agreement of 2011 shall receive credit for a percentage of a year calculated in accordance with the following schedule:

Hours Worked On Weekend/Holiday Crew	Percentage of a Year of Signatory Service
less than 200	0
200-399	25%

400-599	50%
600-799	75%
800 or more	100%

A Classified Employee who earns both regular hours and weekend/holiday crew hours during a calendar year, but who earns fewer than 1,000 hours in total for the year, may combine the partial credits earned under each of the schedules shown above.

Special Rule for 1993 -- For the calendar year 1993, a classified Employee who participated in an authorized strike following expiration of the 1988 Wage Agreement, or who was laid off as a direct result of such an authorized strike, and who worked at least 500 hours will receive credit for a full year of signatory service.

(2) Service prior to December 6, 1974, as defined in paragraph A(3) hereof during which a 1974 Participant received state worker's compensation payments if such payments are pursuant to an award as a result of an occupational disease or injury awarded after May 28, 1946, and if the 1974 Participant was last regularly employed prior to such service as an employee in a classified job for an Employer signatory to the bituminous coal wage agreement then in effect.

(3) Service during which a 1974 Participant receives or is eligible to receive weekly Sickness and Accident Benefits pursuant to Article XI of the National Bituminous Coal Wage Agreement of 1974, as amended from time to time, and any successor agreements thereto. Service shall be computed at a rate of 8 hours for each regularly scheduled work day, or if greater than 8 hours, then at a rate equal to the number of hours, for each regularly scheduled work day, that the 1974 Participant would have worked under an alternate work schedule under Article IV(c) of the Wage Agreement.

(4) A 1974 Participant who retires on or after March 27, 1978, shall receive credit for a year of service for any calendar year (including calendar years prior to 1978) in which he rendered service as an employee of the United Mine Workers of America (UMWA) in the coal industry immediately following regular employment in a classified job under the bituminous coal wage agreement then in effect; provided that the 1974 Participant does not, or is not eligible to, receive a pension or other retirement income from the UMWA. Credit or service with the UMWA shall be computed in the same manner as:

(a) credit is computed for service prior to 1937, as described in paragraph A(2) hereof, or

(b) credit is computed for service under the pension plan of the UMWA, whichever is greater, for service prior to January 1, 1978.

Credit for service after December 31, 1977, shall be computed in the same manner as credit is computed for service under the pension plan of the UMWA.

In no event shall a 1974 Participant receive credit under this paragraph (4) while receiving a pension under this Plan.

Notwithstanding anything in this paragraph (4) to the contrary, a 1974 Participant,

- (a) who is not employed in a classified job for an Employer on March 27, 1978, or
- (b) who is not employed by the UMWA on March 27, 1978, or
- (c) who had retired prior to March 27, 1978, and was eligible to receive, or upon application would have been eligible to receive, a pension under the 1950 Pension Plan, the 1974 Pension Plan or a retirement plan of the UMWA prior to March 27, 1978, shall not receive signatory service credit for the years of UMWA employment described above if it occurred prior to March 27, 1978, unless such 1974 Participant is re-employed in a classified job and
 - (1) obtains at least 3 years of credited service after March 27, 1978, or
 - (2) ceases to be employed in the classified job or employed by the UMWA as the result of
 - (i) nonoccupational disability or accident
 - (ii) occupational injury for which the 1974 Participant receives worker's compensation, or
 - (3) dies after March 27, 1978 at a time when the 1974 Participant is employed in a classified job for an Employer or when employed by the UMWA.

(5) Service as defined in paragraph A(4) hereof during which a 1974 Participant served in the military service of the United States, provided that the classified employment referred to therein (both before and after military service) is for an Employer signatory to the bituminous coal wage agreement then in effect and provided further, however, that for military service credited after December 31, 1974, the 1974 Participant returned to work in a classified job within ninety (90) days after the date of separation from the military service or such longer period as may be allowed by law.

(6) Service (within the meaning of paragraph A(1) hereof) by an employee in a classified job for an Employer not signatory to the bituminous coal wage agreement then in effect if (i) such service is continuous, (ii) such Employer becomes a signatory to the bituminous coal wage agreement after the effective date as a result of recognizing the UMWA as the bargaining representative of its employees, (iii) the employee is working in a classified job with such Employer at the time such Employer becomes signatory to the bituminous coal wage agreement, and (iv) such employee remains in a classified job with such Employer during the twenty-four month period immediately following the date on which such Employer becomes signatory to the bituminous coal wage agreement; provided, however, that not more than ten (10) years of nonsignatory service may be recognized or awarded as signatory service to any person pursuant to this paragraph (6).

(7) Notwithstanding anything to the contrary in this Article IV or this Plan, a New Inexperienced Miner first hired on or after January 1, 2012 shall not earn any vesting, signatory or credited service under this Article IV or this Plan and an Electing Miner shall not earn any signatory or credited service under this Article IV or this Plan on or after his opt-out date.

C. Additional Rules Concerning Credited Service

(1) Except as provided in Article IV(B)(6), employment after April 1, 1971, will not constitute credited service under paragraph A(1) hereof unless such employment was in a classified job for an Employer.

(2) A 1974 Participant shall not be credited with more than one year of service for any calendar year by reason of any combination of the rules of this Article IV.

(3) The maximum number of years of nonsignatory service which may be included in the credited service of any 1974 Participant retiring after December 31, 1981 shall be the number of years by which twenty years exceeds such 1974 Participant's signatory service, but not in excess of ten years.

(4) No credit for service shall be awarded a 1974 Participant for any period in which such 1974 Participant was directly connected with the ownership, operation or management of a mine; provided, however, that in the case of any 1974 Participant who received credit for such service before July 1, 1974, under the terms of the pension plan program established under the United Mine Workers of America Welfare and Retirement Fund of 1950, credit shall be awarded for any period prior to July 1, 1975, in which the 1974 Participant worked as an employee in a classified job in a mine in which such 1974 Participant had no controlling interest, as a member of a cooperative or gang-working crew which shared the profits and losses, and which was operated under the bituminous coal wage agreement then in effect; and provided further, that in the case of a 1974 Participant who received credit for service before July 1, 1974, under the terms of the pension plan program established under the United Mine Workers of America Welfare and Retirement Fund of 1950, credit for signatory service shall be awarded for any period prior to July 1, 1975, during which such 1974 Participant worked in a classified job pursuant to an agreement to produce coal for a signatory coal company which exercised control over the operation of the mine and was responsible for royalty payments on such coal produced to the 1974 Pension Trust or its predecessor.

(5) The following maximum years of nonsignatory service may be included in credited service under this Plan:

Date of Retirement	Maximum Years of Nonsignatory Service
January 1, 1978 to December 31, 1978	13
January 1, 1979 to December 31, 1979	12
January 1, 1980 to December 31, 1980	11
January 1, 1981 and thereafter	10

(6) Subject to Article II E(1)(b)(i), a 1974 Participant with less than ten years of signatory service shall not be entitled to receive a pension under paragraph (A), (B), or (E) of Article II unless such 1974 Participant has at least twenty years of credited service, including at least the following minimum number of years of signatory service:

Date of Retirement	Years of Signatory Service Required
January 1, 1978 to December 31, 1978	Seven (7) years

January 1, 1979 to December 31, 1979	Eight (8) years
January 1, 1980 to December 31, 1980	Nine (9) years
January 1, 1981 and thereafter	Ten (10) years

(7) Except as provided in Article V, service credits shall not be accrued subsequent to the effective date of pension payments.

(8) In the case of any 1974 Participant, except a 1974 Participant covered under Article IV B(4), the last day of credited service shall be the last day on which the 1974 Participant works as an employee in a classified job for an Employer, unless such 1974 Participant continues to accrue credited service during the period for which such 1974 Participant receives or is eligible to receive weekly sickness and accident benefit pursuant to Article XI of the Wage Agreement, in which case the last day of credited service shall be the last day for which such sickness and accident benefits are paid or would have been paid. For a 1974 Participant covered under Article IV B(4), the last day of credited service shall be the later of the last day as determined in the preceding sentence or the last day the 1974 Participant worked for the UMWA.

(9) In the case of an Electing Miner, his last day of credited service shall be his opt-out date, which is the last day of the month in which the Electing Miner completed the Plan's opt-out application.

(10) An employee who is regularly employed in a classified job for an Employer and who performs supervisory duties on a temporary basis for not more than 120 work days during any consecutive period of 12 months, shall be deemed to be employed in a classified job during the days on which the 1974 Participant performs such supervisory duties.

(11) Notwithstanding anything to the contrary in this Article IV or this Plan, a New Inexperienced Miner first hired on or after January 1, 2012 shall not earn any vesting, signatory or credited service under this Article IV or this Plan and an Electing Miner shall not earn any signatory or credited service under this Article IV or this Plan on or after his opt out date.

D. Construction Industry Service

(1) Notwithstanding anything to the contrary, and except for purposes of Article II.C and II.D and as provided by Article II.G, no Construction Industry Service of a 1974 Participant shall be considered Credited Service under this Plan.

(2) In any case in which a 1974 Participant has both Construction Industry Service and at least one hour of service creditable under paragraphs B or C of this Article for any year beginning after December 31, 1985, the 1974 Participant's Credited Service for that year shall be determined by multiplying the Credited Service the 1974 Participant would be entitled to if Construction Industry Service were considered service under this Article by a fraction, the numerator of which is the 1974 Participant's hours of service creditable under this Article for that year and the denominator of which is the sum of such hours and the 1974 Participant's hours of Construction Industry Service for that year.

(3) In any case in which, after June 30, 1985, and before January 1, 1986, a 1974 Participant has both Construction Industry Service and at least one hour of service creditable under the provisions of paragraphs B or C of this Article, the 1974 Participant's Credited Service for that year shall be equal to the sum of his Credited Service for the period beginning January 1, 1985, and ending June 30, 1985, and a fraction of what his Credited Service would be for the period beginning July 1, 1985 and ending December 31, 1985, if Construction Industry Service were considered service under this Article. Such fraction is determined by dividing the 1974 Participant's hours of service under paragraphs B and C of this Article by the sum of such hours of service and the 1974 Participant's hours of Construction Industry Service.

(4) Notwithstanding subparagraph D.(2) or D.(3), the Credited Service of a 1974 Participant for a year in which either subparagraph applies shall not exceed one minus the portion of a year for which the 1974 Participant receives credit for accrual purposes under the United Mine Workers of America Construction Workers Pension Plan. If, in any year, a 1974 Participant receives one year of credit for accrual purposes under the United Mine Workers of America Construction Workers Pension Plan, he shall not be entitled to any Credited Service for such year.

ARTICLE V – REEMPLOYMENT OF 1974 PENSIONERS AFTER ATTAINMENT OF PENSION ELIGIBILITY

A. Any 1974 Participant who has been retired and receiving a pension under this Plan and who shall be reemployed in a classified job by an Employer shall, for the purpose of calculating any subsequent pension benefits to which such 1974 Participant may become entitled, upon subsequent retirement, be granted a pension equal to the sum of the pension such 1974 Participant was previously receiving plus the excess of (i) over (ii) where (i) is the pension to which such 1974 Participant would be entitled at the time of such retirement, based upon all years of Credited Service under the Plan and (ii) is the pension to which such 1974 Participant would be entitled at the time of such retirement, based solely on Credited Service at the time of his previous retirement.

B. Any 1974 Participant eligible for a deferred vested pension under this Plan whose shall be reemployed in a classified job by an Employer prior to the commencement of pension benefit shall, for the purpose of calculating any subsequent pension benefits to which he may become entitled, be granted his credited service applicable to the deferred vested pension plus his credited service accrued after such reemployment.

C. Any 1974 Participant who is reemployed in a classified job by an Employer after attainment of eligibility for a deferred vested pension under this Plan, whose employment is subsequently terminated and who at that time is not eligible for a pension under any provision of Article II by reason of Article IV(C)(6), shall be considered to be eligible for the deferred vested pension for which such 1974 Participant was eligible prior to such reemployment and upon application for pension the date of retirement shall be considered to be the date of retirement which would, upon application for pension, have been applicable to the deferred vested pension for which such 1974 Participant was eligible prior to such reemployment.

ARTICLE VI – 1974 PENSIONERS - SURVIVING SPOUSE BENEFIT

A. (1) Except as provided in paragraph (B) of this Article, a Surviving Spouse Benefit is provided for any 1974 Participant who (a) has retired and is receiving a pension under this Plan, except a 1974 Participant receiving a deferred vested pension who has not completed at least twenty years of credited service, (b) has not retired but at the date of his death otherwise met the eligibility requirements for an immediate pension under Article II(A), (B), (C), (D) or (E)(4) under this Plan, or (c) has attained age 55 with at least twenty years of credited service and who has retired and is entitled to elect an immediate pension under Article II(A), II(B) or II(E) at the date of death.

(2) The amount of such benefit shall be equal to 75% of the amount of the 1974 Participant's pension at the time of death or, in the event the 1974 Participant dies after age 55 at a time when such 1974 Participant was eligible to elect a pension or to retire and receive a pension under Article II, but prior to the receipt of a pension, 75% of the amount of the pension such 1974 Participant would have received if such 1974 Participant had elected a pension or retired and become entitled to a pension as of the date immediately preceding the date of death.

(3) The Surviving Spouse Benefit will not be effective unless the 1974 Participant and the spouse have been married throughout the nine-month period ending on the earlier of the participant's annuity starting date or the date of the participant's death, unless such nine-month requirement would be waived for purposes of determining entitlement to widow's or widower's insurance benefits under the Social Security Act.

(4) Payment to an eligible spouse will commence as of the first of the month following the month in which the 1974 Participant's death occurs and the final payment shall be made for the month in which the spouse's death occurs.

B. (1) Any 1974 Participant who is not employed in a classified job for an Employer on December 6, 1974, is not covered for a Surviving Spouse Benefit under this Article unless such 1974 Participant (a) obtains at least three years of credited service after such date, or (b) had ceased to be employed in a classified job as a result of (i) layoff, (ii) nonoccupational disability or accident, or (iii) occupational injury for which such 1974 Participant was receiving workers' compensation, or (c) such 1974 Participant dies at a time when he is employed in a classified job for an Employer.

(2) Any 1974 Participant who retires on or before December 31, 1975, and is again employed in a classified job for an Employer after such retirement, is not covered for a Surviving Spouse Benefit under this Article unless (a) such 1974 Participant obtains at least three years of credited service after such reemployment or (b) unless such reemployment ceases as a result of (i) layoff, (ii) nonoccupational disability or accident, or (iii) occupational injury for which worker's compensation benefits were awarded, or (c) such 1974 Participant dies while employed in a classified job for an Employer.

C. (1) A Surviving Spouse benefit is provided for any 1974 Participant who completed at least ten years of credited service, who died as a result of a mine accident during the term of the National Bituminous Coal Wage Agreement of 1978 or 1981, and who was not in Construction Industry Service at the time of the mine accident. The amount of such Surviving Spouse benefit shall be a lump sum in the amount of \$10,000, plus \$100.00 a month beginning with the month of February, 1998 and for each month thereafter during the spouse's eligibility. The final payment shall be made for the month in which the spouse's death (or if earlier, the spouse's remarriage) occurs.

(2) The Surviving Spouse Benefit will not be effective unless (a) the 1974 Participant and the spouse were married throughout the nine-month period ending on the earlier of the participant's annuity starting date or the date of the participant's death, unless such nine-month requirement would be waived for purposes of determining entitlement to widow's or widower's insurance benefits under the Social Security Act; (b) the spouse was never eligible for a monthly benefit under this Plan or under any other plan or provision under a Wage Agreement; and (c) the spouse has never remarried and is surviving on February 1, 1998.

ARTICLE VII – 1974 PENSIONERS - JOINT AND SURVIVOR ANNUITIES

A. Notwithstanding any other provision of this Plan, if a 1974 Participant qualifies for a pension under this Plan, but is not covered by a Surviving Spouse Benefit, the Pension

benefit otherwise provided to such 1974 Participant shall be reduced actuarially pursuant to Appendix B, and 50% of such reduced pension benefit will be continued, after the death of the 1974 Participant, for the life of any qualified surviving spouse; provided, however, that such 1974 Participant may elect, within the election period specified in Paragraph C(1) below, and subject to the requirement of Paragraph D below, not to take a joint and survivor annuity as provided for in this Article and instead to receive a pension benefit for life only.

B. If a 1974 Participant has completed 5 years of signatory service for vesting purposes, calculated pursuant to Article II (G), is not covered by a Surviving Spouse Benefit, and dies before he is entitled to elect or elects to receive a pension benefit, the qualified surviving spouse shall be entitled to receive a survivor's benefit in the form of an annuity for life in an amount equal to 75% of the pension benefit the decedent would have received if the decedent had --

- (1) separated from service on the date of death,
- (2) survived to age 55 (in the case of a decedent who died before attaining age 55),
- (3) retired with an immediate Joint and Survivor Annuity as provided for in this Article at age 55, (or, if later on the date before the decedent's date of death).
- (4) died on the day after the day on which the decedent would have attained age 55 (in the case of a decedent who died before attaining age 55).

Payment to a qualified spouse under this paragraph will commence on the first of the month following the month in which the decedent would have attained age 55 (or, if later, the first of the month following the month of the decedent's death) and the final payment shall be for the month in which the spouse's death occurs. Notwithstanding the foregoing, payment to a surviving spouse of a 1974 Participant who died prior to age 55, but while eligible for an immediate pension benefit, will commence on the first of the month following the month of the 1974 Participant's death. The benefit shall be calculated as set forth herein, but as if the 1974 Participant had retired with an immediate Joint and Survivor Annuity on the date before the date of his death.

C. (1) The "election period" in the case of an election to waive the Joint and Survivor Annuity described in Paragraph A shall be the 180-day period ending on the date of the commencement of benefits. Not less than 30 days and not more than 180 days prior to the date of the commencement of benefits, the Trustees shall furnish the 1974 Participant (a) a general description or explanation of the qualified Joint and Survivor Annuity, the circumstances in which it will be provided unless the 1974 Participant elects not to have benefits provided in that

form, the availability of such election and the right to revoke such election, and the rights of the 1974 Participant's spouse; and (b) a general explanation of the relative financial effect of such election on the 1974 Participant's pension. In the event a 1974 Participant elects not to receive a Joint and Survivor Annuity, such election shall not become effective if the 1974 Participant dies within a period of two years beginning on the date of such election.

(2) A 1974 Participant may revoke any election made pursuant to this Article at any time during the applicable election period.

D. An election made under this Article shall not take effect unless--

(1) the spouse of the 1974 Participant consents in writing to such election, and the spouse's consent acknowledges the effect of such election and is witnessed by a Plan representative or a notary public, or

(2) It is established to the satisfaction of the Trustees that the consent required under subparagraph (1) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Trustees may by law consider.

E. A qualified surviving spouse shall be any spouse who has been married to the 1974 Participant for at least nine months prior to the earlier of the participant's annuity starting date or the date of the participant's death, unless such nine-month requirement would be waived for purposes of determining entitlement to widow's or widower's insurance benefits under the Social Security Act.

F. Except as provided in Paragraph B above, payment to a qualified surviving spouse under this Article will commence as of the first of the month following the month in which the 1974 Participant's death occurs, and the final payment shall be made for the month in which the spouse's death occurs.

ARTICLE VIII – ELIGIBILITY OF 1950 PENSIONERS

A. Continuation of Pension Under 1950 Fund

A 1950 Participant entitled to receive a pension benefit on the effective date pursuant to the eligibility rules of the United Mine Workers of America Welfare and Retirement Fund of 1950 shall be eligible for a pension under this Article.

B. Persons Retiring Before 1976

A 1950 Participant who ceased or ceases to perform classified work for an Employer prior to December 31, 1975 (whether or not re-employed in a classified job for an Employer after December 31, 1975), and was not eligible for pension benefits under the 1974 Pension Plan prior to its merger with the 1950 Pension Plan, shall be eligible for a pension under this Article if he has:

(1) Attained the age of fifty-five (55) years, and,

(2) Either completed twenty (20) years of Credited Service, including the required amount of signatory service as set forth in Article X (C) (4) or completed at least ten (10) years of signatory service, including at least three (3) years of signatory service after December 31, 1970.

C. Disability Pensions

A 1950 Participant who is not otherwise eligible for a pension benefit hereunder who became totally disabled prior to the effective date as the result of a mine accident, after May 29, 1946, while employed in a classified job for an Employer, shall be eligible for a disability pension benefit while so disabled. A 1950 Participant shall be considered to be totally disabled as the result of a mine accident only if, by reason of such accident, he is eligible for Social Security Disability Insurance Benefits under Title II of the Social Security Act or its successor.

When a 1950 Participant who has been receiving a disability pension recovers sufficiently to become ineligible for Social Security disability benefits or is disqualified because of earnings, the Trustees shall implement procedures to determine the 1950 Participant's ability to perform classified work in the industry. The continuance of a disability pension shall be based on medical evidence that supports the 1950 Participant's inability to be employed in classified work in the industry. If such 1950 Participant is medically certified able to perform classified work in the industry, he will no longer be eligible for a disability pension.

D. Nonduplication

(1) A 1950 Participant shall be entitled to receive a pension under only one of the foregoing paragraphs of this Article VIII.

(2) Any person who (a) retires on or before December 31, 1975, (b) at the time of retirement is entitled to, or upon attaining age 55 would be entitled to, a pension benefit under the 1950 Pension Plan prior to its merger with this Plan, and (c) is again employed for at least 250 hours in a classified job for an Employer after December 31, 1975, shall, upon his subsequent retirement (or, if later, upon attaining age 55), be eligible for a pension only under Article II of this Plan.

E. Employment for Vesting Purposes

For all purposes of this Article VIII, if any 1950 Participant's signatory service shall be less than the total of his years of employment in the coal industry after May 28, 1946 for Employers then signatory to the bituminous coal wage agreement then in effect (hereinafter referred to as "employment" for purposes of this Article), and if such 1950 Participant has at least three years of such employment after December 31, 1970, then such years of employment shall be used for purposes of any eligibility requirement of minimum signatory service under this Article in place of years of signatory service. Years of employment shall be computed by giving credit for one year of employment for any year for which the 1950 Participant completed 1,000 hours of employment; provided that no credit shall be given for any year in which the Participant completed less than 1,000 hours of employment; and provided further that (a) all years of employment before age 22 shall be disregarded, and (b) years of employment prior to any break in service shall be disregarded to the maximum extent permissible under Section 203(b)(3) of ERISA. The provisions of this paragraph shall be interpreted and construed in accordance with the requirements of ERISA and the regulations issued thereunder.

F. Commencement, Suspension and Termination of Pensions

Payment of pensions shall be subject to the following:

(1) The first payment on all pensions shall be made for the month following the month in which the 1950 Participant becomes eligible for a pension in accordance with Article VIII, but not earlier than the month following the month in which an application is received by the Funds.

(2) The last payment shall be for the month in which the 1950 Pensioner dies.

(3) Pension payments shall be payable on the first day of each month at the 1950 Pensioner's last address of record.

(4) Pension payments shall be suspended for any month in which the 1950 Pensioner is employed, subsequent to commencement of such payments, in the bituminous coal industry, in the same trade or craft (trade or craft shall mean the coal mining industry), and in the same geographic area covered by this Plan. The provisions of this paragraph shall be interpreted in accordance with any regulations issued pursuant to Section 203(a)(3)(B) of ERISA.

(5) Any 1950 Participant who continues to be employed by an Employer after his retirement shall not be entitled to receive pension benefits under this Plan until such time as he is no longer employed by an Employer.

ARTICLE IX – 1950 PENSIONERS - AMOUNT OF PENSION AND DEATH BENEFIT

A. 1950 Participants With 20 or More Years of Service

The pension payable to a 1950 Participant who is

- (1) entitled to receive a pension under Article VIII(A) hereof, or
- (2) entitled to receive a pension under Article VIII(B) hereof and has at least twenty (20) years of Credited Service, including the required amount of signatory service as set forth in Article X(C)(4) hereof, shall be \$425 per month.

B. 1950 Participants With Less Than 20 Years of Service

As of February 1, 1988, the monthly pension payable under this Plan to a 1950 Participant who

- (1) is entitled to receive a pension under Article VIII(B) hereof, and
- (2) has more than ten (10) but less than twenty (20) years of signatory service, shall be an amount computed by multiplying \$250 by a fraction, the numerator of which shall be the years of signatory service (to the nearest 1/4 year) credited to such 1950 Participant and the denominator of which shall be 20. The monthly pension is increased by \$15 effective January 1, 1998, by \$15 effective January 1, 2002, by \$15 effective January 1, 2007, and by \$5 effective January 1, 2009.

C. Disability Pensions

As of July 1, 2011, the monthly pension payable under this Plan to a 1950 Participant entitled to receive a pension under Article VIII(C) hereof shall be \$267.50.

D. Pensions Under Article VIII(E)

The monthly pension payable under this Plan to a 1950 Participant entitled to receive a pension under Article VIII(E) hereof shall be an amount computed by multiplying \$250 by a fraction, the numerator of which shall be the years of signatory service (to the nearest 1/4 year) credited to such 1950 Participant and the denominator of which shall be 20. The monthly pension is increased effective February 1, 1988 by \$30 per month, with a second increase of \$10 per month effective February 1, 1990. The monthly pension is increased by \$15 effective January 1, 1998, by \$15 effective January 1, 2002, by \$15 effective January 1, 2007, and by \$5 effective January 1, 2009.

E. Death Benefit for 1950 Pensioners

(1) Except as otherwise provided herein, a death benefit shall be paid for any 1950 Pensioner whose death occurs on or after July 1, 2011 and who either (1) is receiving pension payments under this Trust and is eligible for health benefits under the 1992 UMWA Benefit Plan, the UMWA 1993 Benefit Plan, or a plan maintained by an employer pursuant to section 9711 of the Internal Revenue Code, or (2) has made application for and is eligible to receive such payments and benefits. The death benefit shall be equal to \$8,500 for such 1950 Pensioner with dependents at the time of his death, and \$7,000 for such 1950 Pensioner without dependents at the time of his death. Effective July 1, 2013 the death benefit shall be equal to \$10,000 for such 1950 Pensioner with dependents at the time of his death, and \$8,500 for such 1950 Pensioner without dependents at the time of his death. Notwithstanding any other provision herein, this Plan amendment providing for increases in the death benefit shall be effective July 1, 2013.

(2) For purposes of this section, the term "dependent" shall mean any person described in (a) through (e), below, as of the date of the death of the 1950 Pensioner. A person shall be considered to have been a dependent of a 1950 Pensioner if such 1950 Pensioner and his spouse provided support of a regular and substantial nature to such person.

(a) a spouse who is living with or being supported by the 1950 Pensioner;

(b) an unmarried dependent child of the 1950 Pensioner who has not attained age 22;

(c) a parent of a 1950 Pensioner or of a 1950 Pensioner's spouse, if the parent has been dependent upon and living in the same household (residence) as the 1950 Pensioner for a continuous period of at least one year;

(d) an unmarried dependent grandchild of a 1950 Pensioner or of a 1950 Pensioner's spouse who has not attained age 22, and is living in the same household (residence) with such 1950 Pensioner; and

(e) a dependent child (of any age) of a 1950 Pensioner or of a 1950 Pensioner's spouse who is mentally retarded or who becomes disabled prior to attaining age 22, and such disability is continuous, and who is either living in the same household with such 1950 Pensioner or is confined to an institution for care or treatment.

(3) The death benefit provided under this section shall not be payable for any 1950 Pensioner who was an eligible beneficiary described in section 9703(f) of the Internal Revenue Code of 1986, as amended by the Coal Industry Retiree Health Benefit Act of 1992, whose death occurs on or after February 1, 1993.

F. One-Time Single Sum Payment Based on Prior Plan Amendment

(1) Any 1950 Pensioner not described in paragraph (2) and who is not receiving a pension pursuant to Article VIII(E), whose pension is in pay status as of October 31, 2011 shall receive a one-time single sum payment of \$580, to be issued by November 1, 2011.

(2) Any 1950 Pensioner whose disability pension pursuant to Article VIII C is in pay status as of October 31, 2011 shall receive a one-time single sum payment of \$455, to be issued by November 1, 2011.

(3) Any widow of a miner whose Widow's Pension pursuant to Article XI is in pay status as of October 31, 2011, shall receive a one-time single sum payment of \$455, to be issued by November 1, 2011.

(4) Any such 1950 Participant whose pension pursuant to Article VIII(E) is in pay status as of October 31, 2011, shall receive a one-time single sum payment of \$455, to be issued by November 1, 2011.

(5) The one-time single sum payments provided for herein and under Article XII are not intended as an ongoing feature of this Plan, and the Plan shall have no obligation to provide payments of this type other than those expressly provided for above.

ARTICLE X - CREDITED SERVICE FOR 1950 PENSIONERS

A. Nonsignatory Service

Subject to the limitations in section C of this Article X, Credited Service is a period during which the 1950 Participant meets the requirements of subparagraphs (1), (2), (3), (4) or (5) below. Any Credited Service shall be nonsignatory service unless it qualifies as signatory service pursuant to Article X(B) hereof.

(1) A 1950 Participant shall receive credit for a year of service for any calendar year in which he worked, subsequent to December 31, 1936 and prior to January 1, 1976, as an employee in a job classified in the then existing bituminous coal wage agreement for an employer in the coal industry for at least 1,000 hours of service, with credit given for the next lowest 1/4 year in the event any employee works less than 1,000 hours of service as follows:

750 - 999 hours,	3/4 year
500 - 749 hours,	1/2 year
250 - 499 hours,	1/4 year
249 hours or less,	0

With respect to any period of service for which records of hours of service are not available or it is not feasible in light of the administrative and cost difficulties involved to compile a record of hours of service, an applicant shall be deemed to have worked a thousand hours of service if he received wages in an amount equal to the product of (i) the lesser of 125 days or 1/2 the average number of days the bituminous mines in the United States were active, times (ii) the daily basic rate paid in the bituminous coal industry for that year; provided that for any year for which information is not available as to the average number of days the mines were active, the available data for the nearest year next preceding shall be used; provided further that if an applicant earned less than the minimum amount required for a year of service, credit for service shall be given to the next lowest 1/4 year in the manner indicated with respect to hours of service.

(2) A 1950 Participant shall receive credit for a year of service for any calendar year in which he worked, prior to January 1, 1937, as an employee in a job classified in the then existing coal wage agreement for an employer in the bituminous coal industry, for a minimum of at least six (6) months during a calendar year, provided that if the applicant worked

less than six (6) months, credit for service shall be awarded to the next lowest one-fourth (1/4) year, based upon service in six (6) months equaling a year's service.

(3) A 1950 Participant shall receive credit for a year of service for any calendar year in which he received state workmen's compensation payments pursuant to an award as a result of an occupational disease or injury sustained in the mine while regularly employed in a classified job under the bituminous coal wage agreement then in effect, provided, in the case of occupational disease, the 1950 Participant had been so employed by an Employer signatory to the Wage Agreement then in effect for at least ten (10) years after May 28, 1946 and prior to January 1, 1976. Credit shall be given up to a maximum of four (4) years service credit from date of injury, or from the date of last employment in case of occupational disease, provided the 1950 Participant did not work regularly (earned at least \$200 per month) during the compensable period. Benefits awarded pursuant to the Federal Coal Mine Health and Safety Act of 1969 shall be deemed "state workmen's compensation payments" within the meaning of this section, only if the miner was last regularly employed in the coal industry after the enactment date of the Act, December 30, 1969, in a classified job under the bituminous coal wage agreement then in effect, and had been so employed by an operator signatory to the agreement for at least ten (10) years after May 28, 1946 and prior to January 1, 1976.

(4) A 1950 Participant shall receive credit for a year of service for any year in which he rendered service as an employee of the United Mine Workers of America in the coal industry immediately following regular employment in a classified job under the bituminous coal wage agreement then in effect; provided that the 1950 Participant returned to work in a classified job within twelve (12) months after the date of his last employment by the United Mine Workers of America; and provided further that the 1950 Participant is not covered by the pension or retirement plan of the United Mine Workers of America. Service credit for such period shall be computed in the same manner as credit is computed for service prior to 1937, as described in paragraph 2 hereof.

(5) A 1950 Participant shall receive credit for a year of service for any calendar year in which he served in the military service of the United States in any war, national emergency, or international police action, immediately following regular employment in a classified job under the bituminous coal wage agreement then in effect, provided that credit for such service shall be limited to the original period of enlistment or obligated military service; and provided further that the 1950 Participant returned to work in a classified job within twelve (12) months after his date of separation from the military service, unless he was precluded from doing so by service connected sickness, accident, or other disability, and returns to work in a classified job when no longer precluded by such disability. Service credit for the period of military service shall be computed in the same manner as credit is computed for service prior to 1937, as described in paragraph 2 above.

B. Signatory Service

Credited signatory service is:

(1) Service as defined in paragraph A(1) hereof during which a 1950 Participant worked, after May 28, 1946 and prior to January 1, 1976, as an employee in a classified job for an Employer signatory to the bituminous coal wage agreement then in effect.

(2) Service as defined in paragraph A(3) hereof during which a 1950 Participant received state workmen's compensation payments if such payments are pursuant to an award as a result of an occupational disease or injury awarded after May 28, 1946 and prior to January 1, 1976, and if the 1950 Participant was last regularly employed prior to such service as an employee in a classified job for an Employer signatory to the bituminous coal wage agreement then in effect.

(3) Service as defined in paragraph A(5) hereof during which a 1950 Participant served in the military service of the United States, provided that the classified employment referred to therein (both before and after military service) is for an Employer signatory to the bituminous coal wage agreement then in effect; and provided further, however, that for military service credited after December 31, 1974 and prior to January 1, 1976, the 1950 Participant returned to work in a classified job within ninety (90) days after his date of separation from the military service or such longer period as may be allowed by law.

C. Additional Rules Concerning Credited Service

(1) Employment after April 1, 1971 will not constitute Credited Service under paragraph A(1) hereof unless such employment was in a classified job for an Employer.

(2) No credit for service shall be awarded a 1950 Participant for any period in which he was directly connected with the ownership, operation or management of a mine; provided however, that in the case of any 1950 Participant who received credit for such service before July 1, 1974 under the terms of the pension plan program established under the UMWA Welfare and Retirement Fund of 1950, credit shall be awarded for any period prior to July 1, 1975, in which the 1950 Participant worked as an employee in a classified job in a mine in which he had no controlling interest, as a member of a cooperative or gangworking crew which shared the profits and losses, and which was operated under the bituminous coal wage agreement then in effect; and, provided further, that in the case of a 1950 Participant who received credit for service before July 1, 1974, under the terms of the pension plan program established under the UMWA Welfare and Retirement Fund of 1950, credit for signatory service shall be awarded for any period prior to July 1, 1975 during which such 1950 Participant worked in a classified job pursuant to an agreement to produce coal for a signatory coal company which exercised control

over the operation of the mine and was responsible for royalty payments on such coal produced to the 1950 Pension Trust or its predecessor.

(3) An applicant shall not be credited with more than one year of service for any calendar year by reason of any combination of the rules of this Article X.

(4) A 1950 Participant with less than ten years of signatory service shall not be entitled to receive a pension under paragraph B of Article VIII unless such 1950 Participant has at least twenty years of Credited Service, including at least the following minimum number of years of signatory service:

Date Attains Age 55	Years of Signatory Service Required
On or prior to December 31, 1976	Five (5) Years
January 1, 1977 to December 31, 1977	Six (6) Years
January 1, 1978 to December 31, 1978	Seven (7) Years
January 1, 1979 to December 31, 1979	Eight (8) Years
January 1, 1980 to December 31, 1980	Nine (9) Years
January 1, 1981 and thereafter	Ten (10) Years

(5) In the case of any 1950 Participant, the last day of Credited Service shall be the last day on which the 1950 Participant works as an employee in a classified job for an Employer, unless such 1950 Participant continues to accrue Credited Service pursuant to Article X(A)(3) or X(B)(2), in which case the last day of Credited Service shall be the earlier of (i) the last day for which state workmen's compensation payments are received, (ii) the date four years from the date of injury or the last day of work in classified job, or (iii) the last day prior to the time such 1950 Participant commenced regular employment in other than a classified job for an Employer during the compensable period.

(6) An employee who is regularly employed in a classified job for an Employer and who performs supervisory duties on a temporary basis for not more than 120 work days during any consecutive period of 12 months shall be deemed to be employed in a classified job during the days on which he performs such supervisory duties.

ARTICLE XI – 1950 PENSIONERS - WIDOW’S PENSION

A. Eligibility

A Widow’s Pension will be provided to eligible widows of miners who were receiving a pension under the 1950 Pension Plan (1950 Pensioners) at the time of the miner’s death.

B. Amount of Pension

The amount of such Widow’s Pension shall be \$175 per month.

C. Application for Widow’s Pension and Commencement and Termination of Widow’s Pension

(1) The first payment on any Widow’s Pension shall be made as soon as possible after an application for Widow’s Pension has been received and shall be for the first of the month following the date the 1950 Pensioner died, but in no event prior to March 1, 1982.

(2) The last payment shall be for the month in which the widow dies or remarries.

(3) Widow’s Pension payments shall be payable on the first day of each month at the widow’s last address of record.

D. Eligible Widows

The Widow’s Pension will not be effective unless the 1950 Pensioner and the spouse have been married throughout the nine-month period ending on the date of the 1950 Pensioner’s death or unless such nine-month period would be waived for purposes of determining entitlement to widow’s insurance benefits under the Social Security Act. Any widow who remarries subsequent to the 1950 Pensioners death shall not be eligible.

E. Survivor Annuities

(1) Joint and Survivor Annuity Option

If a 1950 Participant had at least one hour of service under the 1950 Pension Plan on or after September 2, 1974, and begins receiving his pension on or after July 1, 2011, he may elect to receive his pension in the form of a 50% joint and survivor annuity in lieu of a Widow's Pension for his qualified surviving spouse, unless the Widow's Pension to which his spouse would be entitled upon his death is greater than the amount of the survivor's annuity. If this option is elected, the pension benefit otherwise provided to the 1950 Participant shall be actuarially reduced, and 50% of such reduced pension benefit will be continued after the death of the 1950 Participant for the life of his qualified surviving spouse. The actuarial reduction of the 1950 Participant's pension benefit shall be sufficient to assure that the actuarial value of the 50% joint and survivor annuity does not exceed the actuarial value of the pension benefit that would otherwise be provided to the 1950 Participant for his lifetime. A qualified surviving spouse is a spouse who was married to the 1950 Participant throughout the 1-year period ending on the date the Participant's pension commenced, as provided in Article VIII F(1).

The period for electing the joint and survivor annuity option shall be a period of at least 30 days and no more than 180 days following the furnishing of all applicable information relating to the option, and shall not end prior to the commencement of benefits; provided, however, a 1950 Participant may elect to waive the requirement that the written explanation be provided at least 30 days before the commencement of benefits if the distribution commences more than 7 days following the furnishing of all applicable information.

(2) Pre-Retirement Survivor Annuity

If a 1950 Participant had at least one hour of service under the 1950 Pension Plan on or after September 2, 1974, and dies on or after July 1, 2011 prior to the commencement of his pension, his eligible surviving spouse shall receive the benefit she would have received had the 1950 Participant elected such 50% joint and survivor annuity option and begun receiving his pension on the day prior to his death. An eligible surviving spouse is a spouse who was married to the 1950 Participant throughout the 1-year period ending on the date of his death..

ARTICLE XII – MISCELLANEOUS

A. Determination of Eligibility

The Trustees or such other named fiduciaries as may be properly designated shall have full and final determination as to all issues concerning eligibility for benefits.

B. General

(1) The Trustees are authorized to promulgate rules and regulations to implement this Plan, and those rules and regulations shall be binding upon all persons dealing with and Participants claiming benefits under this Plan.

(2) No benefit payable under this Plan shall be subject in any way to alienation, sale, transfer, assignment, pledge, attachment, garnishment, execution or encumbrance of any kind, and any attempt to accomplish the same shall be void. Notwithstanding the foregoing, the Plan shall comply with any qualified domestic relations order, as that term is defined in ERISA, and with any written authorization by a Participant or beneficiary made pursuant to paragraph (19) of this section.

