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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
Case No. 12-51502-659

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In the Matter of:

PATRIOT COAL CORPORATION, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court  
111 South 10th Street  
4th Floor  
St. Louis, Missouri

May 1, 2013  
9:13 AM

B E F O R E:  
HON. KATHY A. SURRETT-STATES  
U.S. BANKRUPTCY JUDGE

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Motion to Reject Collective Bargaining Agreements and to Modify  
Retiree Benefits Pursuant to 11 U.S.C. 1113, 1114 of the  
Bankruptcy Code Filed by Debtor (3214)

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P R O C E E D I N G S

(Audio begins mid-sentence)

THE CLERK: -- Kathy A. Surratt-States presiding.

THE COURT: Good morning. Please be seated. All right. This is our continued hearing in Patriot Coal on the 1113 and 1114 motion. Let me first start with appearances in the courtroom.

MR. KAMINETZKY: Good morning, Your Honor. Benjamin Kaminetzky of Davis Polk & Wardwell for the debtors here with my colleague, Elliot Moskowitz, Marshall Huebner, Jonathan Martin, Michael Russano and others in addition to our local counsel, Lloyd Palans, of Bryan Cave.

THE COURT: Good morning.

MR. WILLARD: Good morning, Your Honor. May it please the Court. Greg Willard on behalf of the official unsecured creditors' committee together with my co-counsel, Tom Mayer and Stephen Blank from Kramer Levin who are in the courtroom.

THE COURT: All right. Good morning.

MR. PERILLO: Good morning, Your Honor. Fred Perillo for the United Mine Workers of America and my colleague, Sara Geenen, is with me at counsel table. General counsel of the United Mine Workers, Grant Crandall, is with us in the courtroom. We may be joined later today by Mr. Ho and Mr. Traynor.

THE COURT: All right. Thank you.

1 MR. GOODCHILD: Good morning, Your Honor. John  
2 Goodchild here on behalf of the UMWA Health & Retirement Funds.

3 THE COURT: Good morning.

4 MS. LONG: Good morning. Leonora Long on behalf of  
5 the United States trustee.

6 THE COURT: Good morning.

7 MR. GARTNER: Good morning, Your Honor. Matthew  
8 Gardner for Citibank, the first out DIP agents as well as co-  
9 counsel Andrea Saavedra.

10 THE COURT: Good morning.

11 MR. SCHERCK: Good morning, Your Honor. Randy  
12 Scherck, Latham & Gage, on behalf of Bank of America as agent  
13 for the second out DIP lender. And with me is Ana Alfonso and  
14 on the phone is Margot Schonholtz from Willkie Farr &  
15 Gallagher.

16 THE COURT: Okay. Good morning.

17 MS. EHLERS: Good morning, Your Honor. Susan Ehlers,  
18 Armstrong Teasdale, co-counsel for Peabody Energy Corporation.

19 THE COURT: Good morning.

20 MR. MARSICO: Good morning, Judge. Leonard Marsico,  
21 McGuireWoods, for Ohio Valley Coal and Ohio Valley  
22 Transloading.

23 THE COURT: Good morning.

24 MR. MARSICO: Thank you.

25 MR. STRASSER: Good morning, Your Honor. Alan

1 Strasser for the noteholders.

2 THE COURT: Good morning.

3 MR. LEVINE: Good morning, Your Honor. Jon Levine of  
4 Andrews Kurth on behalf of Wilmington Trust, indenture trustee.

5 THE COURT: Good morning.

6 MR. SCHNABEL: Good morning, Your Honor. Eric Lopez  
7 Schnabel of Dorsey & Whitney on behalf of U.S. Bank as trustee.

8 THE COURT: Good morning. All right. And then on the  
9 telephone, I have Ms. McGreal on behalf of the debtors?

10 MS. MCGREAL: Yes. Good morning, Your Honor.

11 THE COURT: Good morning. Gregory Plotko on behalf of  
12 the creditors' committee.

13 MR. PLOTKO: Yes, that's correct. Good morning.

14 THE COURT: Good morning. Margot Schonholtz on behalf  
15 of Bank of America.

16 MS. SCHONHOLTZ: Good morning, Your Honor.

17 THE COURT: Good morning. Theresa Anderson on behalf  
18 of the Pension Benefit Guaranty Corp.

19 MS. ANDERSON: Good morning, Your Honor.

20 THE COURT: Good morning. And Kristi Davidson on  
21 behalf of Caterpillar.

22 MS. DAVIDSON: Yes. Good morning. All right. Mr.  
23 Kaminetzky, Mr. Moskowitz -

24 MR. MOSKOWITZ: Your Honor, I will soon yield the  
25 floor to Mr. Kaminetzky for Mr. Hatfield's testimony but just

1 one preliminary matter. I am pleased to report that we have  
2 reached an agreement with the funds to streamline the  
3 proceedings with respect to Mr. Stover. And we can, with the  
4 Court's permission allow him to go home and he will not have to  
5 testify live.

6 THE COURT: All right.

7 MR. MOSKOWITZ: Let me recite what the agreement is  
8 among the parties. In lieu of Mr. Stover testifying in court,  
9 we will admit his declaration as his direct testimony. In  
10 addition to his initial declaration, we're also going to allow  
11 a supplemental declaration which will have a grand total of one  
12 paragraph of additional information. That will also come in as  
13 a supplement to his direct testimony. We will also be putting  
14 into the record designations from Mr. Stover's deposition along  
15 with counterdesignations. In addition to those materials, the  
16 exhibits to Mr. Stover's declaration and the exhibits to Mr.  
17 Stover's deposition are already part of the big binders of  
18 joint exhibits that are before the Court. And the parties, the  
19 debtors and the UMWA, have agreed that all of those exhibits  
20 are part of a stipulated record before the Court for this  
21 proceeding except for those exhibits to which the parties  
22 are -- the few exhibits to which the parties are still objecting  
23 and will press those objections. But other than that, it's  
24 part of the stipulated record and those exhibits are part of  
25 it.



1           And with that, unless anyone has anything further, we  
2 ask the Court's permission to release Mr. Stover into the  
3 custody of his family.

4           THE COURT: Mr. Perillo?

5           MR. PERILLO: All true and correct.

6           THE COURT: All right. Thank you. All right. Then  
7 Mr. Stover may be released. We appreciate Mr. Stover's  
8 appearance here and a willingness to make himself available for  
9 live testimony.

10           All right. Than, Mr. Kaminetzky, you may call the  
11 next witness, please.

12           MR. KAMINETZKY: Good morning, Your Honor. Again, Ben  
13 Kaminetzky of Davis Polk for the debtors. We're happy to call  
14 as our next and final witness Mr. Bennett Hatfield, CEO of the  
15 debtors, Patriot. For the record, Mr. Hatfield submitted a  
16 declaration in this case which is Exhibit 159 of the joint  
17 exhibits, ECF number 3222.

18           And with that, I ask Mr. Bennett to take the oath.

19           THE COURT: All right. Mr. Bennett, if you'd be sworn  
20 in, please.

21           THE CLERK: Please raise your right hand, sir.

22           (Witness sworn)

23           THE CLERK: Please have a seat in the witness box,  
24 sir. There is a step down. Also, if I may remind the witness  
25 and the attorneys if you would please speak into the

1 microphone. Thank you.

2 DIRECT EXAMINATION

3 BY MR. KAMINETZKY:

4 Q. Good morning, Mr. Hatfield. How are you today?

5 A. Fine, thank you.

6 Q. Okay.

7 A. Fine, thank you.

8 Q. Mr. Hatfield, could you please --

9 MR. KAMINETZKY: Oh, Your Honor, Mr. Hatfield is our  
10 second witness according to the stipulation and order of the  
11 Court that we will be presenting a direct examination of. He  
12 is one of the two witnesses that we designated for that.

13 Q. Mr. Hatfield, could you please describe your experience in  
14 the coal industry?

15 A. Yes. I've been in the business, the coal industry, over  
16 thirty years. I graduated from Virginia Tech with a degree in  
17 mining engineering in 1979 and worked the next twenty-one years  
18 in various positions for Massey Energy Company rising to the  
19 level of executive vice president and chief operating officer  
20 in 2001.

21 In later 2001, I resigned from Massey and accepted a  
22 position with El Paso Corporation essentially helping them sell  
23 their coastal coal assets over the next fourteen months.  
24 There, I was executive vice president and chief commercial  
25 officer.

1 I left -- after a successful sale of that company, I  
2 accepted a position with Arch Coal as president of their  
3 eastern operations, essentially responsible for all their  
4 mining complexes east of the Mississippi. That was in 2003.

5 I remained in that position with Arch Coal for two years  
6 before accepting a position with International Coal Group as  
7 president and chief executive officer in 2005.

8 For the next six years, I led the International Coal  
9 Group, a publicly traded coal company, a little smaller than  
10 Patriot, about twenty million annual tons, and grew that  
11 company substantially until it was sold quite successfully to  
12 one of our competitors in 2011, in June of 2011.

13 I then tried retirement for sixty days, didn't like it at  
14 all and wanted to get back into the coal business and accepted  
15 a position with one of my competitors, Patriot Coal  
16 Corporation. So I joined Patriot Coal in September of 2011 as  
17 chief operating officer.

18 Q. And could you just describe very briefly what your duties  
19 and responsibilities were at Patriot Coal when you first joined  
20 as chief operating officer?

21 A. I was responsible for the mining operations themselves.  
22 My expectation and goal, frankly, was to work with the coal  
23 mines. That's what I enjoy. That's the fun part of this job,  
24 to be quite honest. And so I was responsible for trying to  
25 improve their operating performance at the fourteen mining

1 complexes they were operating at that time across West Virginia  
2 and Kentucky.

3 Q. And did there come a time when you switched jobs in  
4 Patriot Coal?

5 A. Yes. In May, I believe, of 2012, I was asked to step up  
6 to include the president's role. I became president and chief  
7 operating officer upon departure of the previous CEO, Richard  
8 Whiting.

9 Q. Mr. Hatfield, where were you born?

10 A. I was born and raised in southern West Virginia in the  
11 coal fields, Mingo County, West Virginia.

12 Q. And where do you currently reside?

13 A. I live in West Virginia, in Charleston, West Virginia,  
14 specifically.

15 Q. You explained how you've worked for thirty years in the  
16 coal industry. Do you have any family members who worked in  
17 the coal industry?

18 A. Yes. I'm a third generation coal miner. My grandfather  
19 was a coal miner, my father was a coal miner, in fact, a  
20 retired member of the UMWA, and me. Members of my family still  
21 work in the business.

22 Q. Let's talk about Patriot's operations for a few minutes.  
23 Where does Patriot conduct its mines?

24 A. Most of our operations are located in West Virginia. We  
25 do have two active mining complexes in western Kentucky, mining

1 in the Illinois Basin Reserves.

2 Q. Yesterday we heard a lot about the different types of  
3 coals. And, God forbid, I'm not going to revisit that. But  
4 just in laymen's terms, what type of coal does Patriot mine and  
5 process?

6 A. Most of the coal that we mine is thermal coal. There are  
7 generally two categories, thermal coal and metallurgical coal.  
8 The thermal coal is generally mined and sold to electrical  
9 generating companies. It's used for the purpose of generating  
10 electrical power. And the other category of coal that we mine  
11 and sell is metallurgical coal. And metallurgical coal is, in  
12 short, used in steel making. And that represents, essentially,  
13 the gross sector of our business, the more profitable sector of  
14 our business and, I think, an avenue with which we hope to grow  
15 the company in the future.

16 Q. And in general laymen's terms, what methods do -- or  
17 different methods does Patriot use to mine coal?

18 A. We use several different mining methods. We mine both  
19 with surface mining techniques and underground mining  
20 techniques. We have large surface mines that use draglines to  
21 essentially remove the overburden from the top of the  
22 mountains, if you will, and extract the coal directly from  
23 using surface techniques. We also use smaller scale surface  
24 mining operations that deploy inloaders and rock trucks to  
25 remove the coal.

1 But most of our mine is conducted with underground  
2 operations, deep mines, if you will. We have both large scale  
3 longwall operations. There are two of those, our Federal and  
4 Panther complex. But then most of our underground operations  
5 are continuous miner operations that deploy room-and-pillar  
6 mining techniques. It's a smaller scale form of mining,  
7 significantly more flexible to somewhat higher cost.

8 Q. How many individuals are employed by Patriot?

9 A. Approximately 4,000 direct employees.

10 Q. And when you say direct employees, what do you mean by  
11 that as opposed to indirect employees? What do you --

12 A. Well, distinguishing employees from contractors. There  
13 are an additional 200 or so people that also go to work on our  
14 property every day that fill contractor positions. So the  
15 total number of people going to work every day is on the order  
16 of 4200 people.

17 Q. Okay. But those 4,000 employees, how many individuals  
18 actually go to work every day to mine and process coal?

19 A. Approximately 3,800 of them. Our overhead group, the  
20 corporate and regional offices number less than 200. So about  
21 3,800 of those people go to the mining complexes every day and  
22 involve themselves in directly mining and processing and  
23 shipping the coal.

24 Q. Now what percentage of Patriot's employees are represented  
25 by the UMWA?

1 A. Approximately forty percent of our total workforce. I  
2 think there are roughly 1600 union employees at Patriot.

3 Q. And the employees that are represented by the UMWA, are  
4 those miners or other employees?

5 A. I'm sorry. I didn't understand the question.

6 Q. Well, you mentioned that there's kind of the people that  
7 go to mines every day and then there's the 200 others. What  
8 kind of employees are represented by the UMWA?

9 A. They're the coal miners. They -- the people that are  
10 actually directly mining and processing the coal.

11 Q. Are there any other unions in Patriot other than the UMWA?

12 A. No.

13 Q. All right. Have Patriot entities entered into collective  
14 bargaining agreements with the UMWA?

15 A. Yes, we have.

16 Q. And is there one contract or are there various contracts?

17 A. There's one large contract group, if you will, the  
18 National Bituminous Coal Wage Agreement. That's the -- what's  
19 often referred to as the national agreement. And most of the  
20 union employees generally fall under that agreement. But we  
21 have a couple of other categories as well. The Highland  
22 operation, as an example, at one of our large mines in west  
23 Kentucky, there, the economics were somewhat more challenging  
24 as in the last national agreement was being negotiated in 2011.  
25 And so, the Highland agreement has a somewhat different wage

1 structure, somewhat lower cost and so it's a different category  
2 than the national agreement, if you will.

3 And then there's a third category that we generally refer  
4 to as the Gateway agreements. And the Gateway agreements with  
5 the UMWA have significant differences from the national  
6 agreement, significant reductions in cost. And, most  
7 importantly, they do not require participation in the trust  
8 funds, the Pension Fund payments, and instead, provide the  
9 employees with a 401K type of pension structure.

10 Q. So in your mind, there's three categories. There's the  
11 national contract, the Highland contract and the Gateway  
12 contract.

13 A. Yes. In general terms, I think that's a good description  
14 of our range of agreements with the UMWA.

15 Q. Now can you explain briefly Patriot's origins to the  
16 Court?

17 A. Yes. Patriot Coal Corporation itself was created in 2007.  
18 This was obviously prior to my joining the company by many  
19 years. I had no involvement with Peabody or Patriot during  
20 that period of time. But Patriot was created as a spinoff from  
21 what is today Peabody Energy in about October of 2007. And in  
22 that transaction by design, Peabody essentially segregated  
23 their eastern operations and, more specifically, their union  
24 coal mining operations from the rest of the company and that  
25 became the core of Patriot Coal.



1           Approximately eight months after it was created as a  
2 spinoff, Patriot then purchased a company called Magnum Coal.  
3 And Magnum was essentially a derivative, if you will, from an  
4 Arch Coal transaction where Arch Coal had deployed a similar  
5 methodology in separating their eastern union operations from  
6 their larger enterprise. And so Arch had sold many of its  
7 union operations to Magnum which was owned by a company called  
8 ArcLight at that time. So Magnum and Patriot were, for a short  
9 period of time, competitors. But Patriot bought Magnum and  
10 between those two transactions, essentially, that represents  
11 most of what is today Patriot Coal Corporation.

12 Q. Now can you describe for the Court the liabilities that  
13 Patriot inherited as a result of the spinoff from Peabody and  
14 the Magnum transaction that you just described?

15 A. Yes. I think Patriot is somewhat uniquely challenged with  
16 respect to its balance sheet and, specifically, employee  
17 liabilities because in both transactions, both the Magnum  
18 transaction through the purchases from Arch and the Patriot  
19 spinoff, in both cases, the primary core operations were union  
20 operations that were fairly mature. A large number of retirees  
21 and obligations associated with those retirees came with those  
22 subsidiary purchases. So Patriot has an -- I would say, an  
23 inordinate portion of employee liabilities, if you will, legacy  
24 liabilities, compared to most of the companies that we compete  
25 with.

1 Q. What about contracts or, more specifically, under market  
2 contracts? Did Patriot also inherit under market contracts in  
3 connection with the Peabody spinoff in the Magnum transaction  
4 and --

5 A. Yes. And certainly, that's been a point of much  
6 frustration recently as we've tried to turn the company around.  
7 But in both transactions, the Arch sale of its operations and  
8 the Peabody spinoff, the parents, if you will, loaded up the  
9 spinoff company with the underwater or under market coal supply  
10 agreements substantially -- a price substantially below lower  
11 market levels. And that certainly created challenges for  
12 Patriot as a fledgling company, if you will, because of the  
13 revenue loss as they essentially had the obligation to continue  
14 servicing those contracts at substantial financial  
15 disadvantage.

16 Q. Okay. So when we talk about legacy liabilities, you're  
17 talking about the retiree liability that you described and the  
18 under market contract that you described, is that correct?

19 A. Yes. That's the bulk of it. There are also some  
20 environmental obligations that were transferred to the new  
21 companies particularly to Patriot from Peabody that had nothing  
22 to do with the active operations. And that added to the  
23 burden, quite honestly. But the biggest categories of burden I  
24 would characterize as -- or, if you will, financial challenges  
25 were the employee liabilities and the under market coal supply

1 agreements.

2 Q. Now you described Patriot's origins -- and that is,  
3 basically, started as a spinoff from Peabody. Could you  
4 describe Patriot's or your current relationship with Peabody?

5 A. Yes. We actually have no relationship with them. They're  
6 a competitor. We do sell some coal to Peabody through these  
7 coal supply agreements that I referenced. We have the  
8 advantage in the Chapter 11 reorganization process of being  
9 able to either reject or renegotiate those contracts. So we  
10 were successful in requiring Peabody to raise the process  
11 significantly, raise them to market level. So we continue to  
12 service some coal supply obligations to Peabody as a customer  
13 but we have no active relationship as such. They're truly a  
14 competitor. They try to take coal sales away from us and  
15 employees away from us just as we would try to do with them.  
16 So we're truly competitors in every sense of the word.

17 Q. And how about in connection with this Chapter 11 case?  
18 What is your interaction and relationship with Peabody?

19 A. We have no interaction with them, frankly, as a business  
20 relationship. Indeed, I would say our relationship is somewhat  
21 strained recently because we filed suit against them and  
22 because we believe they're attempting to avoid obligations that  
23 they had agreed to assume at the point of spinoff. And indeed,  
24 we filed a legal challenge with this court in that regard.

25 Q. Now I take it from your previous answers that Patriot

1 provide health care to retirees, is that correct?

2 A. Yes.

3 Q. As well as certain dependents of those retirees.

4 A. Yes.

5 MR. KAMINETZKY: Now, Your Honor, we've been trying to  
6 think of ways to streamline the proceedings.

7 Q. So, Mr. Hatfield, in connection with your testimony today,  
8 did you prepare a few slides summarizing some of the testimony  
9 in your declaration that'll assist the Court in understanding  
10 your testimony?

11 A. Yes, I did.

12 Q. Okay. Let me hand that to you and the Court.

13 MR. KAMINETZKY: We provided this to Mr. Perillo and  
14 Ms. Geenen last night.

15 THE COURT: All right.

16 Q. Do you recognize -- if you could just look quickly, do you  
17 recognize these slides?

18 A. Yes, I do.

19 Q. And these are the slides that you prepared in connection  
20 with your testimony today?

21 A. Yes.

22 Q. Okay. Let's just take a look at slide 1. And if you  
23 could just briefly -- there's a lot of numbers on here and by  
24 no means do I mean for you to go through each one. But if you  
25 could just summarize what's depicted on slide 1.

1 A. Yes. Slide 1 has the heading obviously that Patriot  
2 provides health care for thousands of employees, retirees and  
3 dependents. And this is, essentially, a recap of the various  
4 groups to which Patriot does provide health care coverage. In  
5 total, the group numbers almost 33,000 dependents. It's  
6 comprised of a large number of Patriot related dependents, if  
7 you will, including both represented dependents, our active  
8 workforce, those that have retired under the National  
9 Bituminous Coal Wage Agreement, the Coal Act group, those  
10 obviously our responsibility through federal law. And it's my  
11 understanding that that can't be altered through this process  
12 so we retain and anticipate continuing to service that  
13 obligation.

14 And then we have a group in addition to the 15,250  
15 dependents of the represented Patriot employees. There are  
16 8,200 nonrepresented dependents of Patriot employees.

17 Additional to those two categories of Patriot, we also  
18 have what we call the Peabody-Assumed group. And this includes  
19 represented and nonrepresented employees. If you'll notice,  
20 the first line in the represented Peabody-Assumed group is  
21 3,100 dependents that were discussed and referenced in earlier  
22 testimony in this case, the Peabody-Assumed discussion. That's  
23 the focus of our current dispute with Peabody with respect to  
24 their assumed liabilities.

25 Q. So that 3100 -- I don't mean to interrupt you. But that

1 3100 is the 3100 that we talked a lot about on Monday with  
2 respect to the declaratory judgment action?

3 A. Yes.

4 Q. Okay. So that's a component of the Peabody-Assumed group.  
5 But there are also Coal Act -- there's a Coal Act category and  
6 a nonrepresented category. In total, Peabody-Assumed numbers  
7 9,200. And those are, essential, benefits that we administer  
8 but Peabody pays for.

9 Q. Earlier in your testimony, you mentioned that as a result  
10 of the spinoff from Peabody and the Magnum transaction -- I  
11 think you used the word Patriot was saddled with an inordinate  
12 amount of retiree expenses. If you could flip to the next page  
13 of your slides, could you describe for the Court what this  
14 slide is meant to illustrate?

15 A. Yes. Slide 2 provides a breakout, if you will, of the  
16 retirees and dependents for which Patriot is responsible in.  
17 And as you can see in the blue color, the people who have  
18 actually retired from Patriot since its creation represent only  
19 twelve percent of the retirees and dependents for which this  
20 company is today responsible. The largest segment would be the  
21 former Peabody Energy employees highlighted in the green color,  
22 forty-nine percent. And the dependents and retirees from the  
23 Magnum companies represent thirty-nine percent in the red  
24 color. So the Patriot, in truth, those that actually retired  
25 under the Patriot flag, represent only twelve percent with the

1 other eighty-eight percent really as having retired under the  
2 ownership of Arch and Peabody.

3 Q. So just so I'm not confused, so is it your testimony that  
4 eighty-eight percent of Patriot retirees never retired from  
5 Patriot?

6 A. That is correct.

7 Q. Let's turn for a few minutes to the coal markets. How  
8 would you describe the present state of coal market?

9 A. The markets are very difficult right now. I think, quite  
10 honestly, probably the worst coal market I've seen in my thirty  
11 years in this business.

12 Q. Now do you understanding the causes for this challenging  
13 or worse coal market you've seen in your thirty years?

14 A. Yes, I do.

15 Q. And can you describe to the Court what you believe those  
16 to be?

17 A. Yes. I believe Mr. Schwartz did a very good job of  
18 providing the detailed picture. But in laymen's terms, what  
19 we're seeing in 200 -- particularly beginning in early 2012 is  
20 a dramatic downturn in demand for coal. It was most prominent  
21 in the thermal markets initially. As we entered 2012, this  
22 company was expecting to produce and sell some thirty-two  
23 million tons of coal. We saw an upward direction in the market  
24 based on a successful 2011. But in early 2012, it became  
25 apparent that very negative forces were coming to bear on coal

1 pricing and coal demand. First and foremost, the natural gas  
2 prices were -- had dropped dramatically to where natural gas  
3 was taking a substantial portion of coal's electrical  
4 generating market, the key market for our thermal production.  
5 That's, in large part, because of the improved technology of  
6 fracking that's allowed the natural gas companies to  
7 dramatically increase production at relatively low cost. So  
8 natural gas was taking a lot of market away from coal in the  
9 electrical generating sector because of very low cost.

10       Additionally, we have the exacerbating factor of a very  
11 mild winter. The winter from 2011 to 2012 was remarkably mild  
12 and so customers who are normally buying a lot of tonnage  
13 dramatically built dramatic inventories and, frankly, needed to  
14 postpone a lot of their contractual sales and spot sales. So  
15 we had a sharp drop in purchases just because of weather-  
16 related conditions.

17       Adding to that, of course, was, I think, on a thermal  
18 market one of the most adversarial situations we've seen with  
19 respect to federal regulations. In the current administration,  
20 we've seen a series of EPA mandates that are requiring coal-  
21 fired power plants to meet emission standards that, in many  
22 cases, they simply can't satisfy. So it's forcing closure  
23 prematurely of a number of coal-fired generating plants that's  
24 essentially taking market away from the coal business,  
25 particularly the eastern coal business and, indeed, has



1 essentially formed a blockade on constructing any few coal-  
2 fired electrical generation.

3 So with old plants getting shuttered and forced to close,  
4 with new plants essentially being prohibited because they can't  
5 get permits to satisfy the new emission requirements, the  
6 thermal coal market began shrinking pretty dramatically and  
7 customers began moving more and more toward natural gases as  
8 the fuel of choice on new coal-fired -- or new electrical  
9 generation.

10 So, in short, on the thermal side, our marketplace  
11 shrinking dramatically. On the metallurgical side, we've kind  
12 of got a double whammy because of the economic downturn, the  
13 global recession, that brought about a sharp drop in steel  
14 pricing and steel demand which is the key driver for our  
15 metallurgical coal pricing. We had a number of customers who  
16 all but shuttered their doors, frankly, for a long period of  
17 time in early 2012 because there's simply no demand for steel.  
18 And the purchases that were being made were at prices that  
19 essentially pushed many U.S. producers out of the marketplace.

20 So both key segments of our business saw sharp drop in  
21 demand and sharp drop in pricing that's virtually  
22 unprecedented.

23 Q. If you turn to the next exhibit, did you prepare this  
24 exhibit to try to help the Court understand the plummeting  
25 price of met coal that you just described?

1 A. Yes. This -- slide number 3 illustrates the price change  
2 on metallurgical coal. And the metric that's plotted here is  
3 essentially what we refer to as the Australian benchmark price.  
4 It's generally recognized as the world reference point, if you  
5 will, on metallurgical coal pricing and a key reflector of  
6 demand.

7 But you can see, we had a great 2011 period with the  
8 Australian benchmark price, around 330 dollars. Then you see  
9 the substantial drop over the course of 2011 and then even a  
10 more precipitous drop in early 2012 as that benchmark price  
11 dropped from 330 down to 210 dollars per ton in the second  
12 quarter of 2012. And that obviously brought -- came about as a  
13 heavy drag on Patriot revenues because most metallurgical coal  
14 is sold in commitments of twelve months or less, much of it  
15 quarterly. So these prices come to bear on our revenues almost  
16 immediately. None of it sold under long-term contract.

17 So going forward, we thought for a brief period in 2012  
18 there was going to be a recovery. But, indeed, from third  
19 quarter 2012 forward, the price only continued to drop. And  
20 this represents a key driver in our business that the metric  
21 price, the key price, has dropped by half over the period of  
22 time shown in this chart.

23 Q. So what effect -- then let's just take it down to kind of  
24 the Patriot level. What effect has all of this, the dramatic  
25 drop in met coal, the dramatic drop in thermal coal -- what

1 effect has that had on Patriot?

2 A. We had no choice but to downsize our business dramatically  
3 because we had a number of mines running that were simply going  
4 to be creating negative margins and be consuming cash rather  
5 than generating it because the prices being offered were  
6 significantly below the cost of coal production.

7 Q. Now there's been testimony -- and the record is filled  
8 with references to, I guess, two different business plans.  
9 There's the bank plan and the five-year plan, the five-year  
10 business plan. Do you understand what I'm referring to when we  
11 talk about those two?

12 A. Yes. The bank plan is essentially the five-year plan that  
13 we developed as we were preparing for -- to secure approval for  
14 the DIP lenders to get the financing necessary to reorganize  
15 the company. So it was dated around June of 2012. And then we  
16 did an update in October of 2012 and it's called the October  
17 plan.

18 Q. So you have the bank plan and the October plan. If you  
19 can just -- we may come to this more. Just one question with  
20 respect to that. How has coal markets performed since those  
21 two plans?

22 A. Prices have continued to drop in, frankly, kind of  
23 alarming fashion particularly on the metallurgical side to the  
24 point where we even had to close one of our largest most  
25 successful metallurgical operations, the Rocklick complex in

1 Boone County, West Virginia. Rocklick -- we had to close it  
2 from approximately November 16th through about February 5th,  
3 nearly three months because we simply couldn't get -- could  
4 find no demand for that product. So particularly on the  
5 metallurgical side, the market has deteriorated further since  
6 both of the bank plans were developed.

7 On the thermal side, we've generally seen a similar  
8 decline, not quite as precipitous as the metallurgical decline  
9 but, similarly, thermal prices remain very weak.

10 Q. All right. Just so the record here is absolutely crystal  
11 clear, so in both the bank plan and in the October plan, there  
12 were certain price assumptions baked in, is that correct?

13 A. That's correct.

14 Q. And prices that Patriot is enjoying -- or maybe "enjoy" is  
15 the wrong word -- today are higher or lower than those  
16 assumptions in the two plans?

17 A. Lower.

18 Q. Now let's turn to financial performance. Could you  
19 briefly describe Patriot's financial performance in 2012?

20 A. Yes. That's recapped, if you will, on slide 4.

21 Q. And if you could -- it's before the Court but if you could  
22 just touch on some highlights that are depicted in slide 4.

23 A. Yes. The recap essentially illustrates what happened in  
24 2012 in comparison to our 2011 performance which was much  
25 stronger, obviously. 2012 revenues fell to 1.9 billion, down

1 from 2.4 billion in 2011. We had a net loss in 2012 of 731  
2 million dollars. It's substantially worse than the loss in  
3 2011 of about 139. EBITDA fell to about 97 million dollars  
4 from 177 million in 2011. Free cash flow -- we actually  
5 consumed almost 191 million dollars in 2012 compared to a  
6 positive 31.8 million dollars cash flow in 2011. So that's --  
7 2012 was a very, very difficult year.

8 Q. And I know we're -- it's now May 1st, but how are we doing  
9 in 2013?

10 A. Well, the last two recap points on this page essentially  
11 show you where we are in 2013 as things have actually continued  
12 to deteriorate. For the month of January, we had a net loss of  
13 42.2 million dollars. And the worse was slightly deeper in  
14 February of 2013 with a net loss of 47 million dollars.

15 Q. But, Mr. Hatfield, I've heard testimony this week that  
16 Patriot has actually outperformed the business plan in terms of  
17 liquidity, isn't that correct?

18 A. Well, it's actually true with respect to liquidity but not  
19 really because of operating performance. We were successful in  
20 securing several one-time benefits. Particularly, we were able  
21 to negotiate some relief on environmental spending. We had an  
22 obligation to purchase a very expensive water treatment  
23 facility and construct it. We negotiated a delay in that  
24 obligation with the federal court and the Sierra Club. And  
25 that substantially improved our liquidity position compared to

1 where we were in the five-year plan. And we were also  
2 successful in getting some relief on some workers' compensation  
3 obligations where we were able to essentially remain self-  
4 insured as opposed to having to post a bunch of collateral in  
5 that regard.

6 Q. So is it fair to say that -- well, why don't you -- I  
7 don't want to put words in your mouth, but does the liquidity  
8 improvement over a plan -- does that have anything to do with  
9 the mining and processing of coal?

10 A. No. It's more accurately, I think, a reflection of one-  
11 time events that certainly have helped us avoid what would have  
12 been a substantially worse position if we were relying entirely  
13 on operating performance.

14 Q. And again, today, are you able to secure the prices that  
15 were baked into -- the prices for coal that were baked into  
16 your October business plan?

17 A. Generally speaking, no. The prices are significantly  
18 lower now.

19 Q. Now what were the factors, briefly, that caused the  
20 company to file for bankruptcy last year?

21 A. In short, we were running out of cash. We ran out of cash  
22 during the second quarter of 2012. We attempted to secure a --  
23 some relief through our -- through a refinancing effort. We  
24 were unable to close the deal essentially because the banks  
25 were noticing quite accurately what was going on in the coal

1 business of dramatic downturn in prices and many of our mines  
2 operating at a loss. And the accumulation of those events  
3 essentially resulted in us burning through our cash reserves  
4 and having no choice but to file for protection on July 9th,  
5 2012.

6 Q. So Patriot filed for bankruptcy last year. And I take it  
7 then you engaged in an effort to reduce costs, is that fair?

8 A. Actually, we began the effort early on in 2012 but,  
9 indeed, we've continued the cost reduction effort throughout  
10 that time.

11 Q. And let's try to break down the savings or the cuts that  
12 Patriot has made into two buckets. Let's call bucket 1  
13 nonlabor cuts and bucket 2 nonunion labor cuts. So nonlabor  
14 cuts on one hand and then employee cuts or labor cuts not  
15 including the UMWA. Could you flip to page 5 and tell the  
16 Court what page 5 attempts to summarize?

17 A. Yes. In the first of the buckets as you described it,  
18 we've identified and implemented a number of nonlabor cuts.  
19 And they're enumerated on slide 5. The first, obviously, I had  
20 referenced earlier in my testimony, we reduced our thermal and  
21 metallurgical coal production by closing or idling mines that  
22 were projected to have negative margins. We began that,  
23 indeed, in first quarter of 2012 and continued throughout the  
24 course of 2012 as prices continued to drop. We did a full  
25 operating review, mine by mine, to see which mines had the

1 potential to continue generating positive margins at the lower  
2 pricing. And we simply had to idle operations that did not  
3 have the ability to survive, frankly, in a shrinking market.

4 The second category was a substantial reduction in capital  
5 spending. We decreased planned capital spending by 620 million  
6 dollars for the period of 2013 through 2016. This is a  
7 combination of postponing growth plans and also, quite  
8 honestly, reusing equipment and infrastructure from idled  
9 operations. As we closed a mine, we used the resources from  
10 that mine to try to reduce our cash burn.

11 The third category was replacing high cost contract mine  
12 operators with Patriot personnel. We believed, I think,  
13 accurately that we could run more efficiently with direct  
14 management of those operations. So we believe we've saved nine  
15 and a half million dollars in 2012 and projected savings of  
16 eighty million dollars over the 2013 to 2016 period through  
17 replacement of those high cost contract mine operators.

18 The fourth item is rejection or renegotiation of  
19 unprofitable contracts. I referenced this earlier. A couple  
20 of those key contracts were coal supply agreements where we  
21 were selling coal to fulfill obligations that were passed to us  
22 from our parents, if you will, Peabody and Arch. And we were  
23 successful in rejecting and renegotiating those contracts as  
24 well as some burdensome equipment leases and coal leases. We  
25 believe that saved thirty-two million dollars in 2012 and



1 projected to save 209 million dollars between 2013 and '16.

2 We then tried to sell surplus assets but the coal market  
3 is in a difficult situation right now. So many mines are  
4 closed. So many people are trying to sell used equipment and  
5 used assets that there's very little demand. We were  
6 successful in selling approximately 3.1 million dollars in  
7 surplus assets in February of 2013. We expect to continue that  
8 effort to try to raise cash for the business and projecting to  
9 gain forty million dollars through this effort 2013 to 2016.

10 We reduced overhead expenses, so with projected savings of  
11 a million dollars per year over the 2013 to 2016 period. And  
12 we also reduced through the reorganization process, obviously,  
13 reduced our obligations associated with unsecured pre-petition  
14 debt which we believe saved the business 542 million dollars  
15 between 2013 and 2016.

16 Q. Now let's turn to the second bucket that we've described  
17 before, the nonunion labor cuts. And before we do so, are all  
18 those nonunion labor cuts that are described in your  
19 declaration and that I'm going to ask you about, are all those  
20 baked into the five-year plan?

21 A. No. We continued to make adjustments on nonunion benefits  
22 and compensation after completion of the business plan so some  
23 of them are not.

24 Q. Okay. If you could turn to slide 6 and if you could tell  
25 the Court what slide 6 attempts to summarize.

1 A. Slide 6 highlights or recaps the cuts to the nonunion  
2 labor costs. And the first two categories are obviously  
3 elimination of jobs. We reduced the management head count by  
4 about seventy-eight jobs and the nonunion miner head count by  
5 approximately 640 jobs through review of staffing and  
6 downsizing.

7 We made modifications to the nonunion medical benefits and  
8 projected savings from that effort of -- or approximately  
9 thirty-two million dollars from 2013 to 2016.

10 We eliminated the 2014 wage increase. Obviously, 2012,  
11 2013 had already been eliminated. These people haven't seen a  
12 wage increase since 2010 or so. Projected savings from the  
13 2014 wage increase elimination, approximately fifteen million  
14 dollars between 2014 and 2016.

15 We eliminated nonunion retiree medical benefits, projected  
16 savings of approximately fifteen million over the same period.

17 We've reduced nonunion long-term disability benefits,  
18 essentially substantially shrank the period of time during  
19 which people enjoyed disability support among the supervisory  
20 staff.

21 The reduction in nonunion compensation is essentially a  
22 review of the wage structure at all or nonunion operations.  
23 We've essentially marked it to regional market and that  
24 resulted in wage reductions for approximately half of our  
25 nonunion workforce. And that's got a projected savings of

1 twenty million dollars between 2013 and 2016.

2 And we also eliminated earned incentive compensation that  
3 met -- particularly occurred at the end of 2012, both mine  
4 level plans and executive and corporate programs. We  
5 eliminated the supplemental 401K balances and various other  
6 benefits such as the bank vacation program that was inherited  
7 by Peabody subsidiaries and a number of other programs.

8 Q. Well, let me just ask you. I'm looking now at the third,  
9 fourth and fifth box, the modification to nonunion medical  
10 benefits which you say saved thirty-two million between 2013  
11 and '16; the elimination of 2014 wage increases, fifteen  
12 million of savings; and the elimination of nonunion retiree  
13 medical benefits, another fifteen million. So that's thirty-  
14 two, fifteen and fifteen, I think adds up to sixty-two, is that  
15 right?

16 A. Yes.

17 Q. Aren't you planning on just giving that right back to  
18 management as we've heard in the form of a management bonus or  
19 incentive program?