(3) The Employers and the Union, by joint action, reserve the right at any time and from time to time to modify or amend in whole or in part any or all of the provisions of this instrument or to terminate this Plan, without reopening or otherwise affecting the integrity of any other provision of the Wage Agreement, by a written agreement between the Employers and the Union, provided, however, that:

(a) this Plan shall not be amended in such manner as would cause or permit any part of the assets in the 1974 Pension Trust to be diverted to purposes other than the exclusive benefit of the Participants and their beneficiaries;

(b) this Plan shall not be amended to deny to a Participant retroactively any benefits to which such Participant was entitled under this Plan, unless such amendment is necessary to conform this Plan to, or to satisfy the conditions of, any law, governmental regulations or ruling;

(c) the Employers and the Union have delegated to the Trustees the authority and responsibility to make certain changes and amendments as set forth in Article XX(g)(4) of the National Bituminous Coal Wage Agreement of 2011, as amended from time to time, and any successor agreements to that specific Agreement; and

(d) Any written agreement executed by the Union shall be signed by the International President.

(4) Upon the termination of this Plan or the complete discontinuance of contributions to the 1974 Pension Trust, this Plan shall remain in force and effect for the period necessary to complete the payment of benefits in accordance with the terms of this Plan to the extent assets in the 1974 Pension Trust are available to pay such benefits.

(5) Forfeitures arising from the operation of the Plan shall not be used to increase the benefits which otherwise would be received under this Plan.

(6) Any Participant or beneficiary whose claim for benefits under this Plan has been denied shall be:

(a) provided with adequate notice in writing setting forth the specific reasons for such denial, written in a manner calculated to be understood by the Participant; and

(b) afforded a reasonable opportunity for a full and fair review of the decision denying the claim by an appropriate named fiduciary or a person properly designated to carry out such responsibility.

(7) The Trustees are hereby authorized to allocate fiduciary responsibilities in any manner permitted pursuant to section 405(c) of ERISA and to appoint an investment manager or managers as permitted by section 402(c) of ERISA.

(8) Contributions to the 1974 Pension Trust to fund the benefits under this Plan shall be paid solely by the Employers in accordance with Article XX of the National Bituminous Coal Wage Agreement of 2011, as amended from time to time, and any successor agreements to that specific Agreement.

(9) In the event that this Plan merges or consolidates with, or transfers some or all of its assets or liabilities to, any other plan, no Participant or beneficiary herein shall, solely on account of merger, consolidation or transfer, be entitled to an accrued benefit immediately following such event which is less than the benefit to which such Participant or beneficiary would have been entitled immediately preceding such event. In the event that this Plan transfers some of its assets and liabilities to another plan, the assets transferred shall bear the same proportion to the total Plan assets as the liabilities transferred bear to the total Plan liabilities, but in no event shall the amount of assets transferred exceed the liabilities transferred. When such transfers are to a single employer plan, they shall be accomplished in accordance with Section 4232(f) of ERISA.

(10) In the event that an Employer fails to make the contributions to the Plan required by Article XX of the National Bituminous Coal Wage Agreement of 2011, interest (calculated at a rate established by the Trustees at the beginning of each calendar year) shall accrue from the date due until the date on which payment is made. If the Trustees file suit to collect unpaid contributions, plus accrued interest, and a judgment is entered by the courts in favor of the Trustees, the judgment entered shall provide for an additional amount equal to the accrued interest as liquidated damages.

(11) Upon the termination or partial termination of the Plan, the rights of all affected Participants to benefits accrued to the date of such termination or partial termination, are nonforfeitable to the extent required by law or to the extent provided for under the National Bituminous Coal Wage Agreement of 2011.

(12) Except as otherwise provided herein, it shall be unlawful for any part of the assets held pursuant to this Plan, other than such part as is required to pay taxes and administrative expenses, to be used for, or diverted to, purposes other than for the sole and exclusive benefit of the Participants of the Plan except that in the case of a contribution which is made by an Employer by a mistake of fact, or law (other than a mistake relating to Plan qualification), such mistaken contribution may be returned to the Employer within six months after the Trustees determine that the contribution was mistakenly made.

(13) To the extent not inconsistent with the provisions hereof, the Trustees shall comply with the further requirements imposed upon them by and shall have the further powers contained in Article XX, Sections (e), (f), and (g) of the National Bituminous Coal Wage Agreement of 2011, as amended from time to time, and any successor agreements to that specific Agreement.

(14) This instrument and the 1974 Pension Trust shall be construed, regulated and administered in accordance with Federal law, and, to the extent not preempted or inconsistent with such Federal law, the laws of the District of Columbia.

(15) Any action of the Employers which may, or must, be taken hereunder may be taken only by BCOA. Any action which must be taken in writing shall be signed by the President of BCOA. In the event that BCOA ceases to exist, or in the event that more than 50% of the tonnage membership of BCOA on the Effective Date of the 2011 Wage Agreement has withdrawn prior to the time when BCOA is required or permitted to take action under this Article, then such action may be taken by a majority vote, based on tonnage, of existing Employers who were BCOA members on the Effective Date of the 2011 Wage Agreement.

(16) Any Employer who employed any Participant eligible for coverage under, or who received or receives benefits under, the 1974 Pension Plan, or any Employer who was or

is required to make, or who has made or makes contributions to the 1974 Pension Plan and Trust, is obligated and required to comply with the terms and conditions of the 1974 Pension Plan and Trust, as amended from time to time, including, but not limited to, making the contributions required under the National Bituminous Coal Wage Agreement of 1978 as amended from time to time and any successor agreements thereto, including, but not limited to, the National Bituminous Coal Wage Agreement of 2011.

(17) The Employers, the Union and the Trustees shall fully cooperate to obtain all necessary rulings and do all other acts appropriate to ensure that the 1974 Pension Plan and Trust are qualified under Section 401 of the Internal Revenue Code, and that contributions are deductible under Section 404 of the Internal Revenue Code.

(18) Notwithstanding any other provision of this Plan to the contrary, a distribution of benefits shall commence to a participant not later than the April 1 of the calendar year following the calendar year in which the Participant attains age 70 ½ and shall be distributed over the life of such Participant or over the lives of such Participant and his surviving spouse, in accordance with Section 401(a)(9) of the Internal Revenue Code and any regulations promulgated thereunder. In the event that the Participant dies before distributions have commenced hereunder, the surviving spouse shall begin to receive a distribution of the benefit, if any, to which such spouse is entitled no later than the date on which the participant would have attained age 70 ½ and shall be distributed over the life of such surviving spouse. With respect to distributions from the Plan made on and after January 1, 2003, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with Treasury Regulations Sections 1.401(a)(9)-1 through 1.401(a)(9)-9 that were issued on April 17, 2002 and June 15, 2004. Required distributions shall be made regardless of whether a Participant files an application for benefits.

(19) Any Participant or beneficiary whose benefit is in pay status may voluntarily authorize the Trustees to check-off an amount from his or her monthly benefit for remittance to the UMWA of Union membership dues, including assessments, initiation fees, credit union, voluntary COMPAC contributions and other voluntary deductions, provided that any such arrangement must be terminable by the Trustees upon reasonable notice, must be revocable by the Participant at any time upon reasonable notice to the Trustees, and either:

(a) such arrangement must not permit any Participant or beneficiary to check-off an amount exceeding 10% of his or her monthly benefit; or

(b) the designated recipient must file a written acknowledgement that it has no enforceable right in or to any Plan benefit or portion thereof (except to the extent of payments actually received pursuant to the terms of the arrangement); and an agreement for such check-off is in effect between the Plan and the Union. Any check-off authorization must be in

writing, must be voluntary and must comply in all respects with the requirements of the Internal Revenue Code of 1986, as amended, ERISA, the Labor Management Relations Act of 1947, as amended, and any other applicable law.

(20) (a) Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner prescribed by the Trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) An "eligible rollover distribution" is an eligible rollover distribution within the meaning of Section 402(c)(4) of the Code and, effective August 1, 2009, where applicable, Section 402(c)(11) of the Code, except that an "eligible rollover distribution" does not include:

- (i) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more;
- (ii) Any distribution to the extent such distribution is required under Section 401(a)(9) of the Code;
- (iii) The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and
- (iv) Any distribution which is made on account of hardship.

(c) Effective January 1, 2002, an "eligible retirement plan" is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, or a qualified trust described in Section 401(a) of the Code, that accepts the eligible rollover distribution. For purposes of the direct rollover provisions in subparagraph (e) of this section of the Plan, a portion of a distribution shall not fail to be an "eligible rollover distribution" merely because the portion consists of after-tax employee contributions which are not includible in gross income.

However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code, or to a tax-sheltered annuity described in Section 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Effective January 1, 2008, an eligible retirement plan includes a Roth IRA described in Section 408A of the Code, provided the eligible rollover distribution is considered a “qualified rollover contribution” under Section 408A(e) of the Code. Effective August 1, 2009, in the case of an eligible rollover distribution to the designated beneficiary of the Participant who is not the surviving spouse of the Participant, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(d) A “distributee” includes a Pensioner, a surviving spouse under Article VI, a qualified surviving spouse receiving a benefit under Article VII, and a widow receiving a Widow’s Pension pursuant to Article XI. In addition, a Pensioner’s surviving spouse and the Pensioner’s spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(q) of the code, are distributees with regard to the interest of the spouse or former spouse. A “distributee” includes an individual who is a designated beneficiary of the Participant and who is not the surviving spouse of the Participant, in accordance with the provisions of Section 402(c)(11) of the Code.

(e) A “direct rollover” is a payment by the Plan to the eligible retirement plan specified by the distributee.

ARTICLE XIII - PARTICIPANTS COVERED BY A SUCCESSOR PLAN

The following individuals shall cease to be Participants in the Plan and shall not be entitled to benefits hereunder (with respect to Credited Service prior to December 6, 1977):

(1) A Participant in this Plan who retired prior to December 6, 1977, if the Participant is entitled to a pension under a plan qualified under Section 401(a) of the Internal Revenue Code and established by an employer pursuant to an agreement with the UMWA which is a successor agreement to the Western Surface Coal Wage Agreement of 1975, provided that the pension is at least as great as the pension due under the terms of this Plan in effect on December 5, 1977;

(2) A Participant in this Plan prior to December 6, 1977, who on or after December 6, 1977, is an employee of an employer which is signatory with the UMWA to a successor agreement to the Western Surface Coal Wage Agreement of 1975, if the Participant becomes a participant in a pension plan qualified under Section 401(a) of the Internal Revenue Code established by such employer pursuant to such agreement, provided that the plan gives credit for

participation, vesting and Credited Service prior to December 6, 1977, determined under the terms of this Plan in effect on December 5, 1977.

ARTICLE XIV – EMPLOYER WITHDRAWAL LIABILITY

A. As soon as practicable after an Employer's complete or partial withdrawal, the Trustees shall calculate and demand payment of withdrawal liability in accordance with Section 4219 of ERISA.

B. The Trustees shall adopt (and modify as appropriate) a reasonable interest assumption used to calculate the value of unfunded vested benefits under the Plan which will be uniformly applicable to withdrawals by all Employers.

C. The amount of unfunded vested benefits allocable to an Employer that withdraws from the Plan is the product of --

(1) the unfunded vested benefits of the Plan as of the end of the Plan year preceding the Plan year in which the Employer withdraws, less the value as of the end of such year of all outstanding claims for withdrawal liability which can reasonably be expected to be collected from Employers withdrawing before such year; multiplied by

(2) a fraction - (a) the numerator of which is the total number of hours worked for which amounts were required to be contributed by the Employer under the Plan for the last 5 Plan years ending before the withdrawal, and

(b) the denominator of which is the total number of hours worked for which amounts were required to be contributed under the Plan by all Employers for the last 5 Plan years ending before the withdrawal, decreased by the number of any hours worked for which amounts were required to be contributed to the Plan during those Plan years by Employers who withdrew from the Plan during those Plan years.

(3) "Hours worked for which amounts were required to be contributed" counted for one Plan year may not be counted for any other Plan year.

D. For purposes of determining whether a withdrawal has occurred and for purposes of assessing withdrawal liability under this Article, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single Employer and all such trades and businesses as a single Employer. (The preceding sentence shall not be deemed to preclude assessing liability under any other applicable law.)

E. Payment of withdrawal liability must begin within 60 days, notwithstanding any request for review or appeal of the determination of the amount of such liability, after the date on which the Trustees notify the Employer of the amount of withdrawal liability. Annual payments are to be made in twelve (12) equal installments, due on the 10th day of each month.

F. If payment is not made when due, interest on the payment shall accrue from the due date until the date on which the payment is made. Interest on delinquent payment of withdrawal liability shall be payable at the rate established by the PBGC pursuant to Section 4219(c)(6). Default will occur if the Employer fails to make payment when due and then fails to make payment within 60 days after receiving written notice from the Trustees of such failure, or as otherwise determined pursuant to Section 4219(c)(5).

G. If any Employer defaults on payment (as determined pursuant to Section 4219(c)(5)), the Trustees shall require immediate payment of the outstanding amount of withdrawal liability, plus accrued interest on the total outstanding liability from the due date of the first payment which was not timely made. If the Trustees file suit to collect the outstanding balance of withdrawal liability, plus accrued interest, and a judgment is entered by the court in favor of the Trustees, the judgment entered shall provide for an additional amount equal to 20% of the outstanding amount of withdrawal liability as liquidated damages. The Trustees shall have the authority to promulgate rules regarding default and an arbitration procedure.

H. An Employer is entitled to prepay the outstanding amount of any unpaid withdrawal liability, plus accrued interest, if any, in whole or in part, without penalty. However, if the pre-payment is made pursuant to a withdrawal which is later determined to be part of a withdrawal described in Section 4219(c)(1)(D) of ERISA, the withdrawal liability of the Employer shall not be limited to the amount of pre-payment.

I. In the event that this Plan terminates, an Employer's obligation to make payments under this Article ceases at the end of the Plan year in which the assets of this Plan (exclusive of withdrawal liability claims) are sufficient to meet all obligations of this Plan, as determined by the PBGC.

J. In conformance with Section 4208(c) of ERISA, in any Plan year following an Employer's partial withdrawal under Section 4205(a)(1) of ERISA, when the number of contribution base units with respect to which the Employer has an obligation to contribute for such year equals or exceeds 130% of the number of contribution base units with respect to which the Employer had an obligation to contribute in the partial withdrawal year, the amount of the Employer's partial withdrawal liability payment for such year shall be reduced pro rata, in accordance with PBGC regulations.

K. The presumptive partial withdrawal rules in Section 4205(a) and (b) of ERISA shall apply to this Plan.

L. A complete or partial withdrawal of an Employer (hereinafter in this section referred to as the “seller”) under this Plan does not occur solely because, as a result of a bona fide, arm’s-length sale of assets to an unrelated party (hereinafter in this section referred to as the “purchaser”), the seller ceases covered operations or ceases to have an obligation to contribute for such operations, if --

(1) the purchaser is, or becomes at the time of the sale, signatory to the Wage Agreement or any other collective bargaining agreement entered into with the United Mine Workers of America which provides that contributions at the same rate as contributions required under the Wage Agreement shall be made to this Plan;

(2) the purchaser has an obligation to contribute to this Plan with respect to the operations for substantially the same employees and the same number of contribution base units for which the seller had an obligation to contribute to this Plan;

(3) the purchaser provides to the Plan for a period of 5 plan years commencing with the first plan year beginning after the sale of assets, a bond or escrow deposit meeting the requirements of Section 4204 (a)(1)(B). If the Plan is in reorganization, the amount of such bond or escrow deposit shall be twice the amount provided in Section 4204 (a)(1)(B).

(4) the contract for sale provides that, if the purchaser withdraws in a complete withdrawal, or a partial withdrawal with respect to operations, during such first 5 Plan years, the seller is secondarily liable for any withdrawal liability the seller would have had to this Plan with respect to the operations (but for this section) if the liability of the purchaser with respect to this Plan is not paid.

If the purchaser --

(1) withdraws before the last day of the fifth plan year beginning after the sale, and

(2) fails to make any withdrawal liability payment when due, because of a complete or partial withdrawal, then the seller shall pay to this Plan an amount equal to the payment that would have been due from the seller but for this section.

If all, or substantially all, of the seller’s assets are distributed, or if the seller is liquidated before the end of the 5 plan year period described above, then the seller shall provide a bond issued by a corporate surety company that is an acceptable surety for purposes of Section 412 of ERISA, or

an amount held in escrow by a bank or similar financial institution satisfactory to the Trustees, in an amount equal to the present value of the withdrawal liability the seller would have had but for this paragraph.

If only a portion of the seller's assets are distributed during such period, then a bond or escrow shall be required, in accordance with rules established by the Trustees, to the extent consistent with PBGC regulations.

The liability of the party furnishing a bond or escrow under the above paragraph shall be reduced, upon payment of the bond thereof.

For the purposes of this section, the liability of the purchaser shall be determined as if the purchaser had been required to contribute to this Plan in the year of the sale and the 4 plan years preceding the sale based on the same number of hours worked for which amounts were required to be contributed by the seller for such operations for such 5 plan years.

M. Special Rules Following Merger

a. Liability for a withdrawal occurring on June 30, 2007 will be calculated under the terms of the 1950 Pension Plan and the 1974 Pension Plan as they existed prior to that date, consistent with 29 C.F.R. §§ 4211.31(d), 4211.37.

b. Notwithstanding the foregoing, the amount of unfunded vested benefits allocable to an Employer that withdraws from the Plan on or after July 1, 2007 is the sum of the Employer's proportional share, if any, of the unamortized amount of the Plan's unfunded vested benefits for the plan year ending June 30, 2007 (determined under 29 C.F.R. § 4211.34 (b)) and the Employer's proportional share, if any, of the unamortized amount of the unfunded vested benefits arising after the plan year ending June 30, 2007 (as determined under 29 C.F.R. § 4211.34 (c), except using "hours worked for which amounts were required to be contributed" instead of amount of contributions or amounts required to be contributed in determining the Employer's proportional share, and using a fifteen year amortization period, as permitted in 29 C.F.R. § 4211.36(c)(2)).

N. Definitions

a. For purposes of this Article XIV, "hours worked for which amounts were required to be contributed" means all hours for which the Employer actually owed contributions to the Plan as well as all hours for which the Employer would have owed contributions to the Plan had the contribution rate been greater than 0¢ per hour.

b. For purposes of Section 4219(c)(1)(C)(i)(I) and any other provision of ERISA or this Plan requiring the use of contribution base units, for any withdrawal occurring on or after July 1, 2003, the term “contribution base units” shall have the same meaning as “hours worked for which amounts were required to be contributed.”

APPENDIX A

1974 PENSIONERS

ACTUARIAL EQUIVALENCE FACTORS FOR DEFERRED VESTED
RETIREMENT BENEFITS COMMENCING PRIOR TO AGE 62

The following factors are to be multiplied by the full accrued benefit payable commencing at normal retirement age 62 to yield the equivalent benefit payable commencing at the indicated age:

AGE Years	Months	Actuarial Equivalence Factor	AGE Years	Months	Actuarial Equivalence Factor
55	0	.522	56	0	.569
	1	.526		1	.573
	2	.529		2	.577
	3	.533		3	.582
	4	.537		4	.586
	5	.541		5	.590
	6	.545		6	.595
	7	.549		7	.599
	8	.553		8	.604
	9	.557		9	.608
	10	.561		10	.612
57	11	.565	58	11	.617
	0	.621		0	.680
	1	.626		1	.685
	2	.631		2	.691
	3	.636		3	.696
	4	.641		4	.702
	5	.646		5	.707
	6	.651		6	.713
	7	.655		7	.718
	8	.660		8	.724
	9	.665		9	.729
59	10	.670	60	10	.735
	11	.675		11	.740
	0	.746		0	.820
	1	.752		1	.827
	2	.758		2	.834
	3	.765	3	.841	
	4	.771	4	.848	

	5	.777		5	.855
	6	.783		6	.863
	7	.789		7	.870
	8	.796		8	.877
	9	.802		9	.884
	10	.808		10	.891
	11	.814		11	.898
61	0	.905	62	0	1.000
	1	.913			
	2	.920			
	3	.928			
	4	.936			
	5	.944			
	6	.952			
	7	.960			
	8	.968			
	9	.976			
	10	.984			
	11	.992			

Actuarial Basis: 95% of 1959-61 U.S. Total Male Population
Mortality Table at 5% Interest.

APPENDIX B

TABLE OF PERCENTAGES TO BE APPLIED
AGAINST PENSION PAYABLE TO PARTICIPANT
UNDER JOINT AND SURVIVOR ANNUITIES

AGE OF SPOUSE*	AGE OF PARTICIPANT*							
	55 %	56 %	57 %	58 %	59 %	60 %	61 %	62 %
50	85.1	84.2	83.3	82.3	81.2	80.2	79.1	77.9
51	85.6	84.7	83.7	82.7	81.7	80.7	79.6	78.5
52	86.0	85.1	84.2	83.2	82.2	81.2	80.1	79.0
53	86.5	85.6	84.7	83.7	82.8	81.7	80.7	79.6
54	86.9	86.1	85.2	84.3	83.3	82.3	81.2	80.1
55	87.4	86.6	85.7	84.8	83.8	82.8	81.8	80.7
56	87.9	87.1	86.2	85.3	84.4	83.4	82.4	81.3
57	88.3	87.5	86.7	85.8	84.9	84.0	83.0	81.9
58	88.8	88.0	87.2	86.4	85.5	84.5	83.6	82.6
59	89.3	88.5	87.7	86.9	86.0	85.1	84.2	83.2
60	89.7	89.0	88.3	87.4	86.6	85.7	84.8	83.8
61	90.2	89.5	88.8	88.0	87.2	86.3	85.4	84.5
62	90.7	90.0	89.3	88.5	87.7	86.9	86.0	85.1

* Age to nearest birthday.

Pension payable to qualified surviving spouse pursuant to Article VII (A) or XI (E)(1) will be equal to 50% of the Participant's Pension as reduced in accordance with the above Table. The benefit payable to a qualified surviving spouse under Article VII (B) will be equal to 75% of the 1974 Participant's Pension reduced in accordance with the above table.

IN WITNESS WHEREOF, the Employers and the Union, pursuant to proper authority, have caused this instrument, effective December 6, 1974, and amended as of July 1, 2011, to be signed by their proper officers or representatives in Washington, D.C. on this 27th day of September, 2011.

UNITED MINE WORKERS OF AMERICA

BITUMINOUS COAL OPERATORS'
ASSOCIATION, INC.

Cecil E. Roberts

International President

Dale M. Stover

President

Accepted by:

Dated: 10/25/11

Michael H. Holmud

Trustee

Dated: 10/25/11

Michael Burkan

Trustee

Dated: 10/25/11

B. S. Hayes

Trustee

Dated: 10/25/11

Steven J. Schost

Trustee

EXHIBIT 2

December 2012

**United Mine Workers of America
1974 Pension Plan**

Actuarial Valuation Report as of July 1, 2012



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Highlights

Mercer has prepared this report exclusively for the Board of Trustees of the United Mine Workers of America ("UMWA") 1974 Pension Trust to:

1. Present Mercer's actuarial estimates of liabilities and expenses for the UMWA 1974 Pension Plan as of July 1, 2012;
2. Review plan experience for the year ended June 30, 2012;
3. Determine whether negotiated contributions fall within the acceptable range of plan contributions for the year beginning July 1, 2012;
4. Provide the plan's accountants with information concerning the funded status of the plan; and
5. Compare the assets with the value of vested benefits to determine withdrawal liability, if any.

The report is divided into two parts. **Section 1** describes the basis of the valuation. It summarizes the plan provisions, provides information relating to the plan participants, and describes the funding methods and actuarial assumptions used in determining liabilities and costs.

The following changes since the July 1, 2011, valuation are significant::

- 1) The National Bituminous Coal Wage Agreement of 2011 was ratified in June 2011; it is effective July 1, 2011, and expires December 31, 2016. It calls for contributions of \$5.50 per hour worked (including hours worked by New Inexperienced Miners and Electing Miners) and \$1.10 contribution per ton of "purchased coal." The only potential benefit change contained in this Agreement is a \$1,500 increase in lump sum death benefits that is effective for eligible pensioner deaths on or after July 1, 2013. This benefit is expected to be first reflected in the 2013 funding valuation.

The following changes have no effect on the current valuation results since they will be reflected in future demographic experience of the plan:

- New Inexperienced Miners first hired on or after January 1, 2012 (2012 NIMs) will not earn any vesting, signatory, or credited service.
- Miners who are active participants may opt out of the plan on or after January 1, 2012 (EMs). After the opt-out date, EMs will earn service credit for vesting and "any early retirement adjustments based on the type of pension benefit," but not signatory or credited service.
- 2012 NIMs and EMs will be eligible for normal and minimum disability benefits and, if they meet the eligibility requirements, lump sum death benefits. These benefits will be determined as if the miner had not been a 2012 NIM or EM.

There were 36 active EMs reported in the 2012 valuation data under a new separate status code.

- 2) The RPA '94 current liability interest rate was changed to 4.02% for 2012 from 4.48% for 2011 (the highest rate in the acceptable range for each year). In addition, the RPA '94 current liability mortality table was changed to the separate annuitant/nonannuitant mortality tables for males and females for the 2012 plan year as set forth in Regulations section 1.412(l)(7)-1 from the comparable 2011 plan year tables.
- 3) The total number of reported active participants increased by 3.5% from 10,427 in the prior year to 10,789. The total number of reported plan participants decreased by 1.1% from 213,843 in the prior year to 211,585.
- 4) There was a net actuarial loss from experience during the plan year ended June 30, 2012, of \$223,191,000. The loss was primarily the result of less-than-expected investment income.

Highlights *(continued)*

Section 2 contains the results of the valuation. It includes the experience of the plan for the year ended June 30, 2012, the current annual costs, unfunded vested benefits for withdrawal liability purposes, and reporting and disclosure information. The range of contributions developed in Section 2.6, together with the corresponding items from preceding valuations, are shown below.

Comparison of Actual Contributions with Contribution Ranges and Plan Disbursements

	<u>July 1, 2010</u>	<u>July 1, 2011</u>	<u>July 1, 2012</u>
1) Actual Contributions for the Plan Year ¹	\$122,940,000	\$129,211,000	Not Available
2) Contribution Range from Section 2.6			
a) Maximum Tax-deductible Contribution	\$8,056,736,000	\$8,446,046,000	\$9,201,389,000
b) Constant 30-Year Amortization of Unfunded Actuarial Accrued Liability ²	137,263,000	157,456,000	176,241,000
c) ERISA Minimum Funding	0	0	0
Test Criteria; Excess (Shortfall):			
a) 10-Year Funding = (1)-(2a)	(7,933,796,000)	(8,316,835,000)	Not Available
b) 30-Year Funding = (1)-(2b)	(14,323,000)	(28,245,000)	Not Available
c) Minimum Funding = (1)-(2c)	122,940,000	129,211,000	Not Available

Withdrawal liability calculations require a determination of the plan's unfunded vested benefits. FASB Accounting Standards Codification 960 (formerly Statement of Financial Accounting Standards No. 35) requires the calculation of the actuarial present value of accumulated plan benefits. As shown in Section 2.7, the actuarial present value of accumulated plan benefits of \$9,614,214,000 exceeds the net assets available for plan benefits by \$5,411,969,000 as of June 30, 2012. The amount of unfunded vested benefits on June 30, 2012, was \$5,107,362,000. The corresponding amount of unfunded vested benefits on June 30, 2011, was \$4,371,242,000. The increase in unfunded vested benefits was primarily attributable to the net effects of the decrease in interest rates, a market value gain, and interest on the prior year's amount.

¹ Actual contributions include \$37,000 of withdrawal liability payments for the plan year beginning July 1, 2011.

² The amounts shown in the table assume that contributions and expenses are uniformly distributed over the plan year.

Data and Plan Provisions

To prepare our report, Mercer used and relied on July 1, 2012, participant census data and June 30, 2012, draft unaudited financial statements, provided by Funds' Staff and summarized herein. The plan administrator is responsible for ensuring that such participant data provides an accurate description of all persons who are participants under the terms of the plan or otherwise entitled to benefits as of July 1, 2012, that is sufficiently comprehensive and accurate for these purposes. Although Mercer has reviewed the data in accordance with Actuarial Standards of Practice No. 23, Mercer has not verified or audited any of the data or information provided.

We also used and relied on the plan documents, including amendments through September 27, 2011, and interpretations of plan provisions, supplied by the plan sponsor as summarized herein. We have assumed for purposes of this valuation that copies of any official plan document, including all amendments and collective bargaining agreements, as well as any interpretations of any such document, have been provided to Mercer along with a written summary of any other substantive commitments.

The plan sponsor is solely responsible for the validity, accuracy, and comprehensiveness of this information. If any data or plan provisions supplied are not accurate and complete, the valuation results may differ significantly from the results that would be obtained with accurate and complete information; this may require a later revision of this report. Moreover, plan documents may be susceptible to different interpretations, each of which could be reasonable, and different interpretations could lead to different valuation results.

Important Notices

Mercer has prepared this report exclusively for the Board of Trustees of the UMWA 1974 Pension Trust; Mercer is not responsible for reliance upon this report by any party other than the plan sponsor, the plan administrator, and the Trustees. Subject to this limitation, the Trustees may direct that this report be provided to the auditors. The only purposes of this report are to provide the information described on page 1. This report may not be used for any other purpose; Mercer is not responsible for the consequences of any unauthorized use. This report is not an annual determination or certification of endangered or critical status under Internal Revenue Code Section 432. Decisions about benefit changes, granting new benefits, investment policy, funding policy, benefit security, and/or benefit-related issues should not be made on the basis of this valuation, but only after careful consideration of alternative economic, financial, demographic, and societal factors, including financial scenarios that assume future sustained investment losses.

A valuation is only a snapshot of a plan's estimated financial condition at a particular point in time; it does not predict the plan's future financial condition or its ability to pay benefits in the future, and it does not provide any guarantee of future financial soundness of the plan. Over time, a plan's total cost will depend on a number of factors, including the amount of benefits the plan pays, the number of people paid benefits, the period of time over which benefits are paid, plan expenses, and the amount earned on any assets invested to pay benefits. These amounts and other variables are uncertain and unknowable at the valuation date.

Because modeling all aspects of a situation is not possible or practical, we may use summary information, estimates, or simplifications of calculations to facilitate the modeling of future events in an efficient and cost-effective manner. We may also exclude factors or data that are immaterial in our judgment. Use of such simplifying techniques does not, in our judgment, affect the reasonableness of valuation results for the plan.

To prepare the valuation report, actuarial assumptions, as described herein, are used in a forward-looking financial and demographic model to select a single scenario from a wide range of possibilities; the results based on that single scenario are included in the valuation. The future is uncertain and the plan's actual experience will differ from those assumptions; these differences may be significant or material because these results are very sensitive to the assumptions made and, in some cases, to the interaction between the assumptions.

Important Notices *(continued)*

Different assumptions or scenarios within the range of possibilities may also be reasonable and results based on those assumptions would be different. As a result of the uncertainty inherent in a forward-looking projection over a very long period of time, no one projection is uniquely "correct" and many alternative projections of the future could also be regarded as reasonable. Two different actuaries could, quite reasonably, arrive at different results based on the same data and different views of the future. A "sensitivity analysis" shows the degree to which results would be different if you substitute alternative assumptions within the range of possibilities for those utilized in this report. We have not been engaged to perform such a sensitivity analysis and thus the results of such an analysis are not included in this report. Mercer is available to perform a sensitivity analysis upon request.

Actuarial assumptions may also be changed from one valuation to the next because of changes in mandated requirements, plan experience, changes in expectations about the future, and other factors. A change in assumptions is not an indication that prior assumptions were unreasonable when made.

Valuations do not affect the ultimate cost of the plan, only the timing of contributions into the plan or the timing of when future benefit costs are recognized. Plan funding occurs over time. Contributions not made this year, for whatever reason, including errors, may continue to be required and may be made in later years. If the contribution levels over a period of years are lower or higher than necessary, it is normal and expected practice for adjustments to be made to future contribution levels or benefit rates to take account of this with a view to funding the plan over time.

Data, computer coding, and mathematical errors are possible in the preparation of a valuation involving complex computer programming and thousands of calculations and data inputs. Errors in a valuation discovered after its preparation may be corrected by amendment to the valuation or in a subsequent year's valuation.

The Trustees are solely responsible for selecting the plan's investment policy, asset allocation, and individual investments. Mercer's actuaries have not provided any investment advice to the Trustees. The Bituminous Coal Operators' Association is responsible for selecting the plan's actuarial cost and asset valuation methods and the plan sponsor is responsible for funding policy. The policies and methods reflected in this report are those that have been so selected and are described in Section 1.3. Funds' Staff are responsible for reviewing and confirming that these policies and methods are accurate and are solely responsible for communicating to Mercer any changes required thereto. Section 1.3 also describes the assumptions that have been selected for funding purposes. Certain actuarial assumptions, including discount rates and mortality tables, are prescribed for current liability purposes by regulation or statute. By relying on this valuation report, the parties for whom we have prepared this report confirm that they have accepted the actuarial basis contained in this report.

The withdrawal liability and accounting information reported herein is based on the assumptions and methods as described on page 57. The actuarial assumptions and methods for accounting purposes were selected by the plan sponsor. Based on the information provided to us, we believe that the actuarial assumptions are reasonable for the accounting purposes described in this report.

The plan administrator should notify Mercer promptly after receipt of this report if any party for whom we have prepared this report disagrees with anything contained herein or is aware of any information that has not been communicated to Mercer or incorporated herein that would affect our valuation. This report will be deemed final and acceptable for the purposes described unless the plan administrator provides such notice to Mercer.

Important Notices *(continued)*

This report is based on our understanding of applicable law and regulations as of the valuation date, including the Pension Protection Act of 2006, the Worker, Retiree, and Employer Recovery Act of 2008, and the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010. The results of this valuation are subject to change based on future guidance, interpretations, or regulations. Mercer is not a law firm and cannot provide legal advice to the Funds. Funds' Staff should review any legal issues, including the impact of any legislation or regulations, with their legal counsel. Mercer is also not an accountant or auditor and is not responsible for the interpretation of, or compliance with, accounting standards; citations to, and descriptions of, accounting standards provided in this report are for reference purposes only.


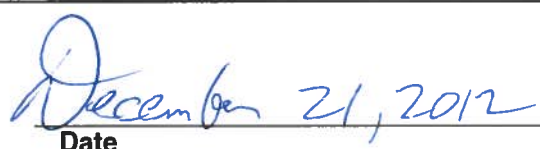

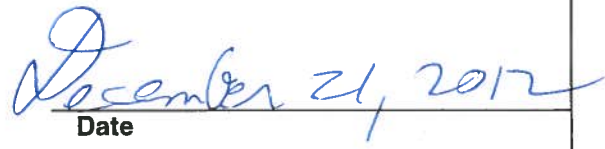
Funded Status

Starting with the July 1, 2008, plan year, the plan's actuary is required to certify annually to the IRS and plan sponsor whether or not the plan is endangered or critical for the plan year, and whether or not a plan in a funding improvement or rehabilitation period is making scheduled progress under its plan. This certification is due by the 90th day of each plan year. The certification was made on September 26, 2012, for the current plan year, based on projected July 1, 2011, valuation results and the unaudited June 30, 2012, market value of assets.

Based on an estimated funding percentage of 72.6% and funding standard account projections, the plan was certified to be in seriously endangered status for the plan year beginning July 1, 2012. If the certification had been based on July 1, 2012, valuation results, the PPA '06 Liability (based on the Unit Credit Method and funding assumptions) would have been \$6,438,715,000 and the PPA '06 Funded Percentage (computed using the actuarial value of assets) would have been 72.34%.

Professional Qualifications

We are available to answer any questions on the material in this report or to provide explanations or further details as appropriate. The undersigned credentialed actuaries meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained in this report. We are not aware of any direct or material indirect financial interest or relationship, including investments or other services that could create a conflict of interest, that would impair the objectivity of our work.

 Carol R. Gramer, FSA, EA, MAAA Enrollment Number 11-03555	 Date
 Fran Kemp, EA, MAAA Enrollment Number 11-02417	 Date
Mercer 1166 Avenue of the Americas New York, NY 10036-2708 212 345 7000	

The information contained in this document (including any attachments) is not intended by Mercer to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code that may be imposed on the taxpayer.

Section 1: Basis of Valuation

In this section, the basis of the valuation is presented and described. This information – the provisions of the plan and the census of participants – is the foundation of the valuation, since these are the present facts upon which benefit payments will depend.

The valuation is based on the premise that the plan will continue in existence, so that future events must also be considered. These future events are assumed to occur in accordance with the actuarial assumptions and concern such events as the earnings of the fund, the number of participants who will remain to retirement, their ages at retirement, and their expected benefits.

The actuarial assumptions and the actuarial cost method, or funding method, which have been adopted to guide the funding of the plan in a reasonable and acceptable manner, are described in this section.

SECTION 1.1

**Summary of Plan Provisions
1974 Pension Plan (Other than Former 1950 Pension Plan)
(Based on National Bituminous Coal Wage Agreement of 2011)**

Class of Employee Covered: All eligible persons retiring on or after December 31, 1975, or becoming totally disabled due to a mine accident on or after December 6, 1974. New Inexperienced Miners first hired on or after January 1, 2012 (2012 NIMs) will not earn any vesting, signatory, or credited service. Miners who are active participants may opt out of the plan on or after January 1, 2012 (Electing Miners). After the opt-out date, Electing Miners will earn service credit for vesting and “any early retirement adjustments based on the type of pension benefit,” but not signatory or credited service. 2012 NIMs and EMs will be eligible for normal and minimum disability benefits and, if they meet the eligibility requirements, lump sum death benefits.

Effective Date: December 6, 1974.

Date of Last Amendment: September 27, 2011.

Normal Retirement:

Eligibility: The earlier of (a) or (b):

- a) Age 62 with 10 years of signatory service or 20 years of credited service, including the required amount of signatory service. Signatory service is defined as time during which a participant worked as an employee in a classified job for an employer signatory to the bituminous coal wage agreement then in effect. The plan limits the amount of non-signatory service which may be recognized by the benefit formula.

<u>Date of Retirement</u>	<u>Years of Signatory Service Required</u>	<u>Maximum Number of Years of Non-Signatory Service Includable in Credited Service</u>
Before 1/1/1977	5	15
1/1/1977 to 12/31/1977	6	14
1/1/1978 to 12/31/1978	7	13
1/1/1979 to 12/31/1979	8	12
1/1/1980 to 12/31/1980	9	11
1/1/1981 and after	10	10

- b) Age 65 with 5 years of signatory service, subject to the plan’s break-in-service rules.

SECTION 1.1

Summary of Plan Provisions (continued)

<u>Benefit:</u>	<u>Monthly Benefit for Each Year of Service</u>				
	<u>From 1/1/1976 to 12/31/1976</u>	<u>Retirements or Terminations Prior to 10/1/1984</u> <u>From 1/1/1977 to 3/26/1978</u>	<u>From 3/27/1978 to 6/6/1981</u>	<u>From 6/7/1981 to 6/6/1983</u>	<u>From 6/7/1983 to 9/30/1984</u>
Credited Non-Signatory Service:	\$ 7.50	\$ 7.50	\$ 7.50	\$ 7.50	\$ 7.50
Credited Signatory Service:					
1st 10 Years	12.00	12.50	13.50	14.50	15.50
2nd 10 Years	12.50	13.00	14.00	15.00	16.00
3rd 10 Years	13.00	13.50	14.50	15.50	16.50
In Excess of 30 Years	13.50	14.00	15.00	16.00	17.00

Retirements or Terminations From 10/1/1984 Through 1/31/1988

	<u>From 10/1/1984 to 9/30/1987</u>	<u>From 10/1/1987 to 1/31/1988</u>
Credited Non-Signatory Service:	\$ 7.50	\$ 7.50
Credited Signatory Service:		
1st 10 Years	16.50	17.00
2nd 10 Years	17.00	17.50
3rd 10 Years	17.50	18.00
In Excess of 30 Years	18.00	18.50

SECTION 1.1

Summary of Plan Provisions (continued)

Retirements or Terminations On or After 2/1/1988

The sum of (a) plus (b) plus (c) plus (d) plus (e).