20 A. Well, absolutely not. No.

21 Q. We've heard testimony about that, though. Is it your  
22 testimony that you're not just giving sixty-two million dollars  
23 to management over the course of the five-year business plan?

24 A. No. That's nuts.

25 Q. Could you explain why that's nuts in your own words?

1 A. The sixty-two million dollar figure that's being thrown  
2 about, in the first place, it's an overstatement. That's only  
3 half cash. There's -- about half of that is essentially  
4 options, if you will, or equity benefits that are only half  
5 value obviously if the reorganized instantly gains value, but  
6 it's a noncash cost. So there's only about thirty-one million  
7 dollars of that that's actually a cash cost.

8 Q. So you're going to put thirty-one million dollars into  
9 management pockets?

10 A. Well, not in the management pockets. These are actually  
11 mine supervisors. These are people that are mine  
12 superintendents, general managers, longwall coordinators. It  
13 does include corporate office personnel such as department  
14 heads, people that run the human resources programs and manages  
15 the benefits, people that manage the payroll that get the coal  
16 miners paid; department heads up to and including the executive  
17 team.

18 But there's huge number of people at the operating level  
19 that we only retain, frankly by paying them these incentive  
20 programs. If we don't pay that sort of incentive program then  
21 these people can go to work for Alpha or Arch or Peabody or any  
22 of the other competitors on our borders where they'll step in  
23 to a program where they get a base salary plus incentive  
24 compensation because every one of our competitors have an  
25 incentive compensation program that's part and parcel of what a

1 salaried employee earns. So that's what's essentially required  
2 to keep us in business to keep the mines running.

3 Q. Now there's been a suggestion or testimony to the fact  
4 that at the negotiating table, the UMWA identified an  
5 additional approximately 189 million dollars of additional cuts  
6 or savings that Patriot could enjoy if they followed the  
7 union's advice. Have you heard that before?

8 A. Yes. I've heard that before.

9 Q. And is that fair and accurate?

10 A. Not -- neither fair nor accurate.

11 Q. And why is that?

12 A. It's just wrong.

13 Q. And what's the basis of your conclusion that it's just  
14 wrong?

15 A. The numbers, frankly, don't have any credence. They're  
16 assumptions that aren't based on good facts.

17 Q. Could you give me an example?

18 A. A good example would be their supposed savings associated  
19 with reducing the salary to hourly ratio of our employees.  
20 They allege that Patriot has too many supervisors at its  
21 operations and by pulling to some other number, some lower  
22 number, they believe that creates a savings. That's just  
23 absolutely a misinterpretation of their own study. They shared  
24 with us the name of the study they referenced and we used their  
25 own numbers and handed them a piece of paper in 1113/1114

1 meeting showing why they were wrong. The average salary to  
2 hourly ratio for West Virginia and Kentucky in their study was  
3 4.35. And we showed them that Patriot's current average of  
4 salary to hourly employees, that ratio was 4.38. We gave them  
5 a breakdown illustrating that. It's essentially the same  
6 number.

7 And they also don't seem to understand as we try to --  
8 despite our many explanations, that the difference that causes  
9 some mines to have higher ratios of salary to hourly employees  
10 or lower ratio of salary to hourly employees is more related to  
11 mine size than union versus nonunion. Large mines will  
12 consistently have a lower ratio of salaried employees to hourly  
13 employees. Small mines will consistently have a higher one.  
14 At our Federal operation, as an example, it's a 400 plus manned  
15 coal mine, there you're going to see a ratio that's probably on  
16 the order of -- trying to think -- half of what the ratio is at  
17 our CC10 mine that has forty-five employees.

18 So it's really a driver associated with the size of the  
19 mine because a small mine with forty-five employees is still  
20 going to have about seven supervisors whereas a mine that's got  
21 400 employees or 450 employees will be able to cover more  
22 supervisors or more hourly employees with a smaller number of  
23 supervisors commensurate with that.

24 So it's really driven by mine size. But even doing that,  
25 we've explained that we're very close to the same study that

1 they're referencing. They also missed the point that at many  
2 of our nonunion mines, what they're calling supervisors are  
3 doing the same work as hourly employees at union mines. For  
4 example, belt examiners and fire bosses at our Panther nonunion  
5 mine, those are salaried positions. But they do the same work  
6 as a fire boss or a belt examiner at a union mine. And the pay  
7 is essentially about the same. So it's a matter of  
8 categorization.

9 So despite those explanations, quite frankly, they seem to  
10 keep pointing to that savings. And I'm surprised by that  
11 because I thought that matter was settled in the 1113/1114  
12 discussions.

13 Q. Changing topics for a moment, as part of your job as CEO  
14 of Patriot, do you analyze how Patriot's cost compare to that  
15 of its competitors?

16 A. Yes.

17 Q. In the area of post-employment cost, how does Patriot  
18 compare?

19 A. Our post-employment costs are significantly higher than  
20 our competitors whether you measure it by cost per employee or  
21 percentage of revenue. Regardless of the metric, we're  
22 consistently higher than most people we compete with.

23 Q. Did you prepare slide 7 and 8? Does that summarize that  
24 point?

25 A. Yes.

1 Q. And could you just briefly walk the Court through 7 and 8.

2 A. Slide 7 is a bar chart that essentially illustrates the  
3 cost per active employee for -- associated with post-employment  
4 obligations. Patriot is in the green bar on the left. I'm  
5 showing a cost of approximately 393,000 dollars per active  
6 employee. And you can see, most of the people that we compete  
7 with, Walters, Peabody, Alpha, Arch, James River, have  
8 substantially lower cost per employee on post-employment  
9 benefits.

10 The only competitor that comes close to the Patriot level  
11 of spending is Consol. And they're, frankly, advantaged by  
12 massive size. It's one of the largest coal companies -- the  
13 largest coal company in the entire United States. And they  
14 are -- they have a segregated business where they're --  
15 essentially half of their company is a natural gas company.  
16 The other half is coal. So they have a substantial revenue  
17 buffer, if you will, operating cash flow buffer over which they  
18 can spread those costs much more effectively.

19 They also have the benefit of running very high  
20 productivity operations because they've essentially retired or  
21 closed virtually all of their continuous mining operations and  
22 they run high productivity longwalls which give them a  
23 substantial operating cost advantage.

24 Q. And Patriot doesn't have any -- like a natural gas hedge  
25 such as Consol, is that right?



1 A. No. We certainly do not.

2 Q. And slide 8, I take it, is basically the same information  
3 but at a different matrix?

4 A. Yeah. I think slide 8 is a better depiction because the  
5 metric is somewhat more relevant when you look at it as a  
6 percentage of revenue. The cost on post-employment obligations  
7 for Patriot is seven percent as illustrated in the green bar on  
8 the left compared to competitors that range from zero to three  
9 percent.

10 Q. Let's talk a little bit about the 1113/1114. How have you  
11 been involved or have you been involved -- let's start with  
12 that -- in the 1113 and 1114 process?

13 A. Yes. I've been involved since we started the process.

14 Q. And could you describe what -- again, your personal  
15 involvement in the 1113 and 1114 process?

16 A. Well, I'm the person at Patriot that's primarily  
17 responsible. I was involved in crafting the very first offer  
18 and analyzing the very first offer. I participated in every  
19 meeting with the United Mine Workers of America, hundreds of  
20 hours of meetings, hundreds of phone calls, hundreds of e-  
21 mails. So I'm the guy responsible for it at Patriot.

22 Q. You've mentioned you were responsible for formulating the  
23 initial proposal back in the fall of last year. How about the  
24 subsequent proposals that have been issued by the company over  
25 time? Have you also been involved in those?

1 A. Yes. Indeed, I was the final approver in each and every  
2 case.

3 Q. Now you're the CEO of the company. Why did you find it  
4 important for you to be personally involved in the 1113/1114  
5 process and negotiations? Why didn't you ask someone else then  
6 to do it so you could go ahead and run the company?

7 A. Because in my assessment, the savings that we have to  
8 secure under 1113/1114 is what determines whether we have a  
9 successful outcome here or not. This is survive or not  
10 survive. This is the driver. And if we don't get the savings  
11 that we're targeting then I see no future for this company  
12 other than liquidation. So with that, frankly, in the balance,  
13 I couldn't see handing that obligation off to anyone else.

14 I also felt like I would be more effective in engaging the  
15 management of the United Mine Workers of America if I dedicated  
16 my personal time to it. I felt like Cecil Roberts would come  
17 to the table if I came to the table. So I've been pleased in  
18 that regard that he has. He's participated in every meeting as  
19 well. But I felt like it was necessary for the CEO to be at  
20 the table if we were truly going to have an opportunity to get  
21 a consensual resolution here, a consensual deal.

22 Q. Do you know the name Micheal Buckner?

23 A. Yes, I do.

24 Q. And was he a member of the UMWA negotiating team?

25 A. No.

1 Q. And you went to every meeting between Patriot and the  
2 UMWA, is that right?

3 A. Yes.

4 Q. And was Mr. Buckner across the table from you in any of  
5 those meetings?

6 A. He wasn't involved in any of the meetings actually of  
7 113/1114 until our very last meeting, I believe, on April 25th.  
8 That was the meeting where we also invited Knighthead to  
9 participate as a potential investor in a reorganized company.  
10 And we had Blackstone participate to describe the thirty-five  
11 percent equity stake and how that number was arrived at and how  
12 it was -- what value it may represent. Mr. Buckner did  
13 participate in that meeting on the 25th of April.

14 Q. So prior -- just so the record's clear, prior to the 25th,  
15 which was last week, was Mr. Buckner at any of the meetings you  
16 attended with the UMWA?

17 A. No.

18 Q. And you referenced hundreds of phone calls and e-mails.  
19 Was he on the other side of the phone or the other side of the  
20 e-mail in any of those correspondence?

21 A. No. To my knowledge, he wasn't really involved in the  
22 process. The union's representatives throughout these series  
23 of meetings were Art Traynor and Brian Sanson and Cecil  
24 Roberts.

25 Q. Now you mentioned that there came a time when the company

1 provided the UMWA with its initial proposal. Do you recall  
2 when that was?

3 A. Yes. That was November 15, 2012.

4 Q. And do you recall when the company filed for bankruptcy?

5 A. Yes. We filed for bankruptcy on July 9, 2012.

6 Q. And there seems to be some criticism. Why did you wait so  
7 long to get the 1113/1114 process rolling if these cuts, as you  
8 testified, are the key to the difference between liquidation  
9 and survival?

10 A. Well, in short, we were trying to get it right with kind  
11 of a, you know, measure-twice-cut-once approach. We had a  
12 situation where the market was changing dramatically throughout  
13 the course of the months after filing. We recognized very  
14 early in the third quarter of 2012 that the numbers that we had  
15 essentially built our plan upon, the pricing, weren't going to  
16 be sustainable, that we could not sell coal at those prices  
17 anymore. Prices continued to drop in the months after we filed  
18 the Chapter 11 petition. So we were actually looking for some  
19 transparency in the market, some certainty as to what pricing  
20 was likely to be supportable over the balance of the five-year  
21 plan. We needed to see some stability both on the thermal side  
22 and the metallurgical side. So that was probably the biggest  
23 driver, if you will, of the delay between the filing date and  
24 the date of actual submitting the -- actually submitting the  
25 1113/1114 proposal.

1 I did have several conversations with Cecil Roberts during  
2 that interim, though. He and I had two or three meetings at  
3 least during that interim where I made it clear to him that we  
4 were working on a proposal, that much of the problem we were  
5 challenged with as the market continued to grow weaker and we  
6 have doubts at this point as to whether the savings that we had  
7 targeted in the initial bank plan were going to make the  
8 company viable, that we needed to improve our understanding and  
9 certainty in that regard.

10 So we completed the October bank plan, I believe, late in  
11 the month of October 2012 and about two weeks later, submitted  
12 the 1113/1114 proposal to the union.

13 Q. Now -- so you've just testified that the original  
14 proposal, 1113/1114 proposal was mid-November, the second week  
15 of November, November 15th I think is the date. Then you  
16 mentioned that there's been -- or has there been revised  
17 proposals over time since that time?

18 A. Yes. We've continued to revise our proposal generally in  
19 response to concerns that the union raises in each meeting  
20 after we've given them a proposal. So there have now been --  
21 we have now provided them with a fifth revision that -- on both  
22 1113 and 1114 that, I believe, in each case addressed concerns  
23 that they had raised about the prior proposal.

24 Q. Now if you could flip to page 9 of the exhibit. And if  
25 you could -- what, obviously, we're trying to do here is a lot

1 in a short amount of time. But you mentioned that there was  
2 the original proposal and then revised proposals over time. If  
3 you could just walk the Court through the 1113 proposal and how  
4 that metamorphosized over time as depicted in the various  
5 proposals you provided to the UMWA.

6 A. Yes. The bar chart illustrates on the left side the  
7 highlights of our original proposal submitted to the union on  
8 November 15, 2012. We then had several meetings with the union  
9 as they responded and raised concerns. You can see our second  
10 proposal, submitted on January 17th, 2013, did a number of --  
11 provided a number of improvements. First off -- this is on  
12 1114 -- we pushed the 1114 implementation date out till June 1,  
13 2013. That's a two-month delay versus the original  
14 implementation date of April 1. That was essentially to give  
15 us -- more time to work with the union to get the VEBA  
16 established.

17 We boosted the cash contribution to fifteen million  
18 dollars to provide more transitional funding and essentially  
19 more time to monetize the union's claim. We enhanced the  
20 profit-sharing plan and agreed to a specific sharing and  
21 recoveries from potential Peabody or Arch litigation.

22 In the third proposal on February 19th, we pushed the  
23 implementation date out further, again responding to the  
24 union's concerns about time needed to get the VEBA up and  
25 running, if you will, to take care of the retiree medical

1 obligations.

2 Q. Let me just cut you off there. Why is that a concession?  
3 What difference does it make if you implement in April, June,  
4 July or the following January? Does that have actual costs for  
5 the company?

6 A. In each case, it's a dedication of cash because every  
7 month that we move that transition date out, that  
8 implementation date, represents between six and seven million  
9 dollars of cost to the company. So that's another six or seven  
10 million dollars that Patriot is spending on retiree medical  
11 because of the delay of one month. So the delay from April 1  
12 to July 1 represents about a twenty-one million dollar cash  
13 consumption that Patriot is putting into the deal.

14 Q. I'm sorry. You were in the middle of the third proposal,  
15 the February 19th proposal.

16 A. Yes. The third proposal put the implementation date at  
17 July 1. We provided more detail on our claim settlement and  
18 monetization trying to address the union's concerns about how  
19 much value may be achievable from their claim, that, obviously,  
20 being the primary funding component of the VEBA. We enhanced  
21 the profit-sharing again and made also changes with respect to  
22 the Peabody-Assumed group making clear as to what the  
23 accountability plan was.

24 On the fourth proposal of February 27th, we -- there was a  
25 specific change there because the union had concerns about the

1 Peabody-Assumed group essentially being pushed into the VEBA,  
2 that they thought that was -- that raised a concern. So in the  
3 fourth proposal, what we did with Peabody Group was essentially  
4 acknowledge that it would be maintaining the status quo, that  
5 Patriot would continue to administer and manage those benefits  
6 as we fully intended to hold Peabody responsible for continuing  
7 to pay for them.

8 And the fifth proposal on April 10th is the one that  
9 received, you know, to our encouragement some favorable remarks  
10 from the union with respect to our staking out a thirty-five  
11 percent equity claim for the union. We essentially  
12 transitioned from describing claim monetization and claim value  
13 to making it very clear and measurable to them that we would  
14 support their having a thirty-five-percent ownership in the  
15 reorganized Patriot enterprise. We also pushed the  
16 implementation date out to January 1 of 2014 with the condition  
17 that the union would work with us to essentially loan about --  
18 up to twenty-one million dollars to the VEBA to help us bridge  
19 that gap between the cash that Patriot has available and the  
20 cash needs of the VEBA.

21 We also added a substantial enhancement to the VEBA in the  
22 form of the per-ton royalty payments. And this was the first  
23 time we had introduced that enhancement to this proposal. The  
24 union had expressed concerns about predictability and  
25 measurement of the net income metric that was the driver of our



1 profit-sharing plan. They were concerned that that may be a  
2 difficult number to predict and that much uncertainty as to  
3 whether it's going to deliver value of certainty. We agreed to  
4 give them a payment that's literally tied to the tons that we  
5 ship, so they twenty cents per ton on every ton that we ship  
6 from the what-is-today Patriot Coal. In our normal business  
7 plan forecast, that represents about five million dollars per  
8 year.

9 And the real enhancement is that if we're successful and  
10 the market improves and we can grow the company, for every ton  
11 that we ship higher than the business plan, they'll get a  
12 dollar-per-ton into that royalty stream going to the VEBA. So  
13 for example, in a year where we produce five million tons more  
14 than our twenty-five-million-ton forecast in the business plan,  
15 that means the union will get five million plus five million,  
16 that's ten million dollars in one year into the VEBA just from  
17 that one component.

18 So we believe it's a substantial enhancement and we made  
19 it clear to the union in the subsequent meetings that that's a  
20 royalty payment that would be earned on 1.2 billion tons of  
21 reserves. It's a huge number; hundreds of millions of dollars.  
22 So that was a key component of the fifth proposal and that's  
23 the proposal that's currently in front of the UMWA.

24 Q. And slide 10, I take it, is basically the same  
25 metamorphosis from the original proposal to where we are today

1 with respect to 1113, is that right?

2 A. Yes. The -- slide 10 shows essentially the same  
3 progression of proposals on the 1113 offer, beginning with our  
4 November 15 proposal, November 15, 2012. You can see in the  
5 second proposal, we tried to respond to the union's concerns  
6 about job opportunities and job security. We continued that --  
7 to offer those enhancements through the third proposal where we  
8 went as far as actually identifying specific mines where we  
9 would work with the union to ensure that they represent those  
10 workers. These are mines that are in our business plans. They  
11 had raised concerns as to whether they would have a position at  
12 those mines. So we quite clearly enumerated those mines and  
13 agreed to support their position at those locations so that  
14 they can demonstrate to their membership that there'll be jobs  
15 to continue working.

16 In our fourth proposal, we pushed the implementation date  
17 out from April 1st until June 1st, again, at substantial cost,  
18 along the lines of what we were talking about a few moments ago  
19 on 1114. Every time we move the implementation date on 1113 by  
20 one month, that cost is about six-and-a-half million dollars  
21 per month. So it's a substantial cost when we move it two  
22 months; about thirteen million dollars.

23 We also in the fourth proposal, agreed to work with the  
24 union on -- with respect to the '74 Pension Plan trying to  
25 agree to a framework that would avoid a large claim. It being

1 our view and their concern, quite honestly, that the creation  
2 of a large claim would damage the union's value in the  
3 reorganized company. We agreed with that assessment, agreed  
4 that we would work with the '74 Pension fund to try to avoid  
5 creating that large claim associated with the withdrawal  
6 liability.

7 Unable to remedy that to their satisfaction, we indeed  
8 sent them a fifth proposal on April 23rd that made it clear  
9 that Patriot would indeed remain in the 1974 Pension Plan and  
10 ex -- we expected to pursue agreed terms with the funds that  
11 would be -- that would make that process workable.

12 Q. Okay. You've just walked through the metamorphosis of the  
13 proposals, both under 1113 and 1114. I want to switch gears.

14 Are you aware that an important part of the 1113, 1114  
15 process is information sharing with the union?

16 A. Yes.

17 Q. And were you involved in that process, the information  
18 exchange?

19 A. Yes, I was involved with the process throughout this --  
20 these series of negotiations.

21 Q. And could you describe what your involvement was in the  
22 process providing information to the UMWA and its advisors?

23 A. Well, I -- first and foremost, I directed my team to put a  
24 framework in place where we were providing regular reports to  
25 the union and, frankly, turning around answers as quickly as we

1 could because we saw that information delivery as essential to  
2 keeping this process streamlines and moving forward. So as  
3 soon as the union gave us a series of questions, we would try  
4 to get the answers into the data room, sometimes in a matter of  
5 hours, certainly in a matter of days. But as soon as the  
6 information was available, we would put it into the data room.

7 In some cases, we actually delivered the answers in the  
8 form of hard copies that were handed across the table in our  
9 1113, 1114 meetings. Indeed, some of the information requests  
10 came in the form of questions posed at these meetings and I  
11 would then immediately relay those to the team, the Patriot  
12 team. They would put them into our status report and turn that  
13 information around as quickly as we could.

14 Q. Now, are you aware that the UMWA has criticized Patriot  
15 for failing to share its fully dynamic business model?

16 A. I've heard that complaint.

17 Q. You think that's fair criticism?

18 A. No, it's not fair; it's nuts.

19 Q. And why is it nuts?

20 A. They -- because it's just not accurate.

21 Q. And why is that?

22 A. We did indeed provide them with the dynamic business model  
23 and they have substantial functionality in the model that was  
24 provided. They can adjust revenue; they can adjust cost. We  
25 believe we provided them with a dynamic business model; indeed,

1 the very one that our financial advisors have worked with from  
2 the moment that we brought them on board to try to help this  
3 company. So they do have a dynamic business model.

4 I am aware that they asked for some further flexibility,  
5 some ability to actually go down into mine-specific cost items  
6 that are substantially below normal budgeting levels of detail.  
7 And in response to that request, we actually invited him to our  
8 corporate headquarters in St. Louis and PWC,  
9 PricewaterhouseCoopers, the union's financial advisor, was  
10 brought into a meeting and we showed them how the system works  
11 and indeed if they wanted to make those sorts of mine-level  
12 adjustments, we would give them a private room, we would give  
13 them access to our information technology team and our  
14 accountants and they could run all the scenarios they wanted to  
15 right there in our corporate office.

16 But we don't have the ability to move that financial  
17 infrastructure anywhere else. It's part and parcel of our  
18 company accounting and cost-tracking structure. But we gave  
19 them full access to that and made it abundantly clear. To my  
20 knowledge, they never took advantage of that opportunity.

21 Q. And just so that we're clear, I want to just ask you this  
22 very precisely. Is there any dynamic model that the company  
23 has that it has not shared with the union and its advisors?

24 A. No.

25 Q. Now, has Patriot performed an analysis to determine the

1 projected value of the equity stake that was offered to the  
2 union at the table?

3 A. Yes. Patriot did so through our -- with the support of  
4 our financial advisors, Blackstone.

5 Q. And have you provided that analysis to the UMWA?

6 A. Yes, indeed, we did. That was the primary purpose of our  
7 meeting on April 25th in the union headquarters.

8 Q. And did you receive information requests from the union  
9 regarding the thirty-five-percent equity stake?

10 A. Yes. We received a list of questions shortly after our  
11 proposal was submitted. I believe we received the list of  
12 questions around April 18th or 19th.

13 Q. And did you fully review it? Did Patriot fully respond to  
14 those questions?

15 A. Yes, indeed, we did.

16 Q. And when and how did you respond to those questions?

17 A. We responded initially during the April 24th meeting.  
18 This is a special meeting where we essentially cleared our  
19 schedule, if you will, to try to gain another day of  
20 negotiations and hopefully progress with the UMWA. And so we  
21 traveled to their headquarters in Triangle, Virginia and in the  
22 very first meeting with Cecil Roberts and his team, I made it  
23 clear that we had received their list of questions and that we  
24 were providing answers in the form of a presentation that  
25 Blackstone would be making on April 25th.

1 I did share with them kind of a layman's view of my  
2 response on some of the questions but obviously the scope of  
3 that analysis is substantially beyond my capabilities. But I  
4 gave them kind of a layman's view of what I believe some of the  
5 answers were and clarified to them that Blackstone would be  
6 there on the morning of April 25th to make a presentation and  
7 would leave a copy of that presentation with them and would  
8 answer their questions for as long as they wanted to ask those  
9 questions.

10 The other thing that they ask about in that list in  
11 addition to the thirty-five-percent equity stake was the  
12 tonnage royalty. And that one I was able to answer more  
13 directly because that's a field in which I am very familiar.  
14 So I gave them an oral review of how the tonnage royalty  
15 component of the VEBA funding would work and promised that we  
16 would give them a full spreadsheet on the morning of April 25th  
17 and we did so.

18 Q. Again, let me ask you this very clearly so that the record  
19 is clear. Is there any analysis that the company or its  
20 advisors has performed with respect to the thirty-five-percent  
21 equity stake that you have not shared with the union?

22 A. No.

23 Q. And I take it from our colloquy that there's been  
24 continuous negotiations with the -- there's been continuing  
25 negotiations with the UMWA in recent weeks, is that right?

1 A. Yes.

2 Q. Indeed, last week?

3 A. Yes.

4 Q. Now, let me ask you a question. You filed for relief  
5 under 1113 and 1114 a while back. Why did you then continue to  
6 negotiate with the union if the matter was going to be turned  
7 over to the Court?

8 A. Because it has been our view from the moment we started  
9 this process that the best outcome is a consensual deal, an  
10 agreement with which we come to agreement, to terms that  
11 mutually are, you know, supported and respected by both sides.  
12 So that was the goal all along. So we never intended to stop  
13 that process even with the filing on March 14th.

14 Q. Okay. And you've -- and I take it from your answer,  
15 you've continued to negotiate up to and including last week?

16 A. Yes --

17 Q. And --

18 A. -- in fact, we met two days last week.

19 Q. And that's on April 24th and April 25th, is that right?

20 A. That's correct.

21 Q. If you could just briefly describe the April 24th meeting  
22 in terms of who participated and how that meeting ended.

23 A. The April 24th meeting was somewhat unusual because our  
24 regular meeting was scheduled for April 25th. But we had  
25 received feedback through counsel, as I recall, that perhaps



1 there was an opportunity to streamline this process, to make a  
2 big jump forward and close the gap. Because to this point, our  
3 proposal exchange with the union had been -- had resulted in a  
4 disappointingly wide gap in perspectives.

5 We were looking for 150 million dollars a year in annual  
6 savings and we felt like -- quite honestly, still feel like --  
7 that that's essential to the survival of the business, and they  
8 were offering up responses that in our view were going to  
9 provide savings of less than ten percent of that; 10 to 15  
10 million per year. So the gap was huge. So when we saw an  
11 opportunity to accelerate the process, we cleared our  
12 schedules, cancelled meetings, flew to the union headquarters  
13 on the morning of the 24th. I had spoken by telephone with  
14 Cecil Roberts and he agreed that he would make his schedule  
15 available, and the bargaining team. And so we scheduled a  
16 meeting on short notice and what I thought would be a  
17 progressive effort to close the gap on 1113.

18 The primary focus of that meeting was 1113 because 1114,  
19 the union's feedback to us was that we've substantially  
20 improved our position and we thought that was perhaps not as  
21 much the focus as the 1113 gap. So --

22 Q. And -- I'm sorry; go ahead.

23 A. So we met with a specific focus on 1113 and began that  
24 meeting about 11 o'clock on the 24th.

25 Q. And how did that unfold?

1 A. Quite disappointing, to be honest. We had, I think, a  
2 sincere, you know, exchange and discussion, but it was  
3 surprisingly unproductive. Despite our repeated efforts to  
4 coax a proposal from the union, we really -- we walked away  
5 empty-handed at the end of the day. We went even as far as to  
6 suggest areas where if they would consider making us a counter,  
7 here's a miracle, we may be able to help you a little bit  
8 trying to identify areas that wouldn't be damaging to the  
9 company's near-term cash sensitivity, but yet would provide  
10 opportunities for the union.

11 So even to the point of us coaxing them on specific areas  
12 where we would like to see them make a counterproposal, we were  
13 unable to entice one from them. Indeed, after separate  
14 caucuses and separate discussions, they essentially adjourned  
15 the meeting at about 4:30 that day without providing us with a  
16 counter.

17 Q. And it sounds like there was a meeting the next day, on  
18 Thursday the 25th?

19 A. Yes. The morning of the -- April 25th, we resumed -- we  
20 reconvened with the scheduled meeting that was intended in its  
21 design to start off with a presentation from Knighthead.  
22 Knighthead is one of our largest senior bondholders. They've  
23 expressed interest in being part of the reorganized company  
24 going forward and potentially even making a proposal to  
25 monetize the union's equity stake. So they suggested, and we

1 agreed, that a dialogue involving Patriot and the union and  
2 Knighthead would be productive. So Knighthead brought a team  
3 of three people to start the meeting and I think had a  
4 productive dialogue with the UMWA team and Patriot. After  
5 about an hour-and-a-half, the Knighthead group adjourned as was  
6 planned.

7 They left the meeting and then Blackstone began their  
8 presentation which was intended to be the, obviously, the  
9 second component of the agenda. And that was Blackstone's  
10 trying to be responsive to the union's request for clarity and  
11 explanation of the thirty-five-percent equity, both the  
12 methodology in which it was determined, what rules go with the  
13 thirty-five percent, what ownership percentage goes with it,  
14 and what, you know, what are the variables that would help them  
15 determine the value.

16 So Blackstone, I thought, provided a very beneficial  
17 presentation to the union. They shared it both, I think, in  
18 hard copy form and also entertained questions from the UMWA and  
19 their advisors that were present for the meeting,  
20 PricewaterhouseCoopers. That portion of the meeting continued  
21 until approximately 1 p.m., I believe.

22 Q. And then what happened?

23 A. Then our financial advisors left -- and we also had with  
24 us a Davis -- our lead counsel with Davis Polk, Marshall  
25 Huebner. He participated in the meeting and provided

1 substantial, I think, beneficial insight with respect to how  
2 the process works going forward and, indeed, urging the parties  
3 to try to find a consensual deal here that closes the gap since  
4 we've made so much progress, we believe, on the 1114 side. So  
5 at 11 -- about 1 o'clock, I think, Mr. Huebner left the  
6 meeting, Blackstone left the meeting and it was just down --  
7 reduced down to the normal 1113, 1114 negotiating team which  
8 includes, on the Patriot side, me, Dale Lucha, Eric Waller, and  
9 Greg Robertson. And on the UMWA side, Cecil Roberts, Brian  
10 Sanson, and Art Trainer.

11 Q. Did you have a productive dialogue and exchange of  
12 proposals at that point?

13 A. I'm disappointed to say no. We had a cordial discussion  
14 and the union described some of their concerns about the  
15 various positions that Patriot had outlined in its most recent  
16 proposal. But still didn't provide a counter of any sort;  
17 indeed, didn't even provide anything along the lines of  
18 feedback on the specific changes that we had indicated some  
19 willingness to consider.

20 They concluded the meeting at about 2:30 indicating to us  
21 that they expected to provide us with a counterproposal in the  
22 very near term. Indeed, they indicated they were working on it  
23 and they expected to send it to us in the next day or so.

24 Q. And when did you receive any type of proposal from the  
25 union?

1 A. That meeting adjourned about 2:30 on April 25th; we  
2 actually received that revised counterproposal from the UMWA on  
3 the 27th, Saturday, April 27th at about 10:30 p.m.

4 Q. That's just this past Saturday, right?

5 A. Yes.

6 Q. I'm going to just jump around a little bit here as we  
7 conclude. Are you aware whether the UM -- well, you're aware  
8 that the UMWA has argued that Patriot has neglected to pursue  
9 Peabody? Are you aware that that's been one of the contentions  
10 of the union?

11 A. I'm aware of that. I'm pretty sure Peabody doesn't agree  
12 with that. I certainly don't agree with it.

13 Q. Why don't you agree with it?

14 A. It's -- because it's wrong.

15 Q. And how is it wrong?

16 A. Because we have filed action, litigation against Peabody  
17 to ri -- to hold them responsible for these Peabody-Assumed  
18 liabilities, first and foremost; the 3,100 people that quite  
19 frankly is -- was -- as was described in court the other day,  
20 they're intending to throw under the bus. We don't think they  
21 should earn any benefit from Patriot's financial distress  
22 because they don't have that financial distress, and we object  
23 to it and, frankly, are very bothered by it. So we filed legal  
24 action to hold them responsible for the Peabody-Assumed  
25 liabilities. But on a broader scope, we've had a legal team

1 working for months on searching e-mails and files and  
2 interviewing knowledgeable people, Patriot employees and  
3 others, as to whether there's a potential claim associated with  
4 the spin-offed (sic) transaction itself.

5 We've invested substantial legal dollars; we worked with  
6 the creditors' committee in analyzing the potential for that  
7 claim and fully intend to pursue that claim if we find that it  
8 has any merit at all.

9 Q. Do you know the term "union busting"?

10 A. Yes.

11 Q. And is it a fair characterization of what we're trying to  
12 do here today as union busting?

13 A. No. That's silly. My father is a retired UMWA member; I  
14 grew up with the UMWA journal on the living room coffee table.  
15 My father-in-law -- you know, two of children's grandfathers  
16 are retired UMWA members. I don't have any animus toward the  
17 union at all. This is an opportunity to save jobs because I  
18 truly believe if this company goes into liquidation, these  
19 1,600 union jobs will disappear forever. I do not believe they  
20 will come back --

21 Q. But isn't it --

22 A. -- because I believe what happens will be we'll go into  
23 liquidation; there's a sale of, essentially, an auctioning of  
24 assets. I believe the jun -- the union will likely lose its  
25 job rights in that auction, and I think it's very unlikely that

1 these union jobs will return. So this is, quite frankly, an  
2 effort to save union jobs and reorganize this business, keeping  
3 the same employees that we have today.

4 Q. But isn't it true that all things being equal, you would  
5 prefer a non-union workforce rather than a union workforce?

6 A. That is true. It's -- and I'm on record in that regard  
7 and I don't offer any apology for it. Quite honestly, it -- in  
8 working with employees, I've been in this business for over  
9 thirty years, I've managed union operations and I've managed  
10 non-union operations, and been successful in both categories.

11 But all things being equal, I prefer an environment where  
12 I can work directly with my employees and negotiate pay terms,  
13 wages, and benefits changes and respond to what the market  
14 allows us to do. And that's sometimes raise wages and benefits  
15 when times are good, and adjust them downward when times are  
16 bad. And that's how I prefer to do business and have that  
17 direct interaction with my employees. But I've also been  
18 successful in running union mines that made money and were  
19 contributing good contributor to the business.

20 So this is a situation where, quite frankly, what we are  
21 trying to do is make the business viable. And it isn't a  
22 matter or a goal of trying to make it non-union. That has  
23 never, ever been the goal on the table and I've been clear on  
24 that in every 1113, 1114 meeting. Never intended to take this  
25 company non-union. What I want to take this company to is

1 viability, and I believe we can get there and we can run  
2 profitable union mines. We don't have to have them non-union  
3 for them to be profitable and successful. And I believe the  
4 union can share in the upside with this company if they support  
5 this reorganization effort.

6 Q. Now, are you aware that the UMWA has argued that Patriot  
7 is asking the union to shoulder eighty-seven percent of the  
8 cost savings?

9 A. I've heard that statistic, yes.

10 Q. Is that a fair argument?

11 A. No.

12 Q. Why not?

13 A. In the first place, I don't believe it's accurate. I  
14 believe Mr. Huffard debunked the number in his testimony, but  
15 it's not accurate because we've required substantial sacrifices  
16 across our entire workforce. And the reason the adjustments  
17 are larger on the union side of the scale than the non-union  
18 scale, quite honestly, is because the union scale is  
19 substantially out of market, far more so than out non-union or  
20 our salaried workforce was out of market. So we're adjusting  
21 everyone, essentially, to what is market.

22 And by "market", I'm defining that as what we compete  
23 with, the companies that are on our borders that would like to  
24 ship the coal sales and take the business that we need to  
25 survive. Alpha and Arch and Peabody and Alliance and James



1 River; all those companies are working for -- to get the same  
2 business that we need to make this company successful going  
3 forward. And so we have to have a labor cost structure that  
4 allows us to compete in that field. And that's what we're  
5 pursuing here.

6 Q. In your thirty years in the coal business, has a customer  
7 ever agreed to pay more for coal because the coal was extracted  
8 and process by union workforce rather than a non-union  
9 workforce?

10 A. Never. Companies want to buy the product; they care about  
11 service and product. On metallurgical coal, if they want --  
12 they care about the carbon and the strength of coke. On  
13 thermal coal, they care about BTUs and sulfur. They don't ever  
14 ask or pay more because it's union or non-union.

15 Q. You've also been criticized for not taking the union up on  
16 its offer to increase production to a seven-day work week.  
17 Have you heard that criticism?

18 A. I'm aware of that criticism, yes.

19 Q. And you've heard that criticism at the table or that offer  
20 at the table, to increase production?

21 A. Yes.

22 Q. Okay. Well, why isn't that a good idea?

23 A. Because it's nuts. You -- when you have mines that are  
24 closing because we can't sell the coal that we're producing  
25 five day a week, how can you ever get ahead by running coal

1 seven days a week? If the prices are such that they are below  
2 our cost, it makes absolutely no sense to run a seven-day  
3 schedule.

4 So what we have tried to do is curtail production to meet  
5 a much shrunken market, if you will; shrunken demand. So we  
6 simply can't assume that creating more revenue by generating  
7 more tons is going to add any value to the business. Indeed,  
8 it will damage the business if we're running mines seven days a  
9 week and selling coal for prices that are below our cost.

10 Q. Now, are you aware that the UMWA has claimed that  
11 Patriot's union mines are safer than its non-union mines? Have  
12 you heard that?

13 A. I've heard that allegation, yes.

14 Q. Do you believe that's true?

15 A. It's not true.

16 Q. And what's your basis of that conclusion?

17 A. Again, thirty years in this business and I also know the  
18 statistics for our particular operations. I don't at all see  
19 any superior performance on safety at union operations versus  
20 non-union.

21 Q. Well, you've also heard the criticism that Patriot's union  
22 mines are more productive than non-union mines. Would you at  
23 least agree with that?

24 A. No.

25 Q. Why is that?

1 A. Well, because it's not accurate. The bigger driver of  
2 productivity is geology; it's seam thickness and roof  
3 conditions and, in surface mines, it's surface mine ratio; the  
4 number of tons or rock or cubic yards of rock that you have to  
5 remove to get a ton of coal. So it's geology that's the big  
6 driver on productivity more so than union or non-union.

7 And so we have union mines that are mining six-foot-thick  
8 seams and they have very attractive productivity, like the  
9 Federal operation, probably about four to four-and-a-half clean  
10 tons per man hour. We also have union mines that are mining  
11 two-and-a-half-foot-thick seams, like CC10 in our Wells Complex  
12 and they probably have a productivity of about two-and-a-half  
13 clean tons per man hour. Now, both are succ -- reasonably  
14 successful because the -- for the circumstances they're dealt,  
15 they're running pretty well. But we also have non-union mines  
16 that are running at least as well as Federal. So it's not a  
17 matter of union versus non-union; it's -- the big driver on  
18 productivity is essentially geology and seam thickness.

19 Q. Now, we've also heard criticism that the company's  
20 proposal or VEBA proposal is outrageous because it's only going  
21 to be funded with fifteen million dollars. Is that fair?