	From 12/16/1993 to 12/31/1997		From 1/1/1998 to 12/31/1999		From 1/1/2000 to 12/31/2001		From 1/1/2002 to 12/31/2003		From 1/1/2004 to 12/31/2005		From 1/1/2006 to 12/31/2006		From 1/1/2007 to 12/31/2008		From 1/1/2009 to 12/31/2010		On or After 1/1/2011	
	From 2/1/1988 to 1/31/1991	From 2/1/1991 to 12/15/1993	On or Before 8/16/1996	After 8/16/1996	From 1/1/1998 to 12/31/1999	From 1/1/2000 to 12/31/2001	From 1/1/2002 to 12/31/2003	From 1/1/2004 to 12/31/2005	From 1/1/2006 to 12/31/2006	From 1/1/2007 to 12/31/2008	From 1/1/2009 to 12/31/2010	From 1/1/2010 to 12/31/2011	From 1/1/2011 to 12/31/2011	From 1/1/2011 to 12/31/2011	From 1/1/2011 to 12/31/2011	From 1/1/2011 to 12/31/2011	From 1/1/2011 to 12/31/2011	On or After 1/1/2011
(a) Credited Non-Signatory Service:	\$ 7.50	\$ 10.00	\$ 10.00	\$ 12.00	\$ 12.00	\$ 14.00	\$ 18.00	\$ 20.00	\$ 24.00	\$ 28.00	\$ 32.00	\$ 34.00	\$ 34.00	\$ 34.00	\$ 34.00	\$ 34.00	\$ 34.00	\$ 34.00
(b) Credited Signatory Service Earned Prior to 2/1/1989:																		
1st 10 Years	20.00	22.50	26.50	28.50	32.50	34.50	38.50	40.50	44.50	48.50	52.50	54.50	54.50	54.50	54.50	54.50	54.50	54.50
2nd 10 Years	20.50	23.00	27.00	29.00	33.00	35.00	39.00	41.00	45.00	49.00	53.00	55.00	55.00	55.00	55.00	55.00	55.00	55.00
3rd 10 Years	21.00	23.50	27.50	29.50	33.50	35.50	39.50	41.50	45.50	49.50	53.50	55.50	55.50	55.50	55.50	55.50	55.50	55.50
In Excess of 30 Years	21.50	24.00	28.00	30.00	34.00	36.00	40.00	42.00	46.00	50.00	54.00	56.00	56.00	56.00	56.00	56.00	56.00	56.00
(c) Credited Signatory Service Earned From 2/1/1989 Through 1/31/1990:	27.50	30.00	34.00	36.00	40.00	42.00	46.00	48.00	52.00	56.00	60.00	62.00	62.00	62.00	62.00	62.00	62.00	62.00
(d) Credited Signatory Service Earned From 2/1/1990 Through 12/15/1993:	32.00	34.50	38.50	40.50	44.50	46.50	50.50	52.50	56.50	60.50	64.50	66.50	66.50	66.50	66.50	66.50	66.50	66.50
(e) Credited Signatory Service Earned On or After 12/16/1993:	N/A	N/A	41.50	43.50	47.50	49.50	53.50	55.50	59.50	63.50	67.50	69.50	69.50	69.50	69.50	69.50	69.50	69.50

SECTION 1.1

Summary of Plan Provisions (continued)

Form of Payment: Unmarried participants: Benefit payments are made during the participant's lifetime (life annuity).
Married participants: Unreduced benefits are paid during the lifetime of the participant with 75% of the unreduced benefit continued to an eligible spouse after the participant's death (postretirement surviving spouse benefit).

Early Retirement:

Eligibility: Age 55 with 10 years of signatory service or 20 years of credited service, including the required amount of signatory service.

Benefit: Benefit as defined for Normal Retirement if pension commences at age 62. If benefit commences before age 62, the benefit is equal to the Normal Retirement benefit reduced ¼% for each month that retirement precedes age 62.

Form of Payment: Same as Normal Retirement.

Disability Retirement:

Eligibility: 1974 Participants, New Inexperienced Miners first hired on or after January 1, 2012, and Electing Miners who become disabled due to a mine accident on or after December 6, 1974, while in a classified signatory job and the participant is eligible for social security disability benefits as a result of such accident, and:

- 1) Normal disability benefit: at least 10 years of service prior to retirement.
- 2) Minimum disability benefit: less than 10 years of service prior to retirement.

Service for purposes of determining disability retirement eligibility and benefits includes 1974 Pension Plan credit hours and – for New Inexperienced Miners first hired on or after January 1, 2012, and Electing Miners – Years of Supplemental Pension Contributions.

Benefit:

Normal: The benefit calculated in accordance with the Normal Retirement Benefit schedule in effect at retirement.

<u>Minimum:</u>	<u>Retirement Date</u>	<u>Benefit Amount</u>
	Prior to 3/27/1978	\$125.00
	3/27/1978 to 6/6/1981	135.00
	6/7/1981 to 6/6/1983	145.00
	6/7/1983 to 9/30/1984	155.00
	10/1/1984 to 9/30/1987	165.00
	10/1/1987 to 1/31/1988	170.00
	2/1/1988 to 1/31/1990	190.00
	2/1/1990 to 12/31/1997	200.00
	1/1/1998 to 12/31/2001	215.00
	1/1/2002 to 12/31/2006	230.00
	1/1/2007 to 12/31/2008	245.00
	On or After 1/1/2009	250.00

SECTION 1.1

Summary of Plan Provisions (continued)

Form of Payment: Same as Normal Retirement.

Deferred Vested Retirement – Regular:

Eligibility: Termination of employment after completion of 5 (10, for participants who do not have an hour of signatory service on or after July 1, 1999) years of signatory service or 20 years of credited service (as defined under Normal Retirement eligibility) before age 55.

Benefit: Benefit calculated in accordance with the Normal Retirement Benefit schedule in effect on the last day of credited service (actuarially reduced for Early Retirement). With 20 years of credited service, there is a minimum monthly benefit of \$195 (\$200, effective January 1, 2009).

Form of Payment: Unmarried participants: Benefit payments are made during the participant's lifetime (life annuity).

Married participants with at least 20 years of credited service: unreduced postretirement surviving spouse benefit.

Married participants with less than 20 years of credited service: 50% joint and survivor benefit which is actuarially equivalent to a life annuity, if elected.

Deferred Vested Retirement – Special:

Eligibility: Cessation of work on or after June 7, 1981, between ages 50 and 55, after 20 years of signatory service and either (1) laid off and not refused recall, or (2) terminated under Article III, Section (j) of the Wage Agreement (or physically unable to perform regular work) and not employed in coal industry thereafter.

Benefit: Benefit calculated in accordance with the Normal Retirement Benefit schedule in effect on the last day of credited service (if paid after age 55 and before age 62: benefit reduced by ¼% for each month payment commencement precedes age 62).

Form of Payment: Same as Deferred Vested Retirement – Regular.

Note: This benefit was deleted as of January 1, 2007, for participants who retire under the 2007 Agreement, because the benefit had become redundant.

Deferred Vested Retirement – Enhanced 1996:

Eligibility: Cessation of work on or after December 16, 1993, before age 55, after 20 years of signatory service, either (1) laid off and not refused recall, or (2) terminated under Article III, Section (j) of the Wage Agreement (or physically unable to perform regular work) and not employed in coal industry thereafter, and the participant's pension benefits are not in pay status on or before August 16, 1996.

SECTION 1.1

Summary of Plan Provisions (continued)

Benefit: Same as Deferred Vested Retirement – Special.

Form of Payment: Same as Deferred Vested Retirement—Regular

Deferred Vested Retirement – Special Permanent Layoff Pension:

Eligibility: Last day of credited service on or after January 1, 1998, before age 55, after 20 years of signatory service and either (1) permanently laid off due to a mine closing, or (2) permanently laid off (i.e., on layoff status at least 180 days and not refused recall).

Benefit: Benefit calculated in accordance with the Normal Retirement Benefit schedule in effect on the last day of credited service, determined as if the participant were age 55 (for purposes of applying a reduction for Early Retirement).

Form of Payment: Same as Deferred Vested Retirement – Regular.

Special 30-and-Out Layoff Pension:

Eligibility: Last day of credited service on or after January 1, 2002, after 30 years of signatory service, and laid off and not refused recall. If not actively at work as of December 31, 2001 (because of a layoff), either (1) earned at least 250 hours of credited signatory service following return to work, or (2) returned to active employment as the result of a bona fide job opening.

Benefit: Benefit calculated in accordance with the Normal Retirement Benefit schedule in effect on the last day of credited service, without actuarial reduction on account of age.

Form of Payment: Same as Deferred Vested Retirement – Regular.

Note: This benefit was deleted as of January 1, 2007, for participants who retire under the 2007 Agreement, because the benefit had become redundant.

30-and-Out Pension:

Eligibility: Last day of credited service on or after January 1, 2003, after 30 years of signatory service. If not actively at work as of December 31, 2001 (because of layoff), either (1) earned at least 250 hours of credited signatory service following return to work, or (2) returned to active employment as the result of a bona fide job opening.

Benefit: Same as Special 30-and-Out Layoff Pension.

Form of Payment: Same as Deferred Vested Retirement – Regular.

SECTION 1.1

Summary of Plan Provisions (continued)

Pension Increases:

- a) Pension increases for participants who retired prior to 2/1/1988, other than those with: a) Minimum Disability Retirement Pensions or, for increases prior to 2/1/1988, b) Deferred Vested Retirement pensions.

<u>Effective Date of Increase</u>	<u>Increase Applicable to Retirements Prior to</u>	<u>Amount of Monthly Pension Increase</u>
1/1/1977	12/31/1976	\$ 10.00
4/1/1978	3/27/1978	10.00
4/1/1979	3/27/1978	10.00
4/1/1980	3/27/1978	5.00
7/1/1981	6/7/1981	10.00
7/1/1982	6/7/1981	10.00
7/1/1983	6/7/1981	5.00
10/1/1984	10/1/1984	10.00
10/1/1987	10/1/1984	10.00
2/1/1988	2/1/1988	20.00
2/1/1990	2/1/1988	10.00

- b) Minimum Disability Retirement pensions for participants who retired prior to 2/1/1988, as follows:

<u>Effective Date of Increase</u>	<u>Increase Applicable to Retirements Prior to</u>	<u>Amount of Monthly Pension Increase</u>
4/1/1978	3/27/1978	\$ 5.00
4/1/1979	3/27/1978	5.00
4/1/1980	3/27/1978	2.50
7/1/1981	6/7/1981	5.00
7/1/1982	6/7/1981	5.00
7/1/1983	6/7/1981	2.50

<u>Effective Date of Increase</u>	<u>Increase Applicable to Retirements Prior to</u>	<u>Amount of Monthly Pension</u>
10/1/1984	10/1/1984	\$160.00
10/1/1987	10/1/1984	170.00*
2/1/1988	2/1/1988	190.00
2/1/1990	2/1/1988	200.00
1/1/1998	1/1/1998	215.00
1/1/2002	1/1/2002	230.00

* \$165 if approved after October 1, 1984.

SECTION 1.1

Summary of Plan Provisions (continued)

- c) Minimum pensions for surviving spouses of pensioners (other than deferred vested pensioners not eligible for the Deferred Vested Retirement--Special benefit for increases prior to February 1, 1988) who died prior to February 1, 1988:

Effective Date of Increase	Increase Applicable to Retirements Prior to	Amount of Monthly Pension Increase
10/1/1984	10/1/1984	\$ 5.00
10/1/1987	10/1/1984	5.00

Effective Date of Increase	Increase Applicable to Retirements Prior to	Amount of Monthly Pension Increase
2/1/1988	2/1/1988	(1/31/1988 amount + \$10) x 1.5
2/1/1990	2/1/1988	(1/31/1988 amount + \$15) x 1.5

- d) Pensions of participants eligible for a Deferred Vested Retirement--Regular pension who ceased work prior to June 7, 1981, and satisfy the criteria for a Deferred Vested Retirement--Special pension are recomputed (prospectively only) using the ¼% reduction and the Normal Retirement benefit schedule in effect on the last day of credited service. Pensions of such participants are increased by any increases applicable to Early Retirement pensioners which occurred after the date of retirement and application for pension.
- e) A monthly benefit increase of \$15 is provided to all pensioners and surviving spouses in pay status, and to all terminated vested participants (not yet in pay status), on January 1, 1998.
- f) A monthly benefit increase of \$15 is provided to all pensioners and surviving spouses in pay status, and to all terminated vested participants (not yet in pay status), on January 1, 2002.
- g) A monthly benefit increase of \$15 is provided to all pensioners and surviving spouses in pay status, and to all terminated vested participants (not yet in pay status), on January 1, 2007.
- h) A monthly benefit increase of \$5 is provided to all pensioners and surviving spouses in pay status, and to all terminated vested participants (not yet in pay status), on January 1, 2009.

Preretirement Surviving Spouse Benefit:

- Eligibility: Eligible for an immediate pension at time of death, except Deferred Vested participants with less than 20 years of Credited Service.
- Benefit: 75% of the pension that the participant would have received had he elected a pension on the day preceding his death.
- Form of Payment: Life annuity to eligible spouse.

SECTION 1.1

Summary of Plan Provisions (continued)

Preretirement Joint and Survivor Annuities:

- Eligibility: Not eligible for a Preretirement Surviving Spouse Benefit and either qualifies for a pension or has 5 (10, for participants who do not have an hour of signatory service on or after July 1, 1999) years of signatory service.
- Benefit: A percentage of the pension that the participant would have received had he separated from service on the day of his actual death, and survived to retire at age 55 (or current age at death, if later) and died on the next day. The percentage is 50% for participants who qualify for a pension and 75% for other participants who are under age 55.
- Form of Payment: Life annuity to eligible spouse, first payable at the later of date of death or the month the participant would have attained age 55.

Special Surviving Spouse Benefit:

- Eligibility: January 1, 1998, surviving spouses who 1) were married to a miner who died as a result of a mine accident during the term of the 1978 or 1981 Wage Agreement (with 10 years of credited service) and who was not in Construction Industry Service at time of death, 2) never remarried, and 3) never received a monthly surviving spouse benefit.
- Benefit: Lump sum of \$10,000 on February 1, 1998, plus monthly benefit of \$100 beginning February 1, 1998, and continuing until remarriage or death.

Lump Sum Death Benefit:

- Eligibility: Regular and disabled pensioners (other than those receiving a deferred vested pension based on less than 20 years of credited service) whose death occurs on or after February 1, 1991, eligible inactive New Inexperienced Miners first hired on or after January 1, 2012, and eligible inactive Electing Miners. Last service must have been with an employer signatory to an agreement providing for such benefits. Effective February 1, 1993, pensioners who are eligible beneficiaries of the UMWA Combined Benefit Fund are not eligible for lump sum death benefits from this plan.
- Benefit: For deaths on or after January 1, 2007: lump sum equal to \$8,500 for the named beneficiary who is the surviving spouse or an eligible dependent, and \$7,000 for any other named beneficiary. For deaths during 2002-2006, the amounts are \$7,000 and \$6,000, respectively.

One-time Single Sum Payments:

- Eligibility: Regular and disabled pensioners and surviving spouses whose pension is in pay status on the day before the payment date.

SECTION 1.1

Summary of Plan Provisions (continued)

Benefit: One-time single sum payments of \$565 for regular pensioners and \$440 for disabled pensioners and surviving spouses, payable on November 1 of 2007, 2008, and 2009.

One-time single sum payments of \$580 for regular pensioners and \$455 for disabled pensioners and surviving spouses, payable on November 1 of 2010 and 2011.

Social Security Supplement:

Eligibility: Pensioners and surviving spouses whose last signatory employer is obligated to current Agreement benefits and who also meet the following requirements:

- pensioners and surviving spouses who are not eligible for unreduced Social Security benefits,
- entitled to Employer-provided benefits under the Employer Plan and subject to such plan's annual deductible, and
- ineligible for Medicare disability benefits.

Deferred vested pensioners with less than 20 years of service are not eligible for the supplement.

Benefit: Lump sum social security supplement of \$1,000 payable on each January 1 of years 1994-2006 (or a pro-rata portion based on length of eligibility within the calendar year).

Note: This benefit was deleted as of January 1, 2007, for participants who retire under the 2007 Agreement, because the benefit had expired by its own terms.

SECTION 1.1

Summary of Plan Provisions (continued)
Former 1950 Pension Plan (Merged with 1974 Pension Plan as of June 30, 2007)
(Based on National Bituminous Coal Wage Agreement of 2011)

Class of Employee Covered: Persons who terminated classified signatory employments prior to December 31, 1975, and are eligible for a pension upon attaining age 55 (not eligible for pension benefits under the pre-merger UMWA 1974 Pension Plan).

Effective Date: December 6, 1974.

Date of Last Amendment: September 27, 2011.

Normal Retirement:

Eligibility: Ceases work, attains age 55 and completes service under (a) or (b):

- (a) 20 years credited service including service with an employer signatory to the bituminous coal wage agreement:

<u>Date Attains Age 55</u>	<u>Years of Signatory Service Required</u>
Before 1/1/1977	5 years
1/1/1977 to 12/31/1977	6 years
1/1/1978 to 12/31/1978	7 years
1/1/1979 to 12/31/1979	8 years
1/1/1980 to 12/31/1980	9 years
1/1/1981 and After	10 years

- (b) 10 years signatory service including at least 3 years after 12/31/1970.

Credited Service: Service in a classified job in the bituminous coal industry may be credited for work prior to April 1971, but this is non-signatory service unless the employee is in a classified job for an employer signatory to the wage agreement then in effect.

Benefit: (a) For pensioners with at least 20 years of credited service:

<u>Period Beginning</u>	<u>Monthly Benefit</u>	
	<u>Without Black Lung Benefits</u>	<u>With Black Lung Benefits</u>
1/1/1975	\$200	\$200
1/1/1976	225	215
1/1/1977	250	225
4/1/1978	275	275
7/1/1981	290	290
7/1/1982	305	305
7/1/1983	315	315
10/1/1984	325	325
10/1/1987	335	335
2/1/1988	365	365
2/1/1990	375	375
1/1/1998	390	390
1/1/2002	405	405
1/1/2007	420	420
1/1/2009	425	425

SECTION 1.1

Summary of Plan Provisions (continued)

(b) For pensioners with less than 20 years of credited service:

Period Beginning	Monthly Benefit Amount to be Multiplied by the Ratio of Years of Credited Signatory Service to 20 Years	
	Without Black Lung Benefits	With Black Lung Benefits
1/1/1975	\$200	\$200
1/1/1976	225	215
1/1/1977	250	225
7/1/1981	250	250

The amounts determined in (b) above shall be increased according to the following schedule:

Effective Date of Increase	Amount of Monthly Pension Increase
2/1/1988	\$30
2/1/1990	10
1/1/1998	15
1/1/2002	15
1/1/2007	15
1/1/2009	5

Form of Payment: Life annuity.

Disability Retirement:

Eligibility: Disabled as the result of a mine accident which occurred after 5/29/1946 while in a classified job and eligible for Social Security disability benefits as a result of such accident.

Benefit:

Period Beginning	Monthly Benefit
1/1/1975	\$125.00
4/1/1978	130.00
4/1/1979	135.00
4/1/1980	137.50
7/1/1981	147.50
7/1/1982	152.50
7/1/1983	157.50
10/1/1984	167.50
10/1/1987	177.50
2/1/1988	207.50
2/1/1990	217.50
1/1/1998	232.50
1/1/2002	247.50
1/1/2007	262.50
1/1/2009	267.50

SECTION 1.1

Summary of Plan Provisions (continued)

Form of Payment: Life annuity, converted to a retirement pension if service eligible at age 55.

Termination with Vested Rights:

Eligibility: Termination of employment after completion of 10 years of signatory service, at least 3 years of which are signatory service after 12/31/1970.

Benefit: (a) For pensioners with at least 20 years of credited service:

<u>Period Beginning</u>	<u>Monthly Benefit</u>	
	<u>Without Black Lung Benefits</u>	<u>With Black Lung Benefits</u>
1/1/1975	\$200	\$200
1/1/1976	225	215
1/1/1977	250	225
4/1/1978	275	275
7/1/1981	290	290
7/1/1982	305	305
7/1/1983	315	315
10/1/1984	325	325
10/1/1987	335	335
2/1/1988	365	365
2/1/1990	375	375
1/1/1998	390	390
1/1/2002	405	405
1/1/2007	420	420
1/1/2009	425	425

(b) For pensioners with less than 20 years of credited service: the amounts shown below multiplied by the ratio of years of credited signatory service (to the nearest ¼ year) to 20 years.

<u>Period Beginning</u>	<u>Monthly Benefit</u>	
	<u>Without Black Lung Benefits</u>	<u>With Black Lung Benefits</u>
1/1/1975	\$200	\$200
1/1/1976	225	215
1/1/1977	250	225
7/1/1981	250	250

The amounts determined in (b) above shall be increased according to the following schedule:

<u>Effective Date of Increase</u>	<u>Amount of Monthly Pension Increase</u>
2/1/1988	\$30
2/1/1990	10
1/1/1998	15
1/1/2002	15
1/1/2007	15
1/1/2009	5

SECTION 1.1

Summary of Plan Provisions (continued)

Form of Payment: Life annuity.

Widow's Benefit:

Eligibility: Widows of pensioners receiving benefits under this plan at time of death, who were married to such pensioner throughout nine-month period ending on date of pensioner's death (unless such nine-month period would be waived for purposes of determining entitlement to widows' insurance benefits under the Social Security Act).

Benefit:

<u>Period Beginning</u>	<u>Monthly Benefit</u>
3/1/1982	\$ 95
10/1/1984	100
10/1/1987	105
2/1/1988	120
2/1/1990	125
1/1/1998	140
1/1/2002	155
1/1/2007	170
1/1/2009	175

Form of Payment: Life annuity, except payment ceases upon remarriage.

Note: In limited circumstances, surviving spouses may be entitled to other survivor benefits in lieu of the above.

Lump Sum Death Benefit:

Eligibility: Regular and disabled pensioners whose death occurs on or after February 1, 1991. Effective February 1, 1993, lump sum death benefits are not payable from the 1950 Pension Plan for pensioners who are eligible beneficiaries of the UMWA Combined Benefit Fund. Regular pensioners with less than 20 years of credited service who used non-classified service for vesting purposes are not eligible for lump sum death benefits.

Benefit: For deaths on or after January 1, 2007: lump sum equal to \$8,500 for regular and disabled pensioners with widow or dependents, and \$7,000 for other regular and disabled pensioners. For deaths during 2002-2006, the amounts are \$7,000 and \$6,000, respectively.

One-Time Single Sum Payments:

Eligibility: Regular and disabled pensioners and widows whose pension is in pay status on the day before the payment date.

Benefit: On November 1 of 2007, 2008, and 2009: one-time single sum payments of \$565 for regular pensioners with at least 20 years of credited service, \$440 for regular pensioners with less than 20 years of credited service and disabled pensioners and widows.

On November 1 of 2010 and 2011: one-time single sum payments of \$580 for regular pensioners with at least 20 years of credited service, \$455 for regular pensioners with less than 20 years of credited service and disabled pensioners and widows.

SECTION 1.2

Plan Participants

Exhibit A--Reconciliation of Data

The data used in this valuation were supplied by the United Mine Workers of America Health and Retirement Funds Staff ("Staff") as of July 1, 2012. The changes in participant data since last year's valuation were as follows:

	ACTIVES	ELECTING MINERS	TERMINATED³		PENSIONERS		Total
			Miners & Truckers	Non-Retired Disabled	Retired and Disabled	Surviving Spouses	
1) Number of participants, 7/1/2011 as reported by Staff for 7/1/2011 valuation	10,427	0	108,021	42	63,455	31,898	213,843
2) New entrants	1,508	0	0	0	0	0	1,508
3) Rehires	146	0	-143	0	-3	0	0
4) Electing miners	-26	27	-1	0	0	0	0
5) Terminations (vested and nonvested)	-630	0	630	0	0	0	0
6) Retired	-614	0	-1,373	0	1,987	0	0
7) Deaths	-22	0	-156	0	-2,499	-1,378	-4,055
8) Additional changes to data base file between 7/1/2011 and 7/1/2012 per Staff	0	9	78	0	-44	246	289
9) Number of participants, 7/1/2012 as reported by Staff for 7/1/2012 valuation	10,789	36	107,056	42	62,896	30,766	211,585 ⁴

Exhibit 2 to the Declaration of Dale Stover

³ Based upon entry age and service assumptions, described in Section 1.3, it was assumed that 10,570 terminated miners and truckers, and no non-retired disabled have vested rights. All non-retired terminated participants over age 65 are assumed to be either dead or ineligible to collect a pension and have thus been excluded from the count of participants with vested rights. Those assumed to be nonvested were excluded from plan costs and liabilities. Terminated counts shown do not include the 0.6% load for unreported prior 1950 Pension Plan vested terminated participants.

⁴ In addition, there are 1,257 spouses of prior 1950 Pension Plan pensioners who are not currently eligible for benefits, but can become eligible when the pensioner dies.

SECTION 1.2

Plan Participants

Exhibit B--Age Distribution

The age distributions of the active employees, electing miners, and vested terminated participants used in the valuation are shown below. Adjustments to the data submitted by the Staff for the assumed dates of birth and a 0.6% increase applied to reported vested terminated participants to account for unreported participants are reflected in the distributions.

Age	Number of Participants		
	Active Employees	Electing Miners	Vested Terminated Participants
24 and under	566	0	0
25-29	1,077	2	9
30-34	1,216	4	56
35-39	1,236	5	99
40-44	1,059	4	158
45-49	768	3	283
50-54	1,365	6	2,377
55-59	2,310	6	4,087
60-64	1,093	5	2,716
65 and over	<u>99</u>	<u>1</u>	<u>848</u>
Total	10,789 ⁵	36	10,633

The average age and service for active employees are 44.8 and 13.4, respectively.
The average age and service for electing miners are 48.0 and 9.8, respectively.
The average monthly benefit for vested terminated participants is \$483.

⁵ Of this number, 6,346 were assumed to have vested rights.

SECTION 1.2

Plan Participants

Distribution of Retirees and Surviving Spouses

Age	Number of Participants		
	Regular Retirees	Disabled Retirees	Surviving Spouses
54 and under	363	572	628
55-59	6,658	1,700	1,236
60-64	12,857	2,385	2,184
65-69	11,431	2,051	2,908
70-74	8,284	1,528	3,488
75-79	5,578	745	4,235
80-84	3,903	323	5,597
85 and over	<u>4,403</u>	<u>115</u>	<u>10,490</u>
Total	53,477	9,419	30,766

The average monthly benefit for regular retirees is \$620.

The average monthly benefit for disabled retirees is \$553.

The average monthly benefit for surviving spouses is \$322.

SECTION 1.3

Actuarial Basis

Actuarial Cost Method

All plan benefits are valued under the Unit Credit Actuarial Cost Method. This method determines the actuarial present value of accrued benefits, or Actuarial Accrued Liability. This is the reserve required at the valuation date to provide all normal retirement, early retirement, deferred vested retirement, disability, and surviving spouse benefits expected to be paid to current participants based on credited service and benefit levels at the beginning of the plan year, except that benefit increases effective during the plan year are reflected on a pro rata basis for the portion of the plan year in which they are in effect.

Assets – the funded part of the Actuarial Accrued Liability.

Unfunded Actuarial Accrued Liability – the remaining unfunded part of the Actuarial Accrued Liability.

Expected Unfunded Actuarial Accrued Liability – Unfunded Actuarial Accrued Liability developed in the prior year's valuation, increased by normal cost and one year's interest at the valuation interest rate, and reduced by total contributions made toward the prior plan year's cost with interest credited at the valuation interest rate from the date contributed.

Actuarial Gains and Losses – deviations in emerging plan experience from that anticipated in the actuarial assumptions. The Expected Unfunded Actuarial Accrued Liability less the Unfunded Actuarial Accrued Liability equals the net Actuarial Gain (or Actuarial Loss, if negative).

Plan costs arise from two sources: a Normal Cost and an Amortization Payment for the Unfunded Actuarial Accrued Liability.

- 1) Normal Cost: The actuarial present value of benefits deemed to accrue during the plan year.
- 2) Amortization Payment: On July 1, 1976 an initial Unfunded Actuarial Accrued Liability was determined as the actuarial present value of projected benefits attributed to past service by the Individual Entry Age Normal Actuarial Cost Method (described below) and this amount was then "frozen" so as to be unaffected by future experience gains and losses. This Unfunded Frozen Actuarial Accrued Liability was subsequently redetermined to reflect changes in the Actuarial Accrued Liability due to plan amendments and changes in assumptions. The Unfunded Frozen Actuarial Accrued Liability increased each year due to interest and decreased each year due to Amortization Payments. The Unfunded Frozen Actuarial Accrued Liability as of July 1, 1976 must be funded over a period of not more than 40 years. A 40-year amortization period also applied to Actuarial Accrued Liabilities generated by plan amendments and changes in assumptions adopted before September 26, 1980.

For benefit improvements adopted or assumption changes made after September 26, 1980, the 40-year amortization period was reduced to 30 years. Under the Pension Protection Act of 2006, such bases first established in plan years beginning on or after July 1, 2008 are amortized over 15 years (or shorter periods, for short-term benefits). Under the Unit Credit Actuarial Cost Method effective July 1, 2009, actuarial gains and losses are also amortized over 15 years.

SECTION 1.3

Actuarial Basis (continued)

On July 1, 1976 the Unfunded Frozen Actuarial Accrued Liability, determined by the Individual Entry Age Normal Actuarial Cost Method, represented the amount of assets that would have been accumulated in the plan (a) had the funding for each participant commenced on his assumed entry age, and (b) had the amount funded each year from assumed entry age to July 1, 1976 equaled a level annual dollar amount which, if paid from assumed entry age to assumed retirement age, would have fully covered all future benefits. When the plan was amended or assumptions were changed, the Unfunded Frozen Actuarial Accrued Liability was adjusted to reflect the increase or decrease in Actuarial Accrued Liability, an amount that would have been accumulated with respect to each participant had the amendment or change been in effect since that participant's assumed entry age.

IRS Letter 1744 dated April 24, 2007 required changes in funding methodology and revisions to 1974 Pension Plan funding standard accounts for 2003-04, 2004-05, and 2005-06. (These changes are set forth in Schedule B of the 2006 Form 5500.) The new method required reestablishing the unfunded liability under the Individual Entry Age Normal Actuarial Cost Method whenever a negative normal cost would have otherwise been produced.

The 1950 Pension Plan was merged into the 1974 Pension Plan as of June 30, 2007. The merged plan continued use of the 1974 Pension Plan cost method through June 30, 2009. The prior 1950 Pension Plan used the Unit Credit Actuarial Cost Method.

Effective July 1, 2009, the Actuarial Cost Method for the merged plan was changed from Entry Age Normal, Frozen Initial Liability to Unit Credit. Under this method, a new amortization base is established whenever there is a plan amendment, assumption change, method change, or actuarial gain or loss.

Effective July 1, 2011, a new software system was used for the valuation. This change did not materially affect costs and liabilities and it met the conditions of automatic IRS approval under Section 4.04 (Approval for Change in Valuation Software) of Revenue Procedure 2000-40.

Valuation of Assets

General Methodology. The Actuarial Value of Assets is equal to a moving average of market values in which investment income is recognized over a five-year period beginning July 1, 2007. (The July 1, 2007, Actuarial Value of Assets was equal to Market Value.) Investment income equal to the expected return on plan assets is recognized immediately. Any difference between the actual investment income (on a market value basis) and the expected return is recognized over a five-year period (20% in the first year, 40% in the second year, and so on, until the full 100% is recognized in the fifth year). In addition, the Actuarial Value of Assets must be no greater than 120% and no less than 80% of the fair market value of assets.

Funding Relief Modifications. For plan years beginning on and after July 1, 2010, the difference between the actual investment income (on a market value basis) and the expected return for the plan year ended June 30, 2009, is recognized on a level basis over 10 years beginning July 1, 2009. In addition, for the plan year beginning July 1, 2010, the corridor was expanded to permit the Actuarial Value of Assets to be no greater than 130% and no less than 80% of the fair market value of assets. For the plan year beginning July 1, 2011, and later years the corridor returned to 80%/120% of market value.

SECTION 1.3

Actuarial Basis (continued)

Actuarial Assumptions

The actuarial assumptions underlying the costs are shown below:

1. Assumptions Concerning Future Events

- Funding Interest Rate: 8%⁶.
- Administrative Expenses: 0.2%⁶ of assets for investment expenses plus 3.5% of benefit payments for other administrative expenses. This assumption is based on a study of experience during July 1, 2004, through June 30, 2010.
- Turnover: 125% of the Vaughn Table (ultimate rates) plus 4%.

Illustrative rates are:

<u>Age</u>	<u>Rates</u>
20	27.3%
30	16.6
40	12.1
50	9.6
55	0.0

Participants terminating before age 55 with at least 20 years of signatory service are assumed to be permanently laid off. This assumption is based on a study of experience during July 1, 2005, through June 30, 2010.

Retirement Age: Rates varying by age as follows:

<u>Age</u>	<u>Active Participants</u>		<u>Vested Terminations</u>
	<u>Service <30 Years</u>	<u>Service ≥ 30 Years</u>	
50		13%	
51		13	
52		13	
53		13	
54		20	
55	10%	38	45%
56	7	34	19
57	7	30	12
58	8	30	9
59	9	30	6
60	10	30	6
61	14	35	6
62	40	70	100
63	30	45	
64	60	30	
65	100	100	

⁶ For purposes of the valuation, the 8% interest assumption is reduced by the 0.2% of assets investment expense assumption, producing a 7.8% interest assumption net of administrative expenses.

SECTION 1.3

Actuarial Basis (continued)

This assumption is based on a study of experience during July 1, 2006, through June 30, 2010, for actives and July 1, 2005, through June 30, 2010, for vested terminations. Future vested terminations are assumed to retire at age 60 (or exit age, with 20+ years).

Preretirement Mortality: RP-2000 Mortality Table for Male Employees, assumed to improve by .75% per year for 15 years (beginning July 1, 2008) at each age between 55 and 99, for funding.

Postretirement Mortality: RP-2000 Mortality Table for Blue Collar Healthy Male Annuitants with ages set forward one year and assumed to improve by .75% per year for 15 years (beginning July 1, 2008) at each age between 55 and 99.

Illustrative rates (before assumed improvements per 1,000) are:

<u>Age</u>	<u>Rates</u>
55	7.67
60	11.52
65	18.23
70	29.34
80	78.16
90	196.37

Spouse and Widow Mortality: Unisex Pension 1984 Mortality Table with ages set back two years, assumed to improve by .75% per year for 15 years (beginning July 1, 2008) at each age between 55 and 99.

Disability: Incidence is 1.5% per year for ages 20 through 64. This assumption is based on a study of experience during July 1, 2004, through June 30, 2010. Mortality of disabled lives in accordance with the Unisex Pension 1984 Mortality Table set forward two years, assumed to improve by .75% per year for 15 years (beginning July 1, 2008) at each age between 55 and 99.

SECTION 1.3

Actuarial Basis (continued)

Future Service: Active participants will earn, for each calendar year they remain active participants in the 1974 Pension Plan, credited signatory service as shown in the following chart:

<u>Participant Category</u>	<u>Annual Future Service</u>
Active participants who earned a full year of service every calendar year since entry, during the period starting in 1997	1.00 year
Continuing actives with partial service year credit in prior calendar year	0.75 year
All other active participants	0.75 year

This assumption is primarily used to determine normal cost and estimated benefit payments. It is also used for determining future eligibility for disability benefits and for early retirement and payment form subsidies.

Rehire: Retired, non-retired disabled, and terminated participants are assumed to be permanently terminated or retired (i.e., will not be rehired).

Surviving Spouses: 80% of eligible participants are married and wives are four years younger than their husbands, except that data is reported for spouses of former 1950 Pension Plan pensioners. These spouses are not currently eligible for benefits, but can become eligible when the pensioner dies. It is assumed that surviving spouses will not remarry.

SECTION 1.3

Actuarial Basis (continued)

2. Assumptions Made With Respect to Employee Data

- Entry Age:
- I) Participants With Credible Past Service Data
Actual entry age. Category includes participants whose first service credit occurred in 1979 or later at age 45 or younger.
 - II) Participants Without Complete Past Service Data
Assumed to enter at age 24 or present age, if younger.
- Past Service:
- I) Participants With Credible Past Service Data
Actual service earned to end of calendar year preceding valuation date plus 1/2 of the assumed future service for the six-month period ending on the valuation date.
 - II) Participants Without Complete Past Service Data
The sum of (a) plus (b) plus (c).
 - (a) 1/2 of the assumed future service for the six-month period ending on the valuation date.
 - (b) actual signatory service credits for calendar years 1977 and later.
 - (c) for periods of assumed service prior to 1977, according to the following chart:

<u>Participant Category</u>	<u>Pre-1977 Annual Past Service</u>
Active participants who earned a full year of service every calendar year since entry, during the period starting in 1977	1.00 year
All other active and terminated participants	0.85 year

Sex: All participants, other than surviving spouses, are assumed to be males. It is assumed that females constitute a very small percentage of the participant population and the use of male mortality rates for all participants (other than surviving spouses) would not have a material impact on the valuation results.

Form of Payment: Future pensioners not eligible for a postretirement surviving spouse benefit are assumed to receive a life annuity or an actuarially equivalent 75% joint and survivor annuity. Current pensioners are assumed to be eligible for a postretirement surviving spouse benefit based on data provided by status code.

SECTION 1.3

Actuarial Basis *(continued)*

Attained Age:	All non-retired participants are at least 18 years old and no active participants have exceeded their 80th birthday. Data submitted outside this range are assumed to be miscoded and are adjusted to the appropriate age limit. (Adjustments were made for 0 active participants.) All terminated participants over age 65 are assumed to be either dead or ineligible to receive a pension and are excluded from the valuation. (28,518 such participants were excluded.)
Active Participant:	All non-retired participants with a full or partial service credit in the preceding calendar year are assumed to be active participants on the valuation date.
Date of Birth:	Participants with no known date of birth are assumed to have the same average age as the other participants in the same status category. (This assumption was applied to 73 active and 4,083 terminated participants.)
Participant Data Not On Valuation Data Base:	It was assumed that the reported vested terminated population should be increased by 0.6% to reflect missing data. Missing participants are assumed to have the same census characteristics as the reported participants. The valuation data was adjusted to correct for the assumed missing information.

Section 2: Summary of Valuation Results

This section sets forth the results of the actuarial valuation.

Section 2.1 shows the change in assets over the valuation year, the composition of the assets, and the calculation of the Actuarial Value of Assets over the year.

Section 2.2 shows the Unfunded Actuarial Accrued Liability and Normal Cost.

Section 2.3 shows the reconciliation of the Unfunded Actuarial Accrued Liability as of the valuation date.

Section 2.4 shows the actuarial gain or loss during the year.

Section 2.5 shows the current liability as of the valuation date and other values necessary for the Schedule MB of Form 5500.

Section 2.6 shows the computation of the range of recommended contributions for the plan year beginning July 1, 2012.

Section 2.7 shows certain data required for withdrawal liability calculations and disclosure under FASB Accounting Standards Codification 960 (formerly Statement of Financial Accounting Standards No. 35).

Section 2.8 shows estimated benefit payments for the next 40 years.

SECTION 2.1

Assets of the Plan as of June 30, 2012

Based upon information furnished by the United Mine Workers of America Health and Retirement Funds' Staff, the change in assets over the valuation year ended June 30, 2012 is summarized as follows:

	<u>Market Value</u>	<u>Actuarial Asset Value</u>
1) Net Assets, June 30, 2011	\$4,421,136,000	\$5,077,338,000
2) Accounting Adjustment	9,000	9,000
3) Contributions		
a) For Production in Current and Prior Plan Years	129,174,000	129,174,000
b) Withdrawal Liability Payments	37,000	37,000
c) Total Attributed to Plan Year = (a)+(b)	129,211,000	129,211,000
4) Other Income (Loss)	2,618,000	2,618,000
5) Interest, Dividends, and Securities Lending Income	76,613,000	76,613,000
6) Net Appreciation (Depreciation) on Investments	296,345,000	96,083,000
7) Benefit Payments	(685,402,000)	(685,402,000)
8) Expenses	(38,285,000)	(38,285,000)
9) Net Assets, June 30, 2012	\$4,202,245,000	\$4,658,185,000

SECTION 2.1

Assets of the Plan as of June 30, 2012 (continued)

The composition of the assets, as of June 30, 2012, is as follows:

	<u>Market Value</u>
Corporate Stocks - Common	\$ 726,405,000
Corporate Stocks - Preferred	1,645,000
Registered Investment Companies	374,252,000
Short-term and Foreign Currency Investments	3,372,000
U.S. Government Securities	525,160,000
Corporate Debt Instruments	142,373,000
Partnership/Joint Venture Interests	559,064,000
Real Estate	236,626,000
Common/Collective Trusts	1,227,746,000
Other Investments	291,859,000
Securities Held as Collateral	299,990,000
Furniture, Equipment, and Leasehold Improvements	807,000
Other Assets	1,319,000
Cash and Cash Equivalents	146,610,000
Accounting Adjustment	<u>(9,536,000)</u>
Total	\$4,527,692,000
Accruals:	
Contributions Due	\$ 9,914,000
Accrued Investment Income	6,673,000
Accrued Investments Sold	51,920,000
Due from Other Trusts	30,484,000
Other Receivables	113,000
Accounts Payable and Accrued Expenses	(73,448,000)
Liability for Investments Purchased	(49,057,000)
Payable under Securities Agreements	(299,990,000)
Other Liabilities	<u>(2,056,000)</u>
Total Accruals	<u>(325,447,000)</u>
Total Net Assets	\$4,202,245,000

Note: The classification of assets used for accounting purposes may differ from classification shown on other pages of Section 2.1.