22 A. Neither fair nor accurate.

23 Q. Why is that? Because the fifteen million was never, ever  
24 intended to be the primary funding vehicle for the VEBA and  
25 I'm, frankly, kind of appalled that we've spent so much time in

1 this hearing talking about how far fifteen million dollars  
2 would go. That's just nuts.

3 The primary funding component for the VEBA has always  
4 intended to be and is designed to be the value of the union's  
5 claim which we have now converted to an equity position. They  
6 own thirty-five percent of the value of this entire business  
7 enterprise, as we successfully reorganize it. That is the big  
8 funding vehicle for the VEBA. And the fifteen million was  
9 always intended to be, essentially, a bridge to allow the VEBA  
10 to e set up and to pay the first few months, perhaps, of costs  
11 as we're getting to a point of monetizing the union's claim and  
12 determining how much of it they want to monetize. Because they  
13 certainly have the flexibility to sell a portion and just --  
14 and save the rest until the stock price improves, or sell all  
15 of it at their election. So it was never a matter of how far  
16 you could go with fifteen million dollars; that's just  
17 irrelevant.

18 Q. Mr. Hatfield, you and I were sitting and standing,  
19 respectively, here a few weeks ago where the company was asking  
20 the Court to approve a key employee retention plan and  
21 incentive plan. Do you recall that?

22 A. Yes.

23 Q. How could you be sitting here today asking for these 1113,  
24 1114 cuts while a month ago you were asking for those plans to  
25 be approved?

1 A. Because I believe if we don't retain the operations  
2 management and the personnel that are future recipients of  
3 those benefits, that this company is just as assuredly aimed at  
4 failure as if we run out of cash. We have lost sixty-seven  
5 people since January 1st of this year because --

6 Q. Wait. Since this year?

7 A. Sixty-seven since January 1st, 2013; the people who were  
8 just concerned about the future of this company and whether  
9 they have a future job here. They're going to work for  
10 competitors, in many cases taking lower-paying jobs because  
11 they're afraid they'll wind up with no job.

12 So it's essential to the success of this business in my  
13 view. And that's not just a bunch of executives -- indeed, the  
14 executive team gets nothing from that program. The people  
15 who -- myself and the people that report to me get not one dime  
16 out of that retention and incentive program. It's primarily  
17 aimed at being sure that we retain the people who manage the  
18 mines, from mine superintendent and longwall coordinators up  
19 through general managers and department heads and people that  
20 manage benefit programs, people that manage payroll, people  
21 that pay our taxes and do our SEC reporting. If we don't keep  
22 that team together, this company is in trouble.

23 Q. Mr. Hatfield, in your opinion, is there anything else  
24 Patriot could have done to avoid being in court this week in  
25 this 1113, 1114 hearing?

1 A. No. I believe we've -- we have made ourselves available  
2 as many times as the UMWA was willing to meet for as long as  
3 the UMWA was willing to meet with every effort aimed at trying  
4 to close the gap in our respective positions on 1113, 1114. I  
5 believe we have acted -- I think in fairness and open in  
6 dealing. I believe we've taken all measures we could possibly  
7 have taken to avoid this.

8 Q. And as CEO of the company, what will happen if you fail to  
9 reach a deal with the union or receive the 1113, 1114 relief  
10 that you're seeking here today in court?

11 A. Without the relief that we've requested, this company will  
12 initially breach its EBITDA covenant. We -- I believe,  
13 frankly, we're going to breach that anyhow because, just  
14 because of the time delay that we've encountered and moved the  
15 implementation date out on 1113, 1114 month after month after  
16 month. So we've damaged ourselves in several respects, so  
17 we're likely to breach the EBITDA covenant within the next few  
18 months.

19 But more seriously, we're going to breach a liquidity  
20 covenant before the end of the year. I believe that will  
21 trigger a discussion and a review with the banks because of the  
22 cost structure and the legacy burdens that this company has  
23 where we're likely to be pushed into liquidation. So I fully  
24 expect that this company is aimed -- is headed into liquidation  
25 if we don't secure the targeted relief under 1113, 1114.

1 Q. As CEO of the company, who do you believe would stand to  
2 lose the most if Patriot is, in fact, liquidated?

3 A. I don't think there's any question. The people that lose  
4 the most are the UMWA and its retirees, the people that they  
5 represent, because that group is the large -- will be the  
6 largest component, if you will, of stockholders in a  
7 reorganized enterprise. A reorganized Patriot Coal is worth  
8 hundreds of millions of dollars. A liquidated Patriot Coal is  
9 worth pennies on the dollar. And if this company goes into  
10 liquidation, the retirees will get virtually nothing. And the  
11 UMWA will lose its active jobs. I believe those jobs will  
12 disappear. So I don't think there's any question at all as to  
13 who the big loser is here. The loser will be the UMWA. But  
14 everyone loses; that's the absolute worst outcome here.

15 Q. And I guess the corollary to that, my final question, who  
16 do you think would be the big winners if the company  
17 successfully reorganizes, survives and becomes a fierce  
18 competitor in the coal industry?

19 A. Again, I don't think there's any question. I think the  
20 union would benefit the most and its retirees would benefit the  
21 most from a reorganized Patriot because this company can be  
22 made viable and should be. We're not in bankruptcy because  
23 we're bad at mining coal or we have weak facilities or we have  
24 a weak product. We're in bankruptcy because we have legacy  
25 burdens that we simply can't carry as a downsized company. We

1 have good talent, good management, state-of-the-art facilities,  
2 a product that our customers like and our competitors wish they  
3 had. So we have a good business here that has a good future,  
4 but we have to deal with the legacy liabilities and an over-  
5 market UMWA contract.

6 With those matters settled, this is an opportunity to  
7 truly create a successful reorganized Patriot Coal and that  
8 will benefit the UMWA, frankly, more than any other party in  
9 this process.

10 Q. Thank you, Mr. Hatfield. That's all I have for now.

11 THE COURT: Mr. Perillo?

12 MR. PERILLO: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. PERILLO:

15 Q. Mr. Hatfield, good morning.

16 A. Good morning.

17 Q. And may I say to you congratulations. You were absent for  
18 the courtroom to go and receive some awards, were you not?

19 A. I'm confused.

20 Q. Didn't you announce yesterday that Patriot had received  
21 three awards from the Coal River Council of the Joseph Holmes  
22 Safety Association?

23 A. Oh, yes. That didn't occur during this week, but we  
24 released the announcement. We're quite proud that several of  
25 our operations were honored by the Holmes Safety Association



1 with safety awards. And that news release came out, I believe,  
2 within the last day or so.

3 Q. One of those operations was the Wells preparation plant,  
4 correct?

5 A. Yes.

6 Q. Is that a union operation?

7 A. Yes, it is.

8 Q. Another one of the operations was at Hill Fork surface  
9 mine in Corridor G. Is that a union operation?

10 A. Yes, it is.

11 Q. And the third one was the Matawan Tunnel underground coal  
12 transportation corridor in Rocklick. Is that a union  
13 operation?

14 A. Yes, it is.

15 Q. Did the association provide any safety award to your non-  
16 union operation?

17 A. Not in this particular case -- actually have won a number  
18 of awards previously, but not in that particular series of  
19 announcements.

20 Q. And those awards were for recent performance, correct?

21 A. Yes.

22 Q. You've had two fatalities this year at Patriot?

23 A. Yes.

24 Q. Our condolences. They were both in non-union facilities?

25 A. That is true and --

1 Q. And zero --

2 A. -- sadly, the first fatality that we've had since the  
3 fatality at our Logan complex in 2011 which is a union complex.

4 Q. You've had zero fatalities in union complexes this year?

5 A. This year, that's correct.

6 Q. Mr. Hatfield, at the outset of your testimony, I think you  
7 referred to yourself as a miner?

8 A. Yes, I think I qualify; I actually have foreman's papers.  
9 But I haven't been an underground foreman in many, many years.

10 Q. When was the last time you actually mined coal?

11 A. That would probably be about 1980, 1979 or '80.

12 Q. Most of your career you've spent in some form of being in  
13 management, correct?

14 A. Yes. Initially as a mining engineer and subsequently, as  
15 a -- in various roles in mine management.

16 Q. And you've been a manager in both union and non-union  
17 operations, correct?

18 A. That's correct.

19 Q. And you're familiar with both how they work, correct?

20 A. I believe I am, yes.

21 Q. You understand that collective bargaining in the United  
22 States is predicated on the assumption that employees have  
23 selected a bargaining representative commonly called a union,  
24 correct?

25 A. I believe that's correct.

1 Q. And you understand it's the national policy of our federal  
2 government that employs a free choice in whether or not to be  
3 union?

4 A. I believe that's the law, yes.

5 Q. And they negotiate with employers and the agreements that  
6 they reach with employers are voluntary agreements, correct?

7 A. Yes, I believe that's the case.

8 Q. And that's true in Patriot's case. Every agreement that  
9 you've agreed to with the UMWA, somebody on Patriot's side  
10 voluntarily signed that agreement, correct?

11 A. Yes, I believe that's true.

12 Q. And that's including the agreements that you are trying to  
13 reject today?

14 A. That's true.

15 Q. Now, I would like to address some of your earlier  
16 testimony. And I'm wondering if you still have your color  
17 slide?

18 A. Yes, I do.

19 Q. I want to talk a little bit about the groups who are  
20 dependants, shown in the first slide on page 1.

21 A. Yes.

22 Q. Are you there, sir?

23 A. Yes, I am.

24 MR. PERILLO: Does the Court also have access to those  
25 slides?

1 THE COURT: I do.

2 MR. PERILLO: Thank you.

3 They're no longer on the screen. I just wanted to  
4 make sure that people could follow along.

5 BY MR. PERILLO:

6 Q. In the represented category that's shown on the first page  
7 in the top part of the chart, if we go down to the third entry,  
8 there's Coal Act liabilities there. Do you see that?

9 A. Yes.

10 Q. And those are liabilities that you testified that you  
11 believe essentially could not be modified, correct?

12 A. That's my understanding. I'm not a lawyer, but it's my  
13 understanding they cannot be modified in this process.

14 Q. Some of those Coal Act liabilities are for employees who  
15 retired from Arch, correct?

16 A. Yes.

17 Q. Why isn't that Arch's responsibility?

18 A. It's my understanding by -- again, by law because we,  
19 Patriot, own those subsidiaries that we don't have the  
20 opportunity to require Arch to pay them unless we literally are  
21 liquidated.

22 Q. And then at that point, Arch will take over those  
23 responsibilities?

24 A. It's my understanding that if Patriot was to disappear, be  
25 in liquidation, that indeed Arch would become responsible for

1 those Coal Act responsibilities that were their former  
2 subsidiaries.

3 Q. When I look down this chart, I can see that there's a  
4 group called the Peabody-Assumed Group and there approximately  
5 3,100 NBCWA retirees listed in that group. Can you find that  
6 part of the chart?

7 A. Yes.

8 Q. Are you familiar with a group that's known as Squaw Creek  
9 Group?

10 A. Yes, I'm generally familiar with it.

11 Q. That is a group where Alcoa is paying four million dollars  
12 per year to Patriot to fund the retiree benefits for the Squaw  
13 Creek Group, correct?

14 A. I believe that's correct, yes.

15 Q. And because it's -- those people are listed in the  
16 Peabody-Assumed Group category, are they not?

17 A. I believe they are.

18 Q. And then you passed that four million dollars, then, in  
19 full, to Peabody, correct?

20 A. Yes. I couldn't confirm which direction the money goes,  
21 but the -- Alcoa reimburses that cost and Peabody essentially  
22 enjoys that reimbursement because it's part of the group that  
23 they remain responsible for.

24 Q. Now, Alcoa's liability to pay that four million dollars is  
25 not contingent on any of the liability-assumption agreements

1 that were discussed here on Monday, correct?

2 A. I'm not certain about that. I just honestly don't know.

3 Q. If the Court denies the declaratory judgment, will Peabody  
4 then continue to receive the four million dollars from Alcoa  
5 even though it no longer has any responsibility to pay for  
6 those retirees?

7 A. Again, I'm not a lawyer, but I doubt that that would be  
8 the case. I suspect that Alcoa only reimburses what is the  
9 actual cost incurred.

10 Q. Don't you currently have an agreement with Alcoa to  
11 receive that four million dollars and then pass it to Peabody?

12 A. Yeah, again, I'm uncertain of -- as to which direction the  
13 money moves but I know there was a dispute that was resolved  
14 recently where for a period of time, Patriot received that  
15 money and did not pass it to Peabody, that was eventually  
16 settled prior to my becoming president in, I think, 2011.

17 Q. And so let's be clear, sir. The payment of the  
18 liabilities for that group of retirees comes entirely from  
19 Alcoa. It costs Patriot nothing.

20 A. Yes, it's part of the group that Peabo -- that Patriot  
21 administers and Alcoa reimburses that cost fully. I agree with  
22 that.

23 Q. But one possible outcome of this proceeding is that that  
24 group of retirees that cost Patriot nothing, is still going to  
25 lose their retiree coverage?

1 A. Again, I'm not certain that I can answer that question. I  
2 just don't know.

3 Q. That's something that the union has discussed with you at  
4 the bargaining table, correct?

5 A. We have agreed that we would work with them to avoid that  
6 outcome. I recognize that that's a concern. I just can't tell  
7 you what the legal ramifications are.

8 Q. On the third day of the trial, we still don't know what  
9 will happen to that group of retirees?

10 A. I personally am not certain as to how it would work.

11 Q. Well, but an answer, definitively, has not yet been  
12 provided to the UMWA on that question?

13 MR. KAMINETZKY: Objection; asked and answered.

14 THE COURT: I'll overrule the objection. You can  
15 answer the question.

16 A. Could you repeat the question for me, please?

17 BY MR. PERILLO:

18 Q. Yes. The UMWA has not been definitively provided an  
19 answer what will happen to that group of retirees?

20 A. Yeah, I haven't provided that answer because I'm not  
21 certain. I do not know what they may have received in the form  
22 of documents that were made available. They have copies of the  
23 transaction documents from the spinoff; they have a lot of  
24 information. So I really can't tell you whether they had that  
25 answer or not.

1 Q. You're also familiar with a group known as the Pre-March  
2 1990 Group?

3 A. I'm not certain I understand based on that description.

4 Q. Isn't there a group of Peabody retirees that Patriot  
5 believes previously won a court lawsuit confirming that their  
6 retiree benefits could not be eliminated?

7 A. Yeah, I recall discussion on that point. Again, I'm  
8 not -- my term with Peabody or -- my terms as a Patriot  
9 executive is somewhat limited so I don't have a lot of  
10 information on that. But I am generally familiar with the  
11 topic you're describing.

12 Q. And the Patriot negotiating team advised the UMWA that you  
13 are not seeking relief for that group. Isn't that correct?

14 A. I believe that's correct.

15 Q. And so that group of retirees is not going to lose their  
16 retiree benefits no matter what happens here today, correct?

17 A. Again, I'm a little cautious about stating legal  
18 conclusions because you've got me far afield from what I know  
19 much about. But we would not intend for that to be the  
20 outcome.

21 Q. Is the Pre-March 1990 Group salaried or union?

22 A. I don't recall.

23 Q. You don't know?

24 A. I don't recall.

25 Q. Besides the Pre-March 1990 Group, is there any other group



1 of retirees, putting aside the Coal Act people, who are in no  
2 danger of losing their benefits as a result of this proceeding?

3 A. Again, except for the Coal Act people that I believe  
4 remain secure, I'm not aware of any group that could feel  
5 comfort in that security.

6 Q. I'd like you to go to slide number 2. I want to try to  
7 understand who is in each one of these colored blocks.

8 MR. PERILLO: Thank you. I don't have a colored copy  
9 of the slide.

10 Q. So let's look at the little blue pie wedge there. Those  
11 are all people who have retired out of Patriot since Patriot  
12 was formed in 2007?

13 A. Yes.

14 Q. The group --

15 MR. PERILLO: I can see it on the screen, but thank you,  
16 Ben. Thank you, counsel.

17 I apologize for addressing counsel directly in court, Your  
18 Honor, and I will not do that again.

19 MR. KAMINETZKY: You were responding.

20 BY MR. PERILLO:

21 Q. If we look at the red pie piece that is marked as the  
22 former Magnum people, I believe, who is in that group?

23 A. Those are people for whom -- for which today Patriot is  
24 legally responsible, but they retired prior to the creation of  
25 Patriot.

1 Q. I understand that, sir. But is that both salaried and  
2 union in that red pie wedge?

3 A. Yes, I believe it is.

4 Q. And if we then return to the first page, people in the red  
5 pie wedge are made up of people who are in the NBCWA 8,100  
6 group of retirees and then in the nonrepresented 1,200 group of  
7 retirees. Parts of those two groups make up the red pie wedge,  
8 is that correct?

9 A. I'm sorry. Could you repeat that for me?

10 Q. Yes. I'm trying to figure out what lines of chart 1  
11 correspond to the red pie wedge in chart 2. And that would be  
12 part of the 8,100 people in the second line of Exhibit 1 or  
13 slide 1. And then if we go down seven lines, where we see a  
14 salaried retiree group of about 1,200, part of that group is in  
15 the red pie wedge; is that true?

16 A. Yeah, it's difficult to go from slide 1 to slide 2 in that  
17 form, because we don't break out the Magnum portion on slide 1.  
18 But --

19 Q. The Magnum people are all buried --

20 A. But they're --

21 Q. -- in the Patriot part of the slide, correct?

22 A. I believe that's correct, yes.

23 Q. And then in the green part, which are the former Peabody  
24 employees and their dependents, some of those people are in the  
25 Peabody-assumed group and some of them are in the Patriot

1 group; is that correct?

2 A. Could you repeat that, please?

3 Q. Yes. The green pie wedge is made up of people who are in  
4 the Peabody-assumed group and also people that are in the  
5 Patriot group in slide 1?

6 A. I believe that's the case, yes.

7 Q. Are any Coal Act people inside this pie wedge?

8 A. I don't recall, to be honest.

9 Q. This is your slide, sir, correct?

10 A. Yes, it is. It is. I just can't remember how we treated  
11 the Coal Act people.

12 Q. I'd like you to turn to slide 3, if you would. You've  
13 shown on slide 3 that if we begin looking at the price of  
14 metallurgical coal in the second quarter of 2011, we can see  
15 there is this generally downward slope with a small kink in the  
16 third quarter of 2012. What happened to those prices in the  
17 part of the chart that is missing that, in other words, goes  
18 from 2009, 2010, and 2011, the first quarter? Is that  
19 generally an upward line?

20 A. Generally, prior to the second quarter of 2011, the prices  
21 were increasing from -- from lower levels. So particularly  
22 during the course of 2010 and 11, I think we generally saw  
23 improvement in the metallurgical coal pricing.

24 Q. So if we completed this chart, it would be generally an  
25 upward line to a peak price around 330?

1 A. Generally speaking. There are obviously different cycles  
2 at different times, but it generally improved to a point where  
3 330 dollars is one of the strongest prices we saw -- we've seen  
4 in recent years.

5 Q. And if you know, sir -- oh, the Australian -- this is, I  
6 think you said, based on the Australian export price?

7 A. Yes, it's the Australian benchmark price.

8 Q. And Australia is the largest exporter or metallurgical  
9 coal in the world, correct?

10 A. I believe that's accurate, yes.

11 Q. And there were disasters in Australia prior to the second  
12 quarter of 2011 which made exporting metallurgical coal from  
13 that country very difficult and caused a spike, is that not  
14 true?

15 A. Well, several things were going on. The Australians did  
16 have some supply disruptions, but I think the -- frankly, the  
17 larger driver during the course of 2010 and 11 was the dramatic  
18 growth, particularly in China, and to a lesser extent India,  
19 that was during that period, particularly in 2011, I believe  
20 China was growing at an annual growth rate of perhaps twelve to  
21 fifteen percent. And China represents half of the entire  
22 world's steel market.

23 Q. And metallurgical coal prices today are still higher than  
24 they were at 2008 levels, isn't that correct?

25 A. I think that's probably close, at least. Yeah, they're at

1 or near, perhaps slightly favorable to where they were in 2008.

2 Q. You agree that metallurgical coal is generally an  
3 international market; it's not primarily a domestic market?

4 A. No, actually we sell substantial quantities into both  
5 markets.

6 Q. Aren't U.S. metallurgical coal producers a relatively  
7 small fraction of the international metallurgical coal market?

8 A. Yes, I believe that's true. If you're speaking globally,  
9 the U.S. producers would be a relatively small piece of the  
10 overall global supply.

11 Q. Thank you, sir. I want to revisit something that we  
12 discussed in the deposition that you and I conducted some weeks  
13 ago. You have testified in your declaration that the below  
14 market or below cost supply contracts from Magnum and Peabody  
15 were, respectively, about 155 million dollars and 417 million  
16 dollars. Do you remember that?

17 A. Could you show me the deposition? I don't recall the  
18 context of that comment.

19 Q. It's actually in your declaration, and --

20 MR. PERILLO: Could somebody give me the number of Mr.  
21 Hatfield's declaration?

22 Q. It's Exhibit 159, sir.

23 A. So it would be under tab 159 here?

24 Q. If the universe is fair and just, it would be under tab  
25 159.

1 A. All right. We're in trouble. My book stops at 138. Oh,  
2 yes. Found another book. I'm looking for 150 what?

3 Q. 159.

4 A. Sorry, I have more books that I can manage. Yes, I have  
5 159 in front of me.

6 Q. Now, in your declaration -- and I will help you by  
7 directing you to the proper paragraph, if you'll permit me, in  
8 a moment -- you did testify that your parents, Arch and  
9 Peabody, saddled Patriot with either below market or below cost  
10 coal supply contracts. Do you recall that testimony?

11 A. Yes.

12 Q. And the amounts of those were, respectively, 155 million  
13 dollars for Arch -- or Magnum, rather, and 417 from Peabody.  
14 Is that not true?

15 A. Is there a particular page you would like to direct me to?  
16 I don't --

17 Q. I'm still flipping to try to get to it.

18 A. Okay.

19 MR. PERILLO: I apologize, Your Honor. I'm not able  
20 to get my finger right on that paragraph at the moment, but I  
21 will, I promise you.

22 THE COURT: It's a lot of paper.

23 MR. PERILLO: Thank you. It's --

24 UNIDENTIFIED SPEAKER: I didn't mean to interact with  
25 Mr. Perillo, but I wanted -- I wanted to just move it along.

1 You got it?

2 MR. PERILLO: I do, and thank you. And I caution you  
3 not to address counsel directly. There was an era, Your Honor,  
4 where there was decorum, but it's --

5 Q. Sir, on pages 30 and 31 of your declaration is where I'm  
6 trying to direct you. It's paragraph 89(b). If you flip to  
7 those pages, you can see that the cumulative below market  
8 pricing for the Peabody contracts was 417 million.

9 A. Yes, I see that.

10 Q. And 155 million for the cumulative below market pricing  
11 for Magnum, correct?

12 A. Yes, that's correct.

13 Q. And during our previous discussion in your deposition, I  
14 asked you if those numbers represented the revenue differential  
15 between the contract price and the market price, and you told  
16 me that that is what it represents, correct?

17 A. I believe that to be the case, yes.

18 Q. And so this is not actually the total value of the  
19 contract, this is just the difference between the contract  
20 price and how much -- well, it yields how much Patriot would  
21 lose in revenue by selling the coal at the contract price.

22 A. Yes, or otherwise stated, it's the damage, if you will.  
23 The low -- the amount revenue was lowered because of the  
24 obligation to service that contract rather than selling the  
25 coal at market.

1 Q. Now, in 2011, the last full year before you filed  
2 bankruptcy, I think you also said to me that approximately 180  
3 million dollars of those below market contracts were  
4 attributable to that calendar year, correct?

5 A. Yes, I believe that's a combination of the two, Patriot  
6 and Arch impacts, about 180 million dollars in that year.

7 Q. And that's a direct effect on your top line, correct?

8 A. It's a direct effect on revenue, and I would say, roughly,  
9 eighty-eight percent of that is a direct impact to EBITDA.

10 Q. Yes, in the -- that was my next question. In our  
11 deposition, you said it was eighty-eight to ninety percent  
12 direct flow through to EBITDA from the 180 million.

13 A. I believe that's correct.

14 Q. Which would add approximately another 160, 170 million  
15 dollars to the revenue line.

16 A. Approximately, yes, or to the EBITDA line, I think you  
17 meant.

18 Q. Yes. If we look at the slide number 4, and we go down to  
19 your fourth line, you indicate that you had positive free cash  
20 flow of 31.8 million in 2011, and that's despite having a  
21 negative impact from these below market coal contracts of  
22 approximately 160 million.

23 A. Actually, the number you're pointing to is 2012, and the  
24 180 million that I referenced is a 2011 number, so it's two  
25 different years. But your point is valid that -- that 2012



1 free cash flow was damaged, certainly, by the -- the extent to  
2 which we serviced those underwater contracts.

3 Q. Read over to the rest of the line, sir.

4 A. Oh, I'm sorry.

5 Q. On the left-hand side of the line you have 190 negative  
6 free cash flow in 2012, but you had positive free cash flow of  
7 31.8 in 2011.

8 A. You're correct; I misspoke.

9 Q. And that number would have been even higher but for the  
10 impact of the Peabody and Magnum below cost contracts?

11 A. Yes.

12 Q. And it actually would have greatly improved your position  
13 going into 2012, correct?

14 A. Yes.

15 Q. And you had a further negative impact, at least in the  
16 first half of 2012, because you continued to honor those below  
17 market coal contracts, correct?

18 A. Yes.

19 Q. And some of those below market coal contracts were not  
20 just below market, they were actually below cost.

21 A. Yes, that's true in some cases.

22 Q. Now, despite all that, in 2012, Patriot was the sixth  
23 largest coal company, in terms of revenue, and the tenth  
24 largest in tonnage, correct?

25 A. Yes, I believe those statistics are accurate.

1 Q. And you previously told me in your deposition that the  
2 reason why you have a higher revenue ranking than your tonnage  
3 ranking is that you sell a higher quality product that you can  
4 sell for a higher market price, correct?

5 A. Yes, much of that advantage comes in the form of our  
6 metallurgical coal pricing that's somewhat above Central  
7 Appalachian regional pricing.

8 Q. I'd like you to go to slide 5, if you would. Before we do  
9 that, I mean, if in fact coal prices recover -- and your  
10 business plan does project increasing coal prices into the  
11 future, does it not?

12 A. Yes, the October business plan did predict market  
13 improvement.

14 Q. And if you have higher quality products, you should gain  
15 more of that upside, should you not?

16 A. I'm not sure that's the case, actually, because again,  
17 metallurgical coal has a higher price but it also has a higher  
18 cost. So it's margin, really, that matters. But -- but we  
19 generally expect that pricing is going to improve over the  
20 course of our five-year plan. But as I noted earlier in my  
21 testimony, prices already are substantially lower than what we  
22 had predicted in that same bank plan.

23 Q. But because you're sixth in revenue and tenth in tonnage,  
24 you necessarily have competitors who are higher in tonnage than  
25 you are but don't do as well on the revenue, isn't that

1 correct?

2 A. That's correct, but that also often doesn't matter,  
3 because if you can sell a product for fifty-five dollars a ton,  
4 if your cost is only forty dollars a ton, you're still making a  
5 lot of money. In some of our cases, where we have a cost of  
6 ninety dollars a ton and we're only able to sell the coal for  
7 ninety-two or ninety-five dollars a ton, so it's really margin  
8 that makes the difference in success or no success.

9 Q. In terms of the demand for your product, because it's a  
10 higher quality product, won't that increase the demand for it?

11 A. Won't what increase the demand for it?

12 Q. Well, if that product is in demand, shouldn't you benefit  
13 from the increase in demand for the type of coal that you sell?

14 A. Yes, but again, demand doesn't improve in lockstep. As an  
15 example, thermal coal pricing has not deteriorated as much over  
16 the last year and a half as metallurgical coal pricing has. So  
17 it isn't quite that easy to predict.

18 Q. And so, in fact, if I was going to try to model what those  
19 changes would be, it's a pretty complicated endeavor, is it  
20 not?

21 A. It is -- it is indeed, yes.

22 Q. Now, I'd like you to go to slide 5, if you would, please.  
23 You've identified here a number of places where Patriot has  
24 made what you've called nonlabor cuts. In other words, these  
25 are cuts that don't relate to your work force, either union or

1 nonunion, correct?

2 A. Yes, I believe all of the cuts on slide 5 relate to our  
3 nonunion work force -- or I'm sorry, these are the nonlabor  
4 cuts on slide 5. Is that --

5 Q. Right.

6 A. -- is that what you're asking?

7 Q. That's what I said. In other words, that don't relate to  
8 your work force.

9 A. I --

10 Q. They relate to the nonhuman part of your operation.

11 A. That's correct.

12 Q. And -- or nonhuman resource part of your operation. When  
13 I look at these things, may I ask you, did any of these items  
14 come at the demand of the UMWA? Do you understand what I'm  
15 asking you?

16 A. Yes, I understand your question. The answer is no; these  
17 are essentially cost-cutting initiatives that were driven by  
18 the management team.

19 Q. And so the UMWA, for example, if we go to the fourth line  
20 down, we had nothing to do with the fact that you had  
21 unprofitable contracts?

22 A. Yes, I certainly can't blame the UMWA for that.

23 Q. And we had nothing to do with your overhead expenses.

24 A. I agree.

25 Q. Or your unsecured pre-petition debt.

1 A. I agree.

2 Q. Did we stop you from making any of these changes earlier  
3 than you did?

4 A. No, I don't believe I've suggested that you did.

5 Q. And is there some reason why you did not take these cost-  
6 saving steps before you were in bankruptcy?

7 A. Actually, we did. Some of these steps were -- were moving  
8 forward as early as January of 2012. So we -- we began  
9 responding, frankly, to the downturn in the market; that's  
10 really what drove the initiative to begin cutting costs,  
11 because prices were falling through the floor.

12 Q. And in your thirty years as a coal company executive or  
13 manager, that's actually a normal thing that all businesses do,  
14 isn't it?

15 A. It is normal when prices fall that coal producers look at  
16 each individual mine and confirm whether they're creating a  
17 margin at that location or not, and idle production when it's  
18 not.

19 Q. You'd agree with me that Patriot's competitors are  
20 suffering from the same market forces that you are, or enjoying  
21 the same market forces that affect you?

22 A. I think it's generally true that we're subject to the same  
23 market forces, but obviously Patriot's quite a bit more  
24 vulnerable with respect to our legacy liability position.

25 Q. Your competitors are making the same kinds of judgments at

1 idling unprofitable operations and reducing their capital  
2 spending and selling off surplus assets as you, are they not?

3 A. Well, I can't speak for what my competitors are doing, but  
4 I think that's normal course, when you have a market downturn,  
5 that generally the entire group of producers tries to cut  
6 capital and reduce spending.

7 Q. For any business?

8 A. For any business, yes.

9 Q. Let's go to slide 6. I notice in the top two lines of  
10 slide 6 you've advised the Court here that you have had a  
11 reduction in management head count and a reduction in nonunion  
12 head count. And so I understand the nonunion head count, that  
13 includes miners and it also includes various employees that  
14 relates to the overhead of the operation; is that correct?

15 A. The nonunion head count would generally be employees at  
16 the operating locations.

17 Q. And that might include, like, secretaries at mines or  
18 geologists or whoever.

19 A. It would normally be miner positions. The management head  
20 count would normally include all salaried employees, which  
21 would include some clerical and administrative support at the  
22 mines.

23 Q. Now, when was this reduction incurred?

24 A. This was over a period of time, again, beginning around  
25 January of 2012.

1 Q. And when you filed your bankruptcy petition, you indicated  
2 that there were approximately 1,250 nonunion miners?

3 A. Yes, I would have guessed about 1,300, but yes, that's  
4 about the number of nonunion miners.

5 Q. But you used a 1,300 number. That means that prior to  
6 your reduction in nonunion head count you had closer to 2,000  
7 nonunion miners?

8 A. Yes.

9 Q. And that -- then that means that --

10 MR. PERILLO: Well, strike that.

11 Q. You've also had reduction in union head count, correct,  
12 sir?

13 A. Yes.

14 Q. Which is not shown on the chart?

15 A. Yes, hence in the heading "the nonunion labor costs".  
16 This is just the nonunion group.

17 Q. Right, but if we had a second page that showed reduction  
18 in union head count, the number next to reduction in union head  
19 count would be somewhere between 300 and 350?

20 A. Yes, I would say close to that. I think about 250 were --  
21 were idled at the Big Mountain complex when we closed it in the  
22 first quarter of 2012. And there probably have been another  
23 fifty or so positions at other locations.

24 Q. And you have about eighty at Hill Fork?

25 A. Yes, that would be close.

1 Q. Okay. So that would put it at well above 350. So then  
2 adding all those numbers together, as of January of 2012, your  
3 union and nonunion work forces would have been roughly equal in  
4 size, in terms of miners, at roughly 2,000 each.

5 A. That's probably correct. I think at one point our total  
6 staffing was about 5,200 people, or approximately 1,100  
7 salaried positions, so that's probably close.

8 Q. And someone in management made the decision to lay off  
9 approximately 350 union miners and approximately 640 nonunion  
10 miners, correct?

11 A. Yes. The decision was more specifically focused on idling  
12 operations that we believed were not going to be profitable at  
13 lower pricing.

14 Q. And those decisions are made in the discretion of  
15 management, correct?

16 A. Yes.

17 Q. I mean, the union, in other words, cannot tell you go lay  
18 off some nonunion miners instead of our miners.

19 A. I would agree with that assessment.

20 Q. If we go a little bit further down on the chart, you have  
21 an elimination of a 2014 wage increase. I want to understand  
22 what this actually represents. If I'm a nonunion employee  
23 making twenty dollars an hour today, as a result of this line  
24 I'm going to continue making twenty dollars an hour; is that  
25 true?



1 A. Yes, and in our business plan, in our thinking, we had  
2 included a proposed wage increase for 2014, and the 2012 and 13  
3 wage increases had already been eliminated. So what that  
4 highlights is the elimination of the 2014 wage increase, which  
5 means wages would not change through at least 2014.

6 Q. So if I was making twenty dollars, I'm still going to make  
7 twenty dollars, and I will not get what I might have gotten as  
8 a wage increase sometime in the future, correct?

9 A. Yes, through 2014.

10 Q. The wage cuts you're proposing for union employees lowered  
11 their current wage, correct?

12 A. Yes.

13 Q. And it's for the majority of the union employees that  
14 their wages will go down, in some cases by seven dollars an  
15 hour, but in other cases by varying amounts?

16 A. Yes, in large part because the unions continued to receive  
17 wage increases throughout the course of these -- of this  
18 process, including January of this year the union got a dollar  
19 an hour raise. So the union's contractual wage increases have  
20 never been disrupted, whereas the nonunion wages were frozen  
21 some time ago.

22 Q. And so if I'm a union employee making twenty-seven dollars  
23 an hour and I get a seven dollar an hour wage cut, I'm going to  
24 go down to twenty dollars an hour.

25 A. I think that would be the case in your example, but that's

1 certainly not the norm with respect to the wage adjustments  
2 that we proposed. Indeed, most of the underground work force,  
3 which is the majority of our UMWA miners receive virtually no  
4 wage adjustment.

5 Q. Well, your proposal is to, I understand, get about  
6 seventy-five million dollars in 1113 concessions?

7 A. Yes.

8 Q. And there are 1,650, roughly, UMWA miners?

9 A. That's approximately correct, I believe.

10 Q. So that's a concession of about 45,000 dollars per miner?

11 A. That's not necessarily, in each case, income coming from  
12 the miner. In many cases it's changes in work policies that  
13 will add value.

14 Q. Well, the dollar value per miner still comes out to 45,000  
15 dollars, doesn't it?

16 A. Not necessarily, because if we have an absenteeism policy  
17 that prevents ten percent of the employees from simply not  
18 showing up for work, then we can have ten percent fewer union  
19 employees and we'll have to hire ten percent fewer people, and  
20 so there's substantial savings from not having to add people.

21 Q. And then that would result in loss of jobs and would  
22 further increase the reduction in union head count?

23 A. No, it would mean that we would not have to add people.  
24 Right now we -- given the current absenteeism issues at the  
25 mines, we're going to have to add people to keep the equipment

1 running. So if people miss fewer days, we avoid adding people.

2 Q. Well, but union head count has been going down, not up,  
3 isn't that true, sir?

4 A. That's generally true because of attrition. We had a lot  
5 of retirements, particularly at the federal location, and a  
6 number of them at Hobet as well.

7 Q. And then in addition to the wage cuts that union employees  
8 are taking, they are also foregoing their future projected wage  
9 increases?

10 A. Not entirely. We've proposed that the wages would be  
11 fixed, I believe, through 2014. And then there would be  
12 increases, contractually, in both 2015 and 2016.

13 Q. Are those increases that you are going to give your  
14 nonunion employees as well?

15 A. We haven't actually got a commitment to the nonunion  
16 employees on making any changes. Again, their wages are  
17 adjusted in accordance with market.

18 Q. And so you could, then, unilaterally, and at any time,  
19 increase nonunion wages?

20 A. We could, but we provided the union the assurance that if  
21 we raised equipment operators at nonunion locations, then  
22 people in those comparable positions in the union locations  
23 would also receive a commensurate raise. So we -- we heard  
24 that concern from the UMWA and provided that assurance, I  
25 believe, in our third 1113 proposal.

1 Q. Now I want to talk a little bit about that. When we had  
2 the deposition, we had a discussion about those potential  
3 future wage increases. And I think you indicated that you  
4 needed a --

5 MR. PERILLO: Well, strike that.

6 Q. You indicated to me that nobody actually knows what the  
7 amounts of those future wage increases will be; they'll be  
8 decided by management at the time.

9 A. Again, as is consistent with the pay practice for sixty  
10 percent of our entire work force, the salaried and nonunion  
11 employees are adjusted in accordance with market. So when the  
12 market is down or flat, they receive no increases; when the  
13 market improves and the company's performance is better, they  
14 do receive annual reviews, and oftentimes, increases.

15 Q. And you told me in the deposition that you wanted  
16 certainty -- and you used the word certainty -- in the sense  
17 that wages would rise and fall with what you perceived to be  
18 the market; is that correct?

19 A. I believe you're mischaracterizing it a bit. I think what  
20 I said was we need certainty on our -- on our projected costs  
21 that costs won't raise artificially, that indeed they only  
22 raise as the market allows us to, to enhance labor costs.

23 Q. And you referred to that as the certainty that our costs  
24 will rise and fall with the market.

25 A. Generally speaking, yes.

1 Q. And is that the expectation of your lenders and potential  
2 investors?

3 A. I believe that would be the case, yes.

4 Q. So they are aware that wages could go up based on  
5 management's discretion and not based on anything that they  
6 would look at and see, for certain, what the wage would be on  
7 any particular day?

8 A. I believe any investor, any bank would expect the  
9 management to -- to -- to manage the enterprise in that fashion  
10 that labor costs are only increased when there's an  
11 opportunity, when there's a margin that allows that because the  
12 market has improved. I believe that's the job they would  
13 expect us to do.

14 Q. And so in answer to my question, though, you believe that  
15 they are comfortable with certainty in the sense that wages  
16 will change in a way that they don't know, but believe you will  
17 do in accordance with the market?

18 A. Yes, I believe they --

19 MR. KAMINETZKY: But --

20 THE WITNESS: I'm sorry.

21 MR. KAMINETZKY: -- he's asked it three times. The  
22 witness has answered. He doesn't like the answer, so he asks  
23 it again, and then this is endless.

24 MR. PERILLO: I actually think the witness just did  
25 answer the question, Your Honor.

1 MR. KAMINETZKY: So why did you re-ask it?

2 MR. PERILLO: Well, he did just now while you were  
3 talking.

4 THE COURT: Gentlemen, now, that's the conversation  
5 you don't get to have. I'll overrule the objection. The  
6 answer -- the question and the answer will stay in.

7 Mr. Perillo, you may proceed.

8 MR. PERILLO: Thank you, Your Honor. And again, I  
9 apologize to the Court.

10 Q. And you had not actually projected out into 2017 and 2018  
11 what your costs and expenses will be in your business model,  
12 correct?

13 A. Our current business model extends just through 2016.

14 Q. When we had the deposition, I think you agreed with me  
15 that things bottom out this year and next year and then  
16 gradually improve, and that's even shown in your plan, correct?

17 A. Again, we've already determined that the October bank plan  
18 pricing is overstated, so I don't think that's the best  
19 reference point. But I do believe I did acknowledge in my  
20 deposition that we generally expect the market to improve after  
21 a period of substantial depression. What's much in debate  
22 right now is how long that depression lasts. At this point  
23 we're fairly confident that prices will be depressed through  
24 all of '13, probably all of '14. Then, generally, the  
25 consensus among market prognosticators is that prices should

1 begin to gradually improve.

2 Q. Now, were you in court when Mr. Huffard gave the colored  
3 slides that show how concessions were distributed out amongst  
4 various groups?

5 A. Yes.

6 Q. You saw that he had a slide that showed that unionized  
7 employees were making thirty-six percent of the total  
8 concessions; do you remember that?

9 A. I recall the slide.

10 Q. And nonunion employees are making four percent of the  
11 total concessions?

12 A. Yeah, I believe that's correct with respect to what's  
13 reflected in the business plan, although I don't think that  
14 captures the changes that we've made that are not in the  
15 business plan.

16 Q. So the ratio is approximately nine to one, thirty-six to  
17 four?

18 A. Again, I'm not sure it's a relevant comparison, because  
19 again, we've outlined changes here that are pretty extensive  
20 that are not in the business plan.

21 Q. If I take that nine to one and I convert it into a  
22 percentage, it's about eighty-seven percent, isn't it?

23 A. I don't really understand your question.

24 Q. That's okay.

25 MR. PERILLO: I'll withdraw it. Permit me a moment,

1 Your Honor, while I catch up with my notes.

2 Q. I want to talk to you, just briefly, about contractors.

3 There are about 200 contractors, but only about fifty to sixty  
4 of those are actually doing jobs that are comparable to UMWA  
5 members in mining, isn't that correct?

6 A. No. I believe the -- I believe the portion you're  
7 referencing are those that are actually employed by the  
8 contract mining company. We have one contract mining company  
9 on our property that employs fifty to sixty people. The  
10 balance of the 200 are also doing jobs that are comparable to  
11 UMWA jobs, just at different locations.

12 Q. And they're spread out amongst all of the complexes?

13 A. Yes.

14 Q. And what are they, engineers or mechanics or what?

15 A. They're electricians, they're equipment operators, they're  
16 belt maintenance people, some short term construction jobs.  
17 It's a variety of locations and classifications.

18 Q. Is that 200 in a contractor group listed inside your  
19 nonunion employee head count, or is that a third group?

20 A. Again, I believe we've recited the numbers correctly.  
21 There are approximately 4,000 Patriot employees and there are  
22 approximately 200 contractors that go to work on our property  
23 every day, including the -- the group that we just described.

24 Q. But what I'm asking, though, is in that group of  
25 approximately 1,259 nonunion miners, is that inclusive or



1 exclusive of the contractors?

2 A. That excludes the contractors because they're not  
3 employees.

4 Q. So that if we actually looked at the proportions then, we  
5 would see approximately 1,650 union miners, 1,250 nonunion  
6 miners, and then plus another 200 nonunion contractors?

7 A. That would be correct.

8 Q. And those contractor employees are not included in either  
9 of the concessionary groups, correct?

10 A. I'm sorry, I'm not sure I know what you mean by  
11 concessionary groups.

12 Q. Well, they're not taking particular wage freezes or wage  
13 cuts or foregoing future wage increases?

14 A. Actually, I believe there's already been a review of  
15 contract rights and they've also been adjusted.

16 Q. But those employees are actually employed by the  
17 contracting company, are they not?

18 A. That is correct, but we negotiate with the owner of the  
19 company what rate we will pay for the services provided, both  
20 for the contract miner and the contract service provider. So  
21 I'm -- I'm confident that those rates have been adjusted as  
22 well.

23 Q. And what I'm getting at, though, sir, is you're paying the  
24 contracting company; that company is setting the wages and  
25 benefits of those 200 contracting employees.

1 A. That is true.

2 Q. When you discussed Gateway with Mr. Kaminetzky, you didn't  
3 mention what the size of Gateway is as an operation. The  
4 Gateway Eagle mine has approximately, what, forty miners at it?

5 A. Actually, it's two sections now, so I believe it's about  
6 between 85 and 100, thereabouts.

7 Q. And that's at the Gateway operations combined?

8 A. No, the total number of Gateway contract employees is more  
9 on the order of, perhaps, 250 people, in round numbers.

10 Q. I think I understood this, but I want to cover it. In  
11 your direct testimony you indicated that in addition to the  
12 underwater supply contracts, your parents, Peabody and Arch,  
13 also passed through to Patriot certain environmental  
14 liabilities as well?

15 A. Yes, they did.

16 Q. Are those the liabilities that have been commonly known as  
17 ARO in this case?

18 A. Yes, I believe they're captured in that category.

19 Q. And that includes the selenium obligations that are among  
20 the obligations you say can't be reduced?

21 A. It would include selenium, but many of them are different  
22 types of water treatment and environmental mitigation, but it  
23 includes all of that.

24 Q. Sir, are you familiar with the concept of an operating  
25 ratio?

1 A. I'm not really sure I know what you mean by that.

2 Q. In other words, the company's operating revenues divided  
3 by its operating costs?

4 A. Okay, I understand that. That's not a metric that I  
5 normally use.

6 Q. Do you know what the proportion of labor is to your  
7 operating costs in your unionized operations?

8 A. I couldn't quote the number; I just don't recall.

9 Q. Do you know the order of magnitude is about thirty  
10 percent?

11 A. I would say it's generally in the range of twenty-five to  
12 thirty percent, more or less.

13 Q. And in your nonunion operations it's slightly higher; it's  
14 generally around forty percent?

15 A. I'm not sure if that's the case or not. That could be.

16 Q. And have you looked to see what proportion of your profit  
17 or EBITDA is produced in your unionized operations rather than  
18 your nonunion operations?

19 A. It's very difficult to get a meaningful number in that  
20 fashion, because in many cases we have union preparation plants  
21 and loadouts that ship nonunion coal. For example, at our  
22 Wells complex, eighty percent of the production is from a  
23 nonunion operation, but the Wells complex preparation plant  
24 loadout is union. So it's difficult to distinguish the two,  
25 quite honestly.

1 Q. So you can't say?

2 A. I can't say with certainty that it is or is not correct.

3 Q. In your deposition we had a discussion, though, and it is  
4 just an arithmetic fact that your union employees are about  
5 fifty-seven percent of your remaining miners and represent  
6 about, roughly, sixty percent of the total production?

7 A. I'll agree with the percentage on the miners; I don't know  
8 if it's accurate on the production or not. They do represent  
9 about fifty-seven percent, or fifty-seven to sixty percent of  
10 our hourly mine work force.

11 Q. Hasn't Patriot, in this bankruptcy, previously stated that  
12 we produce about sixty percent of the actual tonnage?

13 A. I can't say with certainty, but if you'd like to point me  
14 to a location in a disclosure statement, I'll try to verify  
15 that.

16 Q. I don't actually think a disclosure statement's been filed  
17 yet, but --

18 A. I mean a declaration; sorry.

19 Q. Sorry. Sorry. What about this measure: do you know what  
20 percent of your revenue comes out of your union operation?

21 A. I don't recall it offhand.

22 Q. I want to discuss with you the deferral of CAPEX shown on  
23 slide 5, I believe. You're familiar with the concept of an  
24 internal rate of return?

25 A. Yes.

1 Q. And Patriot, it's safe to say, would not make a capital  
2 expenditure unless the internal rate of return suggested that  
3 it would increase your profitability, correct?

4 A. Yes, that's generally the case.

5 Q. And there may be some CAPEX that goes into maintenance,  
6 just to maintain machinery and equipment in a useable  
7 condition. But for investment purposes, it only makes sense to  
8 invest in capital if you're going to get a greater return than  
9 the money.

10 A. Yes.

11 Q. And in fact, you then amortize and depreciate that capital  
12 investment over time, correct?

13 A. Yes.

14 Q. And then that is entered on your corporate P&L as an  
15 expense, correct?

16 A. Correct.

17 Q. Now, it makes sense, then, if you are cash short and you  
18 do not have the cash to make an investment, that you would do  
19 something else, correct?

20 A. Something else other than --

21 Q. Well, you would have to defer the expense?

22 A. I'm not really following your question.

23 Q. Why do you not, for example, lease equipment?

24 A. We do. We certainly did prior to filing on July 9th.

25 Actually, after we -- we filed, it became very difficult to

1 lease equipment because many leasing companies don't want to  
2 deal with a company that's in bankruptcy. So at that point, we  
3 really didn't have the option of leasing, but throughout the  
4 course of 2011 and most of 2012 the company made extensive use  
5 of equipment leasing.

6 Q. And in fact, isn't that another technique you can use in  
7 order to control the problem of cash versus investment?

8 A. It's a way to spread out the impact of -- of an equipment  
9 purchase. But for instance, you can't lease a shaft or a slope  
10 or a borehole because it's a hole in the ground. So a lot of  
11 development capital has to be cash and can't be leased; we  
12 don't always have the flexibility. And again, in  
13 reorganization, as we are now, it's difficult to lease  
14 anything.

15 Q. I would like you to go to the next slide, which is number  
16 7. In the vertical bar, the green bar that is on the left-hand  
17 part of the chart, you've calculated out on a -- I believe this  
18 is a per-employee basis of the costs of your retirees?

19 A. Yes.

20 Q. Now, that includes both union and nonunion retirees?

21 A. Yes, I believe that's accurate.

22 Q. Coal Act and non-Coal Act?

23 A. Yes, I think it's everything that fits into the category  
24 of post-employment obligations.

25 Q. And so that relates back to slide 1, all of those people

1 in all of those categories?

2 A. Actually, slide 1 includes active as well, but it -- it  
3 includes everything that's not active, if you will, on slide 1.

4 Q. No, the active --

5 A. And --

6 Q. -- employees are in the denominator.

7 A. That's correct, in the denominator.

8 Q. And the other -- the employees they are carrying, so to  
9 speak, are in the numerator, correct?

10 A. Except it would exclude the Peabody-assumed group, I  
11 believe.

12 Q. That was my question, sir. And you're not suggesting,  
13 then, that as a result of this proceeding, you'll be able to  
14 eliminate that left-hand bar. There are still going to be  
15 categories that can't be eliminated, like Coal Act people?  
16 Isn't that correct?

17 A. Yes, it's my understanding that we -- we will not be able  
18 to secure any relief on the Coal Act obligations.

19 Q. Do you know -- going to slide 8 -- what percent will be in  
20 the left-hand green bar if you are successful in getting the  
21 VEBA to replace your obligations for retirees?

22 A. I don't recall the number offhand, no.

23 Q. I want to talk to you a little bit about the problems  
24 relating to employees and bonuses. You said in your direct  
25 testimony that the managerial people could leave and go work

1 elsewhere. That's actually true of every single employee at  
2 Patriot, isn't it?

3 A. That is true, yes.

4 Q. And every one of those employees is going to face the job  
5 market that exists in this industry in the United States in  
6 2013, if they decide to leave, correct?

7 A. Yes, and that's exactly what we're focused on, making sure  
8 that we meet the market and what the market's willing to pay  
9 those people if they do choose to go somewhere else.

10 Q. You would agree with me that amongst the expenses that PWC  
11 has identified as cash expenses that you could avoid, there is  
12 the thirty million dollars in the line that goes to bonuses for  
13 nonunion people, correct?

14 A. Yes, the number you're referencing captures the proposed  
15 incentive plan that we have -- we've asked permission from this  
16 Court to approve for 2013, plus payments that would occur in  
17 '14, '15, and 2016. But it's significantly broader than just  
18 if you would characterize it corporate management. That  
19 includes people at the mines, mine superintendents, longwall  
20 coordinators, operating personnel that are critical to the  
21 organization.

22 Q. Some of those people make hundreds of thousands of dollars  
23 and some make less than that, correct?

24 A. There is a broad range, yes.

25 Q. The --



1 MR. PERILLO: Excuse me for a moment, Your Honor.

2 Q. In your direct testimony you indicated that those people  
3 would, in some cases, get lower paying jobs. In some cases  
4 they are going to get lower paying jobs.

5 A. We certainly have had that case in -- in a number of  
6 situations, particularly young mining engineers, several  
7 accountants that have taken positions at lower pay just for the  
8 job security.

9 Q. And then, by definition, every single one of those people  
10 already has a higher paying job at Patriot than the job they  
11 are leaving to go to?

12 A. No, I'm not sure I would characterize it as every one of  
13 those people. There are specific cases where we have seen  
14 people choose to take a lower pos -- lower paid position  
15 because they prefer to have the job security versus a company  
16 that's in bankruptcy then they think may be forced into  
17 liquidation.

18 Q. In your testimony earlier this morning, you indicated that  
19 you thought Patriot was going to breach its liquidity covenant  
20 before the end of this year. Were you in the courtroom  
21 yesterday when Mr. Huffard said he thought it would be in the  
22 first quarter of next year?

23 A. I was in the courtroom but I don't believe that's what Mr.  
24 Huffard said. I believe what Mr. Huffard said was the company  
25 would literally run out of cash early in 2014. We breach the

1 liquidity covenant if we fall below 100 million dollars and  
2 without the 1113, 1114 savings, we will certainly hit that  
3 number in my view, late in third quarter, early fourth quarter  
4 of this year at the latest.

5 Q. Near the end of your testimony you responded to a question  
6 from Mr. Kaminetzky where you said, "That the biggest  
7 beneficiaries of re-organization would be our members because  
8 in the case of a liquidation they would only get pennies on the  
9 dollar." Do you recall that?

10 A. Yes.

11 Q. Have you produced a liquidation analysis that you've  
12 shared with the UMWA?

13 A. No.

14 Q. Or any other constituency in the case?

15 A. I'm not aware that a full liquidation analysis, as such,  
16 has been prepared. I'm simply speaking from my experience in  
17 this business where I've been involved in buying companies out  
18 of bankruptcy in years past and seen the liquidation values  
19 that result.

20 Q. You also took umbrage at the suggestion that Patriot has  
21 not vigorously pursued Peabody. Was there a reason why Patriot  
22 could not have sued Peabody in 2008?

23 A. I wasn't at Patriot in 2008 but nobody has made clear to  
24 me that there is a -- a cause of action, quite honestly, that  
25 would support the litigation. I'm not aware of a claim that --

1 that could have been the basis for such litigation.

2 Q. Well Peabody doesn't think there's one now. That's why  
3 they're defending themselves. Isn't that correct?

4 A. That's Peabody's view. I'm not safe in saying that I  
5 agree with that view but I am certainly supportive of doing  
6 exactly what we're doing which is having our attorneys look  
7 through the files, look through the e-mails, look for every  
8 opportunity of potentially hold Peabody accountable for any  
9 claim of action where we can force them to -- to shoulder a  
10 portion of this load.

11 Q. Did that investigation commence after you got into  
12 bankruptcy, correct?

13 A. I can't remember exactly when it started but I think it  
14 probably did start in -- in approximately the third quarter of  
15 2012.

16 Q. Since you testified earlier today that Patriot lost  
17 revenues somewhere in the neighborhood of 160 or so million  
18 dollars in 2011 alone when you were COO of the company, why  
19 didn't you start an investigation then?

20 A. Well, again, I'm not sure at that point we knew of a basis  
21 for any litigation to be filed. Again the fact that we're  
22 servicing a contract that Patriot's -- Patriot had agreed to  
23 service and doing so at loss does not in itself, in my view,  
24 give rise to -- to a legal claim. So I think that search is  
25 ongoing and that answer will be determined.

1 Q. Just one backtrack to the chart that's still up on the  
2 screen there, Mr. Hatfield. I thought I heard you say that  
3 Consol is the largest coal company in the U.S.?

4 A. It's one of the largest. It's -- it's at least in the top  
5 three and I think by revenue, it may be the largest at this  
6 point.

7 Q. Yeah. It's certainly not the largest coal company by  
8 itself, however.

9 A. You mean in the world or the U.S.? I'm not sure what your  
10 question is.

11 Q. In the U.S.

12 A. It's either Peabody or Consol, I can't remember. They  
13 trade one and two positions from time to time and I don't  
14 remember who's top right now.

15 Q. And I want to talk to you a little bit about the 1113,  
16 1114 process. You agree with me that the UMWA doesn't tell  
17 Patriot who is supposed to be on their bargaining committee,  
18 correct?

19 A. That's correct.

20 Q. You make that decision yourself, right?

21 A. Yes.

22 Q. And you know that Mr. Roberts makes the decision whose on  
23 the UMWA bargaining committee, correct?

24 A. Yes, I believe that's correct.

25 Q. And, in fact, you know from your experience with union

1 companies that it's a federally protected right that each party  
2 names its own negotiators?

3 A. I believe that's correct.

4 Q. Okay. And so if Mr. Roberts puts Mr. Buckner on the  
5 negotiating committee, he's on the negotiating committee, isn't  
6 that true?

7 A. I certainly wouldn't disagree that he has that authority  
8 but --

9 Q. And --

10 A. -- but Mr. Buckner, to my knowledge, did not participate  
11 in the meetings if that's -- if that's your question.

12 Q. Well, you most recently made a new proposal to the union  
13 on the 23rd, isn't that correct?

14 A. Yes.

15 Q. And Mr. Buckner showed at the meeting to discuss that  
16 proposal, right?

17 A. He attended the April 25th meeting. I believe that's the  
18 first one that he had participated in.

19 Q. There are still information requests about that proposal  
20 that are outstanding today, are there not?

21 A. I don't believe that's the case. I believe we've been  
22 responsive to the questions that were posed if you're  
23 referencing particularly the information request that came in  
24 prior to the April 24th meeting.

25 Q. Okay. Some of those requests were still outstanding when

1 the meeting started, were they not?

2 A. Yes, in part, because Blackstone was -- had agreed to show  
3 up on the 25th and share a presentation that answered ninety  
4 percent of the questions. So the answers were coming in the  
5 form of Blackstone's presentation on the morning of April 25th.

6 Q. And they answered ninety percent that means ten percent is  
7 still outstanding?

8 A. No, because they remainder question was on the tender  
9 royalty that the new component that we added to enhance the  
10 VEBA and that was a question that I answered after Blackstone  
11 left the meeting. I shared a spreadsheet with UMWA detailing  
12 1.2 billion tons of reserves that upon which they would earn  
13 that royalty strain of income. Obviously doing the math  
14 resulting in hundreds of millions of dollars flowing into the  
15 VEBA.

16 So we shared that information with him. And I believe  
17 that answered the last of the series of questions that were  
18 posed late in the day on the 25th.

19 Q. You indicated that there were savings that were not in  
20 your business plan that you had taken advantage of?

21 A. Yes.

22 Q. Can you tell me how much money that is?

23 A. I can't recite the numbers but specifically, for instance,  
24 the wage cuts on union workforce as we did the review and  
25 brought everything in line with regional markets, that resulted

1 in wage cuts for about fifty percent of our non-union miners  
2 and that isn't in the bank loan.

3 Q. And, though, as we discussed earlier, those people are  
4 employees at will, correct?

5 A. Yes.

6 Q. They have no contract with you and you can change their  
7 compensation daily if you desire to do it?

8 A. We can but we essentially have to survive in the market so  
9 it's essentially the regional labor market that sets the scale.  
10 The same thing that Alpha pays or Arch or any of our other  
11 competitors. We have to meet the market.

12 Q. I want to talk to you a little bit about the withdrawal  
13 liability and the pension proposal that is outstanding. No one  
14 at Patriot has actually analyzed the effect of withdrawal on a  
15 creditor claims, isn't that true?

16 MR. KAMINETZKY: Your Honor, I object. This is beyond  
17 the scope of both his declaration and direct examination. He  
18 didn't touch on this with a ten foot pole.

19 THE COURT: Mr. Perillo?

20 MR. PERILLO: Well they have a proposal actually to  
21 avoid -- as I understood Mr. Hatfield testify, avoid the  
22 effective withdrawal by remaining in the plan. So I think it's  
23 a pertinent question to ask if anybody analyzed the effective  
24 withdrawal.

25 THE COURT: All right. I'll overrule the objection

1 and allow the question. If you know, Mr. Hatfield, you may  
2 answer the question.

3 A. Yeah, I'm not qualified to get into detail analysis but  
4 the -- what we concluded, frankly, was that the triggering the  
5 withdrawal claim and forcing that into the claim's pool was  
6 just an untenable situation. It would create severe issues  
7 particularly in the form of damage to -- to among others, the  
8 union's position as a claim order. It would damage their  
9 position. It would create issues, certainly, with our senior  
10 bond holders and so we made a determination that we wanted to  
11 avoid triggering that liability and indeed work toward an  
12 accommodation of remaining in the 1974 pension plan.

13 Q. This was your very first attempt at 1113, 1114  
14 negotiations, correct?

15 A. This is the first time I've personally been involved in  
16 them, yes.

17 Q. Well, in fact, it's the first time you've personally been  
18 involved in collective bargaining negotiations, isn't it?

19 A. That's not actually true. I've been involved in  
20 collective bargaining negotiations in my prior years,  
21 particularly in the Massey organization. But this is the first  
22 time I've ever been involved in 1113, 1114.

23 Q. And when you were at Massey, were you actually at the  
24 table with the union?

25 A. Yes. Particularly with respect to negotiating terms on



1 acquired properties.

2 Q. And I thought you told me in your deposition, this was  
3 your first set of concessionary negotiations were you were  
4 attempting to achieve concessions from an existing union  
5 contract?

6 A. I don't believe that's the way I would characterize it.  
7 I'll look at the page if you want me to but I was definitely  
8 involved in discussions and negotiations earlier in my career  
9 where we were seeking to modify terms to the direct bargaining  
10 with the union.

11 Q. All right. I thought you told me at your deposition that  
12 this was the first time you'd actually been at the table in a  
13 bargaining session as a member of the negotiating team. And I  
14 said, I take it from your answer then that this is also the  
15 first time you've attempted to negotiate a concessionary  
16 contract. And you said, that's accurate with regard to my  
17 direct participation. Is that still accurate?

18 A. Yeah. I would characterize it as this is the first time  
19 I've stayed at the table and been the lead negotiator. In my  
20 role at Massey on -- on a couple of occasions, I was supportive  
21 of the bargaining team that was attempting to develop a  
22 concessionary contract with the union.

23 Q. All right. So let's go to slide number 9 then. And look  
24 at your 1114 proposal. These bars tend to slope upwards  
25 and to the right. But if I understand the situation, Mr.

1 Hatfield, nobody from Patriot has ever been able to give a  
2 reasonably precise valuation of the claim or equity stake in  
3 any of the five bars that's shown on this chart, isn't that  
4 true?

5 A. No. I believe we have shared information with the union  
6 on multiple occasions. Blackstone has made presentations on  
7 what the range of values is likely to be and what variables  
8 effect that valuation. We did so when we were talking about it  
9 in the context of a claim and made a specific presentation to  
10 the UMWA on what we thought that range may be. They've also  
11 had input from PricewaterhouseCoopers as to what they think  
12 that range of value may be. More specifically when we started  
13 talking about converting the claim to an equity position --  
14 thirty-five percent equity, we made the presentation that I  
15 referenced earlier, on April 25th, and we believe, showed the  
16 union, what we think the range of values are likely to be and  
17 how -- what, you know, what is the apparent fact that it's  
18 tough to get a premise number until you actually go the market  
19 and validate it but we've shown him very clearly, I think, what  
20 the likely value range is.

21 Q. Well, sir, not to put too fine a point on it, at that most  
22 recent meeting with Blackstone, they told PwC that their  
23 indicated value was too high and that Blackstone thought it  
24 was approximately one-and-half billion to  
25 one-and-three-quarter billion, correct?

1 A I'm not sure the -- the conclusion was that precise but I  
2 do agree that there's a difference of opinion as to what the  
3 enterprise value is and depending on whether you take the PwC  
4 analysis approach or the Blackstone analysis approach.

5 Q. And in the Blackstone analysis report, the thirty-five  
6 percent equity stake might be as worth as little as fifty-six  
7 million and might be worth as much as 400 and some odd million?

8 A. Again, the presentation speaks for itself. I believe you  
9 have a copy of it. But there is certainly a substantial range  
10 depending on a variety of issues that are yet to be resolved  
11 including things like sub-con and final settlement of the  
12 union's actual claim. There's a difference of opinion at this  
13 point as to the size of their claim and all those things can be  
14 worked out in my view with a cooperative discussion.

15 Q. But those were the numbers that were shared at the meeting  
16 on the 25th?

17 A. Yeah. I can't recite the numbers but I would agree there  
18 was a broad range along those lines.

19 Q. Now the chart that you've got here shows that there was an  
20 increase in the cash contribution from ten to fifteen million  
21 between the first and the second proposal, correct?

22 A. Yes.

23 Q. The current proposal has withdrawn the fifteen million,  
24 correct?

25 A. No.

1 Q. So you're still planning to give fifteen million dollars  
2 in cash into the VEBA?

3 A. We offered the union one of two alternatives. Our  
4 preferred alternative is to continue the status quo retiree  
5 medical coverage through the end of 2013, so the VEBA takes  
6 responsibility for administrating the benefits on January 1,  
7 2014. We propose that we would use the fifteen million dollars  
8 to bridge that gap. It's an additional cost of approximately  
9 thirty-six million dollars. And -- but we did so with the  
10 request that the union consider funding the deficit of  
11 approximately twenty-one million dollars through the VEBA. And  
12 to do so using the -- the VEBA equity position as collateral.

13 So if the union agrees to that arrangement then the fifty  
14 million gets used to bridge coverage for the second half of  
15 2013. If the union does not agree to that loan arrangement  
16 then the fifteen million would remain as the contribution that  
17 would be effective July 1, 2013.

18 Q. And the loan you're asking from the UMWA for that purpose  
19 is about twenty-one million dollars, correct?

20 A. We said, I believe, up to twenty-one million dollars.

21 Q. And so it's not deferred to January 1st of 2014 and get  
22 fifteen million. It's deferred to 21 -- to 2014 with a fifteen  
23 million and a loan from the UMWA to fund the time between now  
24 and January 1 of 2014, correct?

25 A. It's not quite correct. The company would continue to

1 administer the program, pay the retirees and provide the same  
2 coverage that they're enjoying today and do so through the end  
3 of the year. The company has agreed that if the union would  
4 bridge up to twenty-one million dollars of what we believe is  
5 the deficit that the company would be responsible for the risk  
6 associated with managing the program through that period of  
7 time.

8 So there's some risk that the company may end up spending  
9 more than fifteen million but -- but that's the deal that we've  
10 put on the table.

11 Q. All right. What I'm getting at, sir, is as of January 1,  
12 2015, there's a -- 2014, excuse me; there's not going to be an  
13 additional cash contribution of fifteen million dollars under  
14 the VEBA?

15 A. That's correct. At that point we expect to have the -- we  
16 would expect to have the -- we would have to have the equity  
17 monetized and substantial money -- hundreds of millions of  
18 dollars in the VEBA through that process.

19 Q. And that -- then that could produce something in that  
20 range, we discussed previously, between fifty-six some odd  
21 million to 450 some odd million?

22 A. Again, I can't recite the numbers but we certainly believe  
23 it's in the hundreds of millions of dollars range.

24 Q. I just want to look at a couple of the other bars on the  
25 graph. Will you look between bars two and three. They both

1 have enhancement and extension of profit sharing plan. This is  
2 about half way down those bars. Do you see that?

3 A. Yes.

4 Q. In both of those cases the enhancement was a lifting of  
5 the ceiling, correct?

6 A. Yes, I believe it was a lifting of the ceiling and also a  
7 lifting of the annual contribution rate. I believe a couple of  
8 numbers changed so I don't -- I can't recite the proposals but  
9 if you'd like for me to pull them out from the notebook, I can  
10 do so.

11 Q. And I'm satisfied with the answer. You recognized,  
12 however, that in both of those enhancements, you still don't  
13 expect any additional money to go into the VEBA from the profit  
14 sharing until 2016?

15 A. Not necessarily. Again, the profit sharing was  
16 essentially designed in response to the union's complaint that  
17 we had used pricing just too low in our bank plan that indeed  
18 prices are going to recover much sooner and the company's just  
19 in a temporary liquidity crisis. And so things are doing to  
20 great very soon.

21 In responsive to that -- to that allegation which,  
22 frankly, we disagree with, we essentially said we'll give you  
23 the benefit of that improvement. And indeed if the company is  
24 profitable sooner, then you'll get -- you'll get benefits  
25 sooner that could be substantial.

1 Q. If you achieve the results you project in your plan, will  
2 there be any additional money from the profit sharing that goes  
3 into the VEBA before 2016?

4 A. Yes. Using the pricing that's in our plan and in which  
5 case the union's pricing assumption would be wrong then there  
6 would be no material contribution to the VEBA until 2016.

7 Q. And then it would be approximately two-and-a-quarter  
8 million dollars?

9 A. Again, it depends on where pricing winds up. But it's --  
10 it begins to become positive in 2016 and hopefully future  
11 years.

12 Q. As projected in the plan, it would be two-and-a-quarter  
13 million dollars?

14 A. I don't recall the precise number.

15 Q. The fourth bar indicates that you clarified the effect of  
16 the Peabody-Assumed Group proposal. As we stand here today, has  
17 the union's request or population details on the  
18 Peabody-Assumed Group been fulfilled?

19 A. I believe they have. I'm not aware of a -- of a  
20 disagreement or a lack of delivery information in that regard.

21 Q. The thirty-five percent equity stake in this fifth bar is  
22 based on the Mercer evaluation that the claim is one billion  
23 dollars, isn't that correct, sir?

24 A. Yes, I believe in the Blackstone presentation, the -- the  
25 calculation is premised on the union having a claim value of

1 approximately one billion dollars.

2 Q. And that pertains only to current retirees, correct?

3 A. I believe that's correct.

4 Q. That does not include active employees who may retire,  
5 correct?

6 A. It's my understanding that that category would be a 1113  
7 claim. Different category, different treatment.

8 Q. And Mercer's analysis is that those people would be  
9 approximately an additional 400 million dollar liability?

10 A. That's approximately correct.

11 Q. And at these meetings, Mr. Cobin (ph.) was allowed to  
12 participate, was he not? Meetings you had last week?

13 A. No. Mr. Cobin --

14 Q. Didn't the UMWA expert on valuing the claim have  
15 discussions with your experts?

16 A. Yeah. In the meetings last week, there wasn't a Mr. Cobin  
17 present. Are you referring to a PwC person?

18 Q. Yes, I am.

19 A. The -- Perry and Adam were the only two PwC people  
20 involved in the meetings on the 25th. Mr. Cobin wasn't  
21 involved.

22 Q. You know from those discussions that the UMWA's analysis  
23 is that the value of the claim is approximately 1.8 billion?

24 A. We're aware that PwC has -- has proposed a higher number  
25 and we've attempted to close that gap, frankly, by having



1 Mercer work directly with PwC with very limited success. Quite  
2 honestly, we've -- we've gone as far as to have Mercer take the  
3 PwC assumptions and put them quite literally into their model,  
4 verbatim or mathematically and we still get a very broad  
5 different in calculation as to what that claim value is. So  
6 there's a substantial gap in the methodology at this point that  
7 needs to be reconciled.

8 Q. Using the way you have calculated a thirty-five percent  
9 equity stake, if you increased the retired -- the amount of the  
10 retiree liability that tends to drive up the size of the equity  
11 stake needed. Isn't that correct?

12 A. Well it's one of many variables, obviously. The other  
13 variables will obviously be likelihood of sub-con or de-con and  
14 a number of other things. But it's certainly one thing that  
15 can move the number.

16 Q. All right. But holding those other things equal, if the  
17 retiree liability goes up, the equity state is going to have to  
18 go up to match it, correct?

19 A. Yes, if you assume everything else is locked in and you  
20 raise the union's claim value then their equity position will  
21 increase.

22 Q. Neither your number nor our number currently includes the  
23 Peabody-Assumed Group, correct?

24 A. That is correct. Our calculation and methodology assumes  
25 that Peabody remains responsible for the Peabody-Assumed Group.

1 Q. In the event that the declaratory judgment is decided  
2 adversely to Patriot that's going to add somewhere in the  
3 neighborhood of another six or seven hundred million dollars  
4 for the size of this pool, correct?

5 A. I can't recite the number. I don't know if your number is  
6 correct or not, but it would make the claim larger certainly.

7 Q. And it would make it larger in that order of magnitude?

8 A. I do not know.

9 Q. Now in your direct testimony, you said that the union was  
10 providing only about ten percent of the 150 million dollars in  
11 concessions that the company is seeking, do you recall that?

12 A. Yes, I believe I said our analysis of the union's proposal  
13 was resulting in savings that were ten percent or so of what we  
14 were needing and believed is necessary for the business.

15 Q. Now, of your 150 million about half is the 1114 savings,  
16 correct?

17 A. Yes.

18 Q. And the union has proposed going into a VEBA correct?

19 A. Yes, but with a big qualifier. Their proposal was we go  
20 into a VEBA but put a billion dollars into the VEBA. Then they  
21 came back with another proposal to put 800 million dollars into  
22 the VEBA. So they're simply asking for more money to go into  
23 the VEBA than represents the entire value of the company. So I  
24 don't call that a proposal that we can measure and deliver as  
25 valid savings.

1 Q. In each successive proposal that the UMWA has made to you,  
2 we have dropped the amount that we request to be put into the  
3 VEBA, is that not true?

4 A. Yeah. I'm aware of the two reference points that we just  
5 described. I'm not aware of the union dropping to a number  
6 that we thought was representative of what's really achievable.

7 Q. Are you not aware that our most recent counterproposal  
8 asks for an equity stay just as your proposal to us proposes an  
9 equity stay?

10 A. I'm aware of that. The proposal we received late Saturday  
11 night, indeed does so, but it --

12 (Gap in audio)

13 Q. -- require an initial cash infusion, correct?

14 A. I'm not sure about that part. I'm not sure if that's  
15 correct or not. I think it's still premised on the fifteen  
16 million and the so forth rolling forward to January 1st, 2014.

17 Q. Pending our agreement on the precise terms of the VEBA,  
18 our proposal would achieve the same seventy-five million that  
19 your proposal would achieve, would it not?

20 A. Only if you can assume that the fifty-seven percent equity  
21 can be delivered and I haven't seen any evidence or validation  
22 of that number being achievable.

23 Q. Well, in fact, as you know from earlier this week, there's  
24 a large group of people who are opposed even to the thirty-five  
25 percent?

1 A. Yes, there are a number of people who believe thirty-five  
2 percent was too much to offer the union.

3 Q. But assuming that yours is feasible and that ours is  
4 feasible, they are going to achieve the same seventy-five  
5 million dollars in actual cost savings?

6 A. Yes. I believe the difference is that the Patriot  
7 proposal is feasible and achievable and I'm not convinced that  
8 the union's is. Hence, I have to gage savings by what I  
9 believe can actually be delivered.

10 Q. And that's causing you to count the union's VEBA proposal  
11 as zero dollars in savings?

12 A. I don't believe you can count it if we can't get it to  
13 closure. I believe the company's proposal can indeed be  
14 brought the closure.

15 Q. Now in the union's latest -- the union's latest  
16 counterproposal was provided to you on Saturday, which was two  
17 days after your meeting -- your last meeting, correct?

18 A. Yes. Yes.

19 Q. And in addition to the VEBA that we just discussed, the  
20 union proposed an additional twenty-six thous -- twenty-six  
21 million dollars in wage concessions to Patriot?

22 A. Yes, I believe it was actually characterized as a wage  
23 free so I don't believe there were wage cuts as such.

24 Q. And while many of the same items were taken line from line  
25 out of your proposal, isn't that true?

1 A. Not many. I would say they -- they accepted a couple of  
2 specific from our proposal. One being the elimination of shift  
3 differentials. Another being the -- a proposal similar to our  
4 overtime proposal but they required higher premium time on  
5 weekends so it's -- it's pretty tough to match up line items  
6 cause there are only one or two line items in their entire  
7 document that match up with something we had asked them to  
8 agree to.

9 Q. The dollar values that we pegged next to those proposals  
10 were taken directly from the company's valuation of the  
11 equivalent proposals in your 1113 proposal to us. Isn't that  
12 true?

13 A. No. But if you'd like for me to look at the document and  
14 respond I will but, I believe, there are just a few of the  
15 items that really match up with the company's proposal. One I  
16 recall, is shift differential. They also made a similar offer  
17 with respect to overtime but they changed it from the numbers  
18 that we had -- that we had proposed because they required  
19 double time on the weekends.

20 So there are a number of twists and changes that made it  
21 difficult to compare. Their medical healthcare -- their  
22 healthcare program savings, that's an example was quite  
23 honestly almost de minimis compared to the relief that we had  
24 requested. We had offered healthcare proposal that essentially  
25 aligned it with what we're providing to the other sixty percent

1 of our workforce. But the union came back with a proposal, on  
2 Saturday night, that said instead they wanted to -- to put the  
3 union workforce on the same plan provided by the 19 -- 1993  
4 benefit trust. And the difference between that and the  
5 union's -- the union's plan is -- is pennies. Frankly, savings  
6 we believe of -- of about a million dollars a year.