SECTION 2.1

Assets of the Plan as of June 30, 2012 (continued)

Distribution of Market Value of Assets on June 30, 2012, by Investment Manager

<u>U.S. Equity:</u>	<u>Amounts In Millions</u>
Argus Investors	\$121.8
Barrow Hanley	68.6
BlackRock Extended Market Fund	36.6
BlackRock S&P Index Fund	135.3
DFA Micro Cap Subtrust	29.0
DFA Small Cap Subtrust	84.3
Goldman Sachs	127.8
Intech	130.5
LSV Asset Management	66.9
T. Rowe Price	67.7
Subtotal	868.5
<u>Non-U.S. Equity:</u>	
BlackRock International Equity	60.9
City of London EM	96.5
Emerging Markets Growth Fund	93.3
GMO	166.0
SSGA International Small Cap	62.9
SSGA MSCI Index	281.6
Subtotal	761.2
<u>Fixed Income:</u>	
BlackRock Active Long Credit Fund	485.3
Bridgewater 20+ USTB	412.4
Loomis Sayles & Co.	164.9
NISA Fixed Income	286.6
SSGA U.S. Long Credit	286.1
Subtotal	1,635.3
<u>Real Estate:</u>	
American Realty Core	106.1
Clarion Partners Core	80.6
JP Morgan Strategic Property Fund	49.9
KTR Industrial Fund II, LP	35.2
Madison International Fund IV, LP	14.5
UBS Trumbull Fund	50.5
Vanguard REIT Index Fund	61.3
Subtotal	398.1

SECTION 2.1

Assets of the Plan as of June 30, 2012 (continued)

Distribution of Market Value of Assets on June 30, 2012, by Investment Manager

	<u>Amounts In Millions</u>
<u>Private Equity:</u>	
ABS Capital Partners V	32.8
Aurora Equity Partners III	30.3
Blum Strategic Partners II	4.1
Blum Strategic Partners III	8.0
Capital International V	15.8
Charterhouse Capital Partners VII	10.0
Charterhouse Capital Partners VIII	31.2
Harvest Partners IV	5.1
Harvest Partners V	21.7
Industrial Growth Partners II	2.4
Industrial Growth Partners III	6.0
Industrial Growth Partners IV	2.6
International Life Sciences Fund III	10.1
Kohlberg Te Investors VI	23.3
Mobius Technology Ventures VI	6.3
Morgenthaler Partners VI	1.8
Morgenthaler Partners VII	5.5
Morgenthaler Venture Partners V	4.1
Perseus Market Opportunity Fund	9.7
Perseus Partners VII	19.0
Phoenix Equity Partners 2006 Fund	6.5
Phoenix Equity Partners IV B	3.1
Snow Phipps II	4.9
Softbank Technology Ventures V	1.7
Softbank U.S. Ventures VI	4.3
SV Life Sciences Fund IV	18.9
Terra Firma Capital Partners III	22.7
Thomas, McNerney & Partners	11.6
Thomas, McNerney & Partners II	20.3
Wellspring Capital Partners III	10.7
Wellspring Capital Partners IV	34.0
Wellspring Capital Partners V	3.8
Subtotal	392.3
<u>Hedge Fund:</u>	
K-2 Institutional Investors II	66.2
Subtotal	66.2
Total Assets Placed With Outside Managers	\$4,121.6

The remainder of the assets were managed in-house.

SECTION 2.1

Assets of the Plan as of June 30, 2012 (continued)

The calculation of the Actuarial Value of Assets, described in Section 1.3, is shown below:

<u>Year Ending</u>	<u>(1) Market Value</u>	<u>(2) Total Return</u>	<u>(3) Expected Return (Market Value Basis)</u>	<u>(4)=(2)-(3) Differential Return</u>
6/30/2009	\$4,222,203,000	\$(999,846,000)	\$437,202,000	\$(1,437,048,000)
6/30/2010	\$4,253,508,000	\$618,307,000	\$310,341,000	\$307,966,000
6/30/2011	\$4,421,136,000	\$723,454,000	\$314,544,000	\$408,910,000
6/30/2012	\$4,202,245,000	\$372,958,000	\$325,762,000	\$47,196,000

Beginning of Plan Year	7/1/2011
End of Plan Year	6/30/2012

Determination of Actuarial Value of Assets

1) Market Value as of June 30, 2012	\$4,202,245,000
2) 6/10 of Column 4, row 1 – Year Ended June 30, 2009	(862,229,000)
3) 2/5 of Column 4, row 2 – Year Ended June 30, 2010	123,186,000
4) 3/5 of Column 4, row 3 – Year Ended June 30, 2011	245,346,000
5) 4/5 of Column 4, row 4 – Year Ended June 30, 2012	37,757,000
6) Preliminary Actuarial Value of Assets = (1)-(2)-(3)-(4)-(5)	4,658,185,000
7) Limits on Actuarial Value of Assets	
a) Minimum = 80% of (1)	3,361,796,000
b) Maximum = 120% of (1)	5,042,694,000
8) Actuarial Value of Assets as of June 30, 2012 = (6), since (6) falls between (7a) and (7b)	\$4,658,185,000

SECTION 2.2

Unfunded Actuarial Accrued Liability and Normal Cost at July 1, 2012

1) Actuarial Present Value of Accrued Benefits:	
a) Retirement Benefits	
Active Miners & Truck Drivers	\$695,560,000
Terminated Vested Participants	414,634,000
Retired Participants	4,309,414,000
Spouses Receiving Benefits	757,825,000
b) Preretirement Spouse's Benefits	10,920,000
c) Disability Benefits	73,966,000
d) Termination Benefits	47,647,000
e) Lump Sum Death Benefits	<u>128,749,000</u>
Total Actuarial Accrued Liability	\$6,438,715,000
2) Actuarial Value of Assets (see Section 2.1)	4,658,185,000
3) Unfunded Actuarial Accrued Liability	1,780,530,000
4) Normal Cost at July 1, 2012	\$25,789,000

SECTION 2.3

Reconciliation of Unfunded Actuarial Accrued Liability

The Unfunded Actuarial Accrued Liability changes from year to year as follows:

- a) It increases by interest at the assumed rate.
- b) It decreases to reflect contributions toward Amortization Payments.
- c) It is modified to reflect any changes in plan provisions, actuarial methods, and actuarial assumptions.
- d) It is modified to reflect the gains and losses occurring during the prior year.

Unfunded Actuarial Accrued Liability

1)	Unfunded Actuarial Accrued Liability at July 1, 2011		\$1,541,364,000
2)	Total Normal Cost, July 1, 2011	\$27,032,000	
3)	Interest to June 30, 2012, on (2) and (3)	<u>122,335,000</u>	
4)	Total of (2)+(3)		149,367,000
5)	Total Contributions Attributed to Plan Year	129,211,000	
6)	Interest to June 30, 2012, on (5)	<u>4,181,000</u>	
7)	Total of (5)+(6)		133,392,000
8)	Net Increase in Unfunded Actuarial Accrued Liability = (4)-(7)		15,975,000
9)	Expected Unfunded Actuarial Accrued Liability at July 1, 2012 = (1)+(8)		\$1,557,339,000
10)	Unfunded Actuarial Accrued Liability at July 1, 2012, Before Benefit Increases		1,780,530,000
11)	Actuarial Gain/(Loss) = (9)-(10)		(223,191,000)
12)	Benefit Increases		0
13)	Unfunded Actuarial Accrued Liability at July 1, 2012 = (10) + (12)		\$1,780,530,000

SECTION 2.3

Past Service Base for Maximum Tax-Deductible and 30-Year Funding Contribution

For the July 1, 2012, valuation, the Past Service Base is equal to the Unfunded Actuarial Accrued Liability on July 1, 2012.

Development of Past Service Base

	<u>Date</u>	<u>PAST SERVICE BASE</u>	
	<u>Established</u>	<u>Initial Amount</u>	<u>Remaining Balance</u>
Initial Past Service Base	7/1/2012	\$1,780,530,000	\$1,780,530,000
Past Service Base at	7/1/2012	\$1,780,530,000	\$1,780,530,000

SECTION 2.4

Actuarial Experience in the Year Ended June 30, 2012

Under the Unit Credit Actuarial Cost Method, actuarial experience is measured by comparing the Expected Unfunded Actuarial Accrued Liability based upon actuarial assumptions being realized, with the Unfunded Actuarial Accrued Liability (before benefit increases and changes in assumptions and methods) at the valuation date. If the Expected Unfunded Actuarial Accrued Liability exceeds the Unfunded Actuarial Accrued Liability, there is an actuarial gain; conversely, if the Expected Unfunded Actuarial Accrued Liability is less than the Unfunded Actuarial Accrued Liability; there is an actuarial loss. There was an actuarial loss of \$223,191,000 in the plan year ended June 30, 2012; the individual sources of actuarial gains and losses are shown below.

Actuarial Gains and Losses by Source

Gains:

1) Active and Terminated Vested Participant Mortality	\$7,729,000
2) Terminations	4,925,000
Total Gains	<u>\$12,654,000</u>

Losses:

3) Interest	\$205,562,000
4) Mortality for Retired Participants	1,880,000
5) Expenses	4,507,000
6) Retirement	14,903,000
7) New Entrants and Rehires	6,481,000
8) Data Adjustments, Transfers and other Miscellaneous Gains/Losses	<u>2,512,000</u>
Total Losses	\$235,845,000
9) Net Actuarial Gain (Loss) from Experience	(\$223,191,000)

SECTION 2.4

Actuarial Experience in Year Ended June 30, 2012 (continued)

A brief explanation of the actuarial gains and losses in the plan year ended June 30, 2012, follows:

- 1) Gain from Non-retired Life Mortality: Actual reserves released by deaths of active and vested terminated participants were \$7,729,000 more than expected, generating a gain from non-retired life mortality.
- 2) Gain from Terminations: Actual reserves released by terminations were \$4,925,000 more than expected, generating a gain from terminations. The gain resulted from 630 terminations since last year's valuation.
- 3) Loss from Interest: If the prior 8% actuarial interest assumption had been exactly met, the Actuarial Value of Assets would be \$4,863,747,000. At June 30, 2012, the Actuarial Value of Assets was \$4,658,185,000. The difference of \$205,562,000 was the loss from interest. For the year ended June 30, 2012, plan assets returned approximately 3.6% on an Actuarial Value of Assets basis and 9.0% on a Market Value basis.

The approximate rates of return shown above are not dollar nor time weighted investment yields which measure investment performance. They are rates of return on total plan assets used in the valuation (including accrual items such as contributions due), and therefore are not, as such, yields earned on the plan's invested assets. Based upon cash and the Market Value of invested assets, plan assets returned approximately 11.6% per year since the inception of the plan.

- 4) Loss from Retired Life Mortality: Actual reserves released by deaths of retired participants were \$1,880,000 less than expected, generating a loss from retired life mortality.
- 5) Loss from Administrative Expenses: Actual administrative expenses were \$4,507,000 higher than expected, generating a loss from administrative expenses, partially due to accounting adjustments.
- 6) Loss from Retirement: Actual versus expected reserves required for the 1,987 new retirements, along with the difference between actual and expected benefit payments, produced a \$14,903,000 loss from retirement.
- 7) Loss from New Entrants and Rehires: Additional reserves required for the 1,508 new and 146 rehired participants amounted to \$6,481,000.
- 8) Loss from Data Adjustments, Transfers, and Other Miscellaneous Gains/Losses: Miscellaneous data adjustments and transfers generated a \$2,512,000 increase in reserve requirements.

SECTION 2.5

Current Liability and Schedule MB Disclosure

The current liability is a present value of accrued benefits determined in accordance with IRC Section 412(l). Under the Code, the plan must compute the RPA '94 current liability measure. This value is necessary to complete the Schedule MB, and it is based on benefit levels in effect on the valuation date.

	RPA '94 Current Liability July 1, 2012
a) Vested Benefits	
Active Participants	\$1,382,591,000
Terminated Vested Participants	694,144,000
Retired Participants and Spouses Receiving Benefits	7,549,915,000
Total Vested	<u>\$9,626,650,000</u>
b) Total Nonvested Benefits	\$248,237,000
c) Total: (a) + (b)	\$9,874,887,000
Value of Benefits Accruing during the Year	\$53,283,000
Expected Benefit Payments during the Year	\$606,034,000
Assumed Rate of Interest (net of administrative expenses)	4.02%
Mortality Table	See Note
Actuarial Value of Assets at July 1, 2012	\$4,658,185,000
RPA '94 Current Liability Funded Percentage	47.17%
Estimated investment return on actuarial value of plan assets for the year ended June 30, 2012, as required on the Schedule MB	3.6%
Estimated investment return on market value of plan assets for the year ended June 30, 2012, as required on the Schedule MB	9.0%

Note: Expected benefit payments exclude \$32,894,000 paid in June 2012 for July 2012. The RPA '94 current liability mortality assumption is the separate annuitant/nonannuitant mortality tables for males and females for the 2012 plan year set forth in Regulations section 1.412(l)(7)-1.

SECTION 2.6

Contributions

Section 404(a)(1) of the Internal Revenue Code describes the limitations on tax-deductible contributions to a pension trust. Section 431 of the Internal Revenue Code sets forth minimum funding standards. For the following reasons, we recommend the Trustees review with tax counsel the tax consequence of any contribution to be made:

- i) Deductibility can be affected by factors not considered in our valuation. For example, we have not reflected the difference (if any) between the fiscal year of contributing employers and the plan year.
- ii) State law may differ from federal tax law and the amounts determined in this report may not be deductible in all jurisdictions. The amounts contained herein can be used to determine the employer's deductible contribution limit under federal law.

On the basis of the valuation as of July 1, 2012, we show in this section information for determining (1) the contribution to meet minimum funding standards for the plan year ending June 30, 2013, (2) the contribution to amortize the Unfunded Actuarial Accrued Liability over 30 years, and (3) the contribution for maximum tax-deductible funding.

SECTION 2.6

Contributions (continued)

Minimum Required Contribution and Funding Standard Account

The funding standard account is used to determine whether the plan meets the minimum funding requirements under ERISA. The funding standard accounts for the plan year ended June 30, 2012, and the determination of the minimum required contribution for the plan year ending June 30, 2013, are as follows:

Funding Standard Account	Plan Year Ending	
	June 30, 2013	June 30, 2012
Charges		
1. Prior Plan Year Funding Deficiency	\$ 0	\$ 0
2. Normal Cost for Plan Year	25,789,000	27,032,000
3. Amortization Charges	896,025,000	1,117,119,000
4. Interest on 1., 2. and 3.	71,901,000	89,244,000
5. Total Charges	\$993,715,000	\$1,233,395,000
Credits		
6. Prior Year Credit Balance	\$1,838,005,000	\$2,155,376,000
7. Employer Contributions	N/A	129,211,000
8. Amortization Credits	567,939,000	570,049,000
9. Interest on 6., 7. and 8.	187,664,000	216,764,000
10. Miscellaneous Credits		
a. Full Funding Limit Credit	0	0
b. Waived Funding Deficiency	0	0
c. Other Credits	0	0
11. Total Credits	\$2,593,608,000	\$3,071,400,000
12. Credit Balance (Funding Deficiency) = (11) – (5)	N/A	1,838,005,000
13. Minimum Required Contribution = (5) – (11), not less than \$0	\$ 0	\$ 0

SECTION 2.6

Contributions (continued)

Full Funding Limit and Full Funding Credit

The Internal Revenue Code provides for a "Full Funding Limit" to prevent excessive tax-deductible contributions to pension plans. In general, the limit prevents sponsors from taking deductions for contributions greater than the excess of the plan's accrued liabilities over the plan's assets. Regulations require that two different liability figures and three different asset figures be developed in order to compute limits used in calculating the minimum required and the maximum deductible contributions.

<u>Projected Liabilities</u>	<u>ERISA Actuarial Accrued Liability</u>	<u>RPA '94 Current Liability</u>
1. Net Interest Rate	7.80%	4.02%
2. Accrued Liability at July 1, 2012	\$6,438,715,000	\$9,874,887,000
3. Normal Cost (Accrual) at July 1, 2012	25,789,000	53,283,000
4. Expected Benefit Payments	606,034,000	606,034,000
5. Net Interest on (2), (3) and (4)	478,626,000	385,916,000
6. Expected Liability at June 30, 2013 = (2) + (3) - (4) + (5)	\$6,337,096,000	\$9,708,052,000

<u>Projected Assets</u>	<u>Unfunded Current Liability/RPA '94 Contribution Limit</u>	<u>Minimum Contribution Limit ERISA</u>	<u>Maximum Contribution Limit ERISA</u>
1. Actuarial Asset Value at July 1, 2012	\$4,658,185,000	\$4,658,185,000	\$4,658,185,000
2. Market Value at July 1, 2012	N/A	4,202,245,000	4,202,245,000
3. Credit Balance as of July 1, 2012	N/A	1,838,005,000	N/A
4. Smaller of (1) and (2), less (3)	\$4,658,185,000	\$2,364,240,000	\$4,202,245,000
5. Expected Benefit Payments	606,034,000	606,034,000	606,034,000
6. Net Interest on (4) and (5)	337,733,000	158,806,000	302,170,000
7. Expected Assets at June 30, 2013 = (4) - (5) + (6)	\$4,389,884,000	\$1,917,012,000	\$3,898,381,000

SECTION 2.6

Contributions (continued)

Full Funding Limit and Full Funding Credit (Continued)

The following calculations are required to determine the full funding credit that may reduce the minimum required contribution.

	<u>Full Funding Credit</u>	<u>Minimum ERISA</u>	<u>Minimum RPA '94</u>
1. Expected Liability	\$6,337,096,000	\$6,337,096,000	\$9,708,052,000
2. Liability Factor		100%	90%
3. Funding Limit Liability = (1) x (2)	\$6,337,096,000	\$6,337,096,000	\$8,737,247,000
4. Expected Assets	1,917,012,000	1,917,012,000	4,389,884,000
5. Preliminary Full Funding Limit = (3) – (4), not less than \$0	\$4,420,084,000	\$4,420,084,000	\$4,347,363,000
6. Full Funding Limit = (5), not less than (5) from Minimum RPA '94	\$4,420,084,000	\$4,420,084,000	N/A
7. Minimum Contribution = Section 2.6 page 44 without regard to the credit balance		381,477,000	N/A
8. Full Funding Credit = (7) – (6), not less than \$0	\$ 0	\$ 0	N/A

SECTION 2.6

Contributions (continued)

Full Funding Limit and Full Funding Credit (Continued)

The following calculations are required to determine the two full funding limits that may reduce the maximum deductible contribution.

	<u>Full Funding Limit</u>	<u>Maximum ERISA</u>	<u>Maximum RPA '94</u>
1. Expected Liability	\$6,337,096,000	\$6,337,096,000	\$9,708,052,000
2. Liability Factor		100%	90%
3. Funding Limit Liability = (1) x (2)	\$6,337,096,000	\$6,337,096,000	\$8,737,247,000
4. Adjusted Expected Assets			
a) Expected assets	3,898,381,000	3,898,381,000	4,389,884,000
b) Contributions included in (a) which have not been deducted	0	0	0
c) Contributions not included in (a) which have been deducted	0	0	0
d) (a – b + c)	3,898,381,000	3,898,381,000	4,389,884,000
5. Preliminary Full Funding Limit = (3) – (4d), not less than \$0	\$2,438,715,000	\$2,438,715,000	\$4,347,363,000
6. Full Funding Limit = (5), not less than (5) from Maximum RPA '94	\$4,347,363,000	\$4,347,363,000	N/A

SECTION 2.6

Contributions (continued)

AMORTIZATION SCHEDULE FOR MINIMUM FUNDING STANDARD DETERMINED AS OF JULY 1, 2012

Charges	Amortization Period			Balances		Amortization Payment
	Date Established	Original Period	Remaining Period	Initial	Outstanding⁷	
Initial Unfunded Frozen Actuarial						
Accrued Liability	7/1/1976	40 years	4	\$2,096,144,000	\$545,704,000	152,160,000
Benefit Increases	7/1/1977	40 years	5	42,396,000	13,390,000	3,092,000
Benefit Increases	7/1/1978	40 years	6	164,492,000	60,450,000	12,056,000
Benefit Increases	7/1/1979	40 years	7	7,492,000	3,113,000	552,000
Benefit Increases	7/1/1980	40 years	8	3,262,000	1,505,000	241,000
Benefit Increases	7/1/1983	30 years	1	123,884,000	9,761,000	9,761,000
Benefit Increases	7/1/1985	30 years	3	149,836,000	33,152,000	11,887,000
Benefit Increases	7/1/1987	30 years	5	50,461,000	17,433,000	4,029,000
Benefit Increases	7/1/1988	30 years	6	767,523,000	308,208,000	61,473,000
Benefit Increases	7/1/1989	30 years	7	167,986,000	76,100,000	13,468,000
Assumption Changes	7/1/1989	30 years	7	91,845,000	41,623,000	7,364,000
Benefit Increases	7/1/1990	30 years	8	87,508,000	43,827,000	7,023,000
Benefit Increases	7/1/1991	30 years	9	285,295,000	155,637,000	22,918,000
Benefit Increases	7/1/1994	30 years	12	319,252,000	211,089,000	25,714,000
Assumption Changes	7/1/1995	30 years	13	192,373,000	133,591,000	15,507,000
Benefit Increases	7/1/1997	30 years	15	155,332,000	117,134,000	12,541,000
Benefit Increases	7/1/1998	30 years	16	560,740,000	437,876,000	45,304,000
Assumption Changes	7/1/1998	30 years	16	118,380,000	92,449,000	9,564,000
Benefit Increases	7/1/1999	30 years	17	46,904,000	37,795,000	3,792,000
Assumption Changes	7/1/1999	30 years	17	4,591,000	3,702,000	371,000
Benefit Increases	7/1/2000	30 years	18	43,056,000	35,663,000	3,481,000
Benefit Increases/Assumption Changes	7/1/2002	30 years	20	520,163,000	451,823,000	42,055,000
Benefit Increases/Assumption Changes	7/1/2003	30 years	21	58,888,000	52,213,000	4,761,000
Benefit Increases	7/1/2004	30 years	22	27,854,000	25,163,000	2,252,000
Benefit Increases	7/1/2005	30 years	23	64,941,000	59,661,000	5,251,000
Benefit Increases	7/1/2006	30 years	24	62,618,000	58,430,000	5,063,000
Benefit Increases	7/1/2007	30 years	25	502,065,000	475,205,000	40,592,000
Benefit Increases	7/1/2008	15 years	11	40,344,000	33,564,000	4,319,000
Benefit Increases	7/1/2009	15 years	12	37,307,000	32,785,000	3,994,000
Funding Method Change	7/1/2009	10 years	7	1,352,071,000	1,046,781,000	185,236,000
Benefit Increases	7/1/2010	15 years	13	15,500,000	14,296,000	1,659,000
Assumption Changes	7/1/2010	15 years	13	13,283,000	12,250,000	1,422,000
Actuarial Loss	7/1/2011	15 years	14	247,154,000	237,909,000	26,459,000
Benefit Increases	7/1/2011	15 years	14	13,818,000	13,301,000	1,479,000
Actuarial Loss	7/1/2012	15 years	15	<u>223,191,000</u>	<u>223,191,000</u>	<u>23,894,000</u>
				\$8,657,949,000	\$5,115,774,000	\$770,734,000
Prior 1950 Pension Plan Charges				<u>5,047,102,000</u>	<u>766,180,000</u>	<u>125,291,000</u>
Total Charges				\$13,705,051,000	\$5,881,954,000	\$896,025,000

⁷ The outstanding balances are equal to the present value of the minimum amortization payments over the remaining amortization period.

SECTION 2.6

Contributions (continued)

AMORTIZATION SCHEDULE FOR MINIMUM FUNDING STANDARD DETERMINED AS OF JULY 1, 2012

Credits	Amortization Period			Balances		Amortization Payment
	Date Established	Original Period	Remaining Period	Initial	Outstanding	
Assumption Changes	7/1/1979	40 years	7	\$12,011,000	\$4,993,000	\$884,000
Assumption Changes	7/1/1983	30 years	1	168,274,000	13,238,000	13,238,000
Assumption Changes	7/1/1984	30 years	2	218,698,000	33,336,000	17,293,000
Assumption Changes	7/1/1988	30 years	6	460,737,000	185,010,000	36,901,000
Assumption Changes	7/1/1991	30 years	9	40,246,000	21,953,000	3,233,000
Termination of Coverage	7/1/1993	30 years	11	18,492,000	11,566,000	1,488,000
Assumption Changes	7/1/2000	30 years	18	67,650,000	56,025,000	5,470,000
Assumption Changes	7/1/2001	30 years	19	4,326,000	3,670,000	350,000
Assumption Changes	7/1/2004	30 years	22	126,541,000	114,302,000	10,231,000
Funding Method Change	7/1/2003	10 years	1	462,371,000	63,342,000	63,342,000
Funding Method Change	7/1/2004	10 years	2	49,209,000	12,994,000	6,742,000
Funding Method Change	7/1/2005	10 years	3	196,925,000	75,223,000	26,979,000
Funding Method Change	7/1/2006	10 years	4	316,469,000	155,495,000	43,357,000
Funding Method Change	7/1/2007	10 years	5	469,970,000	278,593,000	64,387,000
Funding Method Change	7/1/2007	10 years	5	353,477,000	209,539,000	48,427,000
Assumption Changes	7/1/2008	15 years	11	180,156,000	149,878,000	19,287,000
Actuarial Gain	7/1/2010	15 years	13	239,507,000	220,890,000	25,641,000
Funding Method Change	7/1/2010	10 years	8	<u>376,915,000</u>	<u>322,334,000</u>	<u>51,638,000</u>
				<u>\$3,761,974,000</u>	<u>\$1,932,381,000</u>	<u>\$438,888,000</u>
Prior 1950 Pension Plan Credits				<u>1,692,986,000</u>	<u>331,038,000</u>	<u>129,051,000</u>
Total Credits				\$5,454,960,000	\$2,263,419,000	\$567,939,000
Net Amortization Payment as of July 1, 2012 =						
Total Payments on Charges Less Total Payments on Credits						\$328,086,000

SECTION 2.6

Contributions (continued)

**PRIOR 1950 PENSION PLAN AMORTIZATION SCHEDULE FOR MINIMUM FUNDING STANDARD
DETERMINED AS OF JULY 1, 2012**

Charges	Amortization Period		Balances		Amortization Payment
	Date Established	Remaining Period	Initial	Outstanding	
Combined Charges	7/1/1989	0.13 years	\$3,918,713,000	\$37,796,000	\$37,796,000
Benefit Increases	7/1/1991	9 years	129,588,000	65,714,000	9,677,000
Assumption Changes	7/1/1991	9 years	18,060,000	9,155,000	1,349,000
Assumption Changes	7/1/1992	10 years	108,049,000	58,987,000	8,081,000
Asset Transfer	7/1/1993	11 years	210,000,000	122,545,000	15,769,000
Assumption Changes	7/1/1993	11 years	88,237,000	51,489,000	6,626,000
Benefit Changes	7/1/1994	12 years	79,702,000	49,451,000	6,025,000
Assumption Changes	7/1/1995	13 years	60,136,000	39,288,000	4,560,000
Benefit Changes	7/1/1997	15 years	173,833,000	124,329,000	13,310,000
Assumption Changes	7/1/1998	16 years	35,806,000	26,612,000	2,754,000
Actuarial Loss	7/1/1999	2 years	9,760,000	1,885,000	976,000
Actuarial Loss	7/1/2000	3 years	4,801,000	1,350,000	483,000
Benefit Changes	7/1/2002	20 years	22,225,000	18,677,000	1,739,000
Assumption Changes	7/1/2002	20 years	13,728,000	11,538,000	1,074,000
Assumption Changes	7/1/2003	21 years	47,090,000	40,588,000	3,701,000
Actuarial Loss	7/1/2004	7 years	25,131,000	14,762,000	2,612,000
Plan Change	7/1/2005	23 years	596,000	541,000	48,000
Assumption Changes	7/1/2005	23 years	10,645,000	9,660,000	850,000
Actuarial Loss	7/1/2006	9 years	17,638,000	12,730,000	1,875,000
Plan Change	7/1/2006	24 years	552,000	513,000	44,000
Actuarial Loss	7/1/2007	10 years	2,120,000	1,657,000	227,000
Plan Change	7/1/2007	25 years	<u>70,692,000</u>	<u>66,913,000</u>	<u>5,715,000</u>
			\$5,047,102,000	\$766,180,000	\$125,291,000
Credits					
Restoration of 6/30/1983 Credit Balance	7/1/1983	1 year	\$1,279,126,000	\$94,788,000	94,788,000
Assumption Changes	7/1/1990	8 years	18,772,000	8,743,000	1,400,000
Termination of Coverage	7/1/1993	11 years	86,219,000	50,315,000	6,474,000
Assumption Changes	7/1/1994	12 years	94,625,000	58,710,000	7,153,000
Assumption Changes	7/1/1996	14 years	12,942,000	8,869,000	987,000
Actuarial Gain	7/1/1998	1 year	60,878,000	6,035,000	6,035,000
Assumption Changes	7/1/1999	17 years	31,363,000	24,176,000	2,426,000
Assumption Changes	7/1/2000	18 years	22,441,000	17,856,000	1,743,000
Actuarial Gain	7/1/2003	6 years	35,840,000	18,431,000	3,675,000
Assumption Changes	7/1/2004	22 years	16,250,000	14,399,000	1,289,000
Actuarial Gain	7/1/2005	8 years	12,303,000	8,065,000	1,292,000
Assumption Changes	7/1/2006	24 years	<u>22,227,000</u>	<u>20,651,000</u>	<u>1,789,000</u>
			\$1,692,986,000	\$331,038,000	\$129,051,000

SECTION 2.6

Contributions (continued)

The outstanding balances of the amortizable charges and credits, shown on the previous pages, are determined as if the plan were being funded by making the minimum funding contributions under Section 431 of the Internal Revenue Code. To the extent that contributions are made in excess of the minimum required funding, the plan will develop a Credit Balance in the Funding Standard Account. The plan's Unfunded Actuarial Accrued Liability equals the excess of the outstanding charge items over the outstanding credit items, reduced by the plan's Credit Balance:

1.	Outstanding Charge Items, July 1, 2012	\$5,881,954,000
2.	Outstanding Credit Items, July 1, 2012	2,263,419,000
3.	Accumulated Excess Contributions = Credit Balance in Funding Standard Account at June 30, 2012	1,838,005,000
4.	Actual Unfunded Actuarial Accrued Liability at July 1, 2012 = (1)-(2)-(3)	\$1,780,530,000

SECTION 2.6

Contributions (continued)

Constant 30-Year Amortization

1) Normal Cost, July 1, 2012 \$25,789,000

2) Payment to Amortize the Unfunded Actuarial Accrued Liability over 30 Years:

<u>Date Established</u>	<u>Remaining Years</u>	<u>Unfunded Liability</u>	<u>Amortization Payment</u>
7/1/2012	30	\$1,780,530,000	\$143,956,000

3) 30-Year Funding at July 1, 2012 = (1)+(2) 169,745,000

4) One-half Year's Interest on (3) 6,496,000

5) 30-Year Funding at June 30, 2013 (assuming contributions are uniformly distributed over the plan year) = (3)+(4) \$176,241,000

SECTION 2.6

Contributions (continued)

Maximum Tax-Deductible Contribution

1) Normal Cost, July 1, 2012	\$25,789,000
2) Payment to Amortize July 1, 2012, Unfunded Liability of \$1,780,530,000 Over 10 years	243,936,000
3) Interest on (1)+(2) to June 30, 2013	21,039,000
4) Maximum Tax-Deductible Contribution as of June 30, 2013 = (1)+(2)+(3), not less than \$0	290,764,000
5) Minimum Required Contribution as of June 30, 2013	0
6) Larger of (4) or (5)	290,764,000
7) Full Funding Limitation	4,347,363,000
8) Regular IRC Section 404 Maximum = lesser of (6) or (7)	290,764,000
9) Alternate IRC Section 404 Maximum	
a) Projected Current Liability	9,708,052,000
b) 140% of Projected Current Liability	13,591,273,000
c) Adjusted Expected Assets	4,389,884,000
d) Unfunded Current Liability as of June 30, 2013 = ((9b) - (9c), not less than \$0)	9,201,389,000
10) Maximum Tax-Deductible Contribution for Taxable Year Ending June 30, 2013 = greater of (8) or (9d)	\$9,201,389,000

Note: See comments regarding tax-deductibility on page 43.

SECTION 2.6

Contributions (continued)

Vested Benefits Charge and Reorganization Index

1) Actuarial Present Value of Vested Benefits in Pay Status as of July 1, 2012	\$5,067,239,000
2) Actuarial Present Value of Vested Benefits not in Pay Status as of July 1, 2012	1,202,764,000
3) Market Value of Assets as of July 1, 2012	4,202,245,000
4) Unfunded Vested Benefits in Pay Status = (1)-(3), but not less than zero	864,994,000
5) Unfunded Vested Benefits not in Pay Status = (1)+(2)-(3)-(4), but not less than zero	1,202,764,000
6) 10-Year Amortization of (4)	118,506,000
7) 25-Year Amortization of (5)	102,741,000
8) Vested Benefits Charge = (6)+(7)	221,247,000
9) Net Charges to the Funding Standard Account (excluding credit to restore prior 1950 Pension Plan June 30, 1983, credit balance over 30 years)	448,663,000
10) Reorganization Index = (8)-(9) ⁸	\$(227,416,000)

⁸ Since the Reorganization Index is not greater than zero, the plan is not in reorganization for the year beginning July 1, 2012.

SECTION 2.7

Withdrawal Liability and Accounting Information

Unfunded Vested Benefits, June 30, 2012

Withdrawal liability calculations require a determination of the plan's unfunded vested benefits as of the end of a plan year. The unfunded vested benefits as of June 30, 2012, are as follows:

1) Actuarial Present Value of Vested Benefits ⁹ – PBGC Annuity Rate Interest Assumption (3.11% for 20 years and 3.36% thereafter)	\$9,309,607,000
2) Market Value of Assets	4,202,245,000
3) Percentage Funded = (2)÷(1)	45.1388%
4) Unfunded Vested Benefits = (1)-(2)	\$5,107,362,000

⁹ Includes the PBGC expense charge as described in Appendix C to Part 4044 of the PBGC Regulations.

SECTION 2.7

Withdrawal Liability and Accounting Information (continued)

Accumulated Plan Benefits, June 30, 2012

FASB Accounting Standards Codification 960 (formerly Statement of Financial Accounting Standards No. 35) requires a statement of the actuarial present value of accumulated plan benefits. The net assets available for benefits and the actuarial present value of accumulated plan benefits as of June 30, 2012, are as follows:

1) Actuarial Present Value of Accumulated Plan Benefits:	
a) Vested Benefits ¹⁰	
Active Participants	\$1,377,972,000
Terminated Vested Participants	689,501,000
Retired Participants	6,230,533,000
Spouses Receiving Benefits	992,756,000
Preretirement Spouses' Benefits	18,845,000
Lump Sum Death Benefits	<u>209,633,000</u>
Total Vested	9,519,240,000
b) Nonvested Benefits ¹¹	
Active Participants and Preretirement Spouses' Benefits	46,372,000
Disability Benefits	47,175,000
Lump Sum Death Benefits	<u>1,427,000</u>
Total Nonvested	94,974,000
Total = (a)+(b)	9,614,214,000
2) Net Assets Available for Benefits (Market Value)	4,202,245,000
3) Excess of (1) over (2)	\$5,411,969,000

On June 30, 2011, the actuarial present value of accumulated plan benefits was \$9,053,784,000. This exceeded the net assets available for benefits by \$4,632,648,000. On June 30, 2012, the excess of the actuarial present value of accumulated plan benefits over the net assets available for benefits increased to \$5,411,969,000.

We reserve the right to review any materials in which the actuarial calculations shown above are reproduced and credited to Mercer.

¹⁰ The value of nonforfeitable benefits for withdrawal liability calculations excludes actuarial liability for lump sum death benefits. A portion of this liability is included in the value of vested benefits for disclosure under ASC 960 (formerly SFAS 35). The present value of vested benefits is based on benefit levels in effect on June 30, 2012.

¹¹ The present value of nonvested benefits is based on benefits determined using service at the valuation date and the benefit levels set forth in the 2011 Agreement (same as June 30, 2012, levels for 2012 valuation).

SECTION 2.7

Withdrawal Liability and Accounting Information (continued)

Net Change in Actuarial Present Value of Accumulated Plan Benefits

The sources of the net change in the total actuarial present value of accumulated plan benefits during the plan year ended June 30, 2012, are as follows:

Actuarial Present Value of Accumulated Plan Benefits at June 30, 2011	\$9,053,784,000
Increase (decrease) attributable to:	
Increase for interest due to decrease in discount period	343,600,000
Assumption changes	819,213,000
Benefit increases	0
Benefits paid	(685,402,000)
Benefits accumulated (including actuarial gain/loss)	83,019,000
Actuarial Present Value of Accumulated Plan Benefits at June 30, 2012	\$9,614,214,000

Actuarial Basis

For purposes of this demonstration, vested accumulated plan benefits are valued on the Unit Credit Actuarial Cost Method using the assumptions described in Section 1.3, except that there is no discount for disability, the actuarial interest assumption is the PBGC annuity interest rate in effect on June 30, 2012 (3.11% for 20 years and 3.36% thereafter), and administrative expenses are reflected by using the PBGC loading charge as described in Appendix C to Part 4044 of the PBGC Regulation (\$200 per participant plus 5% of the first \$200,000 of liability plus .56% of the liability over \$200,000). Nonvested accumulated plan benefits are valued on the Unit Credit Actuarial Cost Method using the assumptions described in Section 1.3, except that the actuarial interest and administrative expenses assumptions are the same as those used for vested accumulated plan benefits. Vested accumulated plan benefits include all retirement, disability, and death benefits accrued on June 30, 2012; nonvested accumulated plan benefits reflect the benefit levels set forth in the 2011 Agreement (same as June 30, 2012, levels for 2012 valuation).

SECTION 2.8

Benefit Payout Projection

Estimated benefit payments for the next forty years, based upon the actuarial assumptions used in the valuation and benefit levels scheduled to take effect during the term of the collective bargaining agreement applicable to the plan (and reflecting expected future accruals for actives), are shown on the next page. Future benefit payments will vary from the projections as actual experience differs from the assumed experience for mortality, turnover, retirement, etc. For non-retired participants, deviations from the projected benefit payments will also arise from the difference between the assumed probabilities of retirement and the actual ages at which participants begin receiving their pensions.