7 So it doesn't come anywhere close to the level of relief  
8 that we were targeting.

9 Q. When you added up all of the different line items in the  
10 union's proposal, however, it came out to roughly twenty-six  
11 million dollars?

12 A. No. I don't believe we agree with that number at all.

13 Q. You're saying that is not the union's valuation of it or  
14 that the company disagrees with the union's valuation?

15 A. That may be indeed the union's valuation. I just don't  
16 believe that that's the company's assessment and measurement of  
17 the union's offer.

18 Q. And let me just see if I understand your other testimony.  
19 Are you saying that we attributed more value to a wage freeze  
20 than you attributed to the identical wage freeze?

21 A. No. We didn't propose a wage freeze. As I've -- as I've  
22 described previously, we had specific wage reductions for  
23 service mine employees and preparation plan employees that are  
24 paid significantly higher than the regional market. On the  
25 underground employees, there was a work into a wage freeze.

1 But you have to look at all the components together. But the  
2 wage savings offered up by the union were a small fraction of  
3 what the company had requested.

4 Q. Well because twenty-six is less than seventy-five,  
5 correct? I mean, we're not proposing to give you the whole  
6 seventy-five million.

7 A. Again, the seventy-five includes a wide range of  
8 components. Including things like, as I referenced earlier,  
9 absenteeism, remediation. Elimination of some of the personal  
10 time. Union employees can take up to about to about  
11 forty-seven days a year off paid and our non-union employees  
12 have about half that. So we're asking for a lower number of  
13 personal leave days. Lower number of holidays. There's a  
14 number of components that go into the seventy-five million that  
15 are well outside the boundaries of wage.

16 Q. I'd like you to go to the next slide if you would please.  
17 Would you look at the second bar, you indicated an improvement  
18 here and that you gave us protection for UMWA job opportunities  
19 and offered to apply the terms and negotiate agreement any  
20 future operation.

21 Now between proposal one and proposal two, you were  
22 seeking the same dollar value in concessions on 1113, were you  
23 not?

24 A. Yes. The target was approximately the same.

25 Q. And the offer to apply the terms of the negotiated

1 agreement in future operations, meant to the concessionary  
2 agreement, right?

3 A. Well, it meant the new agreement that the union and the  
4 company would agree upon.

5 Q. The one with the seventy-five million dollars of  
6 concessions in it?

7 A. Well, again, we believe the agreement that we would settle  
8 on and agree is representing the current market.

9 Q. The union indicated to you we'd rather bargain from  
10 scratch at future operations?

11 A. I frankly don't remember going into that level of  
12 discussion on that particular point. One of the specific  
13 concerns they had was that we had identified mines in our five  
14 year plan and it wasn't clear to them that they would have a  
15 role at those mines.

16 So that's why in going to the third proposal we named  
17 specific locations were we would work with the union to assure  
18 that -- that their employees receive those jobs.

19 Q. If we go to the other item in the second bar, protection  
20 for job opportunities, you recognize that the UMWA and Patriot  
21 currently have a memorandum of understanding on job protection  
22 that provides for a three out of five ration of transferring  
23 UMWA people to other job opportunities?

24 A. Yes. That would be the job's MOU as its generically  
25 referred to under the current national agreement.



1 Q. You're proposing to eliminate that, aren't you?

2 A. Yes.

3 Q. And you're still proposing to eliminate that, are you not?

4 A. Only with respect to our non-signatory operations. Again,  
5 we've offered substantial hiring opportunities at all of our  
6 representative operations and even added operations to the --  
7 to the portfolio, if you will, of mines in which the union will  
8 have a position.

9 Q. We go from the second bar to the third bar, you're still  
10 seeking seventy-five million dollars a year in concessions in  
11 that third bar?

12 A. Yes.

13 Q. We go from the third bar to the fourth bar, you're still  
14 seeking seventy-five million dollars in concessions between the  
15 third bar and the fourth bar?

16 A. Yes.

17 Q. And we go from the fourth bar to the fifth bar, the change  
18 is that you're going to stay in the pension plan, correct?

19 A. Yes.

20 Q. That actually saves Patriot money, to stay in the pension  
21 plan, correct?

22 A. No.

23 Q. It does not?

24 A. No, because in our bank plan -- the October bank plan, we  
25 presume that there would be no pension payment obligations, no

1 installment payment obligations. The bank plan presumed  
2 withdrawal and that the withdrawal liability becomes a claim.  
3 So there was no financial cost associated with remaining in the  
4 plan or retiring that liability.

5 So that commitment in our fifth proposal indeed burdens  
6 the business compared to our bank plan by eighteen to twenty  
7 million dollars a year.

8 Q. Staying in the plan is actually several million dollars  
9 less than what you're withdrawal payments would be. If you  
10 took the perpetuity payments of interest, isn't that correct?

11 MR. KAMINETZKY: Judge he literally asked the same  
12 question. I had to object.

13 THE COURT: Mr. Perillo?

14 MR. PERILLO: I -- I don't think it is the same  
15 question, Your Honor.

16 MR. KAMINETZKY: Your Honor, he asked is it going to  
17 be -- isn't it don't you save money by saying the plan. He  
18 gave a long answer. And then he said, but is it any cheaper to  
19 save the plan. And we're just doing everything twice?

20 THE COURT: Sounds like the same question to me also.  
21 I'll sustain the objection.

22 MR. PERILLO: I'll withdraw it. I'll withdraw the  
23 question.

24 THE COURT: All right.

25 Q. In the union's final counterproposal to you, Mr. Hatfield,

1 we actually withdrew the seven day proposal that you discussed  
2 in your testimony, isn't that true?

3 A. Yes, I believe that's correct.

4 Q. And that's because you objected to it as being not worth  
5 anything to you until we took it off the table. Isn't that  
6 right?

7 A. Yes. And in that Saturday night proposal it was removed  
8 but it was obviously prevalent in the prior office.

9 Q. Well, I mean both parties have made pretty substantial  
10 movement in their offers, correct?

11 A. Yes.

12 Q. I mean the two hugest moves that Patriot has made both  
13 have come since April 10th, correct?

14 A. I'm not sure that's the case but I would agree that both  
15 parties have made movements of substance.

16 Q. Well the big move in your 1113 proposal is the pension  
17 proposal, isn't it?

18 A. Yes. With respect to 1113, I think that's accurate.

19 Q. Okay. That was only made on the 23rd. And certainly the  
20 equity stake was -- would you characterize that as a big move?

21 A. I think it's a move that certainly helped the process.

22 I'm not sure if the numbers are any different because claim  
23 monetization, we believe, gets you to the same point. What we  
24 added was essentially certainty, measurability, we think, with  
25 the thirty-five percent equity conversion. But the intention

1 all along was to give the union their full value as a claim  
2 holder and indeed the largest claim holder in the pool of  
3 people to who -- would enjoy the value of a reorganized  
4 Patriot.

5 Q. That move was made on April 10th, correct?

6 A. With respect to equity, yes. The claim position, no,  
7 that's been prominent throughout all our offers.

8 Q. The union's proposal that you had to change savings by  
9 changing the hourly salary ratio, do you know that most of our  
10 savings that come from that proposal actually come out of large  
11 mines such as Panther, not small mines? Isn't that true?

12 A. No because the numbers are still wrong. Panther puts  
13 their fire bosses and belt examiners in the category of  
14 salaried employees. Those same people are doing the same job  
15 for about the same pay are treated as hourly employees at other  
16 union locations. So it's the same body count; they just get  
17 put in a different position. And similarly Patriot uses a  
18 number of short term contractors because not all operations  
19 require a lot of short term constriction. So they're probably  
20 between sixty and eighty hourly contractors at Patriot -- I'm  
21 sorry, at Panther that get overlooked at in numbers. So in  
22 short, the UMWA analysis of Panther is just not mathematically  
23 correct in my view.

24 Q. But the savings are attributed to Panther, are they not?

25 A. I'm not sure if that's the case or not. I believe the

1 general calculation was a broad assumption on how much the  
2 salaried hourly ratio of employees can be changed and some  
3 generalization as to how much money that creates. I don't know  
4 if it was Panther specific or not.

5 Q. I just have one last area of inquiry. Well, before I get  
6 there, the date that the UMWA used to compute these hourly  
7 salary ratios was provided to us by Patriot, isn't that  
8 correct?

9 A. No. The study that's being referenced here as the -- as  
10 the correct reference point was a third party study that --  
11 that the union actually -- was purchased and suggested that we  
12 purchase it as a reference point. So what they're calling the  
13 correct set of numbers, if you will, of market reference, is a  
14 third party study. But it is correct that the staffing  
15 information that the union has would've come from Patriot  
16 sources.

17 Q. And provided to us from Patriot itself, correct?

18 A. Yes.

19 Q. Now, I want to go into just one last things, Mr. Hatfield.  
20 You said previously in your testimony that you thought a  
21 consensual deal was the ideal solution in this problem?

22 A. Yes.

23 Q. Do you recall that? Your familiarity with union  
24 negotiations lets you know that our process is going to require  
25 ratification vote of our membership, correct?

1 A. I believe that's accurate, yes.

2 Q. And do you know that ultimately the members are going to  
3 hold their own fate in their own hands to vote on a contract?

4 A. Yes, I'll agree that if you have a ratification process,  
5 then the members will ultimately determine whether they work or  
6 don't.

7 Q. Do you actually know any of the union miners?

8 A. Yes, I do.

9 Q. You've met them? Spoken to them?

10 A. At different locations, at different times when I go to  
11 the mines, yes.

12 Q. Do you sincerely believe that our members are going to  
13 vote for the kinds of wage cuts that you've proposed for them  
14 to take?

15 A. In the first place, I believe, you're mischaracterizing  
16 it. There are small segments of the union population that will  
17 have more substantial wage cuts particularly those at surface  
18 mines and preparation plants where there's substantially more  
19 out of market, if you will, then our underground operations.  
20 The underground operations the wage changes is almost de  
21 minimis. I believe that people will vote for retaining a job  
22 because jobs are scarce. In an industry, particularly in  
23 Central Appalachia, that's being downsized by market forces by  
24 twenty-five to thirty percent. There's thousands of coal  
25 miners out of work every day now. I believe workers at the end

1 of the day will vote to protect their best interest which is  
2 protecting their job and protecting the ability to provide  
3 income to their family and maintain their standard of living.

4 So yes I believe they will support protecting a job.

5 Q. So it's your expectation then that if UMWA were to put  
6 this offer up to a vote, it would carry?

7 A. I do not represent myself as an authority on how the union  
8 vote is likely to go. But I believe if people are described --  
9 if this proposal is described accurately to the workforce and  
10 they understand how this is being measured and the urgent need  
11 for this -- these adjustments and that the fact that this --  
12 the future of this company indeed relies on these changes, I  
13 believe they will vote to support it because I believe they  
14 will recognize that liquidation of this company not only gives  
15 it no value, it eliminates their job.

16 Q. In our previous conversation, sir, I asked you if you  
17 thought the likely consequences of a long and severe strike  
18 would be liquidation, and you told me that you thought it was.  
19 Is that still your opinion today?

20 A. It's still my opinion that a long and severe strike will  
21 likely lead to liquidation of the company particularly if it's  
22 a broad disruptive strike.

23 Q. And that it would reduce the value of creditors' claims?

24 A. I think it would damage everyone that's a stake holder in  
25 this process.

1 Q. Including even the non-union companies?

2 A. Union and non-union.

3 Q. And I ask you, sir, then if you had a strike contingency  
4 plan and you told me no. Is that still true today?

5 A. I'm not sure what you're looking for with respect to a  
6 strike contingency plan. I don't think we have the ability to  
7 continue operating these mines without the workforce that we  
8 employ every day. So our strike contingency plan is to  
9 hopefully avoid a strike.

10 Q. Thank you, Mr. Hatfield.

11 THE COURT: All right. Thank you.

12 Mr. Russano, do you have anything briefly -- I'm  
13 sorry, Mr. Kaminetzky. Did you have anything else?

14 MR. KAMINETZKY: Can we take a two minute recess just  
15 because I think if we do that it would be much shorter than if  
16 I do it on the fly?

17 THE COURT: All right. We'll be in recess for five  
18 minutes.

19 MR. KAMINETZKY: Okay.

20 THE COURT: Thank you.

21 (Recess from 12:31 p.m. until 12:44 p.m.)

22 THE COURT: All right. Mr. Kaminetzky, you may  
23 proceed with your brief redirect?

24 MR. KAMINETZKY: Yes, Your Honor. Thank you for that  
25 break. I think it was productive cause I think I saved the



1 Court two minutes for every one minute of that break. And we  
2 can do this very quickly.

3 REDIRECT EXAMINATION

4 BY MR. KAMINETZKY:

5 Q. Mr. Hatfield, just a few follow up questions to the  
6 questions you had from Mr. Perillo. Did any 1113, 1114  
7 proposal from the UMWA propose that Patriot stop paying coal  
8 act liabilities?

9 A. No. They didn't put that in any of the proposals that  
10 they submit to us formally.

11 Q. Were you in court yesterday when Mr. Huffard described the  
12 multiple factors that went into setting the size of the  
13 thirty-five percent equity stake in the proposal -- in the  
14 latest proposal?

15 A. Yes.

16 Q. And there were factors other than the size of the  
17 potential claim, is that right?

18 A. Yes, there were a number of other factors.

19 Q. And you recall those other factors or some of them?

20 A. Yes. In addit -- in addition to claim size, the -- the  
21 weight in giving to substantial consolidation or  
22 deconsolidation is -- was another variable. The valuation of  
23 the company was another variable. Obviously, coal equities are  
24 somewhat tough to value right now because of the uncertain  
25 market and the precipitous to climb into coal equities over

1 recent months. So those are among the variables that I recall  
2 him mentioning.

3 Q. And Patriot worked with Blackstone -- and Mr. Huffard at  
4 Blackstone and his advisors in coming up with the formula that  
5 yielded at thirty-five percent, is that right?

6 A. Yes.

7 Q. If we could just turn quickly back to page five -- or  
8 slide five, do you have that in front of you still, Mr.  
9 Hatfield?

10 A. Yes, I do.

11 Q. Let me ask you this, if you could go to the fourth box:  
12 Rejection or renegotiation of unprofitable contracts. Do you  
13 see that on page 5?

14 A. Yes, I do.

15 Q. Could you reject the contract outside of bankruptcy?

16 A. No. We have no ability to do that.

17 Q. If you could go to the last box on the slide: Reduction  
18 of unsecured pre-petition debt. Can you reduce the size of  
19 your debt outside of bankruptcy?

20 A. No.

21 Q. When was the last time the non-union workforce received a  
22 pay increase?

23 A. I believe it was 2010. There may have been a very small  
24 sector that got a raise in 2011 but I'm -- it was late 2010,  
25 early 2011.

1 Q. And since that time, has the union received any pay  
2 increases?

3 A. Yes. In fact, the union's received a number of increases.  
4 In 2011 alone because that was a year of the new contract.  
5 They received three raises in twelve months. They got one  
6 essentially January 1, 2011, when the contract was signed. I  
7 believe in around July -- or July, August of 2011. I can't  
8 remember the exact month. And then January 1 of 2012 there was  
9 an automatic January 1 raise. So they received a number of  
10 raises even as recently as January 1, 2013. There's a  
11 contractual obligation for a -- what I believe was a dollar per  
12 hour raise.

13 Q. So they -- you're saying the union received three pay  
14 raises since the last pay raise of the non-union workforce?

15 A. Yes. I believe that's -- I believe that's accurate.

16 Q. And one of just a few months ago?

17 A. Yes.

18 Q. If we could just turn quickly to slide 9? And if you  
19 recall -- do you have that in front of you? That's the 1114  
20 proposal slide. Do you see that?

21 A. Yes.

22 Q. And we -- Mr. Perillo asked you about the new proposal  
23 which defers the implementation date to January 1, 2014 from  
24 July 1, 2013. Why did you do that?

25 A. We did that essentially at the union's request. The union

1 expressed a great deal of concern about the -- their ability to  
2 get this VEBA up and running and they were very concerned about  
3 disruption of benefits during the second half of 2013. So we  
4 were attempting to mitigate that concern, frankly, by agreeing  
5 that we would maintain the status quo for the entire second  
6 half of 2013 if they would essentially work with us. Without  
7 really sacrificing any money as such if they would provide a  
8 loan for the amount of cash that Patriot doesn't have, Patriot  
9 would administer the program and take the risk of the benefits  
10 costing more than the forecast thirty-six million if they  
11 would loan up to twenty-one million dollars to the VEBA and --  
12 and let us manage through that period providing the same level  
13 of benefit coverage. That would let the VEBA become fully  
14 funded monetized in that with the conversion of the claim into  
15 dollars and up and running -- be up and running by January 1,  
16 2014.

17 MR. KAMINETZKY: Thank you. That's all I have.

18 THE COURT: All right. Mr. Perillo, anything else for  
19 Mr. Hatfield?

20 MR. PERILLO: No.

21 THE COURT: All right. Mr. Hatfield, thank you. You  
22 may step down.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: All right. Mr. Kaminetzky or Mr.  
25 Moskowitz, are we ready to break for lunch?

1 MR. KAMINETZKY: Yes. This was our last witness of  
2 the debtors, Your Honor. So I guess this --

3 THE COURT: And, I'm sorry, Mr. Hatfield, go ahead,  
4 we're not going to hold you hostage over here, you've been on  
5 the stand a long time today.

6 MR. KAMINETZKY: Yeah. I think this would be a good  
7 time to break given that we're about "turn over the podium"  
8 although in this strange Bizarro World.

9 THE COURT: Right.

10 MR. KAMINETZKY: You know, we'll take more time then.  
11 But I think just in terms of where we are for the day we wanted  
12 to after lunch raise with Your Honor an issue we have with  
13 respect to Mr. Buckner. We'll be moving to strike his  
14 declaration --

15 THE COURT: Okay.

16 MR. KAMINETZKY: -- for reasons that we could describe  
17 then. And then my understanding is that the first witness that  
18 Union brings will be Mr. Traynor, and as soon as we're done  
19 with the brief remarks about Mr. Buckner I think we'll go  
20 straight to that.

21 THE COURT: All right.

22 MR. KAMINETZKY: Is that right, Mr. Perillo?

23 MR. PERILLO: That is exactly what we discussed.

24 THE COURT: All right. All right. Then we'll be in  
25 recess until 2 o'clock.

1 MR. KAMINETZKY: Thank you.

2 THE COURT: Thank you.

3 (Recess from 12:51 p.m. until 2:08 p.m.)

4 THE CLERK: Please rise. Your Honor, we're back on  
5 the record.

6 THE COURT: All right, thank you. Be seated please.

7 All right. Mr. Kaminetzky, you all have some requests  
8 about Mr. Buckner's declaration?

9 MR. KAMINETZKY: Yes, Your Honor. As we indicated  
10 we're going to -- the debtors are going to move to strike the  
11 declaration of Michael Buckner. And it's kind of for a very  
12 simple reason.

13 There are two types of flavors of testimony in this  
14 world, there's expert testimony and lay testimony. The UMWA  
15 has not proffered Mr. Buckner as an expert. He admittedly  
16 lacks expertise and relevant experience in the key areas of his  
17 declaration, and he's a long time employee of the UMWA. And,  
18 anyway, it's too late for the UMWA to try to proffer Mr.  
19 Buckner as an expert, that ship has sailed long ago.

20 So that means that what we're left with is Mr.  
21 Buckner's declaration has to satisfy the requirements under the  
22 Federal Rules of Evidence for lay testimony. And,  
23 unfortunately, Your Honor, it just doesn't, and not even close.  
24 It doesn't comply with the personal knowledge requirements  
25 under Rule 602, and it doesn't comply with Rule 701 that

1 requires lay opinion testimony be based on personal observation  
2 and not on technical or specialized knowledge. And, number  
3 three, Your Honor, it's replete with hearsay. Unlike experts,  
4 lay witnesses don't get to rely on inadmissible hearsay as the  
5 basis for their testimony or opinions.

6 So, in fact, Mr. Buckner's testimony and declaration  
7 is pretty clearly not admissible as lay testimony. What the  
8 union's trying to do, which is often done, is they're trying to  
9 evade the reliability and qualifications requirements for  
10 expert testimony by cloaking Mr. Buckner as a lay witness. But  
11 the Federal Rules of Evidence preclude doing that. And I'm  
12 quoting now United States v. Peoples from the Eighth Circuit,  
13 250 F.3d 630, "What is essentially expert testimony may not be  
14 admitted under the guise of lay opinions, such substitutions  
15 subverts the reliability requirements for expert testimony."

16 Your Honor, taking a step back, what Mr. Buckner's  
17 basically done is written a brief. He recaps things he's  
18 heard, things he believes, and he's telling the Court I've  
19 looked at this, I've looked at that, I think Mr. Akunuri knows  
20 better than their witness. That's very nice, and that's maybe  
21 what an advocate does, but it's a textbook example of  
22 nonadmissible lay testimony.

23 And what's interesting, Your Honor, this is not a new  
24 problem for Mr. Buckner. In the American Commercial Lines  
25 case, in this district, Judge Limbaugh struck Mr. Buckner's

1 declaration because his statements amounted to "nothing more  
2 than speculation on his part." And Judge Limbaugh expressly  
3 rejected the argument that Mr. Buckner's general employment  
4 history with the UMWA -- remember, he's only worked for the  
5 UMWA, except for two years as a miner in the '70s, could  
6 satisfy the personal knowledge requirement for lay witnesses.  
7 And if I may hand up that decision from Judge Limbaugh.

8 THE COURT: Mr. Perillo, you've seen a copy of this  
9 case.

10 MR. PERILLO: No.

11 THE COURT: Okay. Let's show it to him first, before  
12 you show it to me.

13 MR. KAMINETZKY: It actually came up in his deposition  
14 so I'm surprised Mr. Perillo didn't take a look at it before.  
15 But it's a -- all I handed you, Your Honor, is a public case  
16 that we found on Lexis.

17 But let's not take my word for it, let me be very  
18 specific and very focused and give you very concrete examples.  
19 Let's start with Mr. Buckner's lengthy exposition on the  
20 history of medical benefits in the coal industry, and that's  
21 paragraphs 25 to 54 of his declaration. Now, what he does  
22 there is he speculates as to the motivation for conduct that  
23 took place years before he was even born, testifies to  
24 positions taken by parties in negotiations which he did not  
25 participate, and makes assertions about the subjective state of



1 mind of entities he's never worked for. And if you could turn,  
2 Your Honor, to the board -- I'm sorry, to the screen, these are  
3 just a few excerpts from his declaration.

4 When the NBWC convene in early 1946 a health and  
5 welfare fund for miners was the UMWA's top priority.

6 Next one. The BCOA insisted in the 1978 negotiations  
7 that the funds no longer provide health benefits to active  
8 miners or retirees.

9 In the 1980s companies sought to walk away from their  
10 obligations to retirees, he may know it, he may have heard it,  
11 he may have read a book, but that just doesn't cut it.

12 Mr. Buckner has no firsthand knowledge to these  
13 events, so the testimony is inadmissible under Rule 602. And I  
14 just want to quote -- and Rule 602 says it very clearly, "A  
15 witness may testify to matter only if the evidence is  
16 introduced sufficient to support a finding that the witness has  
17 personal knowledge of the matter" -- personal knowledge of the  
18 matter.

19 And let me quote U.S. v. Oliver from the Eighth  
20 Circuit, 908 F.2d 260, Rule 62, and I quote "Prohibits the  
21 admission of testimony concerning matters the witness did not  
22 observe or had no opportunity to observe." You can't just get  
23 up, sit in a witness box and say I read a book, I spoke to some  
24 folks, and this is what I believe. It doesn't work like that.

25 THE COURT: And, Mr. Kaminetzky, what's that cite

1 again, 908 F.2d --

2 MR. KAMINETZKY: 908 F.2d 260 (8th Cir. 1990) U.S. v.  
3 Oliver.

4 Now, the same problem plagues Mr. Buckner's narrative  
5 regarding the more recent negotiations of the Gateway  
6 collective bargaining agreement, which he goes on at length in  
7 paragraphs 84 through 93 of his declaration. Although Mr.  
8 Buckner speculates as to the purpose of the agreement and  
9 describes a play-by-play of events that supposedly transpired,  
10 there's one big problem, Mr. Buckner did not participate in  
11 negotiations related to the Gateway agreements. He has,  
12 therefore, no personal knowledge of the negotiations as  
13 required under Federal Rule of Evidence 602.

14 And if you pull up paragraph 84 on the screen, look  
15 what he writes in his declaration. "Eliminating pension and  
16 retiree benefits at other UMW minds would negate the very  
17 purpose of the UMWA in entering into the Gateway agreements."

18 In the deposition we asked him:

19 "Q. Are you familiar with the 2011 Gateway Eagle collective  
20 bargaining agreement?

21 "A. Yes, sir.

22 "Q. Did you participate in those negotiations?

23 "A. Not as a negotiator, no."

24 Declaration 87, Patriot official Dale Lucha approached  
25 the UMWA and stated that if the UMWA complied with a set of

1 preconditions Patriot would agree to recognize the union and  
2 offer jobs at Gateway Eagle to UMWA members. Well, in the  
3 deposition was said:

4 "Q. Well, did you hear Mr. Lucha?

5 "A. No, he didn't say that to me, he said that to someone else  
6 who told me."

7 Again, no personal knowledge.

8 Now, other lengthy sections of Mr. Buckner's  
9 declarations offer opinions regarding mine productivity and  
10 efficiency, that's paragraph 55 through 71, and 100 through  
11 102, price forecasts for natural gas and coal, and the  
12 projections contained in Patriot's business plan, paragraphs 72  
13 through 83. For example, Mr. Buckner opines that natural gas  
14 prices will rise which will cause coal prices to rise, and this  
15 means Patriot's revenue projections are too conservative.  
16 Sounds familiar, that's what we hired experts to do.

17 And if you take a look at Buckner 64, "The claim that  
18 NBCWA work rules and productivity is wrong."

19 Bruckner 72, "The rise of natural gas prices is likely  
20 to continue."

21 Buckner 73, "In 2015 and 2016 Patriot will be able to  
22 realize between ninety million to 100 million dollars more in  
23 revenue than it's projections at its five-year business plan  
24 assuming more realistic coal prices."

25 Again Buckner 74. "In a rising pricing environment

1 Patriot will likely increase its revenue not only by realizing  
2 a greater margin per ton, but, also, by increasing the level of  
3 its thermal coal production."

4 Now, Federal Rule 701 requires lay witness opinion  
5 testimony to be rationally based on a witness's perception and  
6 helpful to determine a fact at issue. This means that lay  
7 opinions must be formed based on personal observations and  
8 knowledge not on after the fact analysis. And, again, I'm  
9 quoting the U.S. v. Peoples from the Eighth Circuit, "To be  
10 admissible a court must find that the witness's lay opinion  
11 testimony is based on his or her personal observation and  
12 recollection of concrete facts."

13 Now, Mr. Buckner's opinion about natural gas and coal  
14 prices and Patriot's projection in mine productivity are not  
15 his on his personal observation or even on industry experience.  
16 He's not a participant in commercial coal or natural gas  
17 markets, he has zero experience forecasting energy prices, he's  
18 never worked for a natural gas company, and he spent all of two  
19 years as a miner at a coal company more than thirty years ago.  
20 Mr. Buckner's opinions were formed by reviewing third party  
21 sources for this litigation. And, again, in his deposition  
22 transcript or his deposition he didn't hide this.

23 "Q. How long were you a miner for?

24 "A. From 1976 to 1978.

25 "Q. In your entire career you spent two and a half years in a

1 mine company, correct?

2 "A. Yes, sir."

3 Another quote from his transcript:

4 "Q. Have you ever been hired to forecast energy prices?

5 "A. No, sir.

6 "Q. In paragraph 65 of your declaration you opine that UMWA  
7 mines that Patriot compare favorably with the nonunion  
8 operation in terms of wage and fringe benefits cost per ton,  
9 correct?

10 "A. Yes.

11 "Q. That opinions not based on your personal experience  
12 working at mines, right?

13 "A. No.

14 "Q. You performed your analysis as part of your work in this  
15 litigation, correct?

16 "A. In preparing this declaration, yes."

17 Mr. Buckner couldn't have been more clear that what he  
18 was doing was reviewing third party sources and giving us his  
19 view of those third party sources, that's what experts do,  
20 that's not what lay witnesses do.

21 Now, Rule 701(c) represents a completely separate bar  
22 to the admissibility of Mr. Buckner's opinion about coal and  
23 natural gas prices, Patriot's business projections, mine  
24 productivity, et cetera. Rule 701(c) says that to be  
25 admissible lay opinion testimony cannot be based on technical

1 or specialized knowledge within the scope of Rule 702. Rule  
2 702, of course, is what governs expert witnesses.

3 And, quite frankly, Mr. Buckner admitted, quite  
4 honestly and openly, he is not an expert in these fields. And  
5 I hope that's the case because both us and the union spent a  
6 lot of money hiring experts, and if anyone can get up and talk  
7 about it we just wasted a lot of money.

8 And, again, I could read the deposition transcript  
9 quotes where he kind of says quite explicitly he's not an  
10 expert in coal pricing, not an expert in competitive coal  
11 markets, and he's not a trained economist, but I don't think  
12 that will be in dispute.

13 Now, the same Rule 701(c) prong pervades the medical  
14 analysis and medical literature view of Mr. Buckner's  
15 testimony, and that's paragraphs 11 through 24. And this is  
16 something, he opines about the cause of ischemic heart  
17 disease, the manifestations of progressive massive fibrosis and  
18 stuff like that, classic expert testimony, yet, Mr. Buckner has  
19 no medical qualifications whatsoever.

20 And let's just pull up, just some egregious examples  
21 from his declaration. "Figures 4 and 5" -- this is declaration  
22 at paragraph 13. "Figures 4 and 5 show the more advanced  
23 changes in the lung associated with simple pneumoconiosis with  
24 focal emphysema. Finally, figure 6 and 8 show the devastation  
25 of the lungs of miners who have contracted progressive massive

1 fibrosis, the most disabling and deadly form of the disease."

2           Buckner 17, "Long-term exposure to coal dust is linked  
3 to ischemic heart disease."

4           And this is one I didn't put on the slide, but this is  
5 amazing. Paragraph 24, "I believe that substantially higher  
6 morbidities reported among older miners than the average older  
7 worker are indicative of the cumulative health effects of long  
8 years working in a mine." And, again, that's in his  
9 declaration, paragraph 24. And, again, he's not a doctor, he's  
10 not a medical expert.

11           I think it's interesting the committee notes on  
12 Federal Rules of Evidence, the 2000 amendment, has the  
13 following quote which I think is dead on. "A lay witness with  
14 experience could testify that a substance appeared to be blood.  
15 But a witness would have to qualify as an expert before he  
16 could testify that bruising around the eyes is indicative of  
17 skull trauma." Enough said.

18           And when it comes to mine safety issues Mr. Buckner's  
19 testimony is pure conjecture, as he conspicuously speculates  
20 that if miners killed -- that the miners killed in recent  
21 accidents had helpers, and if they had helpers these tragedies  
22 may not have -- or may have been avoided, and that's paragraph  
23 105. Of course, Mr. Buckner did not observe the accident, he's  
24 not worked in a mine for more than thirty years, and he's never  
25 been responsible for mine safety.

1           Finally, Your Honor, just a word about hearsay. It  
2 pervades just about every aspect of Mr. Buckner's declaration,  
3 and, of course, that's the case, because Mr. Buckner lacks  
4 personal knowledge of the subjects. His declaration is replete  
5 with quotes of out of court statements from medical journals,  
6 analyst's reports and historical studies whose only conceivable  
7 relevance is for the truth of the matters asserted.

8           And if you want to just pull up the next slide,  
9 declaration paragraphs 17, 25, 79 and 83, I think are just  
10 perfect examples of these, and I don't think there's any need  
11 for me to read them into the record.

12           In conclusion, Your Honor, Mr. Buckner's declaration  
13 represents a flagrant violation of Rule 602, 701, and 802, and  
14 the debtors respectfully request it to be struck in its  
15 entirety.

16           And just to take a step back I would love to put Mr.  
17 Huebner on the stand, to give you his opinion of how things  
18 should turn out today. He's read a lot about this case, he  
19 knows a lot about this case. In fact, the first thing Mr.  
20 Hatfield does when he gets out of the negotiation room is call  
21 Mr. Huebner and talk to him, tell him what happened in it. But  
22 that's not how it works, you can't have someone with a strong  
23 opinion how this case would come out to get up here and give  
24 testimony. There is a rule -- a rule for that, and that's what  
25 Mr. Perillo and I do for a living, we're advocates, we're



1 allowed to tell you, you know, what don't believe this guy,  
2 believe that guy, he knows better. That's advocacy. But you  
3 don't get -- you got unfortunately do it from here and not from  
4 there.

5 What he wants to do is tell you how he thinks this  
6 ought to turn out. He wants to tell you his view of what  
7 happened in 1946 when President Truman did this or that. The  
8 problem is he's a fact witness, or he's purported to be a fact  
9 lay witness, and not an expert witness. And the bottom line  
10 is, although he's a -- purported to be a fact witness, he's not  
11 a witness to any relevant facts.

12 Again, he wrote a brief, and so did Mr. Perillo, and,  
13 again, there's nothing wrong with advocacy, but you just don't  
14 do it from the witness stand. Thank you, Your Honor.

15 THE COURT: Thank you. Mr. Perillo, do you care about  
16 them handing up that case?

17 MR. PERILLO: I don't.

18 THE COURT: All right. Ms. Magnus, let me see.

19 All right. Mr. Perillo, what would you like to tell  
20 me in response to Mr. Kaminetzky's request?

21 MR. PERILLO: Would like to tell you that he wasted  
22 the last twenty minutes of your time, because there are two  
23 Eighth Circuit cases on the point which he has neglected to  
24 advise you of.

25 THE COURT: Okay.

1 MR. PERILLO: Both of these cases stand for the  
2 proposition that a lay witness can give summary testimony based  
3 upon other sources that are either government documents re  
4 regularly kept records of business activity. I'll get to those  
5 in a moment. But, first, we ought to go through the Buckner  
6 declaration and look at the bits that Davis Polk omitted from  
7 the screen.

8 For example, in paragraph 24 they carefully cut out  
9 that the facts in this paragraph come from the Center for  
10 Disease Control in a government report issued by the National  
11 Institute of Occupational Safety and Health. So this is  
12 clearly admissible, it fits within the hearsay exception for  
13 government reports, and a lay witness can testify to it.

14 I will go through in short order and demonstrate why  
15 virtually every complaint, perhaps every complaint, that Mr.  
16 Kaminetzky just made, falls for the same reason, and, hence, he  
17 wasted twenty minutes of your time, I apologize, I'm about to  
18 waste twenty minutes more.

19 Mr. Buckner, is a consultant for the UMWA. His career  
20 had him as the research director for the union, that is the  
21 person who compiles for the union business records and  
22 government reports about the history of the union. He was the  
23 historian of the union for a significant period of time. His  
24 peculiar role as a trustee of the benefit plans is to review  
25 these types of reports, including medical reports. He is

1 eminently qualified to give the testimony that he gave. And if  
2 you look at the first ten paragraphs of the Buckner declaration  
3 he sets forth these qualifications, including his graduate  
4 degree in Industrial Labor Relations, very well. He is, in  
5 addition, someone who has been a negotiator for the union, for  
6 the NBCWA for almost thirty years. He was the research  
7 director for the UMWA, later a consultant, and I believe if you  
8 look to paragraph -- between paragraphs 4 and 8 he was the  
9 historian of the union as well, and legislative director.

10 Now, I want to turn to some of the specific paragraphs  
11 that were referenced. Starting in paragraph 11, after he lists  
12 his qualifications, Mr. Buckner begins to go through working  
13 conditions of coal miners, using his first-hand experience as a  
14 former miner, but, also, Mine Health and Safety Administration  
15 government data.

16 In paragraphs 12 to 21 he goes through government  
17 available information, in other words, from government reports,  
18 his personal observations of miners, his personal knowledge,  
19 and his role as a health plan trustee in reviewing their  
20 benefit claims.

21 The paragraph that Mr. Kaminetzky complained about  
22 regarding ischemic heart disease is, again, based on a Center  
23 for Disease Control NIOSH study. His comments about diesel  
24 contamination, paragraph 18, are based on a government report.  
25 Paragraph 19, his statements regarding the muscular stress and

1 injuries of surface miners relate to both his personal  
2 experience, his tours of mines, his direct observations of  
3 miners, and also other reports. His experience as a trustee  
4 for the pension plan ruling on disability pensions for miners  
5 with those conditions.

6 Paragraph 22 is based on union business records, and  
7 union historical documents. Paragraphs 23, 24, 25, 26 and  
8 27 -- excuse me, I'm having trouble reading my own handwriting.  
9 Oh, it's review of the letters that his Court has placed upon  
10 the docket, government reports from the National Institute of  
11 Occupational Safety and Health. Paragraph 25 a 1930s report  
12 from the Bureau of Cooperative Medicine, and the Coal  
13 Commission, again a government report. Paragraph 26 from the  
14 government accounting office report. Paragraph 27 from the  
15 National Committee for Coordination of Multiemployer Pension  
16 Plans.

17 Paragraphs 28 through 54 talking about the history of  
18 miner healthcare, are based on a combination of union business  
19 records, government reports, statements made by courts in case  
20 law that are quoted and additional government records.

21 Paragraphs 55 through 78 commenting on the various  
22 declarations, that's based on the actual record of this case.  
23 It's taken from Patriot documentation provided to the union in  
24 the course of these collective bargaining negotiations,  
25 government reports and items that are posted in the data room.

1 Paragraphs 79, again that was the Dolman report.

2 Paragraph 80, I will confess, that's based on a report  
3 from a foreign government and may, technically, not fit within  
4 the hearsay rule. And I suppose if Your Honor struck paragraph  
5 80 because did not consider a report from the government of  
6 China to be inherently reliable you might do so. I said  
7 virtually everything I will concede here that you may want to  
8 disregard. Report from the Government of China, you believe  
9 that the Chinese are attempting to deceive us about coal.

10 Paragraphs 81 and 82 are publicly available materials  
11 that are presented at various conferences of the coal industry  
12 and reported to the Securities and Exchange Commission.

13 Paragraphs 83 to -- Paragraph 83 is based on a government  
14 report.

15 Paragraphs 84 to 93, these are based on Mr. Buckner's  
16 role as a member of the strategy team for the negotiations for  
17 the UMWA. And much the same as Mr. Hatfield just testified a  
18 short while ago that he engaged in collective bargaining  
19 negotiations without actually being at the table, so does Mr.  
20 Buckner. That's actually quite common in labor relations.

21 Paragraph 86 -- I'm sorry paragraph -- I'm up to 94.  
22 Paragraph 94, these are union records relating to the Peabody  
23 spinoff. Paragraph 95 is a report of a number received from  
24 our PWC professionals, but that is linked up through clearly  
25 admissible expert testimony. Paragraph 96 comes from Patriot's

1 10k.