SECTION 2.8

Estimated Benefit Payments¹²

(Amounts in \$ Thousands)

Plan Year Beginning July 1	Active Participants	Vested Terminated and Non-Retired Disabled Participants	Retired Participants	Surviving Spouses	All Plan Participants
2012	18,889	14,865	486,595	118,579	638,928
2013	33,375	20,941	477,505	109,312	641,133
2014	46,000	26,103	467,684	100,609	640,396
2015	56,314	30,621	457,242	92,453	636,630
2016	65,568	34,795	446,258	84,834	631,455
2017	74,227	38,429	434,790	77,738	625,184
2018	81,451	41,628	422,889	71,147	617,115
2019	89,464	43,622	410,589	65,042	608,717
2020	94,851	45,071	397,917	59,401	597,240
2021	98,382	45,639	384,897	54,199	583,117
2022	100,166	45,690	371,543	49,411	566,810
2023	101,598	45,354	357,871	45,009	549,832
2024	102,316	44,679	343,932	40,956	531,883
2025	102,702	43,832	329,592	37,215	513,341
2026	102,917	42,806	314,878	33,767	494,368
2027	102,900	41,677	299,820	30,593	474,990
2028	102,691	40,438	284,457	27,675	455,261
2029	102,332	39,094	268,834	24,993	435,253
2030	101,961	37,674	253,007	22,530	415,172
2031	101,361	36,131	237,041	20,270	394,803
2032	100,358	34,534	221,012	18,197	374,101
2033	99,125	32,843	205,002	16,297	353,267
2034	97,645	31,075	189,103	14,556	332,379
2035	95,933	29,246	173,409	12,963	311,551
2036	94,000	27,368	158,020	11,507	290,895
2037	91,570	25,463	143,037	10,178	270,248
2038	88,872	23,531	128,563	8,968	249,934
2039	85,927	21,599	114,695	7,870	230,091
2040	82,756	19,676	101,525	6,876	210,833
2041	79,200	17,800	89,131	5,980	192,111
2042	75,413	15,972	77,578	5,176	174,139
2043	71,547	14,214	66,915	4,457	157,133
2044	67,603	12,547	57,175	3,818	141,143
2045	63,490	10,973	48,374	3,253	126,090
2046	59,421	9,514	40,513	2,756	112,204
2047	55,320	8,173	33,569	2,322	99,384
2048	51,287	6,960	27,507	1,946	87,700
2049	47,412	5,875	22,278	1,621	77,186
2050	43,617	4,917	17,824	1,343	67,701
2051 & beyond	239,603	15,989	45,134	4,337	305,063

Note that amounts for the plan year beginning July 1, 2012, include \$32,894,000 paid in June 2012 for July 2012.

¹² The amounts shown above have been increased 3.5% in recognition of assumed administrative expenses.

Glossary

Accumulated Plan Benefits. All benefits earned by current participants based on service through the valuation date.

Actuarial Accrued Liability. The portion of the present value of prospective benefits allocated to service before the valuation date in accordance with the actuarial cost method.

Actuarial Asset Value. The value of assets used in calculating the minimum required and maximum tax-deductible contributions. The actuarial asset value may be equal to the fair market value of assets, or it may spread the recognition of certain investment gains or losses over a period of years in accordance with an asset valuation method. The goal of an asset valuation method is to produce a relatively stable asset value thereby reducing year-to-year volatility in contribution requirements. The actuarial asset value must always fall between 80% and 120% of the fair market value of assets, except for the plan year beginning July 1, 2010 (but not later plan years), when the corridor was expanded to 80%/130% of market value to reflect funding relief modifications.

Actuarial Cost Method. Sometimes called “funding method,” a particular technique used by actuaries to establish the amount and incidence of the annual actuarial cost of pension plan benefits, or normal cost, and the related unfunded actuarial accrued liability. Ordinarily, the annual contribution to the plan comprises the normal cost and an amount for amortization of the unfunded actuarial accrued liability.

Actuarial Gain or Loss. The actuarial loss is the excess of the plan’s unfunded actuarial accrued liability on the valuation date over the unfunded actuarial accrued liability that would have resulted had all of the actuarial assumptions been realized. If the actuarial loss is less than zero, it is called an actuarial gain.

Actuarial Present Value. The current worth (on the valuation date) of an amount or series of amounts payable or receivable in the future. The actuarial present value is determined by discounting the future payments at a predetermined rate of interest, taking into account the probability of payment.

Amortization Charge/Credit. The annual charge or credit to the funding standard account attributable to any amortization charge or credit base. Amortization charge or credit bases are established whenever an event (such as a plan amendment, change in actuarial assumptions, or change in actuarial cost method) causes a change in the plan’s unfunded actuarial accrued liability.

Credit Balance. The excess of credits to the funding standard account over charges to the account. The credit balance is a measure of the excess actual contributions to the plan over minimum required contributions to the plan accumulated with interest. This balance can be used to reduce future minimum funding requirements.

Current Liability. The present value of accumulated benefits payable to employees and their beneficiaries under the plan based on employee service and benefit levels as of the valuation date, but excluding any liabilities contingent on unpredictable events and certain liabilities attributable to service before plan participation. The Internal Revenue Code specifies interest and mortality assumptions that must be used to measure current liability (see RPA '94 Current Liability, also defined in the Glossary). Current liability is used in determining minimum required and maximum deductible contributions.

ERISA. The Employee Retirement Income Security Act of 1974.

Glossary (*continued*)

Full Funding Limitation. Under provisions of the Internal Revenue Code and related regulations, the regular maximum deductible contribution and the minimum contribution under the funding standard account cannot be greater than the amount that would fully fund the accrued liability (including normal cost and interest) at the close of the plan year. Where the plan's actuarial cost method does not directly calculate an accrued liability (e.g., the Aggregate or Frozen Initial Liability methods), the accrued liability and normal cost are calculated under the Individual Entry Age Normal Actuarial Cost Method. The assets used are the lesser of market value or actuarial value. If the minimum contribution under the funding standard account is greater than the full funding limitation, it is adjusted to equal the full funding limitation by the application of the so-called "full funding credit." The full funding limitation may not be less than the amount required to fund 90% of the plan's current liability.

Funding Standard Account. An account that must be maintained by pension plan sponsors to measure compliance with the minimum funding provisions of ERISA. The account is charged annually with normal cost for the year and required amortization of the unfunded actuarial accrued liability. It is credited with the sponsor's contributions, along with any full funding credit. A deficiency in the account may indicate a failure to meet the funding requirements while a credit balance indicates a funding surplus that can be used to reduce future contributions. (A zero balance indicates that the minimum requirements have been precisely met.)

IRC Section 404. The section of the Internal Revenue Code governing the deductibility of contributions paid to pension trusts.

IRC Section 431. The section of the Internal Revenue Code governing minimum funding standards for multiemployer plans.

Normal Cost. The annual cost assigned to the current year, under the actuarial cost method in use.

Present Value. Sometimes called "actuarial present value," the current worth (on the valuation date) of an amount or series of amounts payable or receivable in the future. The present value is determined by discounting the future payments at a predetermined rate of interest, taking into account the probability of payment.

RPA. Retirement Protection Act of 1994.

RPA '94 Current Liability. Computed using an interest rate within the permissible range of 90% to 105% of the four-year weighted average 30-year Treasury rate and the separate annuitant/nonannuitant mortality tables for males and females for the plan year set forth in Regulations section 1.412(l)(7)-1. It is used to determine the minimum floor for the full funding limit and the alternate maximum contribution.

Reorganization Index. The excess of the vested benefits charge over the net charges to the funding standard account for such year. The vested benefits charge is the amount which would be necessary to amortize the plan's unfunded vested benefits over 10 years, to the extent such benefits are attributable to participants in pay status, and over 25 years, to the extent such benefits are attributable to other participants.

Glossary *(continued)*

10-Year Amortization Base. Under Section 404(a)(1)(A)(iii) of the Internal Revenue Code and related regulations, the regular maximum deductible contribution generally equals the normal cost plus amortization over 10 years of all “10-year amortization bases.” Each such base represents an increment of actuarial accrued liability established when the plan was initially adopted or subsequently amended, or when actuarial assumptions were changed. The “initial” 10-year amortization base is the composite of all existing bases on the date of initial compliance with the ERISA funding standards. Under the fresh start alternative, all existing bases may be replaced with one new base equal to the unfunded liability as of the time of new base establishment.

Unfunded Actuarial Accrued Liability. The excess of the present value of prospective pension benefits, as of the date of a pension plan valuation, over the sum of (1) the actuarial value of the assets of the plan and (2) the present value of future normal costs determined by any of several actuarial cost methods. For methods that define an accrued liability, this amount equals the excess of the accrued liability over plan assets.

Vested Plan Benefits. All benefits to which current participants have a vested right based on service and benefit levels through the valuation date. A participant has a vested right to a benefit if he/she would still be entitled to receive that benefit if employment terminated on the valuation date.

Withdrawal Liability. A liability used to allocate unfunded vested benefits to participating employers in the case of a withdrawal of one or more participating employers.



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1166 Avenue of the Americas
New York, NY 10036
+1 212 345 7000

CONSULTING. OUTSOURCING. INVESTMENTS.

Exhibit 2 to the Declaration of Dale Stover

EXHIBIT 3

UMWA HEALTH AND RETIREMENT FUNDS Pg 147 of 267

2021 K Street NW • Washington, DC 20006 • Telephone: (202) 452-5000

October 21, 1983

To: Signatory Employers

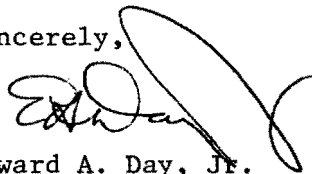
Subject: Arbitration Procedures and Definitions Default

Attached are copies of the Arbitration Procedures and Definitions of Default for the 1974 Pension Plan that have been adopted by the Trustees.

The procedures and definitions were adopted on August 29, 1983.

Should you have any questions, please call our Legal Department at (202) 452-5037.

Sincerely,



Edward A. Day, Jr.
Director of Finance and Administration

Attachments

ARBITRATION PROCEDURES OF
THE UNITED MINE WORKERS OF AMERICA
1974 PENSION PLAN

1. Arbitration of Disputes.

Any dispute between an employer and the Plan concerning a determination of the Plan made under sections 4201 through 4219 and 4225 of the Employee Retirement Income Security Act of 1974 ("ERISA") which is properly the subject of arbitration and as to which arbitration has been properly initiated by the employer, the Plan, or both, shall be resolved by arbitration under these Rules. This provision does not limit any right either party may otherwise have to bring an action to enforce rights or obligations arising under ERISA.

To the extent that any of these Rules is found to be inconsistent with the provisions of ERISA or with any final regulation promulgated by the Pension Benefit Guaranty Corporation relating to the arbitration of withdrawal liability disputes, these Rules shall be construed in a manner consistent with such provisions. The invalidity of a Rule or any part of a Rule shall not affect the validity of any other Rule or part of a Rule.

2. Incorporation of AAA Rules.

The American Arbitration Association (the "AAA") Multi-employer Pension Plan Arbitration Rules (the "AAA Rules") are incorporated herein by reference and shall apply to and govern any arbitration under these Rules, except to the extent that the AAA Rules are inconsistent with these rules. References in the AAA Rules to "these Rules" shall be deemed to be references to these Rules.

3. Application of Rules To Pending Arbitrations.

In the case of any arbitration initiated before the effective date of these Rules or any amendment to these Rules (including any amendment to the AAA Rules), neither these Rules nor any such amendment shall be applied to invalidate an action previously taken in the arbitration in reliance upon procedures previously in effect.

4. Initiation of Arbitration.

Arbitration may be initiated by either the employer or the Plan, or jointly, within the time limits provided in ERISA section 4221(a)(1). Arbitration may be initiated only in the manner prescribed below.

Initiation of arbitration by a single party shall be accomplished by serving simultaneously on the other party and the Washington, D.C., Regional Office of the AAA a Demand for Arbitration. The Demand for Arbitration shall include a statement setting forth the amount involved, the

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nature of the dispute and the remedy sought and shall include as attachments copies of: (1) the Plan's Notice and Demand for Withdrawal Liability; (2) the employer's Request for Review of the Plan's determinations; (3) the Plan's response to the employer's Request for Review, if any; and (4) the appropriate fee as provided in the AAA Rules. The non-initiating party may file an answer to the Demand for Arbitration.

5. Selection of the Arbitrator

The arbitrator shall be selected according to the procedure prescribed by the AAA Rules provided that, if no arbitrator has been selected within 30 days from the date of service of the Demand for Arbitration, then the AAA shall select an arbitrator within 15 days of the expiration of such 30 day period. The arbitrator selected shall immediately provide to the parties through the AAA a copy of his or her signed acceptance.

6. Time and Place of Hearing.

In an arbitration involving an employer whose last address is less than 750 miles from Washington, D.C., the place of the hearing shall be in Washington, D.C. In an arbitration involving an employer whose last address is more than 750 miles from Washington, D.C., the place of the hearing shall be determined in the same manner and within the same time limits as set forth below for the determination of

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the date of the hearing. For purposes of this Rule, an employer's last address is the address used for the employer's covered operations as stated in the last collective bargaining agreement executed by the employer that required contributions to the Plan.

Unless the parties agree to proceed without a hearing, the arbitrator and parties shall, within 30 days of the arbitrator's acceptance, agree to a date for the commencement of the hearing. If no hearing date is established by agreement within the period described in the preceding sentence, the arbitrator shall, within 40 days of the date of his acceptance, establish a date for the commencement of the hearing. In either case, the date established for the commencement of the hearing shall be no later than 75 days from the date of the arbitrator's acceptance.

7. Adjournments and Extensions of Time.

The arbitrator may adjourn the hearing or extend any period of time established by these Rules upon his or her own motion or upon the motion of either party. Such adjournment or extension shall be made only with the agreement of the parties or where manifest unfairness would otherwise result.

8. Order of Proceedings.

At the hearing, the employer shall first present its claim, proof and witnesses. The Plan shall then present its

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response, proof and witnesses. The arbitrator may, with the consent of the parties, vary this procedure, but shall afford full and equal opportunity to each part for the presentation of any material or relevant proof.

9. Filing of Preliminary Statements and Briefs.

The employer shall file with the AAA and serve upon the Plan at least 21 days prior to the hearing a Preliminary Statement. The Plan shall file with the AAA and serve upon the employer a responsive Preliminary Statement at least seven days prior to the hearing. Each preliminary statement shall contain: (1) a statement of the factual and legal contentions of the party with respect to each of the issues before the arbitrator; (2) a list identifying the name, address, and occupation of each witness to be called by the party at the hearing and a specific description of the matters upon which the witness will testify; (3) a list describing each exhibit which the party will offer in evidence; and (4) a statement of the relief sought by the party.

Either party may file with the AAA a Post-hearing Brief within 30 days following the closing of the hearing. Within 15 days thereafter, each party may file a Reply Brief concerning matters contained in the opposing brief.

No preliminary statement, brief or any other document filed by a party shall be forwarded to the arbitrator by the AAA unless attached to it is an affidavit or declaration

-6-

under penalty of perjury showing service on the other party. The AAA shall promptly forward to the arbitrator any briefs or other documents properly filed by a party with the AAA notwithstanding the failure of another party to properly file a brief required or permitted under this Rule or under procedures established by the AAA.

10. Pre-Hearing Conference.

Any pre-hearing conference shall be conducted by the arbitrator. A pre-hearing conference may, with the consent of the arbitrator and the parties, be conducted by telephone conference call.

11. Exchange of Information.

To the extent relevant to the issues before the arbitrator, the Plan shall, upon the written request of the employer and without charge to the employer, provide copies of documents containing general information upon which the Plan's determinations are based, such as annual reports prepared by the Plan and filed with Internal Revenue Service, annual financial statements of the Plan, and actuarial reports of the Plan. The Plan shall also provide to the employer without charge a summary of the Plan's calculation of the employer's withdrawal liability.

The employer shall provide to the Plan without charge any information reasonably demanded by the Plan in writing pursuant to ERISA section 4219(a) for the purpose of ful-

-7-

filling the Plan's responsibilities to determine and collect withdrawal liability.

No other discovery shall be had by either party except upon order of the arbitrator.

12. Conservation of Property.

The Arbitrator may issue such orders as may be appropriate to safeguard or conserve money or property which is the subject matter of the arbitration or to enforce the rights of the parties under the withdrawal liability provisions of ERISA, without prejudice to the rights of the parties or to the determination of the dispute. Failure to obey such an order shall be grounds for the entry of a final award against the offending party for the relief requested by the opposing party.

13. Judicial Review.

Review and enforcement of an award made under these Rules shall be as provided under ERISA.

14. Publication.

Publication of any award made under these Rules shall be made only with the express agreement of the parties.

ADDITIONAL DEFINITIONS OF DEFAULT
UNITED MINE WORKERS OF AMERICA 1974 PENSION PLAN

Pursuant to Article X, Section I of the United Mine Workers of America 1974 Pension Plan, as amended, (the "Plan"), and section 4219(c)(5)(B) of the Employee Retirement Income Security Act of 1974 ("ERISA"), the Trustees have adopted the rule set out below defining events that constitute default by an employer on the employer's withdrawal liability obligation. This rule supplements Article X, section H of the Plan by adding to the definition of default set out in that Article the events described below, each of which the Trustees have determined indicates a substantial likelihood that an employer will be unable to pay its withdrawal liability.

In addition to the event described in Article X, section H of the Plan, the term "default" means:

- (a) the employer's insolvency, or any assignment by the employer for the benefit of creditors, or the employer's calling of a meeting of creditors for the purpose of offering a composition or extension to such creditors, or the employer's appointment of a committee of creditors or liquidating agent, or the employer's offer of a composition or extension to creditors, or
- (b) the employer's dissolution, or
- (c) the making (or sending notice of) an intended bulk sale by the employer, or

-2-

(d) the assignment, pledge, mortgage or hypothecation by the employer of property to an extent which the Trustees determine to be material in relation to the financial condition of the employer, or

(e) the filing or commencement by the employer, or the filing or commencement against the employer or any of its property, of any proceeding, suit or action, at law or in equity, under or relating to any bankruptcy, reorganization, arrangement-of-debt, receivership, liquidation, or dissolution law or statute or amendments thereto, unless such proceeding, suit, or action against the employer or its property is set aside, withdrawn, or dismissed within ten days after the date of the filing or commencement, or

(f) the entry of any judgment or the issuance of any warrant, attachment, or injunction or governmental tax lien or levy against the employer or against any of its property, unless such judgment, attachment, injunction, lien, or levy is discharged, set aside, or removed within ten days after the date such judgment is entered or such attachment, injunction, lien, or levy is issued, or

(g) the failure of the employer to maintain current assets in an amount at least equal to current liabilities, current assets and current liabilities to

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be determined in accordance with generally accepted accounting principles and practices consistently followed, or

(h) the employer's failure to provide information demanded by the Plans pursuant to section 4219(a) of ERISA regarding its ability to pay withdrawal liability, or as to whether it has engaged in a transaction which has as a principal purpose the evasion or avoidance of withdrawal liability, or

(i) the employer's engaging in a transaction which has as a principal purpose the evasion or avoidance of withdrawal liability demanded by the Plan, or

(j) such other event as the Trustees may determine indicates a substantial likelihood that the employer will be unable to pay its withdrawal liability provided the employer is given written notice of such determination and a reasonable opportunity to demonstrate to the Trustees that such determination was in error.

325TH MEETING OF THE BOARD OF TRUSTEES
OF THE UNITED MINE WORKERS OF AMERICA
HEALTH AND RETIREMENT FUNDS, AUGUST 29-30, 1983

PRESENT:

HARRISON COMBS, CHAIRMAN
JOHN J. O'CONNELL, TRUSTEE
PAUL R. DEAN, TRUSTEE

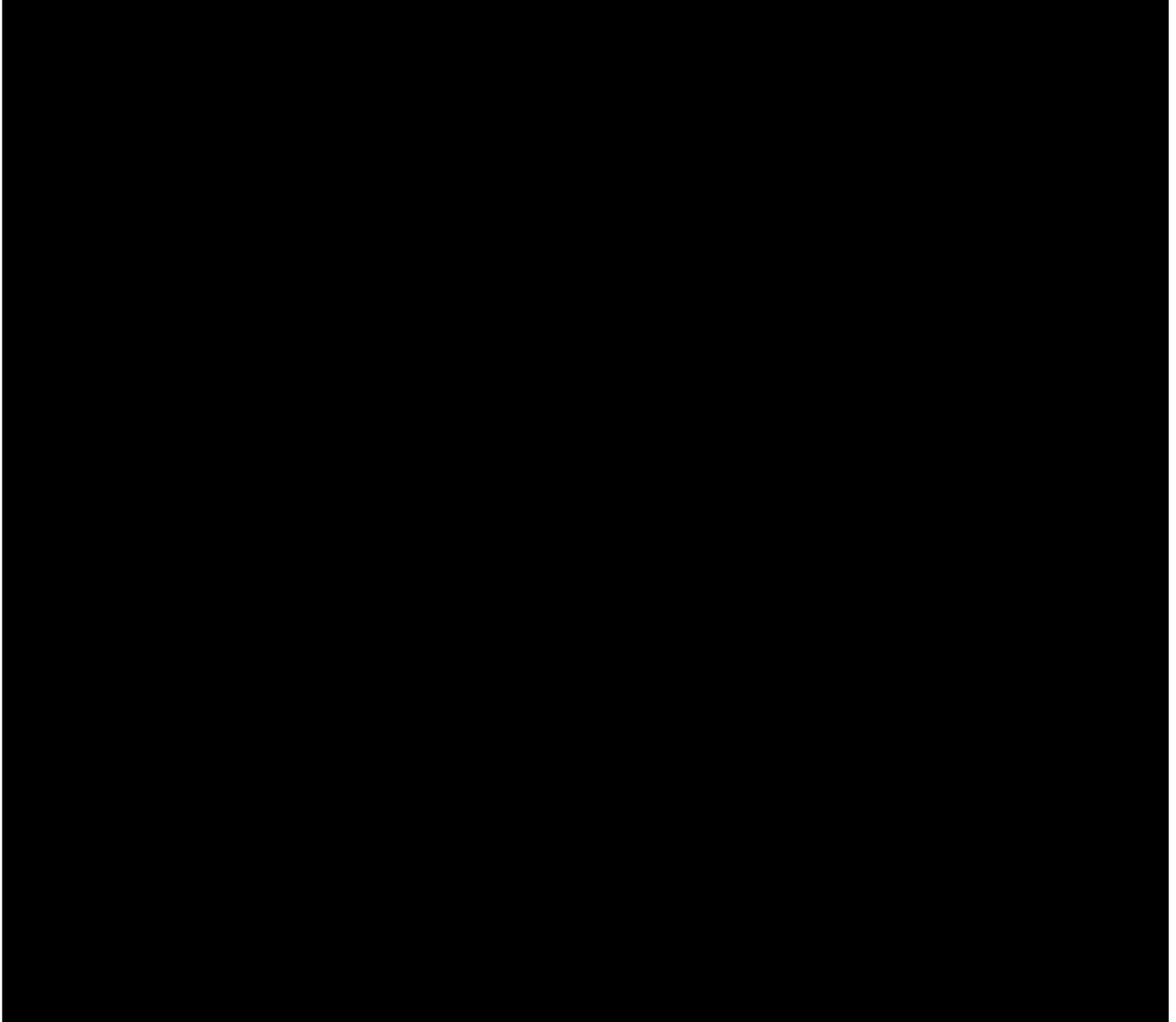
ALSO PRESENT:

HERBERT L. DYER, DESIGNATED EXECUTIVE
DIRECTOR (OBSERVER)
WILLIAM F. HANRAHAN, GENERAL COUNSEL
LINDA TAYLOR, CHIEF INVESTMENT OFFICER
EDWARD DAY, DIRECTOR OF FINANCE AND
ADMINISTRATION
JERRY CLARK, DIRECTOR OF OPERATIONS

BILL QUISENBERRY, UMWA
LIAISON REPRESENTATIVE
MORRIS FEIBUSCH, BCOA
LIAISON REPRESENTATIVE

DON PIERCE, UMWA (August 30)
CHARLES PERKINS, BCOA (August 30)

325th Meeting of the Board of Trustees
of the UMW Health and Retirement Funds
August 29-30, 1983



12. Draft Arbitration and Default Rules

The Trustees considered the memoranda from the General Counsel and from Groom and Nordberg, both dated August 15, 1983, and the proposed rules governing arbitration of withdrawal liability disputes and the proposed rules defining the circumstances under which a withdrawn employer may be considered to be in default of its obligation to pay withdrawal liability (attachment 12). The General Counsel noted that Article X.B.(1) of the 1974 Pension Plan and Article VI.B.(11) of the 1950 Pension Plan authorize the Trustees to adopt rules governing these subjects. After discussion, the Trustees adopted the proposed rules and directed that pursuant to 29 U.S.C. §4214(b), notice of the rules be given to all contributing and withdrawn employers and to the UMW.

EXHIBIT 4

**NATIONAL BITUMINOUS COAL WAGE
AGREEMENT OF 2011**

Article I—ENABLING CLAUSE

THIS AGREEMENT, made this 1st day of July, 2011 between the coal operators and associations signatory hereto, as parties of the first part (each coal operator which is a signatory hereto being called “Employer”) and the International Union, United Mine Workers of America (hereinafter called “Union”), on behalf of each member thereof, as party of the second part, covers all of the bituminous coal mines described in Article IA, Section (f), owned or operated by said first parties. This Agreement carries forward and preserves the terms and conditions of all the various District agreements executed between the United Mine Workers of America and the various operators and coal associations subject to the terms and conditions of this Agreement and as amended, modified and supplemented by this Agreement as herein set out. Furthermore, the terms of the National Bituminous Coal Wage Agreement of 2007 are unchanged and carried forward only for the period from the Effective Date through December 31, 2011, except as provided in this Agreement.

This Agreement shall be binding upon all signatories hereto, including those Employers which are members of signatory associations, and their successors and assigns. In consideration of the Union’s execution of this Agreement, each Employer promises that its operations

covered by this Agreement shall not be sold, conveyed, or otherwise transferred or assigned to any successor without first securing the agreement of the successor to assume the Employer's obligations under this Agreement. Immediately upon the conclusion of such sale, conveyance, assignment or transfer of its operations, the Employer shall notify the Union of the transaction. Such notification shall be by certified mail to the Secretary-Treasurer of the International Union and shall be accompanied by documentation that the successor obligation has been satisfied. Provided that the Employer shall not be a guarantor or be held liable for any breach by the successor or assignee of its obligations, and the UMWA will look exclusively to the successor or assignee for compliance with the terms of this Agreement.

WITNESSETH: It is agreed that this contract is for the exclusive joint use and benefit of the contracting parties, as defined and set forth in this Agreement. It is agreed that at operations covered by this Agreement the United Mine Workers of America is recognized herein as the exclusive bargaining agency representing the Employees of the parties of the first part. It is further agreed that as a condition of employment all Employees at operations covered by this Agreement shall be, or become, members of the United Mine Workers of America, to the extent and in the manner permitted by law, except in those exempted classifications of employment as hereinafter provided in this Agreement. This provision does not change the rules or practices of the industry pertain-

ing to management. The Mine Workers intend no intrusion upon the rights of management as heretofore practiced and understood. It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationships in the bituminous coal industry and to set forth herein the basic agreements covering rates of pay, hours of work and conditions of employment to be observed between the parties, and shall cover the employment of persons employed in the bituminous coal mines covered by this Agreement. Management will not abridge the rights of the Employees as set forth in this Agreement.

Article IA—SCOPE AND COVERAGE

Section (a) Work Jurisdiction

The production of coal, including removal of overburden and coal waste, preparation, processing and cleaning of coal and transportation of coal (except by waterway or rail not owned by Employer), repair and maintenance work normally performed at the mine site or at a central shop of the Employer and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above shall be performed by classified Employees of the Employer covered by and in accordance with the terms of this Agreement. Contracting, subcontracting, leasing and subleasing, and construction work, as defined herein, will be conducted in accordance with the provisions of this Article.

given a preference in filling temporary assignments in regard to that job.

Section (d) **Protection Against Discrimination**

In no case may the Employer make a temporary assignment for the purpose of disciplining or discriminating against an Employee.

Section (e) **Compensation for Temporary Assignments**

When an Employee works on another job on a temporary basis, he shall be compensated for the entire shift at the higher of his regular rate or the rate of the job to which he is temporarily assigned. This section shall not be construed to apply to Employees whose regular job duties include the relief of other Employees for short periods of time which do not exceed thirty (30) minutes for each occurrence during the basic workday. For such relief periods, however, the Employee providing relief shall be paid the higher rate.

**Article XX—HEALTH, RETIREMENT
AND OTHER BENEFITS**

Section (a) **General Purpose**

This Article makes provision for pension, health and other benefits for Employees covered by this Agreement, and for former Employees who were covered under the United Mine Workers of America Welfare

and Retirement Fund of 1950 (“1950 Fund”), and for the spouses and dependents of such Employees. The benefits to be provided are as set forth under separate plans and trusts referred to in Sections (b) and (c) of this Article.

A general description of the benefits to be provided appears immediately following this Article. The specific provisions of the plans will govern in the event of any inconsistencies between the general description and the plans.

Pursuant to the Coal Industry Retiree Health Benefit Act of 1992 (the “Coal Act”), the health benefits (and in some cases the death benefits) provided to retirees who were age and service eligible as of February 1, 1993, and who actually retired by September 30, 1994, are guaranteed by an Act of Congress. The Coal Act, which was enacted with the active support of the United Mine Workers of America and the BCOA, requires responsible employers to provide and pay for these benefits for life. Although, under certain circumstances, employers are permitted to adopt cost containment and managed care programs, the levels of benefits provided to retirees and dependents covered by the Coal Act are fixed by law, and may not be changed by any employer. Employers signatory to this Agreement agree to and will amend their Individual Employer Plan established pursuant to the Coal Act to eliminate any earnings limit that currently applies to eligibility for a Health Card.

Benefits under the Coal Act are provided either by the employer who was providing those benefits on February 1, 1993, or by two newly-created Funds: the United Mine Workers of America Combined Benefit Fund and the United Mine Workers of America 1992 Benefit Plan. Those benefits are not governed by this Agreement.

For purposes of this Article, the 1974 Pension Plan and Trust shall be a continuation of the benefit program established under the UMWA Welfare and Retirement Fund of 1950 (hereinafter the 1950 Fund), and is the surviving plan following the merger of the 1974 Pension Plan and Trust and the United Mine Workers of America 1950 Plan and Trust.

Each participant and beneficiary shall be entitled only to the pension benefits provided in and paid from the 1974 Pension Plan and Trust and each participant, beneficiary and dependent shall be entitled only to the benefits provided in and paid from the 1993 Benefit Trust, or the individual benefit plans referred to in Section (c). An individual that is entitled to health benefits from a plan maintained pursuant to the Coal Act will receive benefits from such plan, and not from a plan maintained pursuant to this Article. In addition, an individual that is entitled to death benefit coverage from the United Mine Workers of America Combined Benefit Fund shall not be entitled to death benefit coverage from any plan maintained pursuant to this Article.

The general purpose of the plans referred to in this Article shall be to provide health care for working and

retired miners and their dependents, pensions for miners upon their retirement; health care and financial support for eligible disabled miners; and financial support for surviving spouses and surviving dependents provided by each of the Trusts and Plans referred to in this Article.

Except as otherwise specifically set forth in this Article, it is agreed that the Trusts referred to in this Article are irrevocable Trusts created pursuant to, and within the scope of, Section 302(c) of the Labor-Management Relations Act, 1947, and shall endure as long as the purposes for their creation shall exist.

Section (b) **The Former 1950 Pension Plan and Trust**

(1) Pursuant to action by the UMWA and BCOA, the former United Mine Workers of America 1950 Pension Trust (“1950 Pension Trust”) was merged into the United Mine Workers of America 1974 Pension Plan and Trust in 2007. Benefits provided by the former 1950 Pension Plan and Trust are now provided by the 1974 Pension Plan and Trust.

(2) Pursuant to the requirements of the Coal Act, the United Mine Workers of America 1950 Benefit Plan and Trust (“1950 Benefit Trust”) and the United Mine Workers of America 1974 Benefit Plan and Trust (the “1974 Benefit Trust”) were merged into the United Mine Workers of America Combined Benefit Fund (the “Combined Fund”). The Combined Fund is governed

by the terms of the Coal Act, and is not maintained pursuant to this Article. Health benefits for individuals who would be eligible for benefits under the 1950 Benefit Plan but for the passage of the Coal Act and who are not entitled to benefits under the Coal Act will be provided by the 1993 Benefit Fund during the term of this Agreement.

Section (c) **1974 Pension Plan and Trust,
1993 Benefit Plan and Trust,
Employer Benefit Plans, and the
2012 Retiree Bonus Account Plan**

(1) The United Mine Workers of America 1974 Pension Trust (“1974 Pension Trust”) is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1974 Pension Trust are as set forth in the United Mine Workers of America 1974 Pension Plan (“1974 Pension Plan”), which is incorporated by reference and made a part of this Agreement. This Plan is a continuation of the pension program of the 1950 Fund and was effective December 6, 1974.

(2) The United Mine Workers of America 1993 Benefit Trust (“1993 Benefit Trust”) is incorporated by reference and made a part of this Agreement. The primary purpose of the 1993 Benefit Trust is to provide certain health benefits, not including pension benefits, only to those retirees who satisfy the Plan’s age and service requirements. The terms and conditions under which those benefits will be provided are as set forth in the

plan under the 1993 Benefit Trust and under the terms of this Article.

(3)(i) Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners under the 1974 Pension Plan and Trust whose last signatory classified employment was with such Employer and who are not eligible to receive benefits from a plan maintained pursuant to the Coal Act. Any assets of the Employer that are wrongfully transferred to any related individual or related corporate entity prior to the satisfaction of the Employer's obligation to provide health benefits shall be treated as assets held in trust for the benefit of eligible retirees and other eligible beneficiaries. Such obligation of the Employer may be enforced by the UMWA and the retirees and other beneficiaries. The Employer and/or other defendant(s) in such an action shall be liable for the costs of litigation, including attorney's fees. The benefits provided by the Employer to its eligible Participants pursuant to such plan shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plan. The plans established pursuant to this subsection are incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

(ii) The 1993 Benefit Plan and Trust provides health and other non-pension benefits during the term of this Agreement, to any eligible retired miner (or the eligible dependent of such retired or deceased miner) who meets the conditions of one of the following:

(a) The retired miner is described in Section (b)(2).

(b) The retired miner separated from classified employment prior to December 16, 1993, would be eligible to receive benefits from the 1974 Benefit Plan but for the passage of the Coal Act, is not entitled to benefits under the Coal Act, and whose last signatory employer was no longer deriving revenue from the production of coal on December 16, 1993.

(c) The miner is retired under the 1974 Pension Plan or any successor plan(s) thereto, last worked in signatory classified employment for an Employer who was obligated to contribute and contributed to the 1993 Benefit Trust at the rates specified in Section (d) and would otherwise cease to receive the health and other non-pension benefits provided herein because such last signatory Employer is no longer in business. An Employer's obligation to contribute at the rates specified in Section (d) must be in effect on the date the Employer is first considered to be "no longer in business." For purposes of determining eligibility under the 1993 Benefit Plan and Trust, the Employer is considered to be "no longer in business" only if the Employer meets the conditions of (I) and (II) below. The parties expressly intend that each of the requirements of (I) and (II) be met.

(I) The Employer has ceased all mining operations and has ceased employing persons under this Wage Agreement, with no reasonable expectation that such operations will start up again; and

(II) The Employer is financially unable (through either the business entity that has ceased operations as described in subparagraph (a) above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by this Wage Agreement or not) to provide health and other non-pension benefits to its retired miners and surviving spouses.

In the case of an otherwise qualifying last signatory Employer that first became obligated to contribute to the 1993 Trust after December 31, 2001, within the meaning of Section (d)(1)(iii) of this Article, and that did not contribute to the 1993 Benefit Trust substantially all amounts owed and at the rates specified in Section (d), eligible retired miners and dependents shall receive only limited coverage under a separate program of benefits designed by the Plan's Trustees. The Trustees shall design the program taking into account the need for the Plan to remain solvent throughout the term of this Agreement, while providing more complete benefits for individuals whose last signatory Employer met the "substantially all" contribution requirement of this Article.

Each Employer is required to maintain, and make available to the Trustees, those business and financial records that may be necessary to determine whether

the eligibility requirements of the 1993 Benefit Trust have been satisfied. If a miner's last signatory Employer ceases to provide health benefits as required under Section (c)(3)(i) of this Article, and the Trustees are investigating whether the Employer is "no longer in business" within the meaning of Section (c)(3)(ii)(c) of this Article, the Employer shall make available to the Trustees those business and financial records that may be necessary to the "no longer in business" determination, including but not limited to financial statements, tax returns, bank statements, coal production and sales data, and information on equipment and other property and assets of the signatory Employer. An Employer that fails to cooperate or make available such records shall be subject to suit by the Trustees and shall be liable for the Trustees' expenses both in reviewing such records and in enforcing the Employer's obligation, including audit fees, court costs and attorney's fees. The Trustees shall make their initial determination of whether an Employer is "no longer in business" no later than 90 days following receipt of such business and financial records, as practicable.

(d) The retired miner worked under the terms of the 1974 NBCWA (but not under the terms of the 1978 NBCWA), has been or would have been denied a benefit by the UMWA 1974 Benefit Plan solely because the miner did not work under the terms of a 1978 or subsequent NBCWA; and is not eligible to receive benefits under the Coal Act.

The Union and Trustees shall assist and fully cooperate with the Employers in obtaining all necessary opinion letters, exemptions, or rulings from the Department of Labor, the Internal Revenue Service or other applicable federal agencies, in order to implement the provisions of this subsection so as to ensure compliance with all applicable federal laws and regulations and ensure the deductibility for income tax purposes of any and all contributions made by signatory Employers to the 1993 Benefit Trust and the individual health plans referred to in this Section.

Notwithstanding any other provision in this Agreement, any new inexperienced miner as defined in Article XXB(d)4 of the Agreement shall not be eligible to receive benefits from the 1993 Benefit Trust, except for a new inexperienced miner described in Article XX(5)(d) and XX(10)(l), (m) and (n).

(4) The United Mine Workers of America 2012 Retiree Bonus Account Plan (“2012 Retiree Bonus Account Plan”) and The United Mine Workers of America 2012 Retiree Bonus Account Trust (“2012 Retiree Bonus Account Trust”) are incorporated by reference and made a part of this Agreement. Retirees and beneficiaries who are eligible to receive a retiree bonus payment from both the 2012 Retiree Bonus Account Trust (such payments referred to herein as the “Retiree Bonus”) and their last signatory Employer (such payments referred to herein as “individual Employer Retiree Bonus Differential Payment”) shall be eligible to

receive a combined single sum bonus payment in the amount of \$580 or \$455 as set forth in the General Description of this Article XX. The one-time single sum Retiree Bonus payment amounts to be paid by the Trustees of the 2012 Retiree Bonus Account Plan are projected amounts. When required, the individual Employer Retiree Bonus Differential Payment described herein is to be made and will supplement the Retiree Bonus in order to provide the projected amounts.

This Agreement provides for the establishment of the 2012 Retiree Bonus Account Trust and the 2012 Retiree Bonus Account Plan, which shall provide a one-time single sum bonus payment to eligible retirees on November 1, 2014, November 1, 2015, and November 1, 2016. The Plan will be maintained as an irrevocable trust created pursuant to Section 302(c) of the Labor Management Relations Act of 1947.

The 2012 Retiree Bonus Account Trust shall be jointly administered by four Trustees, two of whom shall be appointed by the UMWA and two of whom shall be appointed by the BCOA. The Trustees shall be responsible for all actions necessary for the proper and efficient operation of the 2012 Retiree Bonus Account Plan, including but not limited to determining eligibility for benefits in accordance with the provisions of this Agreement and the 2012 Retiree Bonus Account Plan, collecting all contributions owed to the 2012 Retiree Bonus Account Trust, ensuring that Employer contributions to the 2012 Retiree Bonus Ac-

count Trust are tax deductible, and preserving the assets of the 2012 Retiree Bonus Account Trust for payment to eligible beneficiaries on the dates due. The Trustees shall have the same powers, duties, and responsibilities with respect to the Plan as are set forth in this Article XX of this Agreement, and the powers, duties, and responsibilities set forth in the 2012 Retiree Bonus Account Trust document and this Agreement.

Each signatory Employer shall contribute to the 2012 Retiree Bonus Account Trust as provided in Section (d) of this Article XX for each hour worked by the Employer's Employees who perform classified work as defined by this Agreement, for the period commencing January 1, 2012 and through the term of this Agreement. Signatory Employers shall not be required to increase their rate of contribution to the 2012 Retiree Bonus Account Trust under any circumstances, regardless of the financial condition of the 2012 Retiree Bonus Account Plan.

The Retiree Bonus shall be available to (a) all beneficiaries of the UMWA 1974 Pension Plan who are designated in the General Description of Article XX of this Agreement as eligible to receive the Retiree Bonus, provided that they are in pay status under the 1974 Pension Plan as of July 1, 2011, and further provided that they remain in the 1974 Pension Plan and are in pay status under the 1974 Pension Plan as of October 31, 2014 (for the November 1, 2014 bonus), October 31, 2015 (for the November 1, 2015 bonus) and

October 31, 2016 (for the November 1, 2016 bonus), and (b) all 1974 Pension Plan participants who enter pay status under the 1974 Pension Plan between July 1, 2011 and October 31, 2014 (for the November 1, 2014 bonus), or October 31, 2015 (for the November 1, 2015 bonus), or October 31, 2016 (for the November 1, 2016 bonus), subject to the same conditions described above.