2 Paragraph 97, regarding administrative costs relate to  
3 his experience in administering a union strike fund medical  
4 benefit plan, and also as a trustee. And then the last  
5 remaining paragraphs he was commenting on the declarations of  
6 other parties. Again, Your Honor, if you don't find those  
7 comments to be helpful I suppose you will ignore his comments  
8 about Mr. Schwartz, Mr. Lucha.

9 So Mr. Kaminetzky omitted a lot in the slides. In  
10 fact, I think in all of the slides he showed you he truncated  
11 the part of the paragraph where the source was given as a  
12 specifically admissible record.

13 Now, let's look at the law on this. The Eighth  
14 Circuit addressed this in the Burlington and Northern Railroad  
15 case in 1986, this is at 802 F.2d 994, I'm looking in Section 2  
16 of the opinion. Burlington Northern also challenges the  
17 District Court's exclusion of lay opinion testimony of four  
18 executives of railroads that initiated caboosless operations.  
19 I'm going to say that both of the cases I'm about to cite as  
20 authority arose in collective bargaining context, and both of  
21 them addressed issues that are pertinent to Patriot Coal.

22 The Burlington Northern case used lay opinion  
23 testimony on safety issues. In the Teamster's case, which I'm  
24 about to cite next it was lay opinion testimony concerning  
25 business losses arising out of the labor dispute. So very

1 pertinent to what Mr. Buckner was doing in his declaration.

2 "Burlington Northern maintains that the railroad  
3 executives' testimony was based on their extensive personal  
4 knowledge acquired from day-to-day responsibilities, including  
5 reviewing accident reports filed in the ordinary course of  
6 business, and the officers testified or were expected to  
7 testify, in their experience that trains with cabooses were no  
8 safer than trains without cabooses."

9 Then the court in its ruling says "A district court  
10 has broad discretion in determining whether to admit opinion  
11 testimony and we overturn a ruling only for abuse of  
12 discretion." The judge in this case excluded the testimony.  
13 So let's see what happened.

14 "A lay witness's testimony in the form of opinions or  
15 inferences needed only be" -- excuse me, "need only be  
16 rationally based on perception and helpful to a determination  
17 of a fact in issue. Personal knowledge or perception acquired  
18 through review of records prepared in the ordinary course of  
19 business, or perceptions based on industry experience is a  
20 sufficient foundation for lay opinion testimony." Just exactly  
21 the opposite of what Mr. Kaminetzky just told you.

22 Now I don't know if he knew of this opinion, but he  
23 certainly should not have cited a case -- a criminal case,  
24 which is what I believe the case he cited is, instead of a case  
25 involving an issue highly pertinent to what is before you.

1 "The railroad" -- and the court continues "The  
2 railroad executives' testimony based on knowledge derived from  
3 supervising railroad operations, years of experience in the  
4 industry, and review of employee accident reports prepared in  
5 the ordinary course of business, satisfies the foundation  
6 requirement for lay opinion testimony."

7 Now, the key is was it abuse of discretion to exclude  
8 that testimony? Yes, it was. And the district court was  
9 reversed on that point.

10 With respect to the Teamster's case, again, this is  
11 a -- called Allied Systems v. Teamsters, it's 304 F.3d 784,  
12 it's also an Eighth Circuit case decided in 2002. Citing their  
13 earlier decision in Burlington Northern, the Eighth Circuit  
14 said "Personal knowledge or perception acquired through review  
15 of records prepared in the ordinary course of business,  
16 perceptions based on industry experience is a sufficient  
17 foundation for lay opinion testimony." That's not new.

18 What is new is that the opinion testimony of an  
19 officer of a business regarding the losses that were caused by  
20 the Teamsters strike in that case is admitted -- excuse me, let  
21 me back up, "Without qualifying the officer as an expert is  
22 admitted not because of experience, training or specialized  
23 knowledge within the realm of an expert, but because of the  
24 particularized knowledge that the witness had by virtue of his  
25 or her position," citing the advisory committee notes. In that



1 case the district court did allow the testimony and was upheld  
2 by the Eighth Circuit.

3 There is no difference between what Mr. Buckner did  
4 and what the two appellate opinions upheld in the Eighth  
5 Circuit.

6 I want to address, just briefly, some of the  
7 statements that Mr. Kaminetzky made about Mr. Buckner. In the  
8 ACL case it is not true that Mr. Buckner's declaration was  
9 stricken. It was stricken in part and upheld in part, and, in  
10 particular, the court there said right in the document that Mr.  
11 Kaminetzky handed up to you:

12 "As for statements seeking to 'summarize' documents  
13 presently before the Court, the Court will not strike these  
14 statements as 'irrelevant' or improper under Rule 1006. This  
15 is now a bench trial, the Court adheres to the judicial belief  
16 that 'the documents speak for themselves' and will simply  
17 accord whatever weight it believes such 'summaries deserve in  
18 assisting the Court when reviewing the documents."

19 I submit to you that if Mr. Buckner misrepresented the  
20 content of a document that would be a fair game for the debtor  
21 to cross-examine him, or even to argue that specific statements  
22 that he made should be stricken if it is shown that he said  
23 that the document says X and the document really says Y. But  
24 otherwise, the very case that Mr. Kaminetzky offered up to you  
25 suggests that you ought to accept those summaries.

1           In addition, it's worth pointing out that in the ACL  
2 case Mr. Buckner provided evidence concerning the NBCWA. The  
3 Court in that case ruled that the history of the NBCWA was  
4 irrelevant, because it found the employer wasn't a signatory to  
5 the NBCWA. But I don't think it's very likely you're going to  
6 find that Patriot is not a signatory to the NBCWA. And so that  
7 grounds simply doesn't apply here.

8           Finally, with respect to the charge that Mr. Buckner  
9 is just talking about his impressions of the vaguely understood  
10 ancient history that he didn't personally participate in when  
11 he talked about the orphan retirees, he actually has personal  
12 knowledge of that in his role as a union official.

13           So for these reasons, Your Honor, and in accord with  
14 the two Eighth Circuit opinions that are on the money on this  
15 issue, I would ask that you strike, or deny, I guess, this  
16 request to strike Mr. Buckner's declaration, with the minor  
17 exceptions that I admitted in my presentation that derive from,  
18 in the one case, a foreign government source, rather than  
19 United States government source.

20           Thank you, Your Honor.

21           MR. KAMINETZKY: Your Honor, very briefly, this is  
22 going to be easy, because Mr. Perillo just, kind of, talked  
23 past me.

24           Mr. Perillo spent the first ten minutes walking line  
25 by line or paragraph by paragraph through Mr. Buckner's

1 declaration and told us what the underlying sources were for  
2 the opinions or the testimony he states therein. We have no  
3 problem with the underlying doc -- other than the fact that we  
4 don't have them. If they want to put into the evidence the  
5 1946 report about this, the 1952 part, or some history book  
6 about the history of the unions, I don't think I'll have a  
7 problem with that.

8           Again, if all this declaration was, was here's a whole  
9 bunch of books and reports about the history of the mine that  
10 would be fine. But that's not what this is. What this is, is  
11 that he makes, forms conclusions and opinions and purports to  
12 try to tell the Court something based on those underlying  
13 documents.

14           Just, for example, I started listening to just -- I  
15 wrote something down. Mr. Perillo said -- and goes paragraph  
16 by paragraph. He goes and paragraph 96, and let's turn to  
17 paragraph 96 of the declaration, and, again, I just scribbled  
18 this down. He said paragraph 96, all that does is quote from  
19 the company's 10-K. Let's look at paragraph 96. Paragraph 96  
20 says:

21           "Further exacerbating Patriot's financial condition  
22 from the spinoff is the existence of below market supply  
23 contracts that Patriot entered into with Peabody and Magnum  
24 which Patriot admits caused 572 million dollars in lost revenue  
25 from 2007 to 2012."

1 Now, does that paragraph say here is the 10-K of  
2 Patriot? No. If they would have asked us will you stipulate  
3 that this is the 10-K of Patriot, and for some reason they want  
4 to add it to the record, sure. Be my guest. But for -- again,  
5 what Mr. Perillo's first half of his argument was is why the  
6 documents in which Mr. Buckner quotes may be admissible  
7 evidence. We have no dispute with that.

8 It's too late. He should have done that before.  
9 We've been very agreeable with evidence. But if he wants to  
10 put in a picture of a blank lung or some other medical  
11 pictures, I wouldn't have a problem with it. The problem is  
12 Mr. Buckner, who's not a doctor, not an expert, says this is  
13 what it means and these are the causes and its prolonged use of  
14 this and that. That's the dispute that we're having.

15 That's why, again, the first half of Mr. Perillo's  
16 presentation was just talking past us. And I will note that  
17 the exception that he's talking about, the government records  
18 exception, is Rule 1005 of the Federal Rules of Evidence, which  
19 he could have cited to the Court, and then it has a very  
20 specific -- what you could do is admit the entire document if,  
21 under certain circumstances. It's pretty circumscribed, Rule  
22 1005. And that's not what we're talking about here. He hasn't  
23 tried to admit this report or that report. What he's doing is  
24 saying I looked at this report and here's what I think about  
25 it.

1           Again, you have to bifurcate in this dispute the  
2 underlying data that Mr. Buckner is looking at, which we  
3 probably won't have a problem with. If the Court would find it  
4 helpful to read some report from the 1940s, that's fine. But  
5 what he's not allowed to do then is give his own testimony  
6 about it. And Rule 1005 says: "If no such copy can be  
7 obtained by reasonable diligence", I'm looking at the last  
8 sentence, "then the proponent may use other evidence to prove  
9 the content".

10           Did you hear Mr. Perillo say we tried really hard to  
11 find the government records that we're trying -- that Mr.  
12 Buckner has tried to talk about, but we couldn't? They're not  
13 available. I think he said just the opposite, that it's Mr.  
14 Buckner's job to compile this stuff.

15           So, again, if Mr. Buckner's declaration was simply  
16 here is a whole bunch of stuff that I keep in the ordinary  
17 course of business that I think the Court would find helpful,  
18 we're willing to stipulate to that right now. But what we  
19 can't have is a lay witness coming up here and telling you what  
20 he thinks about this stuff, because that's where we cross the  
21 line from admitting underlying documents like a 10-K to  
22 admitting paragraph 96, where he makes conclusions about what  
23 this reflects in the coal markets, et cetera.

24           Finally, Your Honor we love -- love the two Eighth  
25 Circuit cases that Mr. Perillo found. And he tried to talk

1 about those. That's the Burlington case and the Allied case.  
2 Now, why is that? It's because in that case who are we talking  
3 about? We were talking about the railway executives. We were  
4 talking about the Ben Hatfield. Did I hear them object when  
5 Ben Hatfield talked about where he thought the coal market's  
6 going to go? No. You know why? Because he's a lay expert  
7 that every day of his life that's his job as CEO of a company.  
8 He has personal -- that is what a CEO does.

9 If Mr. Buckner worked for a coal mining company for  
10 more than two years as a miner, and if his job was to make coal  
11 predictions and do financial analysis, that would be a  
12 different story. But that's not his job. He was, as Mr.  
13 Perillo quite openly said, Mr. Buckner spent his entire career  
14 as an analyst for the union. He's never done this for a coal  
15 company.

16 So the difference, again, in Burlington Northern it  
17 was a railway executive was permitted to testify in an area of  
18 his expertise, i.e. what he does for a living. In that case  
19 the people that were allowed to testify managed the daily  
20 operations of the railroad, and including the safety of those  
21 railroads, which was the issue in this case.

22 Buckner has absolutely no nexus to that as an employee  
23 and now a consultant of the UMWA.

24 And the same thing is with respect to the Allied  
25 Systems teamsters' case. There, an internal accountant and

1 vice president of internal audit -- of the company -- was  
2 permitted to testify as a lay witness regarding the company's  
3 damages during a work stoppage. Again, he's an internal  
4 auditor of the company being asked what effect did it have on  
5 your numbers, on your books, when there was a work stoppage.  
6 That has absolutely nothing to do with an analyst who was never  
7 involved with the actions in this case giving testimony.

8           And Mr. Perillo is very honest to the fact that, and I  
9 appreciate that, that Mr. Buckner was involved in a lot of  
10 different labor negotiations, and we appreciate that. He just  
11 has no personal knowledge of anything that happened here other  
12 than what we heard, he attended one meeting on April 25th. If  
13 he wants to testify to that one meeting on April 25th, I guess  
14 he's allowed to. It's not in his declaration. But, again, his  
15 declaration should be stricken in its entirety under the Rules  
16 of Evidence that we've cited. He has no personal knowledge.

17           And if Mr. Perillo and I go out in the hallway I bet  
18 you we could stipulate to all the underlying information that  
19 Mr. Perillo wants to get into the record. I don't think we'll  
20 have much of problem with any of that as long as we're supplied  
21 copies.

22           MR. PERILLO: Thank you. I don't mean to belabor the  
23 point, Your Honor, but the public records exception is not  
24 found in Rule 1005. It's found in Rule 803(8), and it says  
25 that "Public Records and Reports", that is

1 "Records, reports, statements, or data compilations,  
2 in any form, of public agencies or offices, setting forth", (B)  
3 here, "matters observed pursuant to duty imposed by law as to  
4 which matters there was a duty to report" are not hearsay.

5 And that means the GAO report, the Coal Commission  
6 report, the MSHA documents, the CDC documents. Those all are  
7 not hearsay and they are all admissible.

8 MR. KAMINETZKY: So stipulated, Your Honor.

9 MR. PERILLO: And they -- excuse me, Mr. Kaminetzky.

10 And Mr. Kaminetzky tried to tell you that what the  
11 railroad executive's doing in Burlington Northern were just  
12 handing up government reports to the Court. That's not what  
13 they were doing. They were testifying about whether a  
14 particular practice was safe or not safe based upon their  
15 reviews of accident reports.

16 And what is Mr. Buckner doing in his declaration?  
17 He's telling you that certain practices are safe or not safe,  
18 based on his review of government accident reports. Those two  
19 things are wildly different, because one was an executive, a  
20 capitalist, and the other is a guy from labor. Ah.

21 Well, congratulations, Your Honor. We've come full  
22 circle. Class warfare is alive and well in the bankruptcy  
23 court, and we just found out that today we are the second class  
24 citizens. I object.

25 With respect to the other case, it is not true that a



1 corporate CEO was testifying about damages to the corporation.  
2 We go to the line above the one I read to you. Grover's,  
3 that's the witness, knowledge "was limited to his firsthand  
4 knowledge, obtained as the bookkeeper and record-keeper at the  
5 terminal". He was a low-level employee who happened to have  
6 access to records, and he gave an opinion about the amount of  
7 damages based on those records.

8 I do not understand why Mr. Buckner cannot do the very  
9 same thing, and in the Eighth Circuit it's an abuse of  
10 discretion not to let him.

11 Thank you.

12 MR. KAMINETZKY: Your Honor, once again, and I don't  
13 mean to pop up again and again, but --

14 THE COURT: You all --

15 MR. KAMINETZKY: -- once again, we're talking past  
16 each other. Mr. --

17 THE COURT: Well, let me make it clear. I think I  
18 know what the issue is, and although I stay current on Eighth  
19 Circuit law I've got to go look at these cases, gentlemen, and  
20 I've got to eyeball them for a minute, much to my law clerk's  
21 chagrin.

22 MR. KAMINETZKY: But, Your Honor --

23 THE COURT: So --

24 MR. KAMINETZKY: No.

25 THE COURT: Yes.

1 MR. KAMINETZKY: And I appreciate it. I just want you  
2 to understand that what we're not in dispute -- Mr. Perillo  
3 spent the first part of his last session talking about a  
4 hearsay exception. Again, we're not talking about the  
5 underlying documents. The underlying documents might very well  
6 be fine. What we're talking about is the testimony.

7 And God forbid am I suggesting that a union can't do  
8 the same thing that company executives can. Capitalists can't  
9 do the same thing as organized labor.

10 In the cases that were quoted it wasn't that all they  
11 did was hand up government reports. No one said that. I  
12 didn't say that. What they did was saying my job in this  
13 company, as Mr. Hatfield is, is to be in charge of safety, to  
14 be the internal auditor, and that's my job, and that's what I  
15 do for the company. Mr. Buckner does not work in the coal  
16 industry. He works for the UMWA. He's an amazing employee.  
17 It's nothing personal. But this is, again, he is a lay  
18 witness, and you have to be a witness to the facts at issue.

19 Thank you.

20 THE COURT: All right. You all have got -- I've got  
21 to go look at these cases. We'll be in recess for twenty  
22 minutes, till 3:15.

23 (Recess from 2:52 p.m. until 3:21 p.m.)

24 THE COURT: Thank you. Be seated, please.

25 All right. I have reviewed the case, decided on the

1 argument.

2 All right. I'll grant the motion in part. I'll  
3 strike paragraphs number 80, paragraphs 95 and 96 of Mr.  
4 Buckner's declaration. I'll allow the other paragraphs of the  
5 declaration under 803(8), the government reports under 803(6).  
6 He relied on business records as well as my reading of the  
7 Burlington Northern Railway case that there are documents from  
8 him employment and based on his perceptions.  
9 (Mr. Buckner's declaration was hereby received into evidence as  
10 of this date.)

11 All right. Mr. Perillo, you ready to call your first  
12 witness?

13 MR. PERILLO: I am, Your Honor. We are tendering for  
14 cross-examination Arthur Traynor, a staff attorney with the  
15 United Mine Workers of America and a declarant --

16 THE COURT: Who? Mr. Traynor. Back there; we're  
17 going to swear you in at the podium first. Hold on.

18 MR. PERILLO: And a declarant in this matter. We're  
19 tendering his declaration as his direct testimony and  
20 presenting the witness for cross-examination, pursuant to the  
21 procedures we previously agreed upon.

22 (Mr. Traynor's declaration was hereby received into evidence as  
23 Joint Exhibit 160, as of this date.)

24 THE COURT: All right. Mr. Traynor, if you'll be  
25 sworn in first.

1 MR. TRAYNOR: Yes, Your Honor.

2 (Witness sworn)

3 THE CLERK: Please have a seat in the witness box,  
4 sir. There is a step up. If you would please speak into the  
5 microphone.

6 MR. KAMINETZKY: May I proceed, Your Honor?

7 THE COURT: You may.

8 MR. KAMINETZKY: Okay.

9 CROSS-EXAMINATION

10 BY MR. KAMINETZKY:

11 Q. Good afternoon, Mr. Traynor. How are you doing?

12 A. I'm doing well. Good afternoon, Ben.

13 Q. Have you ever prepared liquidity projections for a coal  
14 company?

15 A. I have not.

16 Q. Have you ever analyzed liquidity projections for a coal  
17 company on your own?

18 A. I have not.

19 Q. Have you ever negotiated a commercial loan agreement?

20 A. I have not.

21 Q. Have you ever been involved with negotiating a DIP loan?

22 A. I have not.

23 Q. Have you ever been involved in negotiating covenants in a  
24 DIP loan or any other type of commercial loan?

25 A. I have not.

1 Q. Do you have any personal knowledge of typical covenants  
2 that you would find in a DIP loan?

3 A. Other than what my advisors have told me, I do not have  
4 any personal knowledge.

5 Q. Do you have any personal knowledge of the purpose of  
6 liquidity or EBITDA covenants and why lenders care about them?

7 A. Other than what my advisors have told me I do not.

8 Q. Now, isn't it true, sir, that the only loan you've ever  
9 negotiated is the mortgage for your home and maybe some car  
10 loans?

11 A. Personal loans of that sort. Nothing commercial, correct.

12 Q. Have you ever worked on any company's business plan?

13 A. I have not.

14 Q. Do you have any background in corporate finance?

15 A. I do not.

16 Q. Do you have an MBA, Masters in Business Administration?

17 A. No.

18 Q. Do you have any degrees other than your BA and JD?

19 A. I do not.

20 Q. And your BA was in philosophy, was it not?

21 A. It was.

22 Q. Did you take any finance courses in undergrad or in law  
23 school?

24 A. No.

25 Q. Did you take any business courses as an undergrad or in

1 law school?

2 A. No, I did not.

3 Q. Prior to this experience, where I understand you were on  
4 the UMWA's negotiation team, have you ever been directly  
5 involved with labor negotiations for the mine workers?

6 A. If by directly involved you mean at the table I have not,  
7 but I have been involved in labor negotiations for the mine  
8 workers.

9 Q. Prior to this experience have you ever been involved with  
10 labor negotiations with a company in Chapter 11?

11 A. No.

12 Q. And prior to this experience have you ever been involved  
13 in a Section 1113 or 1114 process?

14 A. No.

15 Q. Now, I'd like you to take a look at your amended  
16 declaration, which is Joint Exhibit 160 in the binders in front  
17 of you, and we're going to pull -- pull it up on the screen to  
18 move things along.

19 Specifically, I want to take a look at paragraph 29 on  
20 page 10-11, where you talk about the liquidity covenant in  
21 Patriot's DIP.

22 Again, you could look at the screen or take a look.

23 And in that paragraph you make the following statement.

24 "The 100 million dollar liquidity covenant, an amount  
25 apparently greater than necessary given the secure status of

1 the DIP financing, seemed to be an artificial device that  
2 Patriot could use to justify concessions beyond what would  
3 otherwise be 'necessary' if it had not unnecessarily committed  
4 itself to an arbitrary cash balance requirement."

5 Do you see that you wrote that?

6 A. I do.

7 Q. Do you have any personal basis for making this assertion?

8 A. It's what my advisors told me, and it's what my team and I  
9 concluded after reviewing Mr. Huffard's initial declaration. I  
10 should say that Mr. Huffard's initial declaration confirmed  
11 what our -- my advisors had already told me about their beliefs  
12 about the covenants.

13 Q. Mr. Traynor, when I use the word personal basis I mean do  
14 you have, independent of what your advisors told you, any basis  
15 to conclude or form the conclusion that's written in the  
16 paragraph we just looked at?

17 A. No.

18 Q. Now, let's look at page 11, the last sentence of paragraph  
19 30 of your sworn declaration. And I quote:

20 "It was not until the actual financial data in the October  
21 bank plan was provided and processed by our analysts at PWC  
22 that we were able to determine that Patriot's line graph was  
23 dramatically inaccurate and its liquidity projections were  
24 actually a V shaped trough and resulted in Patriot having a  
25 cash balance of over 200 million in 2016, even without any

1 1113/1114 savings."

2 Do you see that?

3 A. I do.

4 Q. Do you personally have the experience, knowledge, or  
5 expertise to make determinations related to the accuracy of  
6 liquidity projections?

7 A. Not without my advisors. No, I don't personally.

8 Q. So you don't have any personal basis to make that  
9 determination.

10 A. No.

11 Q. So when you wrote in paragraph 30 of your declaration that  
12 "We were able to determine", the "we" there didn't actually  
13 include you.

14 A. No. "We" did include me. I provided my advisors at PWC  
15 the November 15th presentation. They did the analysis looking  
16 at the October bank plan, and they determined -- they made the  
17 determination that the line graph was dramatically inaccurate  
18 and the rest of the sentence there.

19 Q. So the "we" part, which included you, is the part that you  
20 gave them the data for them to analyze.

21 A. That's correct.

22 Q. But you don't include yourself in the "we" of the analysis  
23 part.

24 A. That's correct.

25 Q. Did the UMWA object to the DIP loan presented to the Court



1 in this case?

2 A. I don't believe so, but I'm not sure.

3 Q. Do you think you would know if it would have?

4 A. Probably, yes.

5 Q. Do you believe the UMWA has accepted the concept of a

6 VEBA?

7 A. The UMWA and President Roberts, at the negotiating table,

8 have made the major and historic step of proposing in these

9 negotiations, as part of the resolution to this matter, a VEBA.

10 So, yes.

11 Q. And was that acceptance conditioned in any way?

12 A. It was part of a package proposal.

13 Q. And could you please turn to Exhibit 59 in the binder.

14 And we're just pulling out the relevant section on the

15 screen just to move things along.

16 Now, do you recognize Exhibit 59?

17 A. I do. Yes. This is the UMWA's second set of

18 counterproposals?

19 Q. And do you see the language that we pulled out on the

20 screen from Exhibit 59?

21 A. Yes. I'd like to find it in the document, if you'll give

22 me one moment.

23 Q. Sure.

24 A. Can you help me with a page number of that?

25 Q. Give me one -- it's Section 1A.

1 A. Yes.

2 Q. Do you see it?

3 A. I see it, yes.

4 Q. Okay. And doesn't this language indicate that the  
5 acceptance of the VEBA was conditioned upon Patriot accepting  
6 every single other item in the UMWA's counterproposal?

7 A. Yes. This language means what it says in that all of the  
8 counterproposals were presented as part of an entire package,  
9 could only be accepted or rejected as part of an entire  
10 package.

11 Q. So the answer is yes.

12 A. Can you state your question again? I want to listen very  
13 carefully.

14 Q. Yes. Doesn't this language say or mean that the UMWA's  
15 acceptance of the VEBA was conditioned upon Patriot accepting  
16 every single other item in the UMWA's counterproposal?

17 A. Yes. The acceptance of the VEBA proposed here was  
18 conditioned on acceptance of every other item in the  
19 counterproposal, yes.

20 Q. Right. And you were the principal draftsman of the  
21 various counterproposals that the Union has provided for the  
22 company, correct?

23 A. I did the majority of the drafting, yes.

24 Q. And does similar language to what we see on the screen  
25 here appear in each and every one of the Union's

1 counterproposals?

2 A. I believe that's true, yes.

3 Q. Now, do you agree with me that it's not productive for  
4 negotiating parties to make unrealistic or impossible demands  
5 on the other side?

6 A. Yes.

7 Q. Please turn to Joint Exhibit 160 and turn to page 21, the  
8 first sentence of paragraph 55. And this, again, is your  
9 declaration.

10 A. You said -- I'm sorry. The paragraph again?

11 Q. It's page 21, paragraph 5-5, 55. You should keep that  
12 exhibit in front of you, because that's your declaration.  
13 We're going to go back to it a lot.

14 A. I'm here.

15 Q. All right. You see the words -- and this, again, is from  
16 your sworn declaration.

17 "We again requested that the company renegotiate or  
18 replace its DIP financing arrangements as necessary to  
19 eliminate the liquidity and EBITDA covenants."

20 Do you see that?

21 A. I do.

22 Q. Now, is it your belief that the company could or can get a  
23 new DIP loan without either a liquidity or EBITDA covenant?

24 A. No, that's not my belief. I believe they could have,  
25 based on what my advisors told me, replaced the DIP financing

1 in January. I think we had mentioned -- we had said this as  
2 early as November, if I recall, certainly in December. They  
3 could have replaced the DIP financing that they had with  
4 financing with lower covenants, but --

5 Q. So --

6 A. -- not eliminate it altogether.

7 Q. So when you use the word eliminate in your declaration you  
8 actually mean reduce?

9 A. I mean eliminate the covenants that were in the existing  
10 DIP financing.

11 Q. Does it say that in your declaration?

12 A. We went over this in my deposition, and I think you had  
13 interpreted eliminate to mean eliminate altogether, and I had  
14 said, explained to you at that time that eliminate doesn't mean  
15 to eliminate the covenants altogether, it means to eliminate  
16 the covenants in the particular DIP loans that the company had  
17 in place and still has in place.

18 Q. And is it your testimony that what you meant by eliminate  
19 the liquidity and EBITDA covenants you meant eliminate and  
20 replace with DIP loans with lower liquidity and EBITDA  
21 covenants?

22 A. Yes. We had always asked the company to try to either  
23 renegotiate or replace.

24 Q. I'm glad we cleared that up. And just to be sure, can you  
25 elaborate on what the purpose of DIP loan covenants are or why

1 lenders would care about them?

2 A. I'm not really certain other than what my advisors have  
3 told me. I know it's to provide some measure of security to  
4 the lender, but this is not my area of expertise.

5 Q. Is a potential recovery from Peabody or Arch relevant to  
6 the amount of savings that Patriot needs from the UMWA?

7 A. I think it should be taken into consideration in these  
8 proceedings.

9 Q. Do you know whether Patriot is going to recover against  
10 Peabody or Arch?

11 A. I do not, no.

12 Q. Do you know how much Patriot is going to recover against  
13 Peabody or Arch?

14 A. No, I do not.

15 Q. Do you know when Patriot is going to recover anything from  
16 Peabody or Arch?

17 A. No, I do not.

18 Q. Now, it's my understanding that the UMWA itself is pursuing  
19 claims against Peabody. Is that correct?

20 A. That's correct.

21 Q. And, in fact, you're involved in that lawsuit. Is that  
22 correct?

23 A. Yes.

24 Q. Do you know whether the UMWA is going to recover against  
25 Peabody?

1 A. I don't know for certain, no.

2 Q. Do you know how much the UMWA is going to recover against  
3 Peabody?

4 A. No.

5 Q. Did you know whether Patriot is conducting an  
6 investigation against Peabody?

7 A. We've asked at the bargaining table, and we've been told,  
8 in fact, that they are.

9 Q. Did you know whether the investigation includes fraudulent  
10 conveyance claims against Peabody?

11 A. I don't know, but based on the conversations we've had at  
12 the table I believe that that's one of the things that your  
13 firm is looking into.

14 Q. And are you aware that Patriot filed a successful Rule  
15 2004 motion against Peabody in furtherance of that  
16 investigation?

17 A. I'm a little embarrassed to admit that I didn't know it  
18 was successful, but I know of the motion.

19 Q. It was successful. Now, could --

20 A. Congratulations.

21 Q. Can you please look at the screen. This excerpt is from  
22 page 4 and 5 of the UMWA's brief, its objection. And if you  
23 want I can give you a copy of the brief, because I'm not sure  
24 the actual briefs are part of the exhibits, but --

25 MR. KAMINETZKY: Mr. Perillo, do you need a copy of

1 the brief?

2 MR. PERILLO: I don't.

3 MR. KAMINETZKY: Your Honor, did you need a copy of  
4 the brief just --

5 UNIDENTIFIED SPEAKER: Take one out.

6 THE COURT: That's probably easier, I'm sure. I have  
7 it up there, but --

8 MR. KAMINETZKY: Could I give one to the witness?

9 THE COURT: Certainly.

10 THE WITNESS: Okay.

11 Q. Now, if you could please look at the excerpt -- we're with  
12 page 4 and 5 of the UMWA's objection, to the bottom of page 4  
13 going onto page 5. Oh, and just before we forget, are you one  
14 of the people who signed this brief?

15 A. Yes. I'm in the signature block.

16 Q. Okay. And you're the Art Traynor on page 58 of the brief,  
17 correct?

18 A. Yes.

19 Q. And I think the brief says, if you look at this sentence  
20 in the brief, or sentences in the brief, it says:

21 "Patriot has essentially dismissed the idea of pursuing  
22 its former parent for fraudulent conveyance, something it could  
23 have done years ago, before bankruptcy, as impractical because  
24 of the limited time it has given itself to solve the crisis  
25 that it created."

1 Now, do you believe that Patriot has decided not to pursue  
2 Peabody for fraudulent conveyance?

3 A. Now, but I know that we were told at the bargaining table,  
4 and I made this request myself, how long it would take to do  
5 this fraudulent conveyance investigations, maybe back in  
6 November. It was something we raised very early on and was  
7 told that the investigation that is being conducted should be  
8 wrapped up in the time frame allowed for 1113 and 1114  
9 negotiations and that hasn't happened. And I also agree with  
10 the statement in the brief that it could have been done years  
11 ago, but, inexplicably, it was not. So, I think that's the  
12 essential point that we're driving at here in the brief, but --

13 Q. Well, let me ask you this. I understand the essential  
14 point that you're trying to drive home, and I also understand  
15 your other point, which we'll get back to, but how about this?  
16 Do you agree that Patriot has essentially dismissed the idea of  
17 pursuing its former parent for fraudulent conveyances? Is that  
18 a true statement?

19 A. I don't know. As I told you before, I -- I just don't  
20 know.

21 Q. You were here for the testimony of Mr. Hatfield, weren't  
22 you?

23 A. I was in the back room here, the counsels' room, for a  
24 part of it, and then I was here for another part, but I didn't  
25 listen to every word.



1 Q. Okay. But you did say that you heard at the negotiation  
2 table that Patriot is investigating claims against its former  
3 parents, correct?

4 A. Yes.

5 Q. Okay. But you, nevertheless, signed a brief that said  
6 Patriot has essentially dismissed the idea of pursuing its  
7 former parent.

8 A. Yes.

9 Q. Now, do you know whether Patriot has filed a declaratory  
10 judgment action against Peabody?

11 A. Yes, as part of these proceedings.

12 Q. And you were here Monday when he had some fireworks  
13 related to that declaratory judgment action.

14 A. I actually wasn't. I was handling the protest in the  
15 streets.

16 Q. Okay. Now, you believe that Patriot could have filed this  
17 declaratory judgment action against Peabody sooner than it did.  
18 Is that your position?

19 A. Yes. I believe they could have.

20 Q. Okay. And, in fact, if you want --

21 A. With respect to the Peabody-Assumed Group?

22 Q. Yes.

23 A. Yes. Yes.

24 Q. And, in fact, if you look at your declaration, again,  
25 Joint Exhibit 160, and if you could flip to page 8, paragraph

1 21. Do you see the sentence which starts -- it's pulled up on  
2 the screen --

3 "On March 14, 2013, 119 days after submitting its first  
4 1114 proposal and 249 days after declaring bankruptcy", et  
5 cetera.

6 Do you see that?

7 A. Yes.

8 Q. And here is it fair to say by mentioning the number of  
9 days what you're trying to convey to this Court in your sworn  
10 declaration is that Patriot should have done this sooner?

11 A. Yes. Conveying the number of days, yes.

12 Q. Now, are you aware that Peabody has argued that the  
13 declaratory judgment is still not ripe for judicial  
14 determination?

15 A. I didn't hear that, but that doesn't surprise me, no.

16 Q. Okay. And could you explain to the Court, if you can, how  
17 the issue brought in the declaratory judgment could have been  
18 ripe before Patriot filed for 1113 and 1114 relief?

19 A. Well, the earliest declarations filed, I believe, on July  
20 9th, with the petitions, mentioned that their retiree  
21 healthcare obligations -- I believe it even specifically said  
22 those assumed by Peabody -- were a major source of the  
23 company's financial difficulties, and so it became clear even  
24 at that time that there would be -- it was clear even in those  
25 petitions and those declarations filed with the petitions --

1 Mark Schroeder's declaration comes to mind -- that you would  
2 seek 1114 relief for that group and the liability and  
3 assumption -- excuse me -- the NBCWA liability assumption  
4 agreement that's at issue in the declaratory action, you know,  
5 clearly has this -- what we've been referring to as the  
6 poisoned pill paragraph.

7 Q. And so it's your testimony that as of the date of the  
8 petition Peabody had already taken the view that it would not  
9 honor the commitments in those agreements.

10 A. I don't know that.

11 Q. Well, do you know that there is a controversy requirement  
12 before you go running to court?

13 A. Yes.

14 Q. You have to have a dispute with someone.

15 A. That's right.

16 Q. And could you explain how we had a dispute with anyone  
17 before Peabody told us we had a dispute?

18 A. Well, the language of the liability assumption agreement  
19 that's at issue was available for your review at that time. It  
20 was part of the negotiation -- negotiated spinoff documents.

21 Q. So, it's your testimony when you have a contract with  
22 someone you can sue them before they say they're not going to  
23 honor that contract, just in case.

24 MR. PERILLO: Objection.

25 A. That's not what I'm saying.

1 MR. PERILLO: I think that mischaracterizes the  
2 witness testimony.

3 MR. KAMINETZKY: I'm asking --

4 A. And that's -- that's not what I'm saying.

5 THE COURT: Just a second, Mr. Traynor.

6 THE WITNESS: I'm sorry.

7 THE COURT: Mr. Kaminetzky, did you have something to  
8 say in response to that objection?

9 MR. KAMINETZKY: Yes. Mr. Traynor has opined in his  
10 declaration that we should have taken legal action sooner than  
11 we could. He has certainly opened the door to that by  
12 commenting on the number of days and the foot dragging that he  
13 did. I'm asking him, for him to have made that comment and  
14 criticism he must have concluded that a lawsuit was possible  
15 prior to the time that we brought it. I want to know the basis  
16 for his determination that a lawsuit was possible. Otherwise,  
17 his suggestion that we dragged our feet has no basis.

18 THE COURT: All right. I'll overrule the objection.  
19 You may answer the question.

20 A. I'll tell you that before we filed our action we sent a  
21 letter to Peabody asking them to be accountable for the retiree  
22 obligations that they made to our retirees, and we received a  
23 response, and that was part of our presentation to the Court in  
24 the 510 action that you had mentioned earlier in the Southern  
25 District of West Virginia. It was part of our presentation as

1 to the ripeness issue, and I think Patriot could have done the  
2 same here, and, in fact, at the bargaining table I encouraged  
3 Ben Hatfield to write such a letter, and, to my knowledge,  
4 he -- neither he nor anybody from Patriot has done so.

5 Q. So, again, it's your testimony that this issue was ripe  
6 all the way from the petition date.

7 A. Well, it could have been.

8 Q. It could have been. You mentioned now that the UMWA is  
9 pursuing claims against Peabody. Is that right?

10 A. That's correct.

11 Q. And that's that 510 action you just referred to?

12 A. Yeah, it's ERISA -- ERISA Section 510, I believe, is  
13 the -- what 510 means there, yes.

14 Q. And that suit is also related to Patriot's spinoff from  
15 Peabody. Is that right?

16 A. That's correct.

17 Q. And the spinoff took place in October of 2007. Is that  
18 right?

19 A. I believe that's the date, yes.

20 Q. And do you believe that Patriot's spinoff from Peabody was  
21 doomed from the outset?

22 A. Yes.

23 Q. And, just to be clear, this is in contrast to the spinoff  
24 not working out in hindsight. Isn't that right?

25 A. I'm sorry. Can you ask that again?

1 Q. Yes. I'm just trying to make the distinction so it's  
2 clear to the Court. When you say something is doomed from the  
3 outset that's very different than saying that in hindsight  
4 something didn't work out.

5 A. Oh, yes. I understand what you're saying. Yes, it was  
6 doomed from the outset.

7 Q. So the October, 2007 spinoff was doomed from the offset.  
8 That's your testimony.

9 A. Yes.

10 Q. And the UMWA commenced litigation against Peabody in  
11 October of 2012. Is that correct?

12 A. That's correct.

13 Q. Why didn't the UMWA commence this litigation against  
14 Peabody any sooner, when it criticizes Patriot for having been  
15 unable to do so years before bankruptcy?