The payments to be made from the Retiree Bonus Account Trust (without regard to any additional amounts payable as individual Employer Retiree Bonus Differential Payments) are projected amounts subject to adjustment by the Trustees of the Plan based on the financial condition of the Plan at the time of the scheduled payments and the projected financial ability of the Plan to make bonus payments at a comparable level during any subsequent payment due date. The Trustees of the Plan shall have discretion to determine the amount of the bonus to be paid from the Retiree Bonus Account Trust (without regard to any additional amounts payable as individual Employer Retiree Bonus Differential Payments) in November 2014 and November 2015, provided (i) the amount paid does not exceed the projected amount, (ii) the amount shall be distributed evenly to each eligible pensioner in proportion to the projected amounts, and (iii) the amount paid is reasonably calculated to leave sufficient funds in the Plan to enable the Plan to pay at least a comparable bonus to retirees in the following covered year(s). The

amount of the bonus to be paid from the Retiree Bonus Account Trust (without regard to any additional amounts payable as individual Employer Retiree Bonus Differential Payments) in November 2016 shall be distributed evenly to each eligible pensioner in proportion to the projected amounts and, after payment of all administrative and other expenses, reduce the assets of the Plan to zero.

If the Trustees of the 2012 Retiree Bonus Account Trust determine that there are not sufficient assets in the Trust to pay the projected amount of the Retiree Bonus from the 2012 Retiree Bonus Account Plan to eligible pensioners on November 1, 2014, November 1, 2015 or November 1, 2016, each Employer signatory hereto shall be obligated to make a one-time single sum individual Employer Retiree Bonus Differential Payment, if applicable, on or about the date of the payment from the 2012 Retiree Bonus Account Plan from the Employer only to its own eligible pensioners in the 2012 Retiree Bonus Account Plan whose last signatory classified employment was with the Employer or related entities in the same controlled group of companies that includes the Employer. The amount of the individual Employer Retiree Bonus Differential Payment to the Employer's own eligible pensioners shall be the difference between the projected amount of the Retiree Bonus from the 2012 Retiree Bonus Account Plan and the actual amount of the Retiree Bonus paid by the 2012 Retiree Bonus Account Plan, and shall be paid out of the Em-

employer's general assets. Notwithstanding the above and any other provision in this Agreement, under no circumstances shall an Employer be obligated to make an individual Employer Retiree Bonus Differential Payment to any beneficiary or any pensioner whose last signatory classified employment was not with the Employer or related entities in the same controlled group of companies that includes the Employer, regardless of whether the beneficiary or pensioner has received, or is receiving, a Bonus Payment from the UMWA 1974 Pension Trust or the 2012 Retiree Bonus Account Plan. The UMWA Health and Retirement Funds shall serve as the payroll agent and administer the individual Employer Retiree Bonus Differential Payments on behalf of the affected Employer, and shall be reimbursed by the Employer for reasonable administrative expenses.

Section (d) Contributions by Employers

(1) During the life of this Agreement, for the periods of time indicated below, each signatory Employer (including those engaged in the production of coal and those not engaged in the production of coal) shall contribute to the Trusts referred to in this Article the amounts specified below based on cents per hours worked by each of the Employer's Employees who perform classified work under this Agreement, including those hours worked by New Inexperienced Miners hired on or after January 1, 2012, who are not participants in the 1974 Pension Trust.

(i) Into the 1974 Pension Trust: for the period beginning on the Effective Date and ending when this Agreement is terminated, \$5.50 per hour on each such hour worked.

(ii) Into the 1993 Benefit Trust: for the period beginning on the Effective Date and through December 31, 2011, 50¢ per hour on each such hour worked for any Employer, including related persons to such Employer within the meaning of Section 9701(c)(2) of the Internal Revenue Code, that initially entered into an agreement prior to January 1, 2002 to make contributions to the 1993 Benefit Trust meeting the required standard of such Trust; and 75¢ per hour on each such hour worked for any Employer that became obligated to contribute for the first time on or after January 1, 2002.

For the period beginning on January 1, 2012 and ending when this Agreement is terminated, \$1.10 per hour on each such hour worked for any Employer, including related persons to such Employer within the meaning of Section 9701(c)(2) of the Internal Revenue Code, that initially entered into an agreement prior to January 1, 2002 to make contributions to the 1993 Benefit Trust meeting the required standard of such Trust; and \$1.35 per hour on each such hour worked for any Employer that became obligated to contribute for the first time on or after January 1, 2002.

(iii) Into the 2012 Retiree Bonus Account Trust: for the period beginning on January 1, 2012 and ending when this Agreement is terminated, \$1.50 per hour on

each such hour worked, provided however that signatory Employers shall not be required to increase their rate of contribution to the Trust under any circumstances, regardless of the financial condition of the Plan.

(iv) In addition to the contributions indicated above, during the life of the Agreement, each signatory Employer shall, for the periods of time indicated below, contribute to the Trusts established in this Article in the amounts shown below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal after production by another operator, procured or acquired by such Employer for use or for sale on which contributions to the appropriate Trusts as provided for in this Article have not been made (amounts shown below include cents per hours worked contributions converted to tonnage equivalents).

(a) Into the 1974 Pension Trust: for the period beginning on the Effective Date and ending when this Agreement is terminated \$1.10 per ton on each such ton; and

(b) Into the 1993 Benefit Trust: from the Effective Date through December 31, 2011, 10¢ per ton on each such ton for any Employer, including related persons to such Employer within the meaning of Section 9701(c)(2) of the Internal Revenue Code, that initially entered into an agreement prior to January 1, 2002 to make contributions to the 1993 Benefit Trust meeting the required standard of such Trust; and 14.5¢ per ton

on each such ton for any Employer that became obligated to contribute for the first time on or after January 1, 2002.

For the period beginning January 1, 2012, and ending on December 31, 2016, 22¢ per ton on each such ton for any Employer, including related persons to such Employer within the meaning of Section 9701(c)(2) of the Internal Revenue Code, that initially entered into an agreement prior to January 1, 2002 to make contributions to the 1993 Benefit Trust meeting the required standard of such Trust; and 27¢ per ton on each such ton for any Employer that became obligated to contribute for the first time on or after January 1, 2002.

(c) Into the 2012 Retiree Bonus Account Trust for the period beginning on January 1, 2012 and ending when this Agreement is terminated, 30¢ per ton on each such ton, provided however that signatory Employers shall not be required to increase their rate of contribution to the Trust under any circumstances, regardless of the financial condition of the Plan.

The parties hereto mutually agree that, if at any time during the term of this Agreement a court or tribunal of competent jurisdiction determines by a final decision that is not appealable that the provision appearing in paragraph (iv) just preceding is invalid or in violation of the National Labor Relations Act, 1947, as amended, or other Federal or state law, the parties shall, at the option of and upon demand by the Union, without affecting the integrity of any other provision of

this Section or any other provision of the National Bituminous Coal Wage Agreement, meet and engage in good faith negotiations to agree upon a clause to be inserted into this Agreement in replacement of the provision found invalid or unlawful.

(v) In the event the BCOA ceases to exist, or in the event that more than 50% of the tonnage membership of BCOA on the Effective Date has withdrawn prior to the time when the BCOA is required or permitted to take action under this Article, then such action may be taken by a majority vote, based on tonnage, of Employers who were BCOA members on the Effective Date.

(vi) Hours of work for purposes of Employer contributions to the plans and trusts described in this Article shall include all hours worked, or fractions thereof, by Employees in a classified job covered by this Agreement. Hours actually worked for which a premium pay of any type is provided shall be treated for purposes of Employer contributions to the Trusts as though worked on a straight-time basis. Reporting pay for hours not actually worked shall not be included for the purpose of making Employer contributions to the Trust.

(2) The sole obligation under this Section of any Employer signatory hereto shall be to contribute the amounts specified in this Section.

(3) The obligation to make payments to the Trusts specified in this Article shall become effective on the dates specified in the respective Subdivisions (i) through (iv) of this Section, and the first payments are

to be made on the 10th day of each month after such specified dates, and thereafter continuously on the 10th day of each succeeding calendar month.

(4) It shall be the duty of each of the Employers signatory hereto to keep current said payments due to the Trusts, and to furnish to the International Union, United Mine Workers of America and to the Trustees of those Trusts a monthly statement showing on a mine-by-mine basis the full amounts due hereunder and the tons of coal produced, procured or acquired for use or for sale and the hours worked with respect to which the amounts are payable. Payments to those Trusts shall be made by check payable, as appropriate, to:

“Trustees of the United Mine Workers of America 1974 Pension Trust”

“Trustees of the United Mine Workers of America 1993 Benefit Trust”

“Trustees of the United Mine Workers of America 2012 Retiree Bonus Account Trust”

The Trustees are hereby authorized to require each signatory Employer to make payment of all contributions to the 1993 Benefit Trust, the 1974 Pension Trust, and the 2012 Retiree Bonus Account Trust by a single check made payable in such manner as may be specified by the Trustees.

(5) Payments shall be delivered or mailed to such location as designated by the Trustees of those Trusts.

(6) Failure of any Employer signatory hereto to make full and prompt payments to the Trusts specified

in this Article in the manner and on the dates herein provided shall be deemed a violation of this Agreement. This obligation of each Employer signatory hereto, which is several and not joint, to so pay such sums shall be a direct and continuing obligation of said Employer during the life of this Agreement and it shall be deemed a violation of this Agreement, if any mine, preparation plant or other facility to which this Agreement is applicable shall be sold, leased, subleased, assigned, or otherwise disposed of for the purpose of avoiding any of the obligations hereunder.

(7) Each Employer agrees to give proper notice to the President of the appropriate local union by the 18th day of each month that the Employer has made the required payment to the Trusts for the previous month, as required by this Article, or is delinquent in such payment, such notice to set forth the amount paid to the Trusts, or the amount of the delinquency, the tonnage procured or acquired for use or for sale and the hours worked with respect to the mine or mines under the jurisdiction of such local union. Each Employer agrees to give notice to the appropriate President of the Local Union by the 18th day of each month that the Employer has made the appropriate payment to the insurance carrier for the Employer benefit plan established under (c)(3) above, or is delinquent in such payment.

(8) Title to all the monies paid into and/or due and owing to the Trusts specified in this Article shall be vested in and remain exclusively in the Trustees of

those Trusts. It is the intention of the parties hereto that those Trusts shall constitute irrevocable trusts and that no benefits or money payable from those Trusts shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and that any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void.

(9) It is understood that the individual Employees of Employers agree, through their representative, the United Mine Workers of America, to surrender any personal or individual right to or interest in monies paid or required to be paid to the Trusts pursuant to this Agreement.

(10) Any judgment obtained by the Trustees of the Trusts established pursuant to this Agreement for a default giving rise to damages accruing to more than one of the Trusts established hereunder shall be allocated by the Trustees among such Trusts in proportion to the amounts owing to each which gave rise to such judgment.

Section (e) Responsibilities and Duties of Trustees

(1) The 1974 Pension Trust, the 1993 Benefit Trust, and the 2012 Retiree Bonus Account Trust shall each be administered by a Board of four Trustees, two of whom shall be appointed by the Employers and two of whom shall be appointed by the Union. Either party may, but shall not be required to, appoint an individual

to serve as a Trustee on more than one Trust. One of the Trustees appointed by the Union shall be the Chairman. Each Board of Trustees shall perform its duties in accordance with the requirements, terms and conditions of each such Trust.

(2) It is the intent and purpose of the contracting parties that full cooperation shall be given by each of them to one another, to the Trustees provided for under this Article, and to all affected mine workers, to the eventual coordination and development of policies and working agreements necessary or advisable for the effective operation of the Trusts and Plans. The Trustees of the 1974 Pension Trust shall fully cooperate with the Trustees of the 2012 Retiree Bonus Account Trust and provide whatever information is necessary for the administration of the 2012 Retiree Bonus Account Plan.

(3) Action which may be required by the Employers in connection with any matter hereunder, including but not limited to the removal or appointment of a Trustee, may be taken by BCOA.

(4) All covenants, rights and obligations accruing to the Trusts, and the Benefit Plan, and the Trustees of the Pension and Benefit Trusts and Plans, and all breaches, violations and/or defaults of any provision of this Article pertaining to the Trusts and Plans, the Trust Agreements, or Pension Plans, shall be enforced by the Trustees, at their discretion, through any and all available legal means, without first exhausting the grievance and arbitration procedures set forth in this Agreement.

(5) Disputes arising under this Agreement with regard to the Employer benefit plan established in (c)(3) above shall be referred to the Trustees. The Trustees shall develop procedures for the resolution of such disputes. In the event the Trustees decide such dispute, such decision of the Trustees shall be final and binding on the parties. If the Trustees are unable to resolve the dispute, such dispute shall be referred to a permanent three-member arbitration panel selected by mutual agreement of the UMWA and the BCOA and maintained by the Trustees. A dispute referred in this manner shall be decided by one member of the arbitration panel, determined on a rotating basis, whose decision shall be final and binding on the parties. Precedent under the resolution of disputes mechanism previously in place shall remain in effect, and the panel shall be required to cooperate to assure the consistent interpretation of provisions under the Employer Plans under this Article. Such disputes shall not be processed under the provisions of Article XXIII (Settlement of Disputes).

Section (f) **Audits, Reports and Notices**

(1) It is agreed by the contracting parties that annual independent audits of the Trusts shall be made by independent certified public accountants to be designated by the Trustees of the Trusts. A statement of the results of such audits shall be sent to the contracting parties and shall be made available upon written request to any

working or retired miner or to any beneficiary either by mail or at the principal office of the Trusts, or at such other place as may be designated by the Trustees.

(2) If the Trustees determine that there is reasonable cause to question the accuracy of the sums paid under Section (d) of this Article, or of any verification thereof made by an Employer for a given monthly or annual period, the Employer shall, upon written request by the Trustees, make available for inspection and/or copying at reasonable times and places to a representative of the Trustees, those records which are necessary to verify the accuracy of the sums paid.

(3) A complete accounting, on a mine-by-mine basis, of contributions received by the Trusts under this Article shall be furnished by the Trustees, at least on a quarterly basis, to the International Union. Such an accounting will also be supplied to the District and Local offices of the Union with respect to the mine or mines under their jurisdiction. Such accounting shall include tonnages of coal procured or acquired for use or for sale, and hours worked with respect to which contributions were paid, together with an identification of any period or periods in which contributions were delinquent, showing the amounts of such delinquencies. The Trustees shall take such action as they deem appropriate to collect any such delinquencies, and shall advise the International Union and the appropriate Districts and Locals of the Union, on at least a monthly basis, of such delinquencies, as long as such delinquencies continue.

(4) Upon the written request of any International, District or Local officer of the Union, the Trustees shall make available within seven (7) days of receipt of such request an up-to-date accounting of contributions made and delinquencies outstanding, in respect to any mine or related facility with respect to which such officer has union jurisdiction.

(5) The Trustees shall furnish the Employers and the Union with such other documentation and information as provided for in each of the Trusts described herein.

Section (g) Administration of Trusts

(1) Each Employer shall make available to the Trustees within a reasonable time such information as the Trustees may determine to be reasonably required for the purpose of administering the Trusts and Plans.

(2) The Trustees shall respond to all written requests for information, applications, and other communications from beneficiaries within 15 working days from their receipt at the office of the Trusts. A response from the Trustees may be either a telephonic communication or a letter acknowledging receipt of such communication from the beneficiary. A pension application must be initially approved or denied within 12 weeks of the receipt of the application. The foregoing shall not apply in the event of delays caused by conditions beyond the control of the Trustees.

(3) The Trustees shall police and monitor the rolls of those entitled to benefits from the Trusts. On at least a

quarterly basis, the Trustees shall have available a complete listing of current beneficiaries, identified by UMWA district and local union jurisdiction, if applicable. The Trustees shall promptly investigate and determine the eligibility or ineligibility of any beneficiary whose right to receive benefits from the Trusts has been challenged by an Officer of the International, District or Local Union or by any Employer. In the event that a beneficiary or beneficiaries shall be determined to be ineligible for health care or other benefits, the Trustees shall take prompt action to correct the situation.

(4) The Trustees are authorized, upon prior written approval by the Employers and the Union, to make such changes in the Plans and Trusts hereunder as they may deem to be necessary or appropriate.

They are also authorized and directed, after adequate notice and consultation with the Employers and Union, to make such changes in the Plans and Trusts hereunder, including any retroactive modifications or amendments, which shall be necessary:

(a) to obtain all necessary determination letters or rulings from the Internal Revenue Service or other applicable federal agencies so as to ensure compliance with all applicable federal laws and regulations and ensure the continued qualification of the 1974 Pension Plan and Trust and the deductibility for income tax purposes of any and all contributions made by signatory Employers to such Trusts as paid or incurred;

(b) to conform the terms of each Plan and Trust to the requirements of ERISA, or any other applicable federal law, and the regulations issued thereunder;

(c) to obtain determination letters from the Internal Revenue Service that the 1974 Pension Plan will each meet the requirements of Section 401 of the Internal Revenue Code and the Trusts thereunder will be exempt under Section 501(a) of such Code and that the 1993 Benefit Trust will be exempt under Section 501(c)(9) of such Code;

(d) to establish the deductibility for income tax purposes of any and all contributions made by the signatory operators to the 1974 Pension Trust and 1993 Benefit Trust as paid or incurred; or

(e) to comply with all applicable court or government decisions or rulings.

In addition to the foregoing, the 1993 Benefit Plan Trustees shall have the authority to make any amendments to the plan of benefits of the 1993 Benefit Plan and Trust that they deem necessary and appropriate.

Section (h) **Guarantee of the 1974 Plan and Trust**

Notwithstanding any other provisions in this Agreement the Employers hereby agree to fully guarantee the pension benefits provided by the 1974 Pension Fund, during the term of this Agreement.

In order to fully fund these guaranteed benefits, the BCOA may increase, not decrease, the rate of contributions to be made to the 1974 Pension Trust during the

term of this Agreement. These contributions, which may be adjusted from time to time, shall be made by all Employers signatory hereto during the term of this Agreement.

In addition, each signatory Employer hereby agrees to fully guarantee the health benefits provided under its own Employer Plan described in Section (c)(3)(i) of this Article XX during the term of this Agreement.

GENERAL DESCRIPTION OF THE HEALTH AND RETIREMENT BENEFITS

The following is a general description of certain information contained in the UMWA 1974 Pension Plan and Trust, and the individual Employer's benefit plan. This description is intended merely to highlight certain information; it is not a complete statement of all of the provisions of the Plans and Trusts, nor is it intended to be a Summary Plan Description as defined in the Employee Retirement Income Security Act of 1974, and is qualified in its entirety by, and subject to the more detailed information contained in the Plans and Trusts, copies of which are on file and available for inspection at the offices of the UMWA Health & Retirement Funds, 2121 K Street, N. W., Washington, D.C. 20037. The specific provisions of the plans will govern in the event of any inconsistencies between the general description and the plans.

The benefits provided by the 1993 Benefit Trust may be amended from time to time, as determined by the

1993 Benefit Plan Trustees, subject to the following restrictions, and to the terms of the Trust:

(a) Benefits under the 1993 Benefit Trust shall only be those that can be provided from the assets of the Trust, but there shall be no benefit improvements during the term of this Agreement, and the total package of benefits under the Plan shall not exceed the value of the benefits provided under the individual Employer Plan pursuant to the terms of the 2002 Wage Agreement.

(b) No beneficiary shall be eligible for any benefit that is more generous than the retiree medical benefit contractually required to be provided under the individual employer benefit plan maintained by the signatory Employer.

(c) For those beneficiaries who are not actually enrolled in the 1993 Benefit Plan as of December 31, 2006 within the meaning of section 402(h)(2)(C) and (D) of the Surface Mining Control and Reclamation Act of 1977, as amended, the Trustees must monitor the assets of the 1993 Benefit Trust in order to provide benefits and shall address the Plan's overall financial status, including the stream of benefit obligations as well as the projected income from all available resources, and take prudent and appropriate actions consistent with their duties and obligations under the Trust and Plan documents, including, if necessary reducing benefits. If the Trustees do not act to reduce Plan benefits when and as required, then the Executive Director

of the UMWA Health & Retirement Funds (or if such position is vacant, the highest ranking staff member working exclusively on health benefit plan matters) shall adopt such benefit reductions effective immediately.

The parties expressly agree that the language references to “for life” and “until death” that are retained in this General Description are intended to mean that each Employer will provide, for life, only the benefits of its own eligible retirees who retire during the term of this Agreement. A retiree shall be considered to be a retiree of an Employer if his last signatory classified employment was with such Employer. The benefits and benefit levels provided by an Employer under its Employer Plan are established for the term of this Agreement only, and may be jointly amended or modified in any manner at any time after the expiration or termination of this Agreement.

However, under no circumstances will an Employer be responsible to provide benefits or to contribute toward the provision of benefits, through the 1993 Benefit Trust or any other plan, trust or mechanism, to former employees and retirees (or their spouses, surviving spouses or dependents) of any other Employer beyond the term of this Agreement.

Furthermore, the provisions in the NBCWA of 2007 regarding pension bonus payments for eligible beneficiaries of the 1974 Pension Plan payable on November 1, 2011 are unchanged in this Agreement.

The following general description does not apply to plans maintained pursuant to the Coal Act.

(1) PENSIONS FOR MINERS RETIRED UNDER THE FORMER 1950 PENSION PLAN:

Beginning on the Effective Date, pension benefits are according to the following schedules:

(a) For pensioners with at least 20 years of credited service who retired on other than a disability pension, the pension is \$425 per month. Any such pensioner whose pension is in pay status as of October 31, 2014 shall be issued by November 1, 2014, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$580. Any such pensioner whose pension is in pay status as of October 31, 2015 shall be issued by November 1, 2015, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$580. Any such pensioner whose pension is in pay status as of October 31, 2016 shall be issued by November 1, 2016, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$580.

(b) For pensioners who retired on a disability pension, the pension is \$267.50 per month. Any such disability pensioner whose pension is in pay status as of

October 31, 2014 shall be issued by November 1, 2014, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. Any such disability pensioner whose pension is in pay status as of October 31, 2015 shall be issued by November 1, 2015, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. Any such disability pensioner whose pension is in pay status as of October 31, 2016 shall be issued by November 1, 2016 by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. Such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage.

Any pensioner who is receiving a disability pension or a pension with at least twenty years of credited service under this Plan is entitled to receive health benefits until death. A widow is entitled to receive health benefits until her death or remarriage.

(c) For all other pensioners, any such pensioner whose pension is in pay status as of October 31, 2014 shall be issued by November 1, 2014, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account

Plan, a one-time single sum payment projected at \$455. Any such pensioner whose pension is in pay status as of October 31, 2015 shall be issued by November 1, 2015, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. Any such pensioner whose pension is in pay status as of October 31, 2016 shall be issued by November 1, 2016, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455.

(1A) FORMER 1950 WIDOWS' PENSION:

A Widow's Pension is provided through the 1974 Pension Plan to widows of 1950 Pensioners (as defined in the 1974 Pension Plan). The benefit is \$175 per month. Existing as well as future widows of such 1950 Pensioners will receive this benefit.

Any such widow whose pension is in pay status as of October 31, 2014 shall be issued by November 1, 2014, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. Any such widow whose pension is in pay status as of October 31, 2015 shall be issued by November 1, 2015, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single

sum payment projected at \$455. Any such widow whose pension is in pay status as of October 31, 2016 shall be issued by November 1, 2016, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455.

(2) PENSIONS FOR MINERS WHO RETIRED UNDER THE 1974 PENSION PLAN PRIOR TO THE EFFECTIVE DATE:

Pension benefits for pensioners who retired prior to the Effective Date are continued at current pension benefit levels.

(a) For pensioners who retired on other than a minimum disability pension, such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage.

(b) For pensioners who retired on a minimum disability pension, the pension is \$250 per month. Such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage.

(c) Any pensioner who retired on other than a disability pension and whose pension is in pay status as of October 31, 2014 shall be issued by November 1, 2014, by separate check from the 2012 Retiree Bonus

Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$580. Any pensioner who retired on other than a disability pension and whose pension is in pay status as of October 31, 2015 shall be issued by November 1, 2015, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$580. Any pensioner who retired on other than a disability pension and whose pension is in pay status as of October 31, 2016 shall be issued by November 1, 2016, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$580.

Any pensioner whose disability pension is in pay status as of October 31, 2014 shall be issued by November 1, 2014, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. Any such disability pensioner whose pension is in pay status as of October 31, 2015 shall be issued by November 1, 2015, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. Any such disability pensioner whose pension is in pay status as of October 31, 2016 shall be issued by November 1, 2016 by separate check from

the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455.

(d) Any surviving spouse whose survivor pension is in pay status as of October 31, 2014 shall be issued by November 1, 2014, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. A surviving spouse whose survivor pension is in pay status as of October 31, 2015 shall be issued by November 1, 2015, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. A surviving spouse whose survivor pension is in pay status as of October 31, 2016 shall be issued by November 1, 2016, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. Such surviving spouse will retain a Health Services card until her death or remarriage.

(3) PENSIONS FOR MINERS WHO RETIRE ON OR AFTER THE EFFECTIVE DATE:

An eligible working miner who retires on or after the Effective Date and who is eligible for a pension under the terms of this Agreement will receive pension

benefits based upon the 1974 Pension Plan. Subject to (4) below, full credit is provided for years worked as a classified Employee in mines of signatory Employers.

The earliest retirement age is 55. A miner may retire at 55 with 10 or more years of signatory service.

Except as otherwise provided herein, pension benefits are increased as a miner accumulates years of signatory service. Benefits are also increased based upon a miner's age at the time of retirement with maximum benefits payable to miners who retire at the age of 62 or more.

In order to calculate the amount of a retirement benefit, it is necessary to add:

(1) the benefit amount for signatory service earned prior to February 1, 1989 ("Pre-1989 signatory service");

(2) the amount for signatory service earned between February 1, 1989, and January 31, 1990 ("1989 signatory service");

(3) the amount for signatory service earned on or after February 1, 1990 and before December 16, 1993 ("Post-1989 signatory service"); and

(4) the amount for signatory service earned on or after December 16, 1993 ("Post-1993 signatory service").

The retirement benefit for signatory service earned prior to February 1, 1989, is the following:

\$54.50 per month multiplied by the years of Pre-1989 signatory service for the first 10 such years, plus

\$55.00 per month multiplied by the years of Pre-1989 signatory service for the second 10 such years, plus

\$55.50 per month multiplied by the years of Pre-1989 signatory service for the third 10 such years, plus

\$56.00 per month multiplied by the years of Pre-1989 signatory service for each such year over 30.

The retirement benefit for signatory service earned from February 1, 1989, to January 31, 1990, is \$62.00 for a year of 1989 signatory service.

The retirement benefit for signatory service earned from February 1, 1990, to December 16, 1993, is \$66.50 per year of Post-1989 signatory service.

The retirement benefit for signatory service earned on or after December 16, 1993 is \$69.50 per year of Post-1993 signatory service.

To estimate your pension, use the table on page 326.

Any pensioner whose pension (other than a disability pension) is in pay status as of October 31, 2014 shall be issued by November 1, 2014, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$580. Any pensioner who retired on (other than a disability pension) and whose pension is in pay status as of October 31, 2015 shall be issued by November 1, 2015, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$580. Any pensioner who retired on (other

than a disability pension) and whose pension is in pay status as of October 31, 2016 shall be issued by November 1, 2016, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$580.

(3A) NEW INEXPERIENCED MINERS HIRED AFTER JANUARY 1, 2012:

A New Inexperienced Miner hired on or after January 1, 2012 will not earn vesting service, signatory service or credited service from the 1974 Pension Plan. Such a New Inexperienced Miner shall receive monthly Enhanced Premium Contributions and Supplemental Pension Contributions from his Employer to the United Mine Workers of America Cash Deferred Savings Plan of 1988, as described in Article XXB(d)4 and Article XXB(d)5 of this Agreement.

(4) SIGNATORY SERVICE:

Effective as of the calendar year 1978, each miner who works at least 1,000 hours in a calendar year as a classified Employee with a signatory Employer will receive credit for a full year of signatory service for the purpose of determining the amount of the pension. Time spent performing contractual obligations (such as safety inspections, mine committee work, etc.) shall be

considered as hours worked in the schedule below. Time spent performing work for the UMWA, its districts and local unions in lieu of regular scheduled classified work for the Employer shall be considered as hours worked in the schedule below. A person who is eligible to receive sickness and accident benefits will receive credit as hours worked in the schedule below, for the period of eligibility. Each miner who works less than 1,000 hours in a calendar year as a classified Employee with a signatory Employer will receive credit for the above purpose for a percentage of a year calculated in accordance with the following schedule:

<u>Hours Worked</u>	<u>Percentage of a Year of Signatory Service</u>
less than 250	0
250-499	25%
500-749	50%
750-999	75%
1,000 or more	100%

For the purpose of calculating benefits and/or determining vesting, employment with the United Mine Workers of America, following classified employment with an Employer, shall be treated as signatory service, provided that the employee does not receive a pension from the United Mine Workers of America Pension Plan based on such service.

Notwithstanding the foregoing, a classified Employee working on the weekend/holiday crew as pro-

vided in Appendix C shall receive credit for a percentage of a year calculated in accordance with the following schedule:

<u>Hours Worked</u>	<u>Percentage of a Year of Signatory Service</u>
less than 200	0
200-399	25%
400-599	50%
600-799	75%
800 or more	100%

Special Rule for 1993 – For the calendar year 1993, a classified Employee who participated in an authorized strike following expiration of the 1988 Wage Agreement, or who was laid off as a direct result of such an authorized strike, and who worked at least 500 hours will receive credit for a full year of signatory service.

Notwithstanding anything to the contrary contained in this Agreement, any New Inexperienced Miner hired on or after January 1, 2012 will not earn any vesting, credited or signatory service from the 1974 Pension Plan.

(5) PENSIONS FOR DISABLED MINERS:

A miner who becomes permanently and totally disabled as a result of a mine accident occurring after the Effective Date will become eligible for pension benefits in accordance with the following schedule:

(a) If a miner has less than ten years of signatory service at the time of retirement, the miner will receive \$250 per month. Such pensioner will be entitled to retain a Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage.

(b) If a miner has ten years or more of signatory service at the time of retirement, the miner will receive the greater of the minimum pension payable to a miner with less than ten years of signatory service or a pension based upon the years of signatory service which the miner has accumulated at the time of retirement calculated in accordance with the benefit schedule in (3) above. Such pensioner will be entitled to retain a Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage

(c) Any pensioner whose disability pension under this section is in pay status as of October 31, 2014 shall be issued by November 1, 2014, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. Any pensioner whose disability pension is in pay status as of October 31, 2015 shall be issued by November 1, 2015, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. Any pensioner whose disability pen-

sion is in pay status as of October 31, 2016 shall be issued by November 1, 2016, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455.

(d) A New Inexperienced Miner who becomes permanently and totally disabled as a result of a mine accident occurring on or after January 1, 2012, as well as a miner who makes the election described in Article XXB(d)7 (an "Electing Miner") who becomes permanently and totally disabled as a result of a mine accident occurring on or after the date of his election, shall become eligible for a pension benefit equivalent to that provided in paragraph (a) or (b) above. Such New Inexperienced Miner or Electing Miner will be eligible for a Health Services card for life and, upon his death, his Surviving Spouse will retain a Health Services card until her death or remarriage. A New Inexperienced Miner or Electing Miner described in this paragraph and eligible dependents will be eligible to receive benefits from the 1993 Benefit Trust if his Employer meets the requirements of the 1993 Benefit Plan and Trust and this Agreement.

(6) PENSIONS FOR SURVIVING SPOUSES:

The 1974 Pension Plan provides for Surviving Spouse pensions. Benefits for an eligible surviving spouse will be payable in accordance with the following:

(a) If, on or after the Effective Date, a working miner dies (regardless of cause) and would have been eligible for an immediate pension had the miner retired on the date of death, the surviving spouse will be eligible for a pension equal to 75% of the pension the miner would have received, and will receive this pension until death. Such surviving spouse will be entitled to retain a Health Services card until death or remarriage.

(b) Upon the death of a pensioner, other than a deferred vested pensioner with less than 20 years of service, the surviving spouse of such pensioner will receive a pension equal to 75% of the pensioner's pension until death. Such surviving spouse will be entitled to retain a Health Services card until death or remarriage.

(c) If a miner working on or after the Effective Date becomes eligible for a pension, other than a deferred vested pension with less than 20 years of service, at any time thereafter, upon his death after age 55, the surviving spouse will be entitled to receive a Surviving Spouse pension equal to 75% of the miner's pension until death. Such surviving spouse will be entitled to retain a Health Services card until death or remarriage.

(d) If a miner had completed 10 years of credited service, died as a result of a mine accident during the term of the 1978 or 1981 Wage Agreement, and was not covered by a Surviving Spouse pension (or by any other monthly benefit payable to a surviving spouse under a Wage Agreement), the surviving spouse, if she

has never remarried and is surviving on the first day of the month following the Effective Date, will be entitled to receive a lump sum in the amount of \$10,000, plus \$100 for each month beginning with the first month following the Effective Date and continuing until her remarriage or death.

(e) Any surviving spouse whose survivor pension is in pay status as of October 31, 2014 shall be issued by November 1, 2014, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. A surviving spouse whose survivor pension is in pay status as of October 31, 2015 shall be issued by November 1, 2015, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. A surviving spouse whose survivor pension is in pay status as of October 31, 2016 shall be issued by November 1, 2016, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455.

(6A) PRE-RETIREMENT SURVIVOR'S PENSION:

The Plan also provides a 75% survivor's pension for the spouse of a working miner with 10 years of vested

pension rights who dies before retirement age. The pension benefit will be payable to the surviving spouse at the time the miner would have attained age 55.

Any surviving spouse whose survivor pension is in pay status as of October 31, 2014 shall be issued by November 1, 2014, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. A surviving spouse whose survivor pension is in pay status as of October 31, 2015 shall be issued by November 1, 2015, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. A surviving spouse whose survivor pension is in pay status as of October 31, 2016 shall be issued by November 1, 2016, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455.

(7) DEFERRED VESTED OR SPECIAL PENSIONS:

(a) If after the Effective Date an eligible working miner ceases working for any reason, except as provided in (b) below, after completing at least 10 years of signatory employment, and before age 55, the miner will be eligible to receive a pension at age 62, or an ac-

tuarily reduced pension at any time after 55. This pension will be calculated in accordance with (3) above.

(b) If after the Effective Date an eligible working miner ceases working and meets the following criteria:

(i) had 20 years of signatory service on date last worked;

(ii) had attained the age of 50 on the date last worked; and either

(iii) had been laid off and had not refused a recall to the mine from which he was laid off; or

(iv) had been terminated under Article III, Section (j) of the Wage Agreement (or if the miner had not been terminated, there had been a deterioration in physical condition which prevented the miner from performing his regular work as determined by a panel of three physicians, if the degree of such physical deterioration is disputed by the Trustees) and was not employed in the coal industry thereafter; then the miner will be eligible to receive a pension at age 62, or a pension at any time after age 55, reduced by one-quarter of one percent for each full month between the date on which pension benefits begin and the date the miner attains age 62.

(c) Any miner who ceased work prior to July 1, 2011, is eligible to receive a deferred vested pension under the 1974 Pension Plan and satisfies the criteria in (b) above shall have his pension recomputed using the one-quarter of one percent reduction based on the formula in effect

at his retirement. Such pensioner shall have his pension increased by any increases applicable to Age 55 Retirement which occurred after the date of his retirement and application for pension. Any increase under this paragraph shall be applied prospectively only.

(d) If on or after July 1, 2011, an eligible working miner ceases performing classified work and meets the following criteria:

(i) he had 20 years of signatory service on his date last worked;

(ii) he had been laid off and had not refused a recall to the mine from which he was laid off; or

(iii) he had been terminated under Article III, Section (j) of the Wage Agreement (or if the miner had not been terminated, there had been a deterioration in physical condition which prevented the miner from performing his regular work as determined by a panel of three physicians, if the degree of physical deterioration is disputed by the Trustees) and was not employed in the coal industry thereafter; and

(iv) his pension is not in pay status on or before August 16, 1996;

then the miner will be eligible to receive a pension at age 62, or a pension at any time after age 55, reduced by one-quarter of one percent for each full month between the date on which pension benefits begin and the date the miner attains age 62.

(e) Special Permanent Layoff Pension-If on or after July 1, 2011, an eligible working miner ceases per-

forming classified work and meets the following criteria:

(i) he had 20 years of signatory service on his date last worked and was less than age 55; and

(ii) (A) he has been permanently laid off under circumstances in which his Employer has permanently closed the mine, or

(B) he has been permanently laid off;

then the miner will be eligible to receive a pension computed under the provisions of (3) above, calculated as if he were then age 55. In the case of a layoff described in (ii)(A) above, the pension will be effective on the first day of the first month following both the layoff and the filing of a pension application. In the case of a layoff described in (ii)(B) above, the pension will be effective on the first day of the first month following both a period of 180 days after the layoff and the filing of a pension application. A miner will be considered to have been “permanently laid off” under (ii)(B) if he has been on layoff status for at least 180 days, and has not refused a recall to the mine from which he was laid off. A miner who receives this special permanent layoff pension benefit, or any other pension benefit under this Article, forfeits all seniority, panel, and recall rights.

(f) Special 30-and-Out Layoff Pension—If an eligible working miner meets the following criteria:

(i) his last day of credited service under the 1974 Pension Plan is on or after January 1, 2002; and

(ii) he had at least 30 years of signatory service on such last day of credited service; and

(iii) he has been laid off and has not refused a recall to the mine from which he was laid off; and

(iv) if, because of a layoff, he was not actively at work as of December 31, 2001:

(I) he earned at least 250 hours of credited signatory service following his return to work, or

(II) he returned to active employment as the result of a recall determined by the Trustees to have been to fill a bona fide job opening, and not for the purpose of entitling the Participant to this Special 30-and-Out layoff pension benefit;

then the miner will be eligible to receive a pension computed under the provisions of (3) above, but with no actuarial reduction on account of age.

(g) 30-and-Out Pension—If a working miner meets the following criteria:

(i) his last day of credited service under the 1974 Pension Plan is on or after July 1, 2011; and

(ii) he had at least 30 years of signatory service on such last day of credited service; and

(iii) if, because of a layoff, he was not actively at work as of December 31, 2001:

(I) he earned at least 250 hours of credited signatory service following his return to work, or

(II) he returned to active employment as the result of a recall determined by the Trustees to have been to fill a bona fide job opening, and not for the purpose of en-

titling the Participant to this 30-and-Out pension benefit;

then the miner will be eligible to receive a pension computed under the provisions of (3) above, but with no actuarial reduction on account of age.

(h) The Surviving Spouse pension described in paragraph (6) does not apply to the surviving spouse of a miner receiving a deferred vested pension with less than 20 years of service.

(i) Any pensioner whose pension is in pay status as of October 31, 2014 shall be issued by November 1, 2014, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$580. Any pensioner who retired on and whose pension is in pay status as of October 31, 2015 shall be issued by November 1, 2015, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$580. Any pensioner who retired on and whose pension is in pay status as of October 31, 2016 shall be issued by November 1, 2016, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$580.

(j) Any surviving spouse whose survivor pension is in pay status as of October 31, 2014 shall be issued by November 1, 2014, by separate check from the 2012

Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. A surviving spouse whose survivor pension is in pay status as of October 31, 2015 shall be issued by November 1, 2015, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455. A surviving spouse whose survivor pension is in pay status as of October 31, 2016 shall be issued by November 1, 2016, by separate check from the 2012 Retiree Bonus Account Plan, subject to the terms of the 2012 Retiree Bonus Account Plan, a one-time single sum payment projected at \$455.

(7A) RETIREE BONUSES:

(a) The one-time single sum payments set forth in this Article are not intended as an ongoing feature of the 2012 Retiree Bonus Account Plan, and the Plan shall have no obligation to provide payments of this type other than those expressly provided for in this Article and in the Plan.

(b) Non-Duplication - No individual shall be entitled to receive a single sum bonus payment on any given date under more than one provision of this Article. Additionally, no individual shall be entitled to receive single sum bonus payments in excess of \$580 or \$455, as applicable, during any calendar year in combined

amounts and derived from any source, including the 2012 Retiree Bonus Account Plan, the individual Employer Retiree Bonus Differential Payment, and the UMWA 1974 Pension Trust. Notwithstanding the foregoing, and subject to this non-duplication restriction, in calendar year 2016, payments made solely from the 2012 Retiree Bonus Account Plan may exceed the projected amounts if the assets in the 2012 Retiree Bonus Account Trust are sufficient.

(8) LIFE AND ACCIDENTAL DEATH AND DISMEMBERMENT BENEFITS:

Life and Accidental Death and Dismemberment Insurance benefits are provided by the Employer for working miners in accordance with the following schedule:

(a) Upon the death of a working miner due to other than violent, external and accidental means on or after the Effective Date, life insurance benefits, in the amount of \$80,000 from the Effective Date through December 31, 2011 and \$90,000 from January 1, 2012 through the term of the Agreement, will be paid to the miner's named beneficiary. Spouses who are not eligible for surviving spouse pension benefits, will continue eligibility for a Health Services card (also covers dependents) until remarriage or for 60 months, whichever occurs first.

(b) Upon the death of a working miner due solely to violent, external and accidental means on or after the Ef-

fective Date, life insurance benefits, in the amount of \$160,000 from the Effective date through December 31, 2011 and \$180,000 from January 1, 2012 through the term of the Agreement, will be paid to the miner's named beneficiary. Spouses who are not eligible for surviving spouse pension benefits, will continue eligibility for a Health Services card (also covers dependents) until remarriage or for 60 months, whichever occurs first.

(c) If a working miner should lose 2 or more members due to violent, external and accidental means on or after the Effective Date, the miner shall receive a \$100,000 dismemberment benefit from the Effective Date through December 31, 2011 and a \$120,000 dismemberment benefit from January 1, 2012 through the term of the Agreement. If a working miner shall lose one member due solely to violent, external and accidental means on or after the Effective Date, the miner shall receive a \$50,000 dismemberment benefit from the Effective Date through December 31, 2011 and \$60,000 from January 1, 2012 through the term of the Agreement. A member for the purpose of the above is (i) a hand at or above the wrist, (ii) a foot at or above the ankle or (iii) total loss of vision in one eye.

(d) Accidental death or dismemberment benefits are not payable if caused in whole or in part by disease, bodily or mental infirmity, ptomaine or bacterial infection, hernia, suicide, intentional self-inflicted injury, insurrection or acts of war or is caused by or results from committing or attempting to commit a felony.

(9) PENSIONER'S DEATH BENEFITS:

(a) Upon the death on or after the Effective Date and through June 30, 2013 of a 1950 Pensioner (as defined in the 1974 Pension Plan), and who is not a participant in the Combined Benefit Fund, a \$8,500 death benefit will be paid by the 1974 Pension Plan to his widow, or, in the absence of a widow to his dependents, if any; otherwise a \$7,000 death benefit will be paid by the 1974 Pension Plan to his nearest survivor.

Upon the death on or after July 1, 2013 of a 1950 Pensioner (as defined in the 1974 Pension Plan), and who is not a participant in the Combined Benefit Fund, a \$10,000 death benefit will be paid by the 1974 Pension Plan to his widow, or, in the absence of a widow to his dependents, if any; otherwise a \$8,500 death benefit will be paid by the 1974 Pension Plan to his nearest survivor.

(b) Upon the death on or after the Effective Date and through June 30, 2013 of a pensioner under this Agreement who retired under the 1974 Pension Plan, with other than a deferred vested pension based on less than 20 years of credited service, a \$8,500 death benefit will be paid by the 1974 Pension Plan to the named beneficiary of the deceased retiree if such named beneficiary is a surviving spouse or dependent relative; otherwise, a death benefit of \$7,000 will be paid by the 1974 Pension Plan to the named beneficiary of such deceased retiree.

Upon the death on or after July 1, 2013 of a pensioner under this Agreement who retired under the

1974 Pension Plan, with other than a deferred vested pension based on less than 20 years of credited service, a \$10,000 death benefit will be paid by the 1974 Pension Plan to the named beneficiary of the deceased retiree if such named beneficiary is a surviving spouse or dependent relative; otherwise, a death benefit of \$8,500 will be paid by the 1974 Pension Plan to the named beneficiary of such deceased retiree.

For purposes of this paragraph, “a pensioner under this Agreement” means a pensioner who is not entitled to benefits from the Combined Fund, is not entitled to death benefit coverage from a plan maintained by his employer, and who meets one of the following conditions:

- i) the pensioner is a participant in the 1992 Benefit Plan;
- ii) the pensioner is a participant in the 1993 Benefit Trust;
- iii) the pensioner is a participant in an individual employer plan maintained pursuant to the Coal Act and whose last signatory employer ceased producing and/or processing coal prior to December 16, 1993;
- iv) the pensioner was entitled to death benefit coverage from the 1974 Pension Plan on February 1, 1993 (or would have been had he been retired or eligible to retire on that date); or
- v) the pensioner’s last signatory employer (the employer for whom such pensioner last worked in signatory classified employment) is a

current 1974 Pension Plan contributor signatory to the 2011 NBCWA or to an agreement (including prior agreements, where applicable) requiring a contribution obligation with respect to the 1974 Pension Plan that is identical to the contribution obligation set forth in the 2011 NBCWA (or prior NBCWAs, where applicable).

(c) Age 55 and above—Upon the death at or after age 55 of an Electing Miner defined in Article XXB(d)7 who dies after making his election or of a New Inexperienced Miner hired on or after January 1, 2012, and where each is no longer in active employment in the bituminous coal industry and, either such Miner’s last hour worked (including, for this purpose only, Sickness and Accident benefits) for an Employer was on or after age 55, or such Miner’s last hour worked (including, for this purpose only, Sickness and Accident benefits) for an Employer was prior to age 55 and who obtains 20 or more years of service (determined as if the miner had not been an Electing Miner or New Inexperienced Miner as set forth in paragraph (e)), a death benefit will be paid from the 1974 Pension Plan to the named beneficiary of such Electing Miner or New Inexperienced Miner in the amount specified in paragraph (b).

(d) Under Age 55—Upon the death before reaching age 55 of an Electing Miner defined in Article XXB(d)7 who dies after making his election or of a New Inexperienced Miner hired on or after January 1,

2012, each of whom is no longer in active employment in the bituminous coal industry and, who obtains either (i) 30 or more years of service or (ii) 20 or more years of service (in each case determined as if the miner had not been an Electing Miner or New Inexperienced Miner as set forth in paragraph (e)) and was permanently laid off from his last signatory Employer, a death benefit will be paid from the 1974 Pension Plan to the named beneficiary of such Electing Miner or such New Inexperienced Miner in the amount specified in paragraph (b).

(e) For purposes of determining whether a New Inexperienced Miner and an Electing Miner has the necessary years of service under Sections (9)(c), 9(d) and (10)(l) of the General Description of Health and Retirement Benefits in Article XX, the phrase “determined as if the miner had not been an Electing Miner or New Inexperienced Miner” means (i) for a New Inexperienced Miner hired on or after January 1, 2012, the number of years he has received Supplemental Pension Contributions, and (ii) for an Electing Miner, the number of combined years he has received 1974 Pension Plan credit hours and Supplemental Pension Contribution hours.

(10) HEALTH CARE:

Health care benefits provided under the Employer Benefit Plan are guaranteed during the term of this Agreement subject to the terms of this Agreement at

the level of benefits provided in the Employer Benefit Plan.

(a) Notwithstanding any other provisions of Article IV of this Agreement, the parties agree that an Employer may establish a 2007 New Inexperienced Miners' Optional Work Schedule as set forth in Appendix D of this Agreement.

(b)(i) Working miners will be provided health benefits through their individual Employer's benefit plan maintained pursuant to this Article.

(ii) Notwithstanding the foregoing, a New Inexperienced Miner entering the bituminous coal mining industry for the first time on or after January 1, 2007 who does not have a State Miner's Certificate dated prior to January 1, 2007 shall receive monthly Enhanced Premium Contributions (\$1.00 per hour worked from the Effective Date through December 31, 2013 and \$1.50 per hour worked during Calendar Years 2014, 2015 and 2016) from the Employer to the Savings Plan. So long as permitted under the IRC without adverse tax consequences, an Employee shall be entitled to make a one-time, irrevocable election to have Enhanced Premium Contributions made to the CDSP as provided herein. An Employee subject to Enhanced Premium Contributions shall not be entitled to health care following his retirement date, based on service with the Employer, except as a Disabled Employee or a Pensioner receiving a Disability Retirement Pension (including a Minimum Disability Retirement Pension).

(c) Pensioners, other than deferred vested pensioners with less than 20 years of service, pensioners receiving a Special Permanent Layoff Pension, pensioners receiving a Special 30-and-Out Layoff Pension, and pensioners receiving a 30-and-Out Pension retired under the 1974 Pension Plan will be provided health benefits through the Employer from which they retired. Pensioners entitled to benefits from a plan maintained pursuant to the Coal Act will receive benefits from such plan.

(d) Pensioners receiving a Special Permanent Layoff Pension, or a Special 30-and-Out Layoff Pension, will be provided health benefits from their Employers in accordance with the layoff benefits otherwise provided under this Wage Agreement; subsequently, upon reaching age 55, such pensioners shall receive health benefits from their Employers. Pensioners receiving a 30-and-Out Pension will, upon reaching age 55, receive health benefits from their Employers.

(e) Pensioners, both regular and disabled, their surviving spouses and dependents, who are described in Section (c)(3)(ii) will have benefits provided under the 1993 Benefit Plan and Trust.

(f) Pregnancy benefits will be provided in the same manner as for any other disability.

(g) Only benefits for prescription drugs (only those drugs requiring a prescription for dispensing) are provided.

(h) Spouses of working miners who died, who are not eligible for Surviving Spouse pension benefits, will

continue eligibility for health care until remarriage, or for 60 months, whichever occurs first.

(i) Deferred vested pensioners with less than 20 years of service under the 1974 Pension Plan and miners who will receive a pension with less than 20 years of service under the former 1950 Pension Plan are ineligible for health care. Disability pensioners under both the former 1950 Pension Plan and the 1974 Pension Plan will continue to receive their Health Services card.

(j) Disabled or retarded children of Health Services cardholders will be covered for life, so long as a surviving parent holds the card.

(k) Spouses of disabled employees who had more than 20 years of service, and died prior to receiving a pension and after receiving all Sickness and Accident Benefits, and who are not eligible for Surviving Spouse pension benefits, will continue eligibility for health care until remarriage, or for 36 months, whichever occurs first.

(l) If a New Inexperienced Miner or a miner who has made the election described in XXB(d)7 (“Electing Miner”) becomes a Disabled Employee and such New Inexperienced Miner or Electing Miner obtains more than 20 years of service (determined as if the miner had not been a New Inexperienced Miner or Electing Miner), he will receive a Health Services card for life. If such Disabled New Inexperienced Miner or such an Electing Miner, obtains more than 20 years of service

(determined as if the miner had not been a New Inexperienced Miner or Electing Miner), and dies prior to reaching age 55, his surviving spouse will receive a Health Services card until remarriage, or for 36 months, whichever occurs first. If such Disabled New Inexperienced Miner or such an Electing Miner, obtains more than 20 years of service (determined as if the miner had not been a New Inexperienced Miner or Electing Miner), and dies upon or after reaching age 55, his surviving spouse will receive a Health Services card for life or until remarriage. A New Inexperienced Miner or Electing Miner described in this paragraph and eligible dependents will be eligible to receive benefits from the 1993 Benefit Trust if his Employer meets the requirements of the 1993 Benefit Plan and Trust and this Agreement.

(m) If an Employee who has made the election described in Article XXB(d)7 (“Electing Miner”) dies, and the spouse would have been eligible for a Surviving Spouse Benefit had such miner not been such an Electing Miner, such eligible spouse of the Electing Miner will receive a Health Services card for life or until remarriage. The eligible dependents of a deceased Electing Miner who was not eligible for the monthly Enhanced Premium Contributions described in Article XXB(d)4 will be eligible to receive benefits from the 1993 Benefit Trust if the deceased Electing Miner’s Employer meets the requirements of the 1993 Benefit Plan and Trust and this Agreement.

(n) If an Employee who is a New Inexperienced Miner, or who is an Electing Miner who has made the election described in Article XXB(d)7, dies as the result of a mine accident, the spouse will receive a Health Services card for life or until remarriage. The eligible dependents of a New Inexperienced Miner who dies as the result of a mine accident will be eligible to receive benefits from the 1993 Benefit Trust if the New Inexperienced Miner's Employer meets the eligibility requirements of the 1993 Benefit Plan and Trust and this Agreement.

Explanatory Note on Employer Provided Health Plans

Active miners and their surviving spouses and dependents, and pensioners, their dependents, and surviving spouses receiving pensions from the 1974 Pension Plan, will receive health care provided by their Employer through insurance carriers. A Health Services card identifying the Participant's eligibility for benefits under the health plan shall be provided by the Employer.

The Trustees of the UMWA Health and Retirement Funds shall resolve any disputes, as provided in Section (e)(5), including excessive fee disputes, to assure consistent application of the health plan provisions in the Employer Benefit Plans and of the managed care programs authorized by this Agreement.

Enhanced Cost Containment Program

In an effort to address the problems generated by the ever-increasing cost of health care, while maintaining a high level of benefits, the parties have mutually agreed to adopt managed care and cost containment programs.

a. Coordination of Benefits

If an individual is covered as a dependent under both the Employer Benefit Plan and under a plan maintained by a different employer, the benefits of the two plans will be coordinated so that no more than the total charges for covered medical goods and services will be paid. In no event will the Employer Benefit Plan be required to pay more than it otherwise would have paid without regard to this provision. The health plan shall coordinate benefits in accordance with the “birthday rule” adopted by the National Association of Insurance Commissioners.

b. Generic Drug Substitution

If a Beneficiary uses a brand name drug when a generic equivalent is available, the Beneficiary is responsible for the difference in cost between the generic drug and the brand name drug, in addition to the normal copayment. A generic drug will not be considered “available” unless it has been approved by the federal Food and Drug Administration. In addition, if the prescribing physician determines that use of a brand name drug is medically necessary, the generic drug will not be considered “available,” and there will be no addi-

tional payment by the Beneficiary for the use of the brand name drug.

c. Health Care Participating Provider Lists (PPL)

The Employer may implement Participating Provider Lists (PPLs) of physicians, hospitals, pharmacies and other providers, subject to the following requirements.

1. Initial Certification and Recertification--All Participating Provider Lists (PPLs) must be certified prior to their implementation to ensure that they meet the required standards, and recertified at least once during the term of this Agreement, in accordance with a procedure to be agreed-to between the UMWA and the BCOA. The costs of certification and recertification will be borne by the Employer.
2. Ongoing Review—Continued compliance of each PPL with the required standards will be subject to ongoing review.
3. Criteria—A PPL established by an Employer must meet the necessary criteria. The following is a general statement of the required elements:
4. Choice—Each covered individual will have the freedom to select any provider within the PPL, regardless of whether that provider is a generalist or specialist.
5. Reduction of Paperwork and Prohibition on

Prepayment—Eligible individuals utilizing PPL providers shall, to the extent possible, not be required to fill out or submit claims forms. In addition, such individuals shall not be required to pay a PPL provider any amount other than the copayment permitted under this Agreement.

6. Quality Certification—All providers must meet quality standards.
7. Accessibility
 - a. Providers will be available within a reasonable distance. Where possible, this means that a covered individual will not have to travel more than 20 to 30 minutes to receive general medical care.
 - b. There will be adequate numbers of providers in the different specialties to ensure that each member will have a sufficient choice.
 - c. Providers must be available to see covered individuals within a reasonable period, depending upon the nature of the problem.
8. Breadth of Scope—The PPL shall include adequate diversification of specialties and facilities.
9. Additional Specialties—The program must have provision for going outside the PPL for necessary specialties and/or facilities that are

not contained within the PPL, at no additional cost to the covered individual.

10. Other Outside Referrals—The program must have provision for referral outside the PPL where particular medical services can be better provided elsewhere in the opinion of the referring PPL provider, at no additional cost to the covered individual.
11. Emergencies—Emergency treatment is covered in full (subject to applicable copayments) whether or not provided within the PPL.
12. Beneficiaries Outside PPL Area—A Beneficiary who lives outside an area served by the PPL shall be permitted to utilize non-PPL providers without incurring additional copayments. For purposes of determining the Beneficiary’s copayments, utilization of such non-PPL providers shall be considered to be within the PPL.
13. Transition—Out of PPL—If a Beneficiary has begun to undergo a course of treatment with a non-PPL provider prior to the establishment of the PPL (or with a PPL provider that leaves the PPL), completion of that course of treatment will not be considered “out of PPL” as follows:
 - a. for an acute condition (including pregnancy, treatment for cancer, etc.), for the

duration of the specific course of treatment.

- b. for a chronic condition, for up to six months.
14. Viability—A PPL must be viable, both financially and otherwise, in order to ensure that it will continue to be able to appropriately serve the participant population.
 15. Internal Review—Each PPL must have internal mechanisms (including physician peer review) to resolve member complaints and to ensure that the highest quality standards are maintained.
 16. Precertification—Precertification for services (including hospitalization) performed by PPL providers are the responsibility of the provider, and not the covered individual. In addition, precertification in the event a covered individual is referred to a provider outside the PPL is the responsibility of the PPL provider making the referral.

Failure to precertify a non-emergency hospital admission to a non-PPL hospital (other than by referral from a PPL provider) or certain other specified inpatient and out-patient procedures performed by a non-PPL provider, will subject the Beneficiary to a \$300 deductible.

17. Out of PPL Costs

- a. Hospitalization—Benefits for inpatient treatment by a non-PPL hospital are paid at 90% of the in-PPL rates. The Beneficiary is responsible for the remainder of the charges.
- b. Doctor Visits—Each office visit to a non-PPL physician is subject to a \$20 copayment.
- c. The maximum total out-of-pocket expense under a and b above is \$1,600 per family per year in addition to the precertification penalties.

18. Prescription Drugs—Prescription drugs will be provided through the PPL at a reduced copayment of \$5.00. Prescriptions bought Out of PPL are subject to a \$10.00 copayment. Mail order prescription drugs, where available, will be provided at no copayment. (See chart below.)

d. Each Employer agrees to provide the Union with information sufficient to evaluate the effectiveness of the cost containment programs adopted pursuant to this Article. Such information will be provided no less than annually, and shall include a detailed statement of utilization and costs associated with the Employer Benefit Plans.

The following co-payments are required under the Employer Benefit Plan:

	<u>In PPL</u>	<u>Out -of- PPL</u>
Prescription Drugs	\$5.00 per prescription	\$10.00 per prescription
Prescription Drugs—Mail Order (where available)	\$0 per prescription	Not Applicable
Prescription Drugs—Brand Name where Generic is Available	\$5.00 Plus Additional Cost of Brand Name Drug	\$10.00 Plus Additional Cost of Brand Name Drug
Physician Charges	\$12.00 per office visit	\$20.00 per office visit
Hospital— and Related Charges	\$0	Balance over 90% of PPL Charges

In addition:

- a. No family will have to pay more than \$240 for In-PPL Physician office visits in any year.
- b. No family will have to pay more than \$1,600 in combined Out of PPL Hospital and Related Charges and Out of PPL Physician office visits.

For Out of PPL services, and for services provided prior to the establishment of PPLs, claim forms will be available at most hospitals, clinics, and physician of-

fices. Generally, nothing more is required than signing the forms authorizing the hospital, clinic, or physician to bill the insurance carrier for the services rendered. The insurance carrier will keep individual records for each Participant and dependent and will notify the Participant of the co-payments credited to his account. The hospital, clinic, or physician will bill the Participant for the co-payment amount until the maximum is reached. In some instances, when the Employee pays for services or drugs, the bills should be obtained and submitted with the claim form according to the instructions on the form. If the annual co-payment maximum has been reached, the carrier will remit to the Participant the full payment for covered benefits.

Where possible, for In-PPL services, no claim forms will be required. The PPL provider will generally be responsible for the submission of claims and other paperwork to the insurance carrier. Although a PPL provider may require payment by the Beneficiary of permitted co-payments, such a provider may not require payment by a Beneficiary of amounts that exceed the permitted copayments.

Covered drug prescriptions may be filled at drugstores, clinics and hospital prescription offices.

In an effort to address the problems generated by the ever-increasing cost of prescription drugs, while recognizing the importance of prescription drugs and their value in managing employee health care, and while maintaining a high level of benefits, the parties have

mutually agreed to adopt managed care and cost containment programs such as the program below.

e. The UMWA and BCOA will mutually agree to the appointment and retention of a third party Pharmacy Expert. The individual appointed must have actively practiced as a pharmacist and currently be a registered pharmacist. The Pharmacy Expert cannot be an employee of any Pharmacy Benefit Manager or Pharmaceutical Manufacturer. The Pharmacy Expert will participate on a Pharmacy Review Board composed of one member appointed by the UMWA, one member appointed by the Employer, and the Pharmacy Expert.

1. The Pharmacy Review Board will certify the formulary, which is a list of preferred drug products (PDP). All PDP's that are currently being used must be certified. The initial certification process must be completed within 120 days after the appointment of a Pharmacy Expert. An Employer may continue to use the current PDP of its Plan during the selection of a Pharmacy Expert and during the 120-day certification process. Certification of the PDP will be based on the following criteria:

a. The PDP was recommended by the P&T Committee at the Employer's Pharmacy Benefits Manager (PBM).

b. The Pharmacy Expert, as a member of the Pharmacy Review Board, should evaluate the PDP based on the following standards of quality:

Safety, Efficacy, Comparison Studies, Approved Indications, Adverse Effects, Contraindications/Warnings/

Precautions, Pharmacokinetics, Patient Administration/Compliance Considerations, Medical Outcome and Pharmacoeconomic Studies.

2. Election, Removal or Change of the Pharmacy Expert.

a. The Pharmacy Expert must be selected within 120 days after the Effective Date of this Agreement.

b. The Pharmacy Expert can be removed and/or replaced at any time subject to the mutual agreement of the UMWA and BCOA. The current Pharmacy Expert will remain in his or her position until a replacement is selected. The replacement process cannot exceed 120 days.

3. Ongoing Review

a. The PDP will be reviewed annually.

b. Interim review will be performed as necessary, if mutually agreed upon by the UMWA and the Employer.

c. Changes in the PDP may only be adopted as part of an annual or interim review.

4. The Employer will communicate changes in the PDP to plan participants and network physicians. Any change to the PDP will be communicated 90 days prior to taking effect. If a participant fills a prescription for a non-PDP drug, a communication will be sent to both the physician and the individual outlining the appeal process and the surcharge for additional purchases. If no appeal is received within 30 days, the next refill of the drug will be subject to a \$7.50 surcharge, and each following refill

of that drug will be subject to a \$15 surcharge. If an appeal is filed, surcharges are suspended for 60 days, or until the date of the resolution of the appeal, if later.

5. Funding

BCOA has the authority to reallocate up to \$0.02 per hour worked from future contributions to the Training & Education Fund to the ROD Trust to cover the expenses of the Formulary Review Program.

6. Appeal Process

The decision of the Pharmacy Review Board shall be binding. There will be an appeal process for beneficiaries that are requesting to use a non-PDP drug and not pay a surcharge.

Each Participant will receive a “Summary Plan Description” booklet. Each year a financial report of the Plan will be provided to each Participant.

(11) VISION CARE:

Vision care is provided for Employees, disabled Employees, Pensioners, surviving spouses, and their dependents, covered with a Health Services card through the Employer Benefit Plan. Coverage under the plan is identical to that provided in the 2007 Agreement, increased by 10% effective January 1, 2012, and by 10% effective January 1, 2014.

(12) HEALTH CARE COST CONTAINMENT:

The Union and the Employers recognize that rapidly escalating health care costs, including the costs of

medically unnecessary services and inappropriate treatment, have a detrimental impact on the health benefit program. The Union and the Employers agree that a solution to this mutual problem requires the cooperation of both parties, at all levels, to control costs and to work with the health care community to provide quality health care at reasonable costs. The Union and the Employers are, therefore, committed to fully support appropriate programs designed to accomplish this objective. This statement of purpose in no way implies a reduction of benefits or additional costs for covered services provided miners, pensioners and their families.

In any case in which a provider attempts to collect excessive charges or charges for services not medically necessary, as defined in the Plan, from a Beneficiary, the Plan Administrator or its agent shall, with the written consent of the Beneficiary, attempt to resolve the matter, either by negotiating a resolution or defending any legal action commenced by the provider. Whether the Plan Administrator or its agent negotiates a resolution of a matter or defends a legal action on a Beneficiary's behalf, the Beneficiary shall not be responsible for any legal fees, settlements, judgments or other expenses in connection with the case, but may be liable for any services of the provider which are not provided under the Plan. The Plan Administrator or its agent shall have sole control over the conduct of the defense, including the determination of whether the claim

should be settled or an adverse determination should be appealed. The protections of this paragraph shall not apply in the case of any service or supply obtained from a non-PPL source, until the out-of-pocket maximum is reached.

(13) NATIONAL HEALTH CARE:

Notwithstanding any other provision of this Article, in the event the United States Government enacts a system of comprehensive national health care that provides an alternative means of providing benefits required under this Article, then either the UMWA or the BCOA may, without affecting the integrity of any other provision of this Agreement, reopen this Agreement for the purpose of negotiating modifications to the Employer Plan, the 1993 Benefit Plan and Trust, or both. Additionally, the 1993 Benefit Trust may be renegotiated at the termination of this Agreement.

Article XXA—DENTAL PLAN

INTRODUCTION

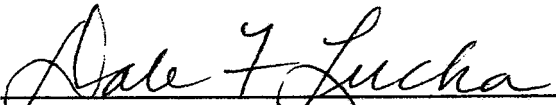
The Plan provides dental benefits for Employees and their eligible Dependents at a cost to each Employee of \$2 per month payable on a payroll deduction basis, or if applicable as a reduction in the Employee's Sickness and Accident Benefits if such Employee is disabled and receiving such Benefits during the particular month.

AGREEMENT

The parties to this Agreement are APOGEE COAL COMPANY LLC ("Employer") and the International Union, United Mine Workers of America ("UMWA"), on behalf of its members. The parties hereto agree to and adopt each and every term of the 2011 NBCWA, including Appendix A, B, C, and D and all Side Letters and Memorandum of Understanding (as listed on Attachment A), as well as the negotiated Individual Employer Plan. These provisions are hereby incorporated by reference and constitute the Agreement between the parties.

The wage increase set forth in Article X of the 2011 NBCWA shall be retroactive and shall cover all hours worked on and after July 1, 2011. The Employer shall include all retroactive payments with the first paycheck payable after execution of this Agreement. In the event that any miner eligible for such retroactive payments is not in active status on the date of the first paycheck after execution, the Employer shall mail to the miner the applicable retroactive amount due for all hours worked on or after July 1, 2011 on the date that the first paycheck after execution is distributed to active miners.

IN WITNESS WHEREOF, both parties signatory hereto have caused this Agreement to be signed on the date specified herein, to be effective July 1, 2011.



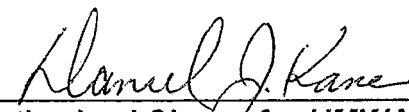
(Authorized Signer for Employer)

DALE LUCHA

(Title and Printed Name)

Employer Identification Number:


APOGEE COAL COMPANY LLC
202 Laidley Tower
Charleston, WV 25324



(Authorized Signer for UMWA
International)

Daniel J. Kane, Secretary-Treasurer

(Title and Printed Name)



(Type or Print Name)

Date: 9/27/11

011 013

AGREEMENT

The parties to this Agreement are Eastern Associated Coal LLC ("Employer") and the International Union, United Mine Workers of America ("UMWA"), on behalf of its members. The parties hereto agree to and adopt each and every term of the 2011 NBCWA, including Appendix A, B, C, and D and all Side Letters and Memorandum of Understanding (as listed on Attachment A), as well as the negotiated Individual Employer Plan. These provisions are hereby incorporated by reference and constitute the Agreement between the parties.

The wage increase set forth in Article X of the 2011 NBCWA shall be retroactive and shall cover all hours worked on and after July 1, 2011. The Employer shall include all retroactive payments with the first paycheck payable after execution of this Agreement. In the event that any miner eligible for such retroactive payments is not in active status on the date of the first paycheck after execution, the Employer shall mail to the miner the applicable retroactive amount due for all hours worked on or after July 1, 2011 on the date that the first paycheck after execution is distributed to active miners.

IN WITNESS WHEREOF, both parties signatory hereto have caused this Agreement to be signed on the date specified herein, to be effective July 1, 2011.

Dale F. Lucha
(Authorized Signer for Employer)

Dale Lucha
(Title and Printed Name)

Employer Identification Number:

EASTERN ASSOCIATED COAL LLC
202 Laidley Tower
Charleston, WV 25324

Daniel J. Kane
(Authorized Signer for UMWA International)

Daniel J. Kane, Secretary-Treasurer
(Title and Printed Name)

(Type or Print Name)

Date: 9/27/11

0117014

AGREEMENT

DFL *BS*

The parties to this Agreement are Heritage Coal ~~Mining~~ Company, LLC ("Employer") and the International Union, United Mine Workers of America ("UMWA"), on behalf of its members. The parties hereto agree to and adopt each and every term of the 2011 NBCWA, including Appendix A, B, C, and D and all Side Letters and Memorandum of Understanding (as listed on Attachment A), as well as the negotiated Individual Employer Plan. These provisions are hereby incorporated by reference and constitute the Agreement between the parties.

The wage increase set forth in Article X of the 2011 NBCWA shall be retroactive and shall cover all hours worked on and after July 1, 2011. The Employer shall include all retroactive payments with the first paycheck payable after execution of this Agreement. In the event that any miner eligible for such retroactive payments is not in active status on the date of the first paycheck after execution, the Employer shall mail to the miner the applicable retroactive amount due for all hours worked on or after July 1, 2011 on the date that the first paycheck after execution is distributed to active miners.

IN WITNESS WHEREOF, both parties signatory hereto have caused this Agreement to be signed on the date specified herein, to be effective July 1, 2011.

Dale F. Lucha
(Authorized Signer for Employer)

(Title)

Dale Lucha
(Type or Print Name)

(Employer Identification Number)

Samuel J. Kane
(Authorized Signer for UMWA International)

(Title)

(Type or Print Name)

Date: *9-27-11*

AGREEMENT

The parties to this Agreement are Highland Mining Company, LLC ("Employer") and the International Union, United Mine Workers of America ("UMWA"), on behalf of its members. The parties hereto agree to extend their 2007 Coal Wage Agreement through December 31, 2014, subject to the changes stated herein.

Wages shall be increased as follows:

Effective July 1, 2011, \$.50/hour. The amounts due and owing to all miners who worked on or after July 1, 2011 shall be paid retroactively with the first paychecks payable after execution of this Extension Agreement. For any miners eligible for retroactive pay who are not in active status, the Employer shall promptly mail to the miner the retroactive amounts due;

Effective July 1, 2012, \$.75/hour;

Effective July 1, 2013, \$ 1.25/hour;

Effective July 1, 2014, \$ 1.25/hour.

Pension Bonus: On November 1, 2014, the Employer shall pay a retiree pension bonus in the amount of \$580 for regular retirees, and in the amount of \$455 for disabled miners and surviving spouses, *provided however*, that if the 2012 Retiree Bonus Account Plan makes a retiree pension payment to the Employer's regular retirees, disabled miners and surviving spouses, then the Employer shall not be required to pay its own pension bonus, the intent being that all those eligible for the Pension Bonus receive one such payment on November 1, 2014.

The side letters and MOUs of the 2011 NBCWA, as referenced in the Attached Appendix A, shall be incorporated into this Agreement. Further, in the event the BCOA reallocates funds from the LMPCP or the T&E Funds as is provided in the 2011 NBCWA, to pay for costs of the UMWA-BCOA ROD Trust, the Employer shall make the same reallocations.

IN WITNESS WHEREOF, both parties signatory hereto have caused this Agreement to be signed on the date specified herein, to be effective July 1, 2011.

Dale F. Lucha
(Authorized Signer for Employer)

(Title)

Dale Lucha
(Type or Print Name)

(Employer Identification Number)

Ronald J. Kane
(Authorized Signer for UMWA International)

(Title)

(Type or Print Name)

Date: 9-27-11

0117015

AGREEMENT

The parties to this Agreement are HOBET MINING LLC ("Employer") and the International Union, United Mine Workers of America ("UMWA"), on behalf of its members. The parties hereto agree to and adopt each and every term of the 2011 NBCWA, including Appendix A, B, C, and D and all Side Letters and Memorandum of Understanding (as listed on Attachment A), as well as the negotiated Individual Employer Plan. These provisions are hereby incorporated by reference and constitute the Agreement between the parties.

The wage increase set forth in Article X of the 2011 NBCWA shall be retroactive and shall cover all hours worked on and after July 1, 2011. The Employer shall include all retroactive payments with the first paycheck payable after execution of this Agreement. In the event that any miner eligible for such retroactive payments is not in active status on the date of the first paycheck after execution, the Employer shall mail to the miner the applicable retroactive amount due for all hours worked on or after July 1, 2011 on the date that the first paycheck after execution is distributed to active miners.

IN WITNESS WHEREOF, both parties signatory hereto have caused this Agreement to be signed on the date specified herein, to be effective July 1, 2011.

Dale F. Lucha
(Authorized Signer for Employer)

Dale Lucha
(Title and Printed Name)

Employer Identification Number:

HOBET MINING LLC
202 Laidley Tower
Charleston, WV 25324

Daniel J. Kane
(Authorized Signer for UMWA
International)

Daniel J. Kane, Secretary-Treasurer
(Title and Printed Name)

(Type or Print Name)

Date: 9/27/11

011,016

AGREEMENT

The parties to this Agreement are MOUNTAIN VIEW COAL CO. LLC. ("Employer") and the International Union, United Mine Workers of America ("UMWA"), on behalf of its members. The parties hereto agree to and adopt each and every term of the 2011 NBCWA, including Appendix A, B, C, and D and all Side Letters and Memorandum of Understanding (as listed on Attachment A), as well as the negotiated Individual Employer Plan. These provisions are hereby incorporated by reference and constitute the Agreement between the parties.

The wage increase set forth in Article X of the 2011 NBCWA shall be retroactive and shall cover all hours worked on and after July 1, 2011. The Employer shall include all retroactive payments with the first paycheck payable after execution of this Agreement. In the event that any miner eligible for such retroactive payments is not in active status on the date of the first paycheck after execution, the Employer shall mail to the miner the applicable retroactive amount due for all hours worked on or after July 1, 2011 on the date that the first paycheck after execution is distributed to active miners.

IN WITNESS WHEREOF, both parties signatory hereto have caused this Agreement to be signed on the date specified herein, to be effective July 1, 2011.

Dale F. Lucha
(Authorized Signer for Employer)

Dale Lucha
(Title and Printed Name)

Employer Identification Number:

MOUNTAIN VIEW COAL CO. LLC
202 Laidley Tower
Charleston, WV 25324

Daniel J. Kane
(Authorized Signer for UMWA
International)

Daniel J. Kane, Secretary-Treasurer
(Title and Printed Name)

(Type or Print Name)

Date: 9/27/11

011017

AGREEMENT

The parties to this Agreement are PINE RIDGE COAL COMPANY LLC ("Employer") and the International Union, United Mine Workers of America ("UMWA"), on behalf of its members. The parties hereto agree to and adopt each and every term of the 2011 NBCWA, including Appendix A, B, C, and D and all Side Letters and Memorandum of Understanding (as listed on Attachment A), as well as the negotiated Individual Employer Plan. These provisions are hereby incorporated by reference and constitute the Agreement between the parties.

The wage increase set forth in Article X of the 2011 NBCWA shall be retroactive and shall cover all hours worked on and after July 1, 2011. The Employer shall include all retroactive payments with the first paycheck payable after execution of this Agreement. In the event that any miner eligible for such retroactive payments is not in active status on the date of the first paycheck after execution, the Employer shall mail to the miner the applicable retroactive amount due for all hours worked on or after July 1, 2011 on the date that the first paycheck after execution is distributed to active miners.

IN WITNESS WHEREOF, both parties signatory hereto have caused this Agreement to be signed on the date specified herein, to be effective July 1, 2011.

Dale F. Lucha
(Authorized Signer for Employer)

Dale Lucha
(Title and Printed Name)

Employer Identification Number:

PINE RIDGE COAL COMPANY LLC
202 Laidley Tower
Charleston, WV 25324

Daniel J. Kane
(Authorized Signer for UMWA International)

Daniel J. Kane, Secretary-Treasurer
(Title and Printed Name)

(Type or Print Name)

Date: 9/27/11

0115018

AGREEMENT

The parties to this Agreement are RIVERS EDGE MINING INC. ("Employer") and the International Union, United Mine Workers of America ("UMWA"), on behalf of its members. The parties hereto agree to and adopt each and every term of the 2011 NBCWA, including Appendix A, B, C, and D and all Side Letters and Memorandum of Understanding (as listed on Attachment A), as well as the negotiated Individual Employer Plan. These provisions are hereby incorporated by reference and constitute the Agreement between the parties.

The wage increase set forth in Article X of the 2011 NBCWA shall be retroactive and shall cover all hours worked on and after July 1, 2011. The Employer shall include all retroactive payments with the first paycheck payable after execution of this Agreement. In the event that any miner eligible for such retroactive payments is not in active status on the date of the first paycheck after execution, the Employer shall mail to the miner the applicable retroactive amount due for all hours worked on or after July 1, 2011 on the date that the first paycheck after execution is distributed to active miners.

IN WITNESS WHEREOF, both parties signatory hereto have caused this Agreement to be signed on the date specified herein, to be effective July 1, 2011.

Dale F. Lucha
(Authorized Signer for Employer)

Dale Lucha
(Title and Printed Name)

Employer Identification Number:

RIVERS EDGE MINING INC
202 Laidley Tower
Charleston, WV 25324

Daniel J. Kane
(Authorized Signer for UMWA International)

Daniel J. Kane, Secretary-Treasurer
(Title and Printed Name)

(Type or Print Name)

Date: 9/27/11

EXHIBIT 5

UNITED MINE WORKERS OF AMERICA 1993 BENEFIT PLAN
AGREEMENT AND DECLARATION OF TRUST

ARTICLE I. (Introduction)

This AGREEMENT is made and entered into between the United Mine Workers of America (“UMWA”) and the Bituminous Coal Operators’ Association, Inc. (“BCOA”), and is effective as of December 16, 1993, as amended and restated as of July 1, 2011.

ARTICLE II. (Definitions)

The following terms shall have the meanings hereinafter set forth:

- (1) “BCOA” means the Bituminous Coal Operators’ Association, Inc.
- (2) “Employer” means an employer that is signatory to the Wage Agreement.
- (3) “Last Signatory Employer” means, with respect to a retired coal miner, the most recent employer to employ the miner in a classified job under a collective bargaining agreement with the UMWA, which required the employer to provide retiree medical benefits.
- (4) “Plan” and “1993 UMWA Benefit Plan” mean the United Mine Workers of America 1993 Benefit Plan established by the Trustees pursuant to Article IX.
- (5) “Plan Year” means the year ending December 31.
- (6) “SMCRA” means the Surface Mining Control and Reclamation Act of 1977, as amended.
- (7) “Trustees” means the trustees of this Trust designated in accordance with the provisions of Article III hereof, who shall be the named fiduciaries and the Plan Administrator, as those terms are defined in the Employee Retirement Income Security Act of 1974, as amended (“ERISA”); provided, however, that this instrument may be amended pursuant to Article XIV hereof to designate other or additional named fiduciaries.
- (8) “Trust” means the Trust Fund established under this Agreement and Declaration of Trust, and any monies or other things of value comprising its corpus.
- (9) “UMWA” or “Union” shall mean the United Mine Workers of America.
- (10) “Wage Agreement” means (A) the National Bituminous Coal Wage Agreement of 2011 (“2011 NBCWA”); and (B) any other collective bargaining contract entered into between the United Mine Workers of America and any employer in the bituminous coal industry that provides for contributions to be made to this Plan at rates identical to those set forth in Article XX of the 2011 NBCWA.

ARTICLE III. (Administration)

The Trust shall be Administered by a Board of four trustees, two of whom shall be appointed by BCOA, and two of whom shall be appointed by the Union. The Union may remove the Trustees appointed by it, at any time and for any reason, and BCOA may remove the Trustees appointed by it, at any time and for any reason. In the event of resignation, death, removal, inability or unwillingness to serve of a Trustee, the party who appointed that Trustee shall appoint a successor.

The Trustees so designated shall constitute the Board of Trustees to administer the Plan and Trust, as they may be amended from time to time. The Union shall designate one Trustee to serve as Chairman.