16 A. I'm not certain.

17 Q. You're not certain. Well, let's take a look at pages 4  
18 and 5 of the UMWA's objection, which -- the UMWA's objection,  
19 again, which you signed, and, again, it says here:

20 "Patriot has essentially dismissed the idea of pursuing  
21 its former parent for fraudulent conveyances, something it  
22 could have done years ago, before bankruptcy."

23 Do you see that?

24 A. I do.

25 Q. So you're criticizing Patriot for not going after Peabody

1 years before filing for bankruptcy. Is that right?

2 A. Yes. In the brief that's, I think, what we're doing here.

3 Yes.

4 Q. Right. And my question to you is why did the UMWA then  
5 wait five years before it went after Peabody?

6 A. I don't know.

7 Q. You don't know why.

8 A. No, I don't know.

9 Q. So you don't know why UMWA did, but you felt comfortable  
10 criticizing Patriot for not taking that action, yet you don't  
11 know why you didn't do the similar action. Is that right?

12 A. Well, we're talking about two different actions.

13 Q. That's right.

14 A. Right.

15 Q. But if the spinoff was doomed from the outset, then why  
16 did you wait till October of 2012 to bring your action?

17 A. I don't know.

18 Q. Okay. Now, are you committed to a consensual resolution  
19 with Patriot?

20 A. We would very much like to reach a consensual resolution.

21 Q. Okay. And is that the case sitting here today?

22 A. Absolutely.

23 Q. So it's a good thing for a debtor and a union to continue  
24 to negotiate after the debtor files for relief under Section  
25 1113 or 1114.

1 A. Yes.

2 Q. And would you agree that it's a good thing for the parties  
3 to continue to negotiate even after a hearing on 1113 and 1114  
4 commences?

5 A. Yes.

6 Q. Now, do you, nevertheless, believe that Patriot's April  
7 10th proposal, which was Patriot's fourth 1113 and fifth 1114  
8 proposal, is indicative of bad faith and tactical behavior?

9 A. Yes.

10 Q. So you believe that our April 10th proposal to the Union  
11 was made or is indicative of bad faith and tactical behavior.  
12 That's your testimony.

13 A. The timing of the proposal, I think, evidences bad faith,  
14 and it was certainly the product of tactical behavior. It  
15 deprived us --

16 Q. All right. Now, you were --

17 A. It deprived us of an opportunity to examine Patriot's  
18 witnesses on the proposal, which represented some movement. It  
19 certainly was a different proposal than the one that had been  
20 made prior. And it deprived us of the ability to address our  
21 declarations to the most recent proposal, as you'll see in the  
22 last paragraph, I believe, of my own declaration where I was --  
23 I had to file it before I was even able to review the last  
24 proposal.

25 Q. Now, you were -- I guess, maybe, you weren't here in



1 court, but do you understand that the Court ruled that the  
2 April 10th proposal is relevant to these proceedings, correct?

3 A. I understand the Court's ruling, yes.

4 Q. And you also understand that even the Union agreed that  
5 proposals made after the debtors' motion but before the  
6 commencement of the hearing are relevant to the statute's good  
7 faith requirement. That's even the Union's view. Is that  
8 correct?

9 A. I believe that's a view, but I would defer to my counsel  
10 on that.

11 Q. So, even though the judge has ruled -- or even though it's  
12 the Union's view that negotiations should continue after the  
13 filing of 1113/1114, and even though you actually testified  
14 under oath now that you believe the parties should continue to  
15 negotiate after the filing of 1113 and 1114 --

16 A. Yes.

17 Q. It's still your sworn testimony that us giving you a  
18 proposal on April 10th exhibited bad faith and tactical  
19 behavior. Is that right?

20 A. Yes. Negotiations and continued negotiations are a good  
21 thing, I think absolutely necessary if we're to reach a  
22 consensual resolution. That doesn't mean that continued  
23 negotiations can't sometimes involve tactical behavior or bad  
24 faith behavior.

25 Q. So for us --

1 A. So I don't think they're inconsistent.

2 Q. So, you're saying -- so we were inevitably -- if you  
3 follow the Court's guidance and the obligation to continue to  
4 negotiate after the filing of 1113 and 1114 relief, you are not  
5 only following the Court's guidance but you are also engaged in  
6 bad faith and tactical behavior. Is that your --

7 A. No. Certainly not.

8 Q. So how could we have given you a proposal after the filing  
9 of 1113 or 1114, or how could we have given you a proposal last  
10 week or the week before or even today, without you standing  
11 here and accusing the company of engaging in bad faith and  
12 tactical behavior.

13 A. It was the timing of this particular proposal that led our  
14 team and our counsel to make the argument that this was  
15 tactical and -- the timing was tactical and made in bad faith.

16 Q. So when did the tactical bad faith window close which  
17 would allow us now to provide you with a proposal and not be  
18 accused of bad faith and tactical behavior?

19 A. I don't know about a window.

20 Q. So if we would give you a proposal today, would that be  
21 bad faith and tactical behavior?

22 A. No, it -- the judge has say -- said that she'll consider  
23 proposals up to the day the hearing commenced, but I think, you  
24 know, we intend, if there -- to try to reach a resolution even  
25 after the hearing concludes. We've made a counterproposal to

1 you just this last Saturday, and, so, no, I don't think it's  
2 necessarily the case that any proposal provided at this time is  
3 made in bad faith or with a tactical motivation.

4 Q. Well, let me ask you this then. When you provided at  
5 10:35 p.m. on Saturday the Union's counterproposal --

6 A. Yes.

7 Q. Which I note, again, deprived us of an opportunity to  
8 depose your witnesses or perform an analysis between Saturday  
9 night at 10:35 and 9 a.m. on Monday morning. Was that  
10 counterproposal issued by the Union in bad faith and exhibiting  
11 tactical behavior?

12 A. No.

13 Q. Okay. I get it. So our proposal of April 10th exhibited  
14 bad faith and tactical behavior, but your counterproposal a  
15 week later did not exhibit any such behavior.

16 A. Yeah. You had asked for a counterproposal, in fact, or  
17 Mr. Hatfield had asked for a counterproposal in that time, yes.

18 Q. So the Union was upset with our proposal on April 10th.

19 A. We are always happy to continue negotiations. It was the  
20 timing and the apparent attempt to deny us the opportunity to  
21 address your most recent proposal at hearing that was tactical,  
22 that we believe was tactical. And so that was the basis of the  
23 whole argument that was made by counsel. I believe it referred  
24 to, if I recall correctly, the Frontier decision.

25 Q. How do you -- well, you work for Mr. Roberts.

1 A. President Roberts you mean?

2 Q. Yes.

3 A. Yes.

4 Q. Cecil Roberts, so, is your boss. How could -- Mr. Roberts  
5 went out in the press and gave certain statements about our  
6 April 10th proposal. Are you aware of that?

7 A. Yes, I'm generally aware of that.

8 Q. And he actually --

9 A. Yes.

10 Q. You've seen certain articles where he's quoted as  
11 described the April 10th proposal from the company to the UMWA.

12 A. Yes.

13 Q. Okay. And does Mr. Roberts describe that to the press,  
14 that April 10th proposal, as a proposal made in bad faith and  
15 for tactical reasons?

16 A. He describes the substance of the proposal, and the  
17 substance of the proposal, which is the direct equity stake, I  
18 believe, he referred to as a step forward.

19 Q. So, it's fair to say that Mr. Roberts referred to the  
20 April 10th proposal as a step forward, correct?

21 A. Yes, but he wasn't referring to the timing of the proposal  
22 in the litigation context.

23 Q. I see. So it was a step forward substantively, but it was  
24 made in bad faith.

25 A. The timing was made in bad faith.

1 Q. I see. And you agree that the way this matter will be  
2 resolved, if it could be resolved between the parties absent an  
3 imposition from the Court or a Court decision, would be for the  
4 company and the Union to continue to trade proposals.

5 A. Can you repeat your question?

6 Q. Yes. You agree if this thing is going to be resolved  
7 absent the Court resolving it for us, the way to do that is for  
8 the Union and the company to continue to talk and exchange  
9 proposals and counterproposals.

10 A. Yes.

11 Q. Now, I take it you tried to be honest, fair and accurate  
12 in your declaration. Is that right?

13 A. That's correct.

14 Q. And that includes portions of your declaration where you  
15 talk about Patriot's responses to the UMWA and PWC's data  
16 requests. Is that correct?

17 A. That would -- that characterization I would apply to the  
18 whole document, yes.

19 Q. Okay. And PWC, as you just saw, we understand, they're  
20 the UMWA's advisors, right?

21 A. PricewaterhouseCoopers

22 Q. Yes. And you understand that many of the data requests  
23 issued by the UMWA actually came from PWC.

24 A. Yes.

25 Q. Do you believe that Patriot has ever been prompt in its

1 responses to the UMWA or PWC's requests for data?

2 A. Yes. Many times Blackstone and Patriot have been prompt  
3 with their responses, and many times they have not. Many times  
4 they have outright, in fact, failed to provide key data, and  
5 there are still remaining data items outstanding, including the  
6 data necessary for us to value -- necessary for PWC to value  
7 the Peabody-Assumed Group, which was first requested back in  
8 October. The request was repeated in March. It was repeated  
9 at our most recent bargaining meeting. And still we don't have  
10 the underlying census data that would allow PWC to put a value  
11 on the 3,100 Peabody-Assumed.

12 There are numerous requests outstanding relating to this  
13 April 10th proposal, requests that we made, I believe, around  
14 April 18th or so. PWC and Blackstone have exchanged data  
15 requests -- or, excuse me, data status updates. I believe  
16 Blackstone sent a status report on April 22nd, and PWC  
17 responded on April 23rd, and those documents lay out a number  
18 of items that remain open in those documents.

19 In the document that came over on April 22nd, in response  
20 to ten items that we had requested on April 18th about the  
21 April 10th proposal, Blackstone said we'll provide you that  
22 information at the April 25th meeting. And I was surprised to  
23 hear that characterization by your colleague of the last  
24 meeting as unproductive and that we showed up and asked simple  
25 questions and -- about the proposal. That was surprising to

1 me, because we had actually asked a series of very detailed  
2 questions, and we were told that answers would not be provided  
3 until April 25th, and the status reports clearly reflect that.

4 When we met with the -- with Patriot on April 24th  
5 they did not provide answers to the -- to the ten or thirteen  
6 or so questions that we had asked about the April 10th  
7 proposal, and a number of questions that we asked have still  
8 not been answered.

9 MR. KAMINETZKY: Your Honor, I move to strike anything  
10 after the word "yes." My question to the witness was do you  
11 believe Patriot has ever been prompt in its responses to the  
12 UMWA or PwC's request for data. He said, "Yes," and then  
13 launched into a narrative that took about two minutes, which  
14 was absolutely not responsive to my very simple yes or no  
15 question.

16 Of course, whatever Mr. Perillo wants to do on  
17 redirect, that's his business, but that was completely not  
18 responsive.

19 MR. PERILLO: Your Honor, I would just say --

20 THE COURT: At the podium, please, Mr. Perillo.

21 MR. PERILLO: I think you've given the company  
22 witnesses pretty wide latitude in giving speaking explanations  
23 to what were otherwise yes or no questions, at least you did  
24 with the two witnesses that I extensively cross-examined so far  
25 in this action. And I believe that Mr. Traynor's response was

1 actually responsive. He was admitted that sometimes they are  
2 prompt, and sometimes they're not, and he gave an example.

3 THE COURT: All right. I'll deny the request to  
4 strike the response. You may proceed, Mr. Kaminetzky.

5 Q. How many requests has there been -- how many requests has  
6 the UMWA/PwC made of the company?

7 A. Oh, I don't know. Over the course of the bargaining,  
8 we've made many requests, I know that.

9 Q. Could be over 200, correct?

10 A. I don't know.

11 Q. Could it be over 200?

12 A. It could be; I don't know.

13 Q. Now, during their negotiations process, did the UMWA ever  
14 represent that Patriot has responded to requests in a timely  
15 and appropriate fashion?

16 A. Certain requests, yes, they did.

17 Q. And where is that reflected in your declaration?

18 A. I am not sure whether it is or isn't. I could review it,  
19 if you'd like.

20 Q. So we did this at your deposition, and I think your  
21 testimony was, and this is your deposition at 224, lines 4 and  
22 9:

23 "Q. Did Patriot at anytime respond promptly to the UMWA's  
24 information request?"

25 "A. Yes.



1 "Q. Where does it say that in your declaration?

2 "A. It doesn't."

3 Does that sound like truthful testimony that you gave?

4 A. I don't have my deposition transcript in front of me, but  
5 that sounds like, you know, what I just testified to. So I --  
6 yeah, I'm sure I said that, yup. That is the truth and remains  
7 the truth today. Sometimes they did respond timely.

8 Q. That wasn't my question. The question is why wasn't -- is  
9 that fact reflected in your declaration, and your deposition  
10 says it's not reflected in your declaration. Is that still  
11 your testimony?

12 A. The part of the deposition you just read back says that  
13 it's not?

14 Q. I'll do it again.

15 "Q. Did Patriot at anytime respond promptly to the UMWA's  
16 information request?"

17 "A. Yes.

18 "Q. Where does it say that in your declaration?

19 "A. It doesn't."

20 A. Okay.

21 Q. Is that truthful testimony?

22 A. At the time, I must object; it's possible that it doesn't  
23 say that.

24 Q. Sitting here today -- no, let me start again. Do you have  
25 an encyclopedic memory as to the dates when PwC made specific

1 requests and the dates when the company responded to those  
2 requests?

3 A. No, I don't. The more recent requests, I have a better  
4 memory of, but if you want me to go through months of the  
5 bargaining issue, I won't remember every date, no.

6 Q. Now, in certain -- in certain parts of your declaration,  
7 you cite sources for certain statements that you made, correct?

8 A. Yes.

9 Q. Okay. So if you could take a look, for example, at your  
10 declaration. Let's turn to page 9 at paragraph 25.

11 MR. PERILLO: Paragraph 9 at page 25?

12 MR. KAMINETZKY: Page 9, paragraph 25. Did I invert  
13 that? I'm sorry.

14 MR. PERILLO: Thank you.

15 Q. Do you see the statement there: "The UMWA made its first  
16 information request on October 31st, 2012. Patriot did not  
17 complete its response to this request until December 19th,  
18 2012." And then you cite Robertson Declaration Exhibit 8. Do  
19 you see that?

20 A. I do.

21 Q. And just so the record is clear, Robertson Declaration  
22 Exhibit 8 is Joint Exhibit 9, if that will help you out.

23 Now, why don't we pull up the relevant page of Joint  
24 Exhibit 9 and see if Joint Exhibit 9, the Robertson Declaration  
25 Exhibit 8, actually supports the statement you made in your

1 declaration. And what we've done here is we've, because it's  
2 hard to read, we've pulled up the page, and we've blown out the  
3 dates to assist the Court. If you could take a look at that  
4 page. If you could tell me when you're ready to answer some  
5 questions.

6 A. Okay.

7 Q. Now, isn't it fair to say that this exhibit demonstrates  
8 that the request was made on October 31st, 2012? The majority  
9 of material was posted to the data room by November 15th, 2012,  
10 and was fully responded to on or about November 20th, 2012,  
11 with the exception of one part -- subpart, item 6 of one  
12 request for which responsive material had to be created which  
13 was supplied to the UMWA on December 10th, 2012.

14 A. Yup. That's what this document that was prepared by  
15 Blackstone says.

16 Q. Now does the December 19th date that you use in your  
17 declaration appear anywhere on this document?

18 A. Yes. The status report itself is dated December 19th.

19 Q. Right. But does the -- in terms of the dates when  
20 information was provided, as cited on Joint Exhibit number 9,  
21 does any -- does it appear from this document that any of the  
22 information was provided on December 19th, 2012?

23 A. Are you asking me what the document says, or what actually  
24 happened? Because the --

25 Q. I'm asking you what the document says.

1 A. I know we went through this in my deposition, and I don't  
2 believe there was anything provided on -- there's anything  
3 reflected in this document as having been provided on December  
4 19th.

5 Q. Now, I'm glad you mentioned your deposition. So in your  
6 declaration, you'd agree with me that you cite one data source,  
7 or one source for the statement which was Robertson Declaration  
8 Exhibit 8, correct?

9 A. Yes.

10 Q. And I remember asking you at your deposition whether you  
11 relied on any other data source when drafting this sentence in  
12 your declaration. And do you recall what your response was?

13 A. I believe it was that I don't recall.

14 Q. Well, it was close. It said, "I may have, yes." Does  
15 that sound about right?

16 A. Yes.

17 Q. And what happened next at your deposition? Do you recall  
18 that I asked counsel, Mr. Perillo, for you to provide the  
19 sources that you did use to complete your declaration with  
20 respect to the times when information was provided? Do you  
21 recall me making that request several times during your  
22 deposition?

23 A. Yes. If there were any other sources, paper sources, we  
24 should provide them to you; you did.

25 Q. Right.

1 A. And I responded to you that I looked and there were none.

2 Q. So you responded -- actually, I made that request at your  
3 deposition, correct?

4 A. Yes.

5 Q. Okay. And you came -- we didn't hear from you until  
6 Monday morning, is that correct, on that issue?

7 A. Yes.

8 Q. And do you recall standing right here on Monday morning,  
9 and what did you tell me? Why don't you tell the Court what  
10 you told me?

11 A. That I looked and didn't find any documents.

12 Q. So you have -- so you looked and you didn't find any other  
13 documents that -- other than Robertson Declaration Exhibit 8,  
14 which provided data that you could have used in completing your  
15 declaration.

16 A. Any other documents, right.

17 Q. Right.

18 Did you consult anyone -- with anyone? And did they tell  
19 you dates, other than what was in Robertson Declaration Exhibit  
20 8?

21 A. No. The only thing I've done since is reviewed the  
22 document itself, and I looked at the data response number 6,  
23 and it's the one that wasn't -- that the report reflects as  
24 being provided on December 10th, and it's the Excel census  
25 data. That's the request that would have encompassed

1 information -- that would have included the information  
2 necessary to value the Peabody-Assumed group. So in actuality,  
3 I can tell you now that this response still has not been  
4 completely closed out, and so it's -- the complete notation  
5 here is erroneous. And Blackstone's status reports were often  
6 erroneous, and we would respond -- sometimes PwC would respond  
7 to clarify that.

8 Q. And I asked you at the deposition several times to provide  
9 us with any backup -- document backup for your statement that  
10 the dates on these type of Blackstone or AlixPartners' reports  
11 are wrong, and you didn't provide me with anything, is that  
12 correct?

13 A. I'm sorry; I don't recall you making that request, except  
14 with respect to this particular item and one other specific  
15 item. But the request that you just recited, I don't believe  
16 you made it. If it was in general for any Blackstone status  
17 update, you didn't ask me that.

18 Q. Well, we're going to go through it now, but you agree with  
19 me that in your declaration, in addition to the paragraph we  
20 just looked at, you make other statements regarding the  
21 timeliness of the company's responses to the UMWA's requests.

22 A. I believe it does.

23 Q. Okay.

24 A. Yes.

25 Q. And you would agree with me that it's in connection with

1 that testimony that I asked several times at your deposition  
2 for the union to provide me with any backup documents that  
3 showed different dates to that in the Blackstone reports that  
4 we looked at during your deposition. Do you recall that?

5 A. No. It was just the December 9th request that you asked  
6 about, and there was one other particular date that we covered  
7 in the deposition that you asked about. And I did look for  
8 those two and didn't find any other backup documents, as I told  
9 you. And you also -- you made a third request for the portion  
10 of my notes that I repeated verbatim in my declaration, and I  
11 told you that you have it verbatim. Those were the three  
12 requests you made.

13 Q. So, well, we'll come back to that.

14 So it's your -- I just want to know, you know, how bad of  
15 a game of gotcha we're playing. So you do have data and  
16 documents other than what you cited in your declaration that  
17 shows specific dates when the company provided documents and  
18 data to the union that are different than the dates in the  
19 reports that we looked at in your deposition, but you haven't  
20 turned those over, is that your testimony?

21 A. Your question -- with regard to this 12-9 request for  
22 reviewing here, I looked, and there's no other document that  
23 would shed light on when the data was provided. But as I said  
24 at my deposition, and I'm telling you now, the Blackstone dates  
25 were often incorrect, and it was sometimes the case -- in fact,

1 I'd even go so far as to say often the case -- not every time,  
2 but often the case that PwC would respond with a status update  
3 almost identical in format that would correct to the error in  
4 the Blackstone summary of what data had been provided and when.  
5 And that's exactly what was done just last week with April 22nd  
6 and April 23rd request as an example.

7 Q. Well, let me ask you this: it says Patriot -- in the  
8 paragraph we just looked at -- Patriot did not complete its  
9 response to this request until December 19th, 2012.

10 A. It does say that.

11 Q. Is that a true statement?

12 A. No, I was wrong. Patriot still has not completed the  
13 response to number 6.

14 Q. Okay.

15 A. And we reiterated that request in PwC's status reports,  
16 and we've asked for that information at numerous bargaining  
17 sessions. What we need to value the Peabody assume group,  
18 that -- you know, our estimates are that it could be 600 to 700  
19 million dollars of additional liability related to our 1114  
20 claim. And we just still haven't received that information.

21 At the April 25th meeting, I brought this up to your  
22 partner, Marshall Huebner, and he agreed it was very important  
23 that we get that information as soon as possible.

24 MR. KAMINETZKY: Your Honor, I didn't even ask a  
25 question. So I have to -- I mean, I don't know how I'm going



1 to lose this one, but I move to strike the answer as not --  
2 unresponsive, because there was no question pending. So I'm  
3 not sure -- this is kind of an odd one. I don't know, move to  
4 strike because there was nothing pending, which I guess is a  
5 subset of nonresponsive.

6 THE WITNESS: You asked me whether this was correct.

7 THE COURT: Whoa.

8 THE WITNESS: Oh, excuse me, Your Honor. Excuse me.

9 THE COURT: Mr. Traynor, Mr. Kaminetzky is correct.  
10 You answered, and then you paused, and before he asked the next  
11 question, you said something else. So I will strike what was  
12 said that was nonresponsive.

13 Q. Now, you're aware that Blackstone believes that PwC's  
14 reports were frequently wrong and corrected them, is that  
15 correct?

16 A. I don't know. I am sure that Blackstone and PwC have  
17 different views on the information exchange. I shouldn't say  
18 I'm sure; I would suspect that's the case.

19 Q. If you could turn to your declaration, page 15, the late  
20 two sentences of paragraph 39. Page 15, paragraph 39. It  
21 says: "After explaining the discrepancies in the list of  
22 retirees paid for and questions arising out of our review of  
23 the list, we requested from Patriot more precise information,  
24 including all relevant correspondence and other documents about  
25 the allocation of retiree medical liabilities between Peabody,

1 Alcoa, and Patriot. These documents were not provided for  
2 months.

3 A. Yes.

4 Q. And what document or documents do you cite in support of  
5 that statement here in your declaration?

6 A. None.

7 Q. Excuse me?

8 A. There are no document references in my declaration.

9 Q. Excuse me?

10 A. There are no document references in my declaration.

11 Q. And why is there no document reference here when there was  
12 in the previous paragraph we looked at?

13 A. This came from my clear recollection. When I prepared my  
14 declaration, I was relying on my bargaining notes, and also my  
15 recollection, and this was about the -- the second meeting,  
16 November 29th, where here we -- I'm describing how we made  
17 requests for these lists showing which retirees are the  
18 responsibility of Patriot, which are the responsibility of  
19 Peabody, and which are still being reimbursed by Alcoa, and I  
20 know that we were still talking about receiving that  
21 information. Really, it's correspondence related to the  
22 allocation of those retirees. We were still talking about  
23 those documents as late as January 23rd.

24 TELEPHONE AUTOMATED MESSAGE: Hello, you have been  
25 conducting a meeting for a long period of time. If you need to

1 continue the meeting, press 1 now. If not, I'll end the  
2 meeting.

3 A. We were still talking about that --

4 Q. Just a second.

5 A. Oh.

6 MR. KAMINETZKY: I want to move to strike the  
7 telephone operator's --

8 A. We were still talking about this request on a January 23rd  
9 meeting with your colleague, Elliott Moskowitz, and I brought  
10 up the fact that we hadn't received these documents, and he  
11 said to me, you know, "We're looking through about 100,000 e-  
12 mails. It's taking some time to respond to this request." And  
13 that was completely understandable. We got a response as to  
14 why it was taking a long time, and you know, I acknowledged  
15 that they were doing a full ESI search. But it remains true  
16 that the documents were not provided from us.

17 Q. Well, let's take a look at a status report from the  
18 debtors' advisors that may suggest otherwise. If you could  
19 turn to Joint Exhibit 68, which is Robertson Declaration  
20 Exhibit 67, and what we're going to do is pull that up on the  
21 screen, and if you could take a minute to look at that?

22 A. 68? Okay.

23 Q. Now, Exhibit 68 that we have on the screen states that the  
24 requests were made on January 8th, 2013, and January 31st,  
25 2013. And it indicates that some documents were already in the

1 data room as of the date of the request. That's the December  
2 21st, November 3rd, and December 10th dates. Additional  
3 responsive documents were posted on February 7th and February  
4 21st, and that Patriot confirmed completion and posted a  
5 privileged log on February 28th. Is that a fair summation of  
6 this document?

7 A. That's what the document says, but it's incorrect. I made  
8 this request for these documents at the November 29th meeting,  
9 our second meeting, and that's presumably why responsive  
10 documents were provided in December 21st, which is before the  
11 day that Blackstone says these documents were requested.  
12 Blackstone often, as I said, got these dates wrong, and this  
13 January 8th date is not right. That would explain why  
14 documents were posted as early as November 30th, which is the  
15 day after I made the request. There were certain documents  
16 posted then, but the request remained outstanding for months  
17 after that.

18 Q. So in your -- when you made the statement in your  
19 declaration: "These documents were not provided for months,"  
20 is it your testimony that all of the documents were not  
21 provided for months?

22 A. That's exactly right.

23 Q. Okay. But it doesn't say that, right? It says, "These  
24 documents were not provided for months."

25 A. I'm sorry, can you repeat the two sentences you want me to

1 draw a distinction between?

2 Q. Well, again, you've signed the declaration in order to  
3 help the Court out on issues that it needs to decide in this  
4 case. Do you think there's a distinction between writing  
5 "these documents were not provided for months," as opposed to  
6 "some of the documents were not provided for months"?

7 A. Well, it's not a distinction that occurred to me at the  
8 time I was drafting the declaration.

9 Q. I see. And do you recall at the -- when we looked at  
10 this -- when we looked at this document in your deposition, I  
11 asked you and counsel to turn over your notes related to PwC's  
12 status reports that purportedly contradict the data on this  
13 page. Do you recall me asking you for that?

14 A. I don't recall you asking for my notes. I recall again  
15 that, similar to the other item we reviewed you asked for any  
16 PwC status updates that would contradict this status update.  
17 And I told you I looked for those and didn't find any.

18 Q. Well, let's look at your deposition testimony. I'm going  
19 to pull it up, actually.

20 A. I'd like to have that in front of me.

21 Q. Sure. It's Traynor deposition 191, 7 through 19. Let me  
22 hand that to you.

23 MR. KAMINETZKY: Would the Court like a copy of the  
24 deposition transcript?

25 THE COURT: Oh, sure.

1 MR. KAMINETZKY: I'm just going to read what's on the  
2 screen.

3 (Pause)

4 MR. KAMINETZKY: Again, I'm looking at Traynor  
5 deposition page 191, line 7 through 19.

6 Q. Are you there?

7 A. Yes.

8 Q. "Q. And what document did you consult, or whom did you  
9 consult before you wrote the statement: 'These documents were  
10 not provided for months'?

11 "A. I believe I consulted my notes, my recollection, and  
12 possibly the PwC status report.

13 "MR. KAMINETZKY:"

14 That's me.

15 "I ask that you turn over your notes related to that,  
16 as well as the PwC status report that contradicts, or  
17 purportedly contradicts the data on the documents that we are  
18 looking at."

19 Do you see that?

20 A. I do see that.

21 Q. And did you turn over anything in response to the request  
22 that I made at your deposition?

23 A. No, I didn't.

24 Q. Let's turn to Joint Exhibit 160 -- again, that's your  
25 declaration -- page 30, the last sentence of paragraph 78.

1 MR. KAMINETZKY: I ask that that be pulled up on the  
2 screen.

3 Q. Are you with me?

4 A. 78 on page 30?

5 Q. Yes, sir.

6 A. Yes.

7 Q. And it says: "On February 8th, nearly a full month after  
8 the UMWA negotiating team first requested medical utilization  
9 data necessary to fully value its active medical saving  
10 proposals, Patriot provided by e-mail a copy of -- a copy of  
11 two third-party CVs Caremark confidentiality agreements for our  
12 review and execution. The second agreement would not be  
13 provided until February 14th." Do you see that?

14 A. I do.

15 Q. Now, do you think that this paragraph offers a full, and  
16 fair, and complete characterization of Patriot's response to  
17 the UMWA's request for medical utilization data?

18 A. No. It's referring to the delay in providing the  
19 confidentiality agreements that the company said would be  
20 required in order to respond to that request.

21 Q. Okay. Where do you describe in your declaration the  
22 response to the other multi -- multi-part request for medical  
23 utilization data?

24 A. I don't know. Would you tell me?

25 Q. I didn't find it. But do you recall that request?

1 A. That we made a request for medical utilization data?

2 Q. That's right.

3 A. Yes.

4 Q. And it was quite a detailed request, you would agree with  
5 me?

6 A. Yes, it was.

7 Q. It requested perhaps a hundred different types of  
8 information.

9 A. I don't know, but that sounds -- I mean, that wouldn't  
10 surprise me, if it did. I don't know the number, but it was a  
11 lot -- it was detailed yes.

12 Q. And so the hundred -- over a hundred wouldn't surprise  
13 you.

14 A. No.

15 Q. Why don't you take a look at Joint Exhibit 51, just to  
16 make sure we're talking about the same thing. And tell me if  
17 this is the UMWA's request that we'd been talking about.

18 A. Yes. This is the written version of the request. The  
19 request was first made orally at a meeting, and then this  
20 was -- Brian Sanson, on our bargaining team, made the request,  
21 and was asked to reduce it to writing. And I believe this is  
22 the -- yes, this is the e-mail from Mr. Sanson.

23 Q. So this is the form written request for all this type of  
24 data. And again, this is Exhibit -- Joint Exhibit 51, correct?

25 A. This is the request reduced to writing.



1 Q. And now could you turn to Joint Exhibit 52, and let me ask  
2 you if you've seen this document before. And again, this is  
3 Joint Exhibit 52.

4 A. Yes. I recall reviewing this at my deposition.

5 Q. Now, Joint Exhibit 52 reflects that the majority of the  
6 information requested on January 15th was posted to the data  
7 room by January 17th, is that right?

8 A. I'm sorry, would you repeat the question? I'm sorry.

9 Q. Yeah. I just want to know --

10 A. I was just reviewing this document and I didn't hear.

11 Q. I guess, in a lot of ways, the document speaks for itself.  
12 But it certainly reflects that the majority of the information  
13 requested by the union on January 15th, in the previous  
14 exhibit, was posted to the data room two days later on January  
15 17th, correct?

16 A. That's what the document reflects.

17 Q. And that the request had been almost fully responded to by  
18 January 23rd. Is that correct?

19 A. I don't know about that because, you know, again, it shows  
20 that a number of the items, the specific items are listed as  
21 complete, but I don't know what information wasn't provided,  
22 and the relative importance of that piece of information. And  
23 in terms of even amount -- even quantity, I don't know whether  
24 the majority of the information had been provided. This  
25 document doesn't really tell you that.

1 Q. Did you have --

2 A. But I do see that a lot of the items are marked complete.

3 Q. And they were created two days later.

4 A. I'd have to review. I mean, this is a long document. I'd  
5 have to review that, but I agree with you that the document  
6 speaks for itself as Blackstone's representations of the dates  
7 that these information requests were responded to.

8 Q. And where can I find your document that shows that these  
9 dates are wrong?

10 A. I don't believe I have a document that shows they're  
11 wrong. I could, but I am not aware of one.

12 Q. Did you look for one?

13 A. I don't recall whether I looked -- I don't recall looking  
14 for one, no. Unless -- I mean, I may have looked for one, if  
15 it was one of the things you had asked for, but I don't recall  
16 finding one. I can't think of a document that's responsive to  
17 the medical utilization. I know Brian Sanson followed up with  
18 this directly.

19 Q. Okay. And neither you nor Mr. Sanson was able to locate  
20 any documents that would show that the dates on that previous  
21 exhibit were wrong, is that your testimony?

22 A. I don't -- yeah, I am not aware of a document that would  
23 show that these dates are wrong.

24 Q. Now, isn't it true that purchasers of coal never pay more  
25 for the coal because it was mined by a union miner, rather than

1 a non-union miner?

2 A. I don't know.

3 Q. Well, were you here for the deposition -- sorry, for the  
4 testimony of Mr. Hatfield where he said that no customer has  
5 ever paid more for coal because it Wall Street produced by  
6 union miner rather than a non-union miner?

7 A. I think I recall something to that effect, but I wasn't  
8 following very closely, but, yeah, it rings a bell.

9 Q. And so is it your belief that a union miner should receive  
10 greater compensation for doing the same exact job as a non-  
11 union miner?

12 A. I don't know what you mean by should. I mean, if -- a  
13 union miner can bargain a higher compensation than -- a union  
14 miner can bargain a higher compensation. I don't know what you  
15 mean by should. As a moral proposition? I don't know.

16 Q. Well, let me ask you this question. Do you believe that  
17 the -- well, do you think -- let me ask it this way: what do  
18 you think dictates how much a company should pay its workers?  
19 Let's not say "a" company; a coal mining company should pay its  
20 miners.

21 A. What do you mean by should?

22 Q. What dictates, you know? What should dictate what the  
23 appropriate wage is for a coal miner?

24 A. What should dictate is confusing me. I mean, is this a  
25 moral question or --

1 Q. Well, you could make it moral philosophical, metaphysical,  
2 psychological -- whatever you'd like.

3 A. It's just a confusing question. But I know that federal  
4 law provides for certain minimum wages. I know that federal  
5 law provides for the right to -- in fact, federal law provides  
6 that the practice of collective bargaining should be promoted,  
7 and so collective bargaining might set compensation. So I  
8 guess one answer to your question would be federal law.

9 Q. Okay. Do you -- thank you for that.

10 Do you believe that market forces should dictate how much  
11 a miner is paid?

12 A. I think market forces play a role.

13 Q. Did that play a primary role? Or federal law should play  
14 the primary role? Just trying to find out where market forces  
15 in your mind come into the picture of how much is an  
16 appropriate wage for a coal miner.

17 A. I don't -- the market rate can be one of many factors.  
18 You know, I really don't know the answer to your question.

19 Q. Well, you said -- you mentioned federal law, and we talked  
20 about market. Anything else?

21 A. Anything else what? That should?

22 Q. Any other inputs that should determine what the fair wages  
23 for a coal miner?

24 A. I think morality would enter into that equation. I mean,  
25 if you're asking me my personal opinion. If --

1 Q. You're the man on the stand.

2 A. Well, but I'm not a coal operator, but if I were, I would  
3 say morality would play a role in my decision.

4 Q. So we have market forces, we have federal law, and  
5 morality. Is there anything else?

6 A. Are you -- again, can you repeat the question. Is this  
7 about me, if I were -- are you asking me to hypothetically  
8 assume that I were a coal operator?

9 Q. Well, let's -- you're right. Let me lay more of a  
10 foundation. You've been sitting across the table from the  
11 company for the last six months as a part of the negotiating  
12 team, correct?

13 A. Correct.

14 Q. And part of that negotiation has been about wages,  
15 correct?

16 A. Yes.

17 Q. And retiree benefits.

18 A. Correct.

19 Q. And clearly, you're sitting at the table because someone  
20 made the determination at the UMWA that you would be productive  
21 in those negotiations, correct?

22 A. Somebody appointed me to the team.

23 Q. And that would be Mr. Roberts.

24 A. I am not quite sure. I know my boss informed me that I  
25 would be a member of the team. Mr. Roberts is certainly my

1 boss, but my direct boss is Grant Crandall.

2 Q. Okay. And were involved in conversations at the  
3 negotiation table about wages?

4 A. Yes.

5 Q. Okay. And I assume that there's a difference of opinion  
6 among the union and the company as to what an appropriate wage  
7 should be in certain circumstances?

8 A. We didn't talk about it philosophically and abstractly as,  
9 you know, as you and I are here now. It was about certain  
10 rates that are now set by contract in the NBCWA, and then we  
11 talked about the company's proposal to cut those rates. There  
12 were conversations about that.

13 Q. Oh really? You don't recall making a statement at the  
14 negotiation table that the market doesn't set wages; the union  
15 does?

16 A. No. I didn't say those words.

17 Q. Did you say anything similar to that?

18 A. In the context not just about wages, but about benefits in  
19 general, I remember mentioning to -- we had -- Ben Hatfield and  
20 I had a conversation about how the union's benefits and wages  
21 were set by collective bargaining.

22 Q. Right. And that's the appropriate wage, irrespective of  
23 the bargain.

24 A. We didn't say that. I don't know --

25 Q. Who is Adam Rosen?

1 A. Adam Rosen works for PwC. He's an analyst with PwC.

2 Q. And who is Perry Mandarino?

3 A. He is also an analyst with -- well, I am not sure about  
4 the precise job titles. He's with PwC.

5 Q. Okay. Do you know whether Mr. Mandarino performed the  
6 underlying analysis on the salary-to-hourly ratio?

7 A. I believe that -- I don't know whether Mr. Mandarino has  
8 done that or been a part of it. I know for a fact Adam Rosen  
9 has, and I know Mike Buckner has.

10 Q. So you don't know one way or the other whether Mr.  
11 Mandarino performed the underlying analysis on the salary-to-  
12 hourly ratio?

13 A. I don't know for sure whether he has or has not.

14 Q. Well, let me pull up your deposition testimony. Or let me  
15 just -- if you could turn to your deposition at pages 176 to  
16 177. Question -- are you there? Again, this is page 176.  
17 We'll start with line 15.

18 A. Okay.

19 Q. "Q. Tell me what Mr. Rosen said about Mr. Mandarino's  
20 testimony with respect to the salary ratio issue.

21 "A. He just said that, in Perry's testimony, Perry wasn't  
22 conversant on the issue. I don't think Perry had done a lot of  
23 the underlying analysis. That's not what -- that last part is  
24 not what Adam said; that's what I know to be true."

25 A. Right.

1 Q. Did you say that in your deposition?

2 A. Yes.

3 Q. So at your deposition, you knew to be true that Perry had  
4 not done the underlying analysis.

5 A. Well, I didn't think he had done a lot of the underlying  
6 analysis.

7 Q. Okay. That's fair.

8 A. Because I know that --

9 Q. That's fair.

10 A. In general, what Adam would do is a lot of the work, and I  
11 know Perry ranks higher at PwC above Adam. So Adam would do a  
12 lot of the first-run analysis, Perry would review it. And  
13 then, like I said, in this particular instance, Mike Buckner  
14 did some of the analysis, as well.