For purposes of taking any action and any other aspect of administration under the Plan or Trust, a quorum shall consist of one Trustee appointed by the Union and one Trustee appointed by BCOA; provided, however, that a quorum shall not be deemed to exist unless all Trustees have received reasonable notice of the meeting at which any action is taken, unless such notice is waived. Any Trustee may call a meeting of the Trustees. The Trustees need not be physically present to constitute a quorum, but may conduct business telephonically or through similar modes of simultaneous communication. Alternatively, the Trustees may act without meeting, by written resolution signed by all Trustees.

In the event the Trustees deadlock, and cannot agree to the appointment of a neutral arbitrator, any Trustee may petition the United States District Court for the appointment of such arbitrator, pursuant to Section 302(c)(5) of the Labor Management Relations Act of 1947, 29 U.S.C. § 186(c)(5).

The UMWA and the BCOA may each designate a liaison representative who shall be permitted to attend Trustee meetings, to request and receive data and information relating to Fund operations, and to meet with Fund staff and representatives regarding issues relating to the Fund.

The Trustees shall retain outside co-counsel who shall serve as the legal advisors to the Fund and the Trustees. This shall not preclude the Trustees from exercising their authority to retain additional counsel as set forth in Article VII(9). The fees and expenses of counsel shall be paid from the Trust.

ARTICLE IV. (Creation)

The Trust established hereby is an irrevocable trust created pursuant to section 302(c) of the Labor-Management Relations Act of 1947. The Trust consists of such sums of money and other property, acceptable to the Trustees, as from time to time shall be contributed to, held by, or paid or delivered to the Trustees and such earnings, profits, and increments thereon as may occur from time to time. All such money and other property due and owing or delivered to the Trustees and all investments and reinvestments made therewith or proceeds thereof and all earnings and profits thereon, less the payments which at the time of reference shall have been made by the Trustees as authorized herein, are referred to herein as the "assets of the Trust." The assets of the Trust shall be held by the Trustees and dealt with in accordance with the express provisions of this instrument and the requirements of law.

The monies to be paid into the Trust shall not in any manner be liable for or subject to the debts, contracts, liabilities or torts of the parties to this Agreement or of any Employer or participant or beneficiary under the Plan.

ARTICLE V. (Trustee Responsibilities, Administration)

The Trustees, or such other persons as may be properly designated pursuant to Article III hereof, are directed and authorized (a) to hold to invest and to reinvest the assets of the Trust as provided herein; (b) to pay monies from the Trust in accordance with the terms of the Plan for the purpose of distributing the benefits payable under the Plan; and (c) to pay the cost of administration of the Trust as hereinafter provided.

Subject to the provisions of this Trust and the Plan, the Trustees shall have full and exclusive authority and discretion to determine all questions of coverage and eligibility, including all factual determinations, investment of trust funds, delivery of benefits, and all other related matters. They shall have full discretionary power to construe the provisions of this Agreement and Declaration of Trust and the Plan.

The Trustees shall have the authority to make any and all certifications, estimates or other determinations specified in SMCRA Section 402(h)(2)(C) and (i)(1)(B), and to take any and all other actions that are contemplated pursuant to SMCRA Section 402(h) and (i).

The Trustees are empowered to promulgate such reasonable rules and regulations as they determine to be desirable for carrying out the purposes of this Trust and of the Plan. In addition to any other powers granted to the Trustees, the Trustees are empowered to do all acts which they deem necessary or proper and to exercise any and all powers of the Trustees under this instrument under such terms and conditions as they may deem to be for the best interest of the Trust.

ARTICLE VI. (Control of Assets)

The Trustees, or other persons as may be properly designated pursuant to Article III hereof, shall have full discretionary powers of management and control, of sale and resale, in fee simple or otherwise, mortgage, lease, and pledge, of the assets of the Trust, and shall not be restricted to investments in securities or property of the character now or hereafter authorized by law or rules of the United States District Court for the District of Columbia; provided; however, that all such investments shall be made in a manner consistent with the needs and purposes of the Plan. To the extent permitted by ERISA, the Trustees are authorized to invest assets of the Trust in deposits described in Section 408(b)(4) of ERISA, and in common or collective trust funds or pooled investment funds, including but not limited to those described in Section 408(b)(8) of ERISA. The assets of the Trust shall be invested and reinvested, without distinction between principal and income, in securities and other forms of property, including but not limited to, corporate stocks (common and preferred), debentures, bonds, and other obligations whether or not secured, but excluding real property. The Trustees, or such other persons as may be properly designated pursuant to Article III hereof, shall not be limited as to the amount or type of any investment in relation to the amount or type of investments constituting the Trust as a whole, subject to applicable legal requirements, and the needs and purposes of the Plan.

The Trustees, or such other persons as may be properly designated pursuant to Article III hereof, may, in their discretion, keep such portion of the assets of the Trust in cash or cash balances as the Trustees may determine to be reasonably necessary to satisfy the current needs of the Trust.

ARTICLE VII. (Asset Management)

Neither by way of limitation nor in derogation, but in amplification of any powers granted herein, provided, however, that all such powers are exercised in a manner consistent with the needs and purposes of the Trust, the Trustees, or such other persons as may be properly designated pursuant to Article III hereof, are further authorized:

- (1) To purchase, sell, exchange, convey, transfer or dispose of, and also grant options with respect to, any property (other than real property), at any time held by them and to make any sale, private or public;
- (2) To compromise, compound and settle any debt or obligation due from third persons to them or to third persons from them, as Trustees hereunder, and to reduce the rate of interest on, to extend or otherwise modify, or to foreclose upon default or otherwise enforce, any such obligations;
- (3) To vote in person or by proxy and to give general or special proxies or powers of attorney, with or without power of substitution, on any securities or other investments held by them;

- (4) To exercise any rights or options appurtenant to any securities or other property held by them for the conversion thereof into other securities or property, or to exercise any rights or options held by them to subscribe for or purchase additional securities or other property, and to make any and all necessary payments with respect to any such conversion or exercise;
- (5) To join in, dissent from or oppose, the reorganization, recapitalization, consolidation, sale or merger of corporations or properties of which they may hold stocks, bonds or other securities or in which they may be interested, upon such terms and conditions as they may deem prudent; to pay any expenses, assessments or subscriptions in connection therewith and to accept any securities or property (whether or not the Trustees would be authorized to then invest in such securities or property) which may be issued upon any such reorganization, recapitalization, consolidation, sale or merger, and thereafter to hold the same;
- (6) To make, execute, acknowledge and deliver any and all instruments and other documents that may be necessary or appropriate to carry out the powers herein granted;
- (7) To enforce any right, obligation or claim in their absolute discretion and in general to protect in any way the interest of the Trust, either before or after default with respect to any such right, obligation or claim, and, in case they shall consider such action for the best interests of the Trust, in their absolute discretion to abstain from the enforcement of any right, obligation or claim and to abandon any property which at any time may be held by them;
- (8) To borrow or raise money for the purpose of the Trust in such amount and upon such terms and conditions as in their absolute discretion they may deem advisable; and for any sums so borrowed to issue their promissory note as Trustees and to secure the repayment thereof by mortgaging or pledging all or any part of the Trust; subject to the following:
 - (A) No single loan may exceed \$25,000 without approval of the BCOA and the UMWA, as settlors;
 - (B) The total amount of any outstanding loans may not exceed \$50,000 without approval of the BCOA and the UMWA, as settlors; and
 - (C) The term of any single loan may not exceed three months without approval of the BCOA and the UMWA, as settlors; and
 - (D) No person lending money to the Trustees shall be bound to see to the application of the money loaned or to inquire into the validity, expediency or propriety of any such borrowing;

- (9) To employ suitable agents, consultants and counsel from time to time, and to pay them reasonable expenses and compensation;
- (10) To retain without liability for depreciation any securities or property at any time purchased and/or received by the Trustees as a part of the Trust;
- (11) To do all acts which may be necessary to comply with any of the requirements of ERISA, the Act, or any other federal law;
- (12) To enter into any and all contracts and agreements for carrying out the terms of the Plan and the Trust and for the best interest of the Trust;
- (13) The Trustees may, in their sole discretion, cause the securities which from time to time may comprise the Trust, to be registered in their name as Trustees hereunder, or in the name of their nominee without disclosing the ownership thereof or to take and keep the same unregistered, and to retain them, or any part thereof, in such conditions that they will pass by delivery.

Notwithstanding the above authority granted the Trustees hereunder, no power shall be exercisable in any manner which violates the requirements of ERISA or any other applicable law, governmental rule or regulation, or which is inconsistent with the needs and purposes of the Trust.

ARTICLE VIII. (Payment of Expenses)

The expenses incurred by the Trustees in the performance of their duties hereunder, including reasonable compensation for the Trustees in accordance with the provisions of Section 408(c)(2) of ERISA, for agents, and for service of counsel rendered to the Trustees and expenses incident thereto, and all other proper charges and disbursements of the Trustees, including all taxes of any kind and all kinds whatsoever that may be levied or assessed under existing or future laws of any jurisdiction upon or in respect of the Trust hereby created or any money, property or securities forming a part thereof, shall be paid by the Trustees out of the Trust.

The Trustees are authorized to and shall make final resolution of disputes concerning benefits under the Employer-provided benefit plans described in Article XX Section (c)(3) of the National Bituminous Coal Wage Agreement of 2011, provided, however, that Trust resources may not be used for purposes of resolving such disputes.

ARTICLE IX. (Plan of Benefits)

(1) BENEFITS. (A) Health Benefits are to be paid from the Trust during the term of the National Bituminous Coal Wage Agreement of 2011. The Trustees shall have full authority to determine all questions of nature and amount of health benefits to be provided, based on what it is estimated the Trust can provide without undue depletion or excessive accumulation, and provided that coverage and benefit levels shall at all times conform to each requirement of

Article XX of the National Bituminous Coal Wage Agreement of 2011 relating to the UMWA 1993 Benefit Plan, including all restrictions set forth in the General Description of the Health and Retirement Benefits of such Article, and shall not exceed the level of benefits provided as of December 31, 2006. The benefits provided under the Plan of Benefits shall be only such benefits as can be provided by the assets of the Trust. Accordingly, the benefits are subject to termination, suspension, revision or amendment by the Trustees in their discretion at any time.

(B) Benefits shall at all times be subject to prescription drug co-payments of at least \$15 for each PPL prescription, \$30 for each non-PPL prescription, and \$5.00 for each mail order prescription; and to office visit co-payments of at least \$20 in-PPL and \$30 non-PPL. A prescription or refill shall be deemed to be each 30 days (or fraction thereof) supply; provided that a mail order prescription or refill shall be deemed to be each 90 days (or fraction thereof) supply. In the event, however, that the Board of Trustees determines that it would be more cost effective for the Plan to have a prescription or refill deemed to be a different supply than provided for herein, the Board may implement the more cost effective rule.

(C) No family will have to pay more than \$600 for in-PPL prescription drug copayments and \$400 for in-PPL Physician office visits in any year. No family will have to pay more than \$1,600 in combined non-PPL copayments, including no more than \$600 in non-PPL prescription drug copayments, \$400 in non-PPL Physician office visits, and \$600 in non-PPL Hospital and Related Charges in any year.

(D) No beneficiary shall be eligible for any benefit that is more generous than the retiree medical benefit contractually required to be provided under the individual employer benefit plan maintained by the last signatory Employer.

(E) For those beneficiaries who are not actually enrolled in the 1993 Benefit Plan as of December 31, 2006, within the meaning of section 402(h)(2)(C) and (D) of the SMCRA, the Trustees must monitor the assets of the 1993 Benefit Trust in order to provide benefits, and shall address the Plan's overall financial status, including the stream of benefit obligations as well as the projected income from all available resources, and take prudent and appropriate actions consistent with their duties and obligations under the Trust and Plan documents, including, if necessary, reducing benefits. If the Trustees do not act to reduce Plan benefits when and as required, then the Executive Director of the UMWA Health & Retirement Funds (or if such position is vacant, the highest ranking staff member working exclusively on health benefit plan matters) shall adopt such benefit reductions effective immediately.

(2) ELIGIBILITY REQUIREMENTS FOR BENEFITS. Subject to the provisions of this section, the Trustees shall have full authority to implement the eligibility requirements for health benefits set forth below and to adopt rules and regulations setting forth the same which shall be binding on all participants and beneficiaries. In the case of an otherwise qualifying last signatory Employer that first became obligated to contribute to the 1993 Trust after December 31, 2001, within the meaning of Article XX(d)(1)(ii) of the 2011 NBCWA, and that did not contribute to the 1993 Benefit Trust substantially all amounts owed and at the rates specified in such Article, eligible retired miners and dependents shall receive only limited coverage under a

separate program of benefits designed by the Trustees. The Trustees shall design the program taking into account the need for the Plan to remain solvent throughout the term of the Wage Agreement, while providing more complete benefits for individuals whose last signatory Employer met the "substantially all" contribution requirement referred to herein. No individual shall be eligible for benefits as a participant in the Plan unless he meets the following conditions:

- (A) The retired miner would be eligible for benefits under the United Mine Workers of America 1950 Benefit Plan but for the passage of the Coal Industry Retiree Health Benefit Act of 1992 ("the Coal Act"), and is not entitled to benefits under the Coal Act.
- (B) The retired miner separated from classified employment prior to December 16, 1993, would be eligible to receive benefits from the 1974 Benefit Plan but for the passage of the Coal Act, is not entitled to benefits under the Coal Act, and whose last signatory employer was no longer deriving revenue from the production of coal on December 16, 1993.
- (C) The miner is retired under the 1974 Pension Plan, last worked in signatory classified employment for an Employer who was obligated to contribute and contributed to the 1993 Benefit Trust at the rates set forth in the Wage Agreement, and would otherwise cease to receive the health and other non- pension benefits provided herein because such last signatory Employer (including successors and assigns) is no longer in business. An Employer's obligation to contribute at the rates specified in the Wage Agreement must be in effect on the date the Employer is first considered to be "no longer in business." For purposes of determining eligibility under the 1993 Benefit Plan and Trust, the Employer is considered to be "no longer in business" only if the Employer meets the conditions of (I) and (II) below. It is expressly required under this Trust that each of the requirements of (I) and (II) be met.
 - (I) The Employer has ceased all mining operations and has ceased employing persons under the Wage Agreement, with no reasonable expectation that such operations will start up again; and
 - (II) The Employer is financially unable (through either the business entity that has ceased operations as described in (I) above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by the Wage Agreement or not) to provide health and other non-pension benefits to its retired miners and surviving spouses.
- (D) The retired miner worked under the terms of the National Bituminous Coal Wage Agreement of 1974 (but not under the terms of the National Bituminous Coal Wage Agreement of 1978), has been or would have been denied a benefit by the United Mine Workers of America 1974 Benefit Plan and Trust solely because the miner did not work under the terms of a 1978 or subsequent National

Bituminous Coal Wage Agreement; and is not eligible to receive benefits under the Coal Act.

(3) EFFECTIVE DATE FOR BENEFIT COVERAGE. Benefits under the 1993 Benefit Trust shall be payable effective on December 16, 1993. The Trustees shall have the discretionary authority to determine whether to pay claims retroactive to February 1, 1993.

(4) METHOD OF PROVIDING BENEFITS. The health benefits shall be provided and maintained by such means as the Trustees shall, in their sole discretion, determine.

(5) WRITTEN PLAN OF BENEFITS. The detailed basis on which payment of benefits is to be made pursuant to this Agreement and Declaration of Trust shall be specified in writing by appropriate action of the Trustees, subject, however, to such changes or modifications by the Trustees from time to time as they, in their sole discretion, may determine. All changes or modifications shall be specified in writing by appropriate resolution of the Trustees.

(6) NON-ASSIGNABILITY OF BENEFITS. To the extent permitted by law, no part of the Fund, nor any benefit payable in accordance with the Plan shall be subject in any manner to anticipating, alienation, sale, transfer, assignment, pledge, encumbrance or charge by any person.

(7) APPROVAL OF PLAN. The Plan adopted by the Trustees shall be such as will qualify for approval as an employee welfare benefit plan by the Internal Revenue Service, United States Department of the Treasury, and will continue as a qualified employee welfare benefit plan, so as to ensure that the contributions to the Trust are proper deductions for income tax purposes and that the Trust is considered tax-exempt. The Trustees are authorized to make whatever applications are necessary with the Internal Revenue Service to receive and maintain approval of the Plan.

ARTICLE X. (Trustee Liability)

A Trustee shall not be liable for the making, retention, or sale of any investment or reinvestment made by him or her as herein provided; for any loss to or diminution of the Trust; or for anything done or omitted under this instrument, except for his own willful misconduct or lack of good faith, or any other action or omission for which personal liability is imposed under Part 4 of Subtitle B of Title I of ERISA. Any Trustee may consult with legal counsel concerning any questions which may arise with reference to his duties under this instrument, and except as otherwise provided by ERISA, the opinion of such counsel shall be full and complete protection in respect to any action taken or suffered by such Trustee hereunder in good faith and in accordance with the opinion of such counsel.

When and if a monetary claim or suit is lodged against one or more fiduciaries of the Trust, including the Trustees thereof, in their individual capacities, arising out of their action as fiduciaries, the Trust may (and if such fiduciary is a Trustee, then to the extent permitted by law, the Trust shall) engage and compensate counsel to represent such fiduciary until a final court

decision, or a final government agency decision if no court appeal is filed, finds that such fiduciary in his individual capacity (1) has breached his fiduciary obligations under ERISA; (2) by so doing has caused a loss to the Trust or its corresponding Plan or has gained by use of Trust assets; and (3) is therefore liable in his individual capacity for damages or to return any profit occasioned by such breach to the complaining person, persons, entity or entities.

If the Trust expends moneys for counsel under the preceding paragraph, and the individual liability described therein is so finally determined against one or more fiduciaries, each individual found so liable shall reimburse the Trust for moneys so expended for his counsel.

No provision in this Article shall be construed in a manner violative of the provisions of Section 410 of ERISA.

ARTICLE XI. (Recordkeeping, Reporting, Delegation)

The Trustees, or such other persons as may be properly designated pursuant to this Article, shall keep accurate and detailed accounts of all investments, receipts, and disbursements and other transactions hereunder, and such accounts, books and records relating thereto shall be open to inspection and audit by BCOA and the Union at all reasonable times at the offices of the Trust. The Trustees, or other such persons as may be properly designated pursuant to this Trust, shall be responsible for providing Eligible Beneficiaries under the Plan with all information required to be furnished pursuant to the provisions of ERISA or the regulations promulgated thereunder.

The Trustees, or such other persons as may be properly designated pursuant to this Article, shall be responsible for maintaining records sufficient to comply with any requirements of ERISA and for the filing of all reports with the Labor Department and Treasury Department which may be required by any provision of ERISA or the regulations issued thereunder, including the plan description and reports specified by Section 101(b). A copy of each document or report provided to participants or beneficiaries or filed pursuant to the requirements of ERISA or any other applicable law, governmental rule or regulation shall be sent to BCOA and to the Union unless the right to receive such copy has been waived in writing. The Trustees shall provide BCOA and the Union with such other information and/or documentation as BCOA or the Union may reasonably request within a reasonable time from when such request shall be made.

The Trustees shall provide BCOA and the Union with quarterly reports summarizing all pending litigation involving the Trust and the Plan and describing all significant operational issues that are under review. Ninety days following the closing of the Plan Year, the Trustees shall file with BCOA and the Union a written report setting forth in such form and detail as they may request, the transactions effected by the Trustees during the period from the close of the period covered in the previous report. The reports shall be supplemented by the annual report of an independent certified public accountant and by the report required by Section 103 of ERISA. Upon the expiration of ninety (90) days from the date of any report to BCOA and the Union, the Trustees shall be forever released and discharged from any liability or accountability to anyone

as respects the propriety of their acts or transactions shown in the aforementioned report except as otherwise provided by law or with respect to any acts or transactions as to which BCOA or the Union shall file written objections with the Trustees within such period of ninety (90) days.

The UMWA or the BCOA may audit the accounts, books and records, and operation of the Plan and Trust, at any time and for any reason, upon reasonable notice to the Trustees. The Trustees shall cooperate fully in connection with any such audit and shall make available appropriate personnel and records deemed necessary by the auditors for inspection and copying at reasonable times and places.

The Trustees are hereby authorized to allocate or delegate fiduciary responsibilities in any manner permitted under ERISA, including Section 405(c)(1). The Trustees may appoint an investment manager or managers to manage any investments held under this instrument as permitted by Section 402(c) of ERISA.

ARTICLE XII. (Employer Contributions)

- (1) Each Employer shall pay to the Trustees for each month during the term of the Wage Agreement the contributions specified under Article XX, section (d)(1)(ii) and (iv)(b) of the 2011 NBCWA. The sole financial obligation of each Employer shall be limited to the amounts so specified, and to any interest, liquidated damages and other costs arising out of an audit or a failure to pay such required contributions, as set forth in this Article or statutory penalties, as provided in Section 9707(a)(2) of the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. § 9707(a)(2). No Employer signatory to the 2011 NBCWA shall be obligated to make contributions to this Trust for any period after December 31, 2016.
- (2) All required contributions shall be paid to the Trustees on or before the tenth day of the month for the preceding work month, along with all reports on contributions required by the Trustees, and shall be in the manner and form determined by the Trustees.
- (3) Each Employer is required to maintain, and make available to the Trustees, those business and financial records that may be necessary to determine whether the eligibility requirements of the 1993 Benefit Trust have been satisfied. If a miner's last signatory Employer ceases to provide health benefits as required under the Wage Agreement, and the Trustees are investigating whether the Employer is "no longer in business" within the meaning of Section (c)(3)(ii)(c) of this Article, the Employer shall make available to the Trustees those business and financial records that may be necessary to the "no longer in business" determination, including but not limited to financial statements, tax returns, bank statements, coal production and sales data, and information on equipment and other property and assets of the signatory Employer. An Employer that fails to cooperate or make available such records shall be subject to suit by the Trustees and shall be liable

for the Trustees' expenses both in reviewing such records and in enforcing the Employer's obligation, including audit fees, court costs and attorney's fees. The Trustees shall make their initial determination of whether an Employer is "no longer in business" no later than 90 days following receipt of such business and financial records, as practicable.

In addition, the Trustees may designate a qualified representative to conduct an audit of the payroll and wage records of any Employer to permit the Trustees to determine whether such Employer is making full payment to the Trustees in the amounts required by the Wage Agreement. The Trustees may review and utilize the reports of any audits performed by the Trustees of the United Mine Workers of America Health and Retirement Funds, preserving the confidentiality of information as appropriate, and may otherwise share such information with such Trustees.

Whenever a discrepancy is disclosed by virtue of such audit, the Trustees may assess the entire costs of the audit to the Employer, who shall be obligated to make payment to the Trustees therefor.

- (4) In the event that an Employer fails to make the contributions required under Article XX, section (d)(1)(ii) and (iv)(b) of the 2011 NBCWA, interest (calculated at a rate established by the Trustees at the beginning of each calendar year) shall accrue from the date due until the date on which an amount owed is paid. If no such interest rate is established, the rate of interest shall be the amount prescribed under Section 6621 of the IRC. In addition, the Employer shall be assessed liquidated damages in an amount equal to the greater of twenty percent (20%) of the amount owed or the amount of interest charged. The Trustees are empowered to waive the imposition of liquidated damages for good cause.
- (5) The Trustees are empowered to collect all amounts owed through any means they so choose. All reasonable expenses incurred by the Trustees in enforcing the Employer contribution requirement, including, but not limited to, reasonable attorneys' fees, accountants' fees, and court costs, with interest, shall be added to the obligation of the Employer. The Trustees shall have the authority to settle or compromise any claims, suits or legal actions in their discretion, as they deem to be in the best interest of the Trust.
- (6) Any assets of the Employer that are wrongfully transferred to any related individual or related corporate entity prior to the satisfaction of the Employer's obligation to provide health benefits shall be treated as assets held in trust for the benefit of eligible retirees and other eligible beneficiaries. Such obligation of the Employer may be enforced by the UMWA and the retirees and other beneficiaries. The Employer and/or other defendant(s) in such an action shall be liable for the costs of litigation, including attorney's fees.

ARTICLE XIII. (Employer Action)

Any action of the Employers which may or must be taken hereunder may be taken only by BCOA. Any action which must be taken in writing shall be signed by the President of BCOA. In the event that BCOA ceases to exist, or in the event that more than 50% of the tonnage membership of BCOA on the Effective Date of the 2011 Wage Agreement has withdrawn prior to the time when BCOA is required or permitted to take action under this Article, then such action may be taken by a majority vote, based on tonnage, of existing Employers who were BCOA members on the Effective Date of the 2011 Wage Agreement.

Any Employer who is required to make or who makes contributions to the 1993 Benefit Trust is obligated and required to comply with the terms and conditions of the 1993 Benefit Trust.

ARTICLE XIV. (Amendments)

The Union and BCOA reserve the right at any time and from time to time to modify or amend in whole or in part any or all of the provisions of this instrument, or to terminate this Trust as permitted by law, by written agreement between the Union and BCOA. Any written agreement executed by the Union shall be signed by the International President.

The Trustees are authorized, upon prior written approval by the Union and BCOA, to make such changes to the provisions of this Agreement and Declaration of Trust as they may deem to be necessary or appropriate. The Trustees are authorized and directed, after adequate notice and consultation with the Union and BCOA, to make such changes in this Agreement and Declaration of Trust (provided such amendments are consistent with the purposes of the Trust), including any retroactive modifications or amendments, which shall be necessary:

- (1) To obtain all necessary determination letters or rulings from the Internal Revenue Service or other applicable federal agencies, so as to ensure compliance with all applicable federal laws and regulations and to ensure the qualification of the Plan and Trust and the deductibility for income tax purposes of any and all payments in connection with the financing requirements hereunder, as paid or incurred;
- (2) To conform the terms of the Trust to the requirements of ERISA or any other applicable federal law, and the regulations issued thereunder; or
- (3) To comply with all applicable court or government decisions or rulings.

In the event, however, that the Trustees determine that an amendment or amendments to this Trust are necessary in order to obtain an initial determination of qualification under the applicable provisions of the Internal Revenue Code, they shall so advise the Union and BCOA, and no amendment shall be effective unless agreed to in writing by the Union and BCOA.

The Union, BCOA, and the Trustees shall fully cooperate to obtain all necessary rulings and do all other acts appropriate to ensure that any payments made in accordance with the Employer contribution requirements hereunder are deductible for Federal Income Tax purposes.

ARTICLE XV. (Use of Trust Assets)

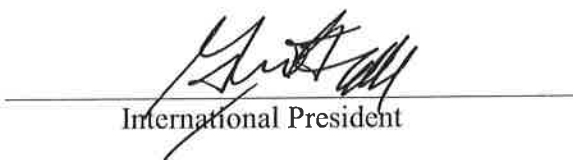
Except as otherwise permitted by law, and notwithstanding anything to the contrary contained in this instrument, or any amendment hereto, it shall be unlawful for any part of the Trust other than such part as is required to pay taxes and administrative expenses, to be used for, or diverted to, purposes other than for the sole and exclusive benefit of the Eligible Beneficiaries, except that in the case of a contribution which is made by an Employer by a mistake of fact or law (other than a mistake relating to Plan qualification), such mistaken contribution may be returned to the Employer within six months after the Trustees determine that the contribution was mistakenly made.

ARTICLE XVI. (Applicable Law)

This instrument shall be construed, regulated and administered under Federal law.

IN WITNESS WHEREOF, the Union and BCOA, pursuant to proper authority, have caused this instrument to be signed by their proper officers or representatives on this 31st day of December, 2012.

UNITED MINE WORKERS OF AMERICA



International President

BITUMINOUS COAL OPERATORS'
ASSOCIATION, INC.



President


Accepted by:

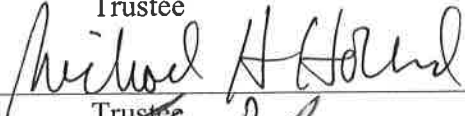
Dated: January 30, 2013

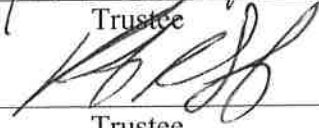
Dated: 1/30/2013

Dated: 01/30/2013

Dated: 1-30-13


Trustee


Trustee


Trustee



Trustee

EXHIBIT B

Paul Green

From: Paul Green
Sent: Friday, March 15, 2013 5:22 PM
To: Marshall S. Huebner (marshall.huebner@davispolk.com); Benjamin S. Kaminetzky (ben.kaminetzky@davispolk.com)
Cc: John Goodchild
Subject: 1974 Pension Plan Withdrawal Liability
Attachments: Withdrawal liability_001.pdf

Marshall and Ben,

We understand that there is a misimpression over the impact of a withdrawal by Patriot from the UMWA 1974 Pension Plan. We understand that Patriot believes that it would be permitted to satisfy its withdrawal liability by making annual \$26 million payments. As explained in the attached letter to the Creditors' Committee, a withdrawal would result in a claim currently estimated to be close to a billion dollars, jointly and severally, against all of the debtors and payment in installments is not an option.

Thanks. I'm sure this subject will come up again.

Paul

Paul A. Green
Mooney, Green, Saindon, Murphy & Welch, P.C.
1920 L Street, N.W., Suite 400
Washington, DC 20036
202-783-0010
(Fax) 202-783-6088
pgreen@mooneygreen.com
www.mooneygreen.com

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UMWA HEALTH AND RETIREMENT FUNDS

2121 K Street, NW • Suite 350 • Washington, DC 20037 • Telephone: 202.521.2200

March 14, 2013

Thomas Moers Mayer, Esq.
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036

Dear Tom:

We believe it is important to clear up several misunderstandings that have developed over the manner and amount of withdrawal liability that Patriot Coal and its related entities ("Patriot") would have to pay in the event of a withdrawal from the United Mine Workers of America 1974 Pension Plan ("1974 Plan"). More specifically, two misconceptions have arisen regarding this matter. First, it has been suggested that Patriot would have the option of paying its withdrawal liability in annual installments amounting to approximately \$26 million. Second, even if it did not pay these installments, that Patriot would have the ability to reduce the 1974 Plan's claim from the full amount of Patriot's withdrawal liability (which has been tentatively estimated at \$960 million for a withdrawal during the current plan year) to the discounted present value of the stream of installment payments. As explained below, both of these concepts are erroneous.

As you are aware, under ERISA Section 4219(c)(1)(a)(i) and (c)(1)(A), an employer that withdraws from a multiemployer pension plan is permitted to pay its withdrawal liability in installments, the amount of which is determined by a statutory formula. Although the duration of these payments is generally limited to twenty years, that twenty-year limitation does not apply to the 1974 Plan. ERISA Section 4211(d)(2). Patriot's assumption that it would be permitted to pay its withdrawal liability in installments is, however, mistaken.

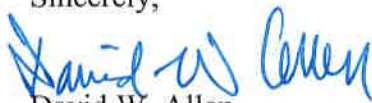
ERISA Section 4219(c)(5) provides that, in the event of a "default" by a withdrawn employer, "a plan sponsor may require immediate payment of the outstanding amount of an employer's withdrawal liability" That same section goes on to define a default as either the employer's failure to make-up any past due payments within 60 days of demand or "any other event defined in rules adopted by the plan which indicates a substantial likelihood that an employer will be unable to pay its withdrawal liability." Long before Patriot was established, the Trustees adopted a resolution defining additional instances of default. These include "insolvency," any "pledge, mortgage or hypothecation by the employer of property to the extent which the Trustees determine to be material in relation to the financial condition of the employer," "bankruptcy," and "the employer's engaging in a transaction which has a principal purpose the avoidance or evasion of withdrawal liability demanded by the Plan" Furthermore, the rule adopted by the Trustees was reviewed and upheld by the United States Court of Appeals for the District of Columbia Circuit. *Connors v. B&H Trucking*, 817 F.2d 132, 137 (D.C. Cir. 1989). In this case, each of these four elements of default has been triggered.

Thomas Moers Mayer, Esq.
Kramer Levin Naftalis & Frankel LLP
March 14, 2013
Page 2

I understand that you have previously contended that such a default may be cured under a debtors' plan of reorganization. This is incorrect for several reasons. First, we do not agree that the Bankruptcy Code's "cure" provisions apply to this type of default. The provisions in the statute contemplate a contractual default, not a default under a statutory obligation. Furthermore, the PBGC has specifically authorized use of an employer's bankruptcy as a default trigger, something that would not have made sense if such a default could be set aside. 49 FR 22642 (May 31, 1984) ("In terms of a plan's authority to declare a default . . . the regulation distinguishes between an employer's failure to make a payment and a plan determination that there is a substantial likelihood of the employer's inability to pay its total withdrawal liability. Such a substantial likelihood would exist, for example, when an employer declares bankruptcy . . .") Second, one of the instances of default was Patriot's granting of liens on its property in its DIP credit facility. It is highly unlikely that Patriot is in a position to cure this default. Finally, a default may have also occurred with the efforts by both Peabody and Arch to "avoid or evade" withdrawal liability when they disposed of their subsidiaries that contributed to the 1974 Plan. We are not aware of any provision of the Bankruptcy Code that permits a debtor to cure a default by a non-party to the proceeding.

Even assuming that it were possible to "cure" the default in the payment of withdrawal liability, the second assumption, that the 1974 Plan's claim could be reduced to the discounted present value of the stream of installments is unfounded. ERISA clearly requires that, if an employer is in default, the entire amount of its withdrawal liability is immediately due and owing. You have, of course, recognized that, because of the ERISA joint and several liability provision for control group members, this liability runs to all of the Debtor entities and is not limited to the organized subsidiaries. There is no provision of ERISA, Bankruptcy law or relevant non-Bankruptcy law that would permit the setting aside of any sort of liability in this manner, let alone a *statutory liability*.

Sincerely,



David W. Allen
General Counsel

**EXHIBIT C
(FILED UNDER SEAL)**

EXHIBIT D

Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Tel: 215.963.5000
Fax: 215.963.5001
www.morganlewis.com

Morgan Lewis
C O U N S E L O R S A T L A W

John C. Goodchild, III
215.963.5020
jgoodchild@morganlewis.com

November 8, 2012

VIA E-MAIL

Damian S. Schaible
Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017

Re: In re Patriot Coal Company, et al., Bankr. S.D.N.Y. 12-12900 (SCC)

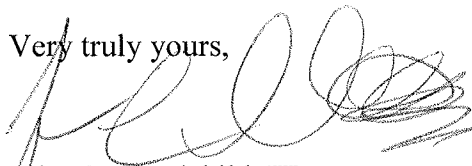
Dear Damian:

We write on behalf of the UMWA 1974 Pension Trust, the UMWA 1993 Benefit Plan, the UMWA 1992 Benefit Plan, and the UMWA Combined Benefit Fund (collectively, the "UMWA Funds"), following the entry of the Stipulated Protective Order Under 11 U.S.C. §§ 1113(d)(3) and 1114(k)(3) [Docket No. 1040] between the Debtors and the United Mine Workers of America (the "UMWA").

One or more of the UMWA Funds may participate in the negotiations or preparation for court proceedings under Sections 1113 and/or 1114. The determination of which UMWA Funds will be included in those negotiations or preparation will depend on the nature of the Debtors' business plan, which we understand will be delivered to the UMWA shortly. In that regard, please send us at your earliest convenience a form of Stipulated Protective Order that we can review with the UMWA Funds.

We look forward to receiving a form of Stipulated Protective Order.

Very truly yours,



John C. Goodchild, III

JCG/mlp
c: Paul A. Green, Esq.

From: Moskowitz, Elliot [mailto:elliot.moskowitz@davispolk.com]
Sent: Wednesday, November 14, 2012 3:53 PM
To: Goodchild, III, John C.; Schaible, Damian S.
Cc: Paul Green
Subject: RE: Patriot Coal

John,

I hope you are well. Thanks for your patience in awaiting a response; I had to discuss the matter in detail with my clients. We will go ahead and prepare a draft confidentiality stipulation for your review. I hope to have that for you before the weekend. Needless to say, entering into a confidentiality stipulation should not be read to mean that the Debtors have formed a view about the appropriate role for the Funds in the 1113/1114 process, but we agree that it makes sense to take this step now. (Also, I think we will probably be in contact a fair bit on this case, so feel free to just send me an email or call versus a formal letter for requests of this sort.) Looking forward to working with you on this.

Elliot

From: Goodchild, III, John C. [mailto:jgoodchild@morganlewis.com]
Sent: Tuesday, November 13, 2012 8:44 AM
To: Moskowitz, Elliot; Schaible, Damian S.
Cc: Paul Green
Subject: RE: Patriot Coal

Elliot, could you let us know when we can expect a response?

Thanks very much,

John

John C. Goodchild, III
Morgan, Lewis & Bockius LLP
1701 Market Street | Philadelphia, PA 19103-2921
Direct: 215.963.5020 | Mobile: 215.421.7665 | Fax: 215.963.5001
jgoodchild@morganlewis.com | www.morganlewis.com
Assistant: Michele L. Petralia | 215.963.5753 | mpetralia@morganlewis.com

From: Moskowitz, Elliot [mailto:elliot.moskowitz@davispolk.com]
Sent: Thursday, November 08, 2012 6:13 PM
To: Schaible, Damian S.; Goodchild, III, John C.
Cc: Paul Green
Subject: RE: Patriot Coal

Thanks Damian.

John, we will get back to you.

From: Schaible, Damian S.
Sent: Thursday, November 08, 2012 5:56 PM
To: 'Goodchild, III, John C.'; Moskowitz, Elliot
Cc: Paul Green
Subject: RE: Patriot Coal

Thanks John. I am passing this onto my colleague, Elliot Moskowitz, who I believe is running point on this aspect of the case.

Thanks for asking about the storm. My family and our home was largely unaffected; we are just very sad to see so many other people not able to say the same.

Hope you and your family are well.

Best regards,
Damian

Damian S. Schaible | Davis Polk & Wardwell LLP | 450 Lexington Avenue | New York, NY 10017
212 450 4580 tel | 212 701 5580 fax | damian.schaible@davispolk.com

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From: Goodchild, III, John C. [<mailto:jgoodchild@morganlewis.com>]
Sent: Thursday, November 08, 2012 5:27 PM
To: Schaible, Damian S.
Cc: Paul Green
Subject: Patriot Coal

Damian,

I hope all is well with you and yours after the storm. The attachment is a letter from me to you relating to the Stipulated Protective Order between the Debtors and the union.

Regards,

John

John C. Goodchild, III
Morgan, Lewis & Bockius LLP
1701 Market Street | Philadelphia, PA 19103-2921
Direct: 215.963.5020 | Mobile: 215.421.7665 | Fax: 215.963.5001
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EXHIBIT E

From: Moskowitz, Elliot [elliot.moskowitz@davispolk.com]
Sent: Friday, December 21, 2012 2:05 PM
To: fp@previant.com; Goodchild, III, John C.
Cc: Huebner, Marshall S.; Resnick, Brian M.
Subject: Information Sharing Between UMWA and UMWA Funds

Fred and John,

Further to discussions I have had with both of you over the last few days, I write to set out the conditions under which the Debtors' 1113/1114-related information may be shared by the UMWA with the Funds. As you know, the Debtors have made available to the UMWA information in a data room on Intralinks that is specific to the 1113/1114 process and is labeled as such (the "Labor Data Room"). The Funds have asked the Debtors to grant the UMWA permission to share relevant information from the Labor Data Room with the Funds so that the Funds may provide assistance to the UMWA in connection with the 1113/1114 process. Likewise, the UMWA has indicated to the Debtors that it would find the ability to share such information with the Funds to be helpful. Accordingly, the Debtors authorize the UMWA to share information from the Labor Data Room with the Funds and to discuss such information with the Funds under the following conditions:

- The Funds agree to treat any information they receive from the Labor Data Room as Confidential or Highly Confidential, however designated by the Debtors, pursuant to the separate confidentiality agreement between the Debtors and the Funds.
- This permission extends only to information in the Labor Data Room. It does not extend to information provided to the UMWA that is covered by the Committee confidentiality provisions if such information is not in the Labor Data Room.
- The Funds will periodically provide to the Debtors a list of the documents that have been shared. The format and timing of such a list will be discussed between the Debtors and the Funds.
- The Debtors continue to reserve all rights regarding the nature and extent of any participation by the Funds in the 1113/1114 process. It is understood that the Funds and UMWA reserve their rights in this regard as well.

Please let me know if you have any questions or wish to discuss any of the above. If we are in agreement on these understandings, I would be grateful if you would confirm by reply email.

Elliot

Elliot Moskowitz

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017

212 450 4241 tel
212 701 5241 fax
elliot.moskowitz@davispolk.com



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