15 Q. And let's go to the next page, paragraph -- page 177, 6  
16 through 13.

17 "Q. You mentioned that could be the -- that the reason why he  
18 wasn't" --

19 "He," meaning Mr. Mandarino.

20 -- "wasn't conversant is because he wasn't involved in the  
21 underlying analysis, is that right?

22 "A. That's not something Mr. Rosen said, but that's what I  
23 think."

24 A. Right.

25 Q. And is that truthful testimony?



1 A. Yeah, it relates back to what I had said earlier, that  
2 that was my belief. You know, because we were talking about  
3 some of the items that -- you had asked me who I had talked to  
4 prior to my deposition. I said Adam Rosen. You had asked what  
5 I had talked about, and I had said that Adam and I had talked  
6 about Perry's deposition and some of the things he wasn't  
7 conversant with. And I had said that, you know, it appeared  
8 that he may not have been conversant in some of the details of  
9 the salaried hourly ratio. And so this is -- here, these two  
10 questions reflect our conversation about that. These two  
11 excerpts, I should say.

12 Q. And that testimony was truthful at the time than it is  
13 today?

14 A. Yes.

15 Q. Do you know what Mr. Mandarino performed the underlying  
16 work in connection with the dynamic business model?

17 A. I think there was a lot of work done with that, and I  
18 don't know exactly who did it. I know -- I can tell you,  
19 generally, most of my conversations were with Adam Rosen.

20 Q. Again, do you know whether Mr. Mandarino performed the  
21 underlying work in connection with the dynamic business model?

22 A. I don't.

23 Q. And in fact, we had a conversation about that issue in  
24 your deposition, is that correct?

25 A. I believe we did.

1 Q. And if you could pull that up on page 178, lines 9 through  
2 22 of your deposition.

3 "Q. Moving to the next topic" --

4 Are you there? Page 178?

5 A. Yes.

6 Q. "Q. Moving to the next topic" --

7 This is the question.

8 "Q. Moving to the next topic, dynamic model, what did Mr.  
9 Rosen tell you in connection with Mr. Mandarino's deposition  
10 with respect to the dynamic model?

11 "A. Again, the gist of Mr. Rosen's comments were that Perry  
12 wasn't conversant with it. Perry said that -- Perry Mandarino  
13 had said that he did -- he did not attempt to manipulate the  
14 model that had been provided. And so it was a situation,  
15 again, where I -- I am not speaking about what Adam told me,  
16 but seemed to be the situation again where Perry" --

17 Meaning Perry Mandarino.

18 -- "had not done the underlying work that he was testifying  
19 about on behalf of his team."

20 Was that truthful testimony?

21 A. Yes. I was very candid with you about the conversations I  
22 had had, yes.

23 Q. God bless you.

24 Is it fair to say that Mr. Mandarino, one of the UMWA's  
25 experts, hasn't done a lot of the hands-on work in this matter?

1 A. Again, that's not something that I have any direct  
2 knowledge of, but it's always been my impression that Adam, and  
3 people who work with Adam have been doing a lot of the direct  
4 analysis, and that Perry reviews their work.

5 Q. And, indeed, you wish that Mr. Rosen would have testified  
6 and been the expert for the union because he did a lot more of  
7 the hands-on work, is that correct?

8 A. Only when it comes to the issue about, you know, Perry  
9 having trouble testifying that he manipulated the model. But  
10 not in general, no. Perry's -- I don't wish that Adam would  
11 replace Perry on many of the items that Perry has testified  
12 about. But where it comes to some of these items, based on a  
13 conversation that Adam had with me, that was my impression at  
14 the time.

15 Q. And do you see -- if we could turn to just page -- to  
16 close out this -- page 181 of your deposition testimony. And  
17 let's go to line 16. And you testified, this is part of your  
18 answer, "I expressed some displeasure that, concern that maybe,  
19 I guess, it would have actually be sort of wishful thinking  
20 that -- wish Adam would have testified because he did a lot  
21 more of the hands-on work." Is that right?

22 A. Right.

23 Q. And that was your testimony, correct?

24 A. Yes; with respect to those issues.

25 MR. KAMINETZKY: That's all I have. Thank you.

1 THE COURT: Mr. Perillo, any brief redirect?

2 MR. PERILLO: Yes, I do, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. PERILLO:

5 Q. Mr. Traynor, is it a common thing in labor negotiations  
6 that unions propose packages?

7 A. Yes.

8 Q. And why is that so?

9 A. Well, that's what the union is -- the union is sometimes  
10 conceding in one area and wants to make gains and exchange in  
11 another area, and so you would offer a package deal as opposed  
12 to negotiate on one individual item to enable that sort of  
13 trading. That's one reason that I can think of.

14 Q. So it stops cherry picking?

15 A. Yes, it would do that.

16 Q. And is your proposal in these negotiations any different  
17 from dozens and dozens of other common collective bargaining  
18 proposals in that regard?

19 A. No.

20 MR. KAMINETZKY: Wait, wait. I'm going to object  
21 because, as Mr. Traynor testified, this is the first time he's  
22 been directly involved in labor negotiations; certainly in 1113  
23 and 114 context. So questions such as "is it common" and  
24 "dozens and dozens" have absolutely no foundation.

25 MR. PERILLO: Well, I don't think that's actually

1 true, Your Honor, because Mr. Traynor said this is his first  
2 time at the table. But he did say he had been involved in  
3 other collective bargaining negotiations. And to that point --

4 Q. Mr. Traynor, was your involvement in all those other  
5 negotiations in assisting in the drafting of proposals?

6 A. Well, not only have I been involved in other negotiations  
7 and assisted in the drafting of proposals, but I have been  
8 involved, as I discussed in my deposition, directly involved at  
9 the table in other labor negotiations, just not for the mine  
10 workers.

11 THE COURT: All right. I'll overrule the objection.  
12 That's my understanding of the testimony, as well. That he had  
13 been involved in other labor negotiations, certainly not  
14 involved in labor negotiations in bankruptcy.

15 Q. Why did you sign the brief in this case, Mr. Traynor?

16 A. It's common practice in my legal department that those  
17 involved in the case will sign the brief with counsel, prepare  
18 the brief, even when there's very little involvement. In this  
19 case, you know, I reviewed the brief, but certainly didn't do  
20 much of the drafting at all.

21 Q. Mr. Traynor, with respect to paragraph 55 that you were  
22 questioned about in your declaration, page 21, where you say,  
23 "We again requested that the company renegotiated, replace its  
24 DIP financing," et cetera. I take it then you had made this  
25 request several times?

1 A. Yes.

2 Q. Were any of those requests part of a formal written  
3 proposal, made as a condition of the collective negotiations?

4 A. I'm sorry; can you repeat the question about the  
5 condition?

6 Q. All right. Were you requests --

7 A. Yes?

8 Q. -- that the company replace the DIP, was that part of a  
9 formal written proposal?

10 A. I recall putting that request in writing, that it was in  
11 some of Cecil Roberts' letters. Yes.

12 Q. But I'm asking you, sir, is it in the union's written  
13 formal counter-proposals that are conditioned on acceptance as  
14 an entirety.

15 A. No. I understand. No, it was not. It wasn't in any of  
16 them.

17 Q. Mr. Traynor, do you still have the brief up there?

18 A. Yes.

19 Q. When Mr. Kaminetzky read the section of the brief, he left  
20 off the last part of this sentence, and I want to just read the  
21 entirety of the sentence for you.

22 A. Can you direct me to the page?

23 Q. Bottom of page 4. "Patriot has essentially dismissed the  
24 idea of pursuing its former parent for fraudulent  
25 conveyances -- something it could have done years ago before

1 bankruptcy -- as impractical because of the limited time it has  
2 given itself to solve the crisis that it created." Now,  
3 reading the entire sentence there, have you ever claimed that  
4 Patriot was not pursuing Peabody at all?

5 A. No.

6 Q. And do you actually mean the words dismissed as  
7 impractical because of the time constraints?

8 A. Can you ask -- repeat the question again?

9 Q. Yes.

10 A. Yes.

11 Q. Did you actually sincerely mean the words on the page,  
12 that they dismissed it as impractical because of the time  
13 constraints?

14 A. Well, again, I didn't write this, but --

15 THE COURT: Wait, just a second --

16 A. -- yes.

17 THE COURT: -- Mr. Traynor. Mr. Kaminetzky, do you  
18 have an objection?

19 MR. KAMINETZKY: Yes. This is --

20 THE COURT: At the podium, please.

21 MR. KAMINETZKY: All right. This is leading beyond  
22 belief.

23 MR. PERILLO: I'll withdraw that question.

24 THE COURT: All right.

25 Q. Mr. Traynor?

1 A. Yes?

2 Q. At the table, did you raise the issue of whether or not  
3 Patriot was vigorously pursuing Peabody?

4 A. Yes; many times.

5 Q. And did they tell you that they thought they could achieve  
6 a settlement in a timely fashion?

7 A. No.

8 Q. What did they say?

9 A. They said we're looking into it. And as I testified  
10 earlier, at one time they said they hoped to -- or that they  
11 would, in fact, have their investigation completed in the same  
12 time frame as the 1113-14 negotiations.

13 Q. Are you aware that there is a subset to the Peabody-  
14 Assumed group that's sometimes called the group of 500 or the  
15 group of 450?

16 A. Yes, very familiar with the group.

17 Q. Explain to the Court what that is.

18 A. There is a group of retirees for whom Peabody assumed  
19 responsibility at the time of the spinoff who ended up on  
20 Patriot's books. A number of these retirees -- I believe it  
21 was about a hundred -- Peabody even was making payments for  
22 these retirees up to about a year after the spinoff. During  
23 the course of these negotiations, through our comparison of the  
24 lists that we requested, we discovered this issue, brought it  
25 to the company's attention, and repeatedly asked them to do



1 something about it. I believe our advisors valued the yearly  
2 expenditure for these retirees that Patriot was incurring at  
3 twelve million dollars. And the Peabody-Assumed group has been  
4 serviced by Patriot. And when we had a -- when we had a call  
5 with Patriot's counsel about this, and I asked why, it was  
6 explained to me that -- excuse me, I asked why Patriot hadn't  
7 done anything about this, it was explained to me that the  
8 decision was made that Peabody was one of Patriot's biggest  
9 contracts, and they didn't want to go up against one of their  
10 biggest customers.

11 Q. Could that action have been instituted in 2008?

12 A. As far as I know, it could have, yes.

13 Q. The action --

14 A. I see no reason why not, I should say.

15 Q. The action that the union has against Peabody, what type  
16 of action is that?

17 A. It's an ERISA action.

18 Q. And under what section?

19 A. Section 510.

20 Q. What relief does it seek?

21 A. It seeks to assign responsibility for these retirees to --  
22 it seeks, basically, damages for Peabody having dumped these  
23 retirees on Patriot.

24 Q. Could that lawsuit have been brought before Patriot  
25 attempted to cut off the liability for the retirees?

1 A. I really don't know. I mean, I've been involved in the  
2 lawsuit, but there are other lawyers who have taken a lead  
3 role, as I've been consumed with these bankruptcy matters and  
4 other things.

5 Q. I want to discuss with you the timing of the proposal that  
6 came on April 10th. Had our expert declarations all been  
7 declared by that day?

8 A. I don't recall whether our -- well, yes, actually, I don't  
9 recall they had. Yeah. I believe that was -- April 2nd was  
10 our expert deadline, if I recall right.

11 Q. What was the date that all of the rest of our declarations  
12 were due?

13 A. Oh, I believe it was the 12th, if I recall correctly. Or  
14 maybe the -- maybe I'm recalling incorrectly.

15 Q. And what time of day did we get the April 10th proposal?

16 A. I recall not seeing it until the evening. I don't know  
17 when it was transmitted, but I recall not seeing it until late  
18 in the evening.

19 Q. What was the change that was made in the April 10th  
20 proposal?

21 A. The thirty-five percent equity stake was the big one.

22 Q. When did we depose the company's VEBA expert?

23 A. I didn't attend that deposition. I believe it was the day  
24 prior, if I recall correctly. It was before that date.

25 Q. Did the union have the opportunity to submit a reply brief

1 against Patriot in this case after the April 10th proposal?

2 A. No.

3 Q. The April 23rd proposal was made on the day that  
4 replies -- that Patriot's reply was due. Did we have an  
5 opportunity to present declarations after the April 23 date?

6 A. No.

7 Q. Were there any depositions, other than that of Mr.  
8 Engelhardt, that were still outstanding on April 23rd?

9 A. No. I'm not even sure, if I recall correctly the precise  
10 date of Engelhardt's, but I know that, yeah, there weren't any  
11 others.

12 Q. Has the timing of those proposals effectively deprived the  
13 union of presenting any direct testimony on them at this trial?

14 A. Yes. That's the big problem, and that's why we believe  
15 this was tactical.

16 Q. I'd like you to take a look at Exhibit 88, please.

17 A. I see it.

18 Q. Can you tell me what it is?

19 A. It's a PwC request list. These are the -- I guess it's  
20 eleven items that PwC sent to Blackstone or Alix, as was  
21 customary with these requests. They went from one set of  
22 advisors to the other. And they deal with questions about the  
23 thirty-five percent equity stake and other aspects of the April  
24 10th proposal.

25 Q. And is that -- are there items on that list that are still

1 outstanding?

2 A. Yes.

3 Q. Mr. Kaminetzky asked you some reasons why you didn't  
4 mention some facts favorable to Patriot in your declaration,  
5 concerning the timing of providing information. Can you recall  
6 that in Patriot's brief against the UMWA, accused the UMWA of  
7 bad faith and foot dragging?

8 A. Yes. That is what the brief said.

9 Q. And why, then, did you include these instances in your  
10 declaration where Patriot had provided incomplete or late  
11 information?

12 A. It was in response. It was our side of the story.

13 Q. Are there still information requests on the two latest  
14 proposals from the company outstanding today?

15 A. Yes.

16 Q. And what did Mr. Huebner tell you on April 25th, by the  
17 way?

18 A. About the Peabody-Assumed data? He acknowledged that it  
19 was very important that we get that, and he turned to other  
20 members at the table, in the direction of Blackstone, and said,  
21 "We need to get that." I believe he shared our sincere belief  
22 that we need that information. It's just -- it's unfortunate  
23 we haven't gotten it when we requested it in October.

24 Q. And as of the time that the Court opened this trial on  
25 Monday, had we received complete and reliable information as to

1 the two proposals that the Court is considering?

2 A. No. Not to my knowledge, we have not. And I would know  
3 because Adam Rosen at PwC would have told me. It's on my  
4 radar.

5 Q. And did we receive sufficient information to evaluate  
6 those proposals?

7 A. No.

8 Q. I want you to go to paragraph 39, please. Are you there?

9 A. No; one moment. Okay.

10 Q. In this paragraph of your declaration, what type of  
11 information are you talking about?

12 A. If you'll just give me one moment to read it.

13 UNIDENTIFIED MALE SPEAKER: What paragraph number?

14 MR. PERILLO: 39, sir.

15 (Pause)

16 A. It's information about which retirees are carried by which  
17 entity, whether it's Patriot, Alcoa, or Peabody.

18 Q. And was that information ever provided?

19 A. Not completely.

20 Q. Are you seeking a population census in this part of your  
21 declaration?

22 A. Let's see -- that's part of what's mentioned here. We had  
23 asked in October for a population census. Basically, all  
24 information necessary to provide a complete picture of the  
25 liability -- the retiree medical liability. That kind of

1 analysis has been done for the group that are -- that fall into  
2 what I think the company has valued at a billion and, you know,  
3 we have a variety of other numbers. But that is the type of  
4 information, yes. The short answer is yes.

5 Q. Mr. Kaminetzky pointed out that you got partial  
6 information in the census. Is that true?

7 A. Yes.

8 Q. What good is a partial census when you're looking to  
9 define the contours of a group?

10 A. It leaves us without the ability to know what the full  
11 liability is, what the value of the unsecured claim that was  
12 offered to us would be, how we should assess the -- what  
13 percentage of an equity stake we should get if, in fact, you  
14 know, that's the route that we take. I mean, it really leaves  
15 us in the dark.

16 Q. Mr. Kaminetzky also examined you extensively regarding  
17 Joint 51, the Brian Sanson message asking for certain medical  
18 utilization data. Do you recall that?

19 A. I'm sorry; I was looking toward the exhibits. Would you  
20 ask the question again?

21 Q. This is the questioning about the medical utilization  
22 data --

23 A. Yes.

24 Q. -- that Brian Sanson requested.

25 A. Um-hum.

1 Q. Why did you highlight the fact in your declaration that  
2 you did not receive the confidentiality agreements from Patriot  
3 for many, many days?

4 A. Because Patriot had said that we needed these  
5 confidentiality agreements to get all of the information. I  
6 want to be clear on that. There's some of the information that  
7 could have been provided without a confidentiality agreement,  
8 and in fact, it was provided. But some of the information was  
9 not provided until we executed these confidentiality  
10 agreements.

11 What I was pointing out in my declaration is that it was  
12 the company that failed to send to us those confidentiality  
13 agreements for execution for a long period of time -- whatever  
14 it says in my declaration there. I think it was about a month.  
15 And that precluded us from receiving that information. And it  
16 was necessary -- that information was necessary to developing  
17 proposals on active medical savings.

18 Q. I want to turn, finally here, to a series of questions  
19 that Mr. Kaminetzky asked you about, you know, should union  
20 miners get paid more than non-union miners. Would you object  
21 to the raising up of all non-union miners everywhere to the  
22 level of UMWA benefits?

23 A. Absolutely not. And I think that's, in fact, what  
24 unionization does.

25 Q. And are you familiar with the Equal Pay Act?

1 A. Equal Pay Act, yes.

2 Q. Requires that women be paid the same as men?

3 A. Yes.

4 Q. Yeah. In that act, do you think it was contemplated that  
5 men's wages would be cut down to the level of -- that women  
6 were being paid at the time?

7 A. No. No.

8 Q. And I want to ask you about -- a question about market  
9 forces. You're aware of the statute passed by Congress that  
10 says the labor of the human being is not a commodity or article  
11 of commerce?

12 A. I am.

13 Q. Do you believe in that?

14 A. Yes; absolutely.

15 Q. Suppose you -- I'm sorry, go ahead.

16 A. I just said absolutely, yes.

17 Q. Suppose you didn't believe in that, would it still be the  
18 law?

19 A. Yes.

20 Q. And --

21 A. I mean --

22 Q. -- suppose all of these well-healed Wall Street types and  
23 financial advisors tell you that that's not the case? Does  
24 that change your mind?

25 A. No --



1 MR. KAMINETZKY: Objection.

2 A. -- it doesn't change the law.

3 MR. KAMINETZKY: Objection, Your -- wait. Stop.

4 THE COURT: Just a second, Mr. Traynor.

5 MR. KAMINETZKY: Objection, Your Honor. I just object  
6 to the ad hominem of facts. I don't think there's a need for  
7 it.

8 THE COURT: I'll overrule the objection. You can ask  
9 the question.

10 A. I'm not sure who you were pointing to, Fred.

11 Q. I wasn't pointing at Mr. Kaminetzky, but go ahead.

12 A. I -- no, I think that wouldn't change the law. I'm  
13 certain it wouldn't change the law. You know, people have  
14 differing views.

15 And at the table -- I think I know what Mr. Kaminetzky was  
16 referring to -- there was a discussion of, you know, market  
17 forces. And what I remember saying to Mr. Hatfield is that the  
18 union doesn't necessarily share his desire to reduce wages to  
19 what he calls market. Our goal is to get Patriot through its  
20 crisis, the crisis that's brought it to bankruptcy, and see  
21 that it's successfully reorganized. And we had that exchange  
22 so that both parties could understand where we're coming from  
23 and advance the prospects of reaching a mutually-acceptable,  
24 consensual agreement.

25 MR. PERILLO: Thank you, Mr. Traynor.

1 MR. KAMINETZKY: Very briefly, Your Honor.

2 RE-CROSS-EXAMINATION

3 BY MR. KAMINETZKY:

4 Q. Going back to paragraph 39, that's the paragraph that you  
5 were just looking at with Mr. Perillo, of your declaration, on  
6 page 15.

7 A. Yes.

8 Q. Was there anything missing other than a ruling on the  
9 declaration judgment action now pending before the Court?

10 A. What do you mean was there anything missing? Can you  
11 elaborate? I don't understand exactly what you're asking.

12 Q. Well, you were talking about -- I think it was your  
13 testimony that you believe that information that you're  
14 describing in paragraph 39 was not provided in full.

15 A. Yes.

16 Q. Okay. And that has to do with which group of employees?

17 A. Right. Correct. Yeah, so here we're talking about the  
18 correspondence in other documents that weren't ultimately  
19 provided until, I believe, certainly sometime after the January  
20 23rd call when we were still talking about them. And it also  
21 includes, as I mentioned earlier, the underlying data that we  
22 had requested back in October for the Peabody-Assumed group,  
23 still had not been -- well, it's never been provided.

24 Q. Okay. And again, we're talking about what you've  
25 testified to has never been provided. Following up on your

1 last statement.

2 A. Right.

3 Q. The statement you made to Mr. Perillo.

4 You understand that there's a declaratory judgment action  
5 now pending before the Court.

6 A. Yes.

7 Q. Now submitted before the Court about that group of Peabody  
8 folks that you were just describing, correct?

9 A. Yes. Yes. That action will determine whether or not  
10 Peabody continues to pay for those liabilities, which are  
11 administered and held by Patriot, but paid for by Peabody. Or  
12 whether they'll be solely Peabody's responsibility and go into  
13 the VEBA. So it's critical we know what the liability  
14 associated with those retirees actually is.

15 Q. Right. And those retirees, or the liability, only kicks  
16 in if Patriot doesn't prevail -- does not prevail on that  
17 action, correct?

18 A. I'm not -- I would want to think about that and consult  
19 with counsel, because I know there's a joint and several --  
20 there are joint and several provisions that I'm not entirely  
21 familiar with. But I understand that, essentially, the action  
22 is to determine where those liabilities end up.

23 Q. And if we prevail on that, those liabilities won't end up  
24 on Patriot's books?

25 A. I want to be careful about how we characterize that. I'm

1 not exactly sure but I know that the dispute is generally who  
2 will be paying for them, that Peabody's now paying for them and  
3 the action will resolve whether Peabody continues to pay for  
4 them.

5 Q. What information -- I'm here and I'm listening -- you said  
6 you don't have sufficient information to evaluate the April  
7 10th proposal. So, I'm here with a pen and paper. What  
8 information do you need to evaluate the April 10th proposal?  
9 Again, I'm not asking you what other people said. I mean,  
10 what's your belief on what the union needs to evaluate the  
11 April 10th proposal that it hasn't received from the company?

12 A. Yeah, I understand. If you're asking me off the top of my  
13 head without reference to the information requests -- you're  
14 asking me not to answer the question by referring to the  
15 information requests?

16 Q. No, you can refer to whatever you want.

17 A. Okay.

18 Q. But were comfortable of making the statement that you  
19 don't have the information you need to evaluate the proposal,  
20 so I would like to know what information you need to evaluate  
21 the proposal that you don't have.

22 A. There's a document -- in fact there were -- I mentioned  
23 earlier, there were two documents that were recently exchanged.  
24 Blackstone sent a document to PWC and it was an information  
25 status update and it included the status of numerous

1 information requests that we had made including those set forth  
2 in Joint Exhibit, I think it's 88, but others as well. And we  
3 disputed working with PWC. We put together a status report  
4 that we sent to Blackstone that reflects the accurate and  
5 complete -- the accurate status of those information requests  
6 and I think that was provided to Blackstone on the 23rd and  
7 that's really the best go to source for what information is  
8 outstanding. I could try off the top of my head without having  
9 that document to list some of it but I know I wouldn't be able  
10 to do all of it.

11 But I can give you, for example, we have not been told  
12 what sort of corporate governance rights would go along with  
13 the thirty-five percent equity stake. I'm going to look at the  
14 request again here to refresh my recollection if that's okay.  
15 Again, I'm not looking at the status update which would really  
16 help better, I'm looking at the request and it's -- oh, number  
17 four, "Please provide all supporting schedules and analyses  
18 that explain how each of the non-UMWA claimants would be  
19 treated under the proposal, indicating both the form and amount  
20 of recovery." I don't believe that was provided. You know,  
21 that would be something that would be useful to our analysts.

22 The exact definition of the reorganized enterprise,  
23 whether it would include joint ventures, and other interests  
24 that Patriot owns that are not currently in bankruptcy. I know  
25 that's something we were wondering about.

1 "Detailed breakout of which creditors or parties would own  
2 the remaining sixty-five percent of the reorganized enterprise  
3 with the ownership percentage held by each respective party."  
4 I don't believe that that was provided. I'm not the financial  
5 analyst, so you know whether that was provided in the  
6 Blackstone handout on 4/25, I'm not entirely sure but I don't  
7 recall seeing that.

8 Oh, here's number seven, "What corporate governance rights  
9 would be associated with the direct thirty-five percent equity  
10 stake in the reorganized enterprise?" So that's the question I  
11 referred to earlier. We were asking what corporate governance  
12 rights would be associated. And I know that wasn't addressed  
13 at the April 25th meeting. We weren't told that.

14 Then we also asked, "What corporate governance rights  
15 would be associated with the remaining sixty-five percent of  
16 the reorganized enterprise, indicating the governance rights to  
17 the extent applicable of each specific party." We weren't  
18 provided that.

19 And again, I'm not the financial expert but I recall  
20 hearing from our advisors that this information is important  
21 because it helps you understand what your equity stake is  
22 actually worth. I mean, that's where we really need to know  
23 what these governance rights consist of because you need to  
24 know what kind of -- the type of governance rights -- I might  
25 butcher this because it's not my area of expertise but you need

1 to know the type of governance rights that are associated with  
2 your claim to know the real full monetized value of what you  
3 could expect to get in the marketplace.

4 Number nine, "Define all existing mining complexes as  
5 referenced in paragraph 9 on page 5, specifically addressing  
6 whether this only refers" -- I can't tell you right now off the  
7 top of my head whether we've received a response to that. I  
8 would have to go look at the proposal. It would -- excuse me,  
9 it would take some time.

10 Number ten, we did get a response from Ben Hatfield on  
11 that one. He told us that there wasn't any new money  
12 investment assumed to be received by the reorganized enterprise  
13 but I think his response suggested there could be exit  
14 financing and maybe there was a disconnect. This was the  
15 meeting on the 24th where our advisors weren't there. So,  
16 sometimes we all agreed that you know, we need our advisors to  
17 talk because we sometimes -- you know, Ben admits that this is  
18 true as well, to his credit, that you know, we sometimes misuse  
19 these terms but he made clear that there may be exit financing  
20 involved with the arrangement and we had used the term new  
21 money investment. Ben had said he doesn't envision that there  
22 would be a new money investor providing funds directly into the  
23 VEBA except that investment associated with us, monetizing our  
24 claim.

25 And then I know PWC did not receive a response to

1 number -- I'm pretty sure, I should say, that PWC did not  
2 receive a response to number eleven where it says, "Please  
3 outline the post-emergence capital structure contemplated by  
4 the debtors under the proposal."

5 Again, this is -- to each of these requests, Blackstone  
6 responded that on April 22nd, that we would get an answer on  
7 April 25th. On April 23rd, we responded and in our status  
8 update next to each of these items, we said, "Please provide  
9 the information in advance of the meeting, so the meeting can  
10 be as productive as possible."

11 That's a little recitation of what we asked for and we  
12 didn't receive any of the information in advance of the  
13 meeting. We didn't receive any of the information except what  
14 I said Mr. Hatfield told us on the 24th. We didn't receive any  
15 of that information. So, it wasn't until the 25th that we got  
16 some of this information. And that's on Thursday.

17 So, of course, we had questions on Thursday and we got  
18 answers to some of those questions. We were able to take those  
19 and I think pretty quickly turn them around and do a  
20 counterproposal on Saturday.

21 Q. Again, I thought I asked one question; maybe you answered  
22 another. Is it your sworn testimony that the items that you  
23 listed as -- what I asked you is what items have the company  
24 not given the union in order to assist it in valuating the  
25 April 10th proposal. You then mentioned a number of items.



1 A. Yes.

2 Q. But isn't the case, sir, that in the meetings of April  
3 24th and April 25th, that answers to those questions were  
4 provided by both the company and/or Blackstone?

5 A. No, I just went through and where I told you that those  
6 answers have not been provided, that's inclusive of the 4/25  
7 meeting. We did not receive the information that I told you.

8 Q. So all the things -- it's your testimony that all the  
9 things that you described, corporate governance, et cetera,  
10 were not -- there were no discussions or information provided  
11 with respect to those issues at that April 24th and April 25th  
12 meeting?

13 A. Yeah, that's my recollection that we didn't get complete  
14 answers. We received some information. Don't get me wrong.  
15 We received some information 4/25 but I went through a list and  
16 I am telling you what I believe is still outstanding and  
17 again --

18 Q. So you received some information. You just don't view it  
19 to be complete; is that your testimony?

20 A. That's correct.

21 Q. Okay, thank you.

22 THE COURT: Mr. Perillo, anything else for this  
23 witness?

24 MR. PERILLO: No, Your Honor.

25 THE COURT: All right. Mr. Traynor, you may step

1 down. Thank you.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Mr. Perillo, you have another witness  
4 today?

5 MR. PERILLO: Your Honor, for personal reasons, I  
6 would like to be excused but Mr. Ho will present our next  
7 witness in my absence, if that is acceptable to the Court.

8 THE COURT: It is. Before you go, let me just make  
9 sure where we're going tomorrow. We're having Mr. Mandarino?

10 MR. PERILLO: Tomorrow morning, Your Honor, we will  
11 present Mr. Buckner. Mr. Mandarino is the only confidential  
12 witness tomorrow. So, I would propose that we present Mr.  
13 Buckner, Mr. Cobin and then we would clear the courtroom and  
14 then present Mr. Mandarino for the -- and that would be our  
15 last witness for tomorrow, I think.

16 THE COURT: All right. And Buckner is cross only or  
17 he's --

18 MR. PERILLO: He is one of our two direct witnesses.

19 THE COURT: Okay.

20 MR. PERILLO: But we do believe we will complete all  
21 three witnesses in a day.

22 THE COURT: All right. And then Mr. Cobin is cross  
23 only?

24 MR. PERILLO: He is.

25 THE COURT: Mr. Mandarino is live direct.

1 MR. PERILLO: And cross, yes.

2 THE COURT: And cross. And then -- all right. So,  
3 that takes us through Thursday. Are those all the witnesses  
4 that the union has or are there other witnesses?

5 MR. PERILLO: Those are all of the witnesses that we  
6 have.

7 THE COURT: Great. So, we'll get through all of them  
8 tomorrow.

9 MR. PERILLO: The Gods willing.

10 THE COURT: I think the Gods are with us. All right.  
11 Then, Mr. Perillo, you may be excused.

12 MR. PERILLO: Thank you, Your Honor.

13 THE COURT: And then, Mr. Ho, you may call your next  
14 witness, please.

15 MR. RUSSANO: Your Honor, very quickly, Michael  
16 Russano on behalf of the debtors. We do have a procedural  
17 issue to raise with respect to the next witness.

18 THE COURT: Yes.

19 MR. RUSSANO: We would like to move to exclude certain  
20 portions of Mr. Akunuri's expert declaration and to preclude  
21 Mr. Akunuri from relying on those portions in formulating his  
22 opinions. I do just want to be clear that this is very  
23 different from the argument you've heard earlier with respect  
24 to Mr. Buckner. We're not challenging --

25 THE COURT: I believe you all have a written objection

1 in response, correct, on this issue that's been filed?

2 MR. RUSSANO: Yes.

3 THE COURT: okay.

4 MR. RUSSANO: We -- exactly right, Your Honor.

5 THE COURT: Okay.

6 MR. RUSSANO: And we're -- again, we're not objecting  
7 to Mr. Akunuri being an expert in valuing companies. This goes  
8 to certain aspects of his declaration that rely on information  
9 that was not provided to us. May I proceed, Your Honor?

10 THE COURT: You may.

11 MR. RUSSANO: Your Honor, as the Court is aware from  
12 the review of the declarations, a central component of Mr.  
13 Akunuri's declaration is his comparison of the projected coal  
14 prices in Patriot's business plan to third-party coal price  
15 forecasts.

16 Based on that analysis, Mr. Akunuri concludes that  
17 Patriot has understated its future revenues because Patriot's  
18 projections are unreasonably conservative. In reaching that  
19 conclusion, Mr. Akunuri relies on just two outside sources of  
20 coal price projections and those are from a company called SNL  
21 and another company called Wood Mackenzie.

22 Because Mr. Akunuri and counsel for the union have  
23 refused, despite multiple requests to provide the debtors with  
24 the complete Wood Mackenzie price -- coal price forecast, those  
25 portions of Mr. Akunuri's opinions that rely on that forecast

1 should be stricken from his declaration.

2 As Your Honor knows, and as the Supreme Court has  
3 explained in *Dalbert and Kumho Tire*, 526 U.S. 137, expert  
4 testimony may only be admitted if the Court in fulfilling its  
5 gatekeeper obligation can determine that the evidence is "based  
6 on sufficient facts or data" and that's Federal Rules of  
7 Evidence 702(b) and if it can determine that the evidence that  
8 the opinion testimony is "the product of reliable principles  
9 and methods." That's 702(c). And that "the expert has  
10 reliably applied principles and methods to the facts of the  
11 case;" 702(d).

12 Here, the union's refusal to produce the Wood  
13 Mackenzie forecast has made it impossible for the debtors or  
14 the Court to assess the reliability of Mr. Akunuri's methods or  
15 their application to the facts of this case. As we're all very  
16 aware, having listened to Mr. Schwartz testify yesterday,  
17 forecasting of coal prices is not a simple matter. There isn't  
18 just one type of coal. There's not just six types of coals.  
19 There are dozens of types of coal. And the prices for that  
20 coal vary based on origin, heat content, sulfur content,  
21 transportation and many other things.

22 And from the multitude of coals for which Woods  
23 Mackenzie provides forecasts, Mr. Akunuri had to choose those  
24 that he thought were most comparable to the coals produced by  
25 the debtors. That takes judgment. That takes knowledge. It

1 takes specialized skill.

2 And here, Mr. Akunuri testified in his deposition,  
3 he'll testify today, that he is not an expert in coal price  
4 forecasting. The only way the debtors can test whether or not  
5 the Wood Mackenzie forecast that Mr. Akunuri, a non-expert,  
6 chose, the only way we can test that is to get the actual  
7 forecast. We have no way otherwise without getting the full  
8 forecast, not just excerpts that Mr. Akunuri has provided.

9 Your Honor, I would like to show you what a real coal  
10 forecast looks like and that's Joint Exhibit 232, if you would  
11 turn to that. Your Honor, Joint Exhibit 232 is the EVA  
12 forecast from the first quarter of 2013. If it's helpful, I  
13 can pass one up to the bench.

14 THE COURT: I have it.

15 MR. RUSSANO: You have it; great.

16 THE COURT: Um-hum.

17 MR. RUSSANO: EVA, you may recall from yesterday is  
18 the company that Mr. Schwartz helped found and is a direct  
19 competitor of Wood Mackenzie. And you'll see, Your Honor, this  
20 isn't just a collection of numbers. It contains numbers but it  
21 also contains analysis, explanation, description of assumptions  
22 and methodology. This is what the debtors provided to the  
23 union.

24 Now, Your Honor, let me show what the union produced  
25 to the debtors and this is UMWA Exhibit 1. It's not a joint

1 exhibit, of course, because we objected to it.

2 THE COURT: Thank you.

3 MR. RUSSANO: Your Honor, this is a two-page Excel  
4 spreadsheet that lists numbers just for the forecast that Mr.  
5 Akunuri decided to use, just two pages of numbers; no analysis,  
6 no methodology, no description. The debtors -- and on top of  
7 that, the debtors received nothing, absolutely nothing with  
8 respect to the forecast that Mr. Akunuri admits he considered  
9 and rejected. And he admitted that in his deposition and I  
10 could provide cites and the union admitted that in their  
11 pretrial objections, that he considered other forecasts and  
12 rejected them.

13 There is simply no way the debtors and the Court can  
14 assess whether Mr. Akunuri's testimony is based on improperly  
15 selected coal forecasts or whether it is biased or even  
16 contradicted by the actual Wood Mackenzie forecast.

17 I would also like to read to you, Your Honor, from the  
18 Wood Mackenzie public Web site. This is not an exhibit, so I  
19 would like to provide a copy to counsel before I read from it.  
20 Again, this is from the Wood Mackenzie Web site. May I  
21 approach?

22 THE COURT: You may.

23 MR. RUSSANO: And you'll see, Your Honor, this is what  
24 you get when you buy the Wood Mackenzie forecast. You get  
25 analysis of the driver's influencing thermal cold demand,

1 economic factors, environmental legislation and market  
2 competition. You get market outlook of major coal basins in  
3 the U.S., analyzing supply and demand, infrastructure and  
4 import/export markets. Your Honor, you get the idea.

5           The report may even contain information that would be  
6 relevant to the issue of what taxes are included in the Wood  
7 Mackenzie forecast. That's something I'm sure you've read  
8 about in Mr. Schwartz's reply declaration and which you heard  
9 him testify about yesterday. We have none of that information.  
10 All we have is two pages of numbers and the debtors and the  
11 Court are being asked to accept those numbers with blind faith;  
12 trust us, Mr. Akunuri selected the right forecast and trust us,  
13 there's nothing in those -- in the entire forecast that the  
14 debtors or the Court would find of interest.

15           Your Honor, that's not how this works and it's not how  
16 the evidentiary rules of the Supreme Court intended it to work.  
17 The union's only stated basis for their failure to produce this  
18 information is that they signed a contract with Wood Mackenzie  
19 that allegedly prevents them from providing it to us. And let  
20 me be crystal clear about what happened here and this is  
21 evident from the record and the deposition testimony.

22           The union requested that Mr. Akunuri prepare his  
23 analysis. PWC, that Mr. Akunuri works or, asked the union to  
24 purchase the Wood Mackenzie forecast expressly for the purpose  
25 of preparing that analysis in connection with this litigation.



1 The union then signed an agreement forbidding it from producing  
2 the information that it knew its expert would rely upon.

3 Your Honor, under those circumstances it's buyer  
4 beware. The union has three viable choices: Don't purchase  
5 the Wood Mackenzie forecast because it can't be produced.  
6 Negotiate with Wood Mackenzie in order to allow the forecast to  
7 be produced or purchase the forecast for the debtors. It did  
8 none of that.

9 I want to be clear about one other thing. Well,  
10 several other things but this thing in particular. The debtors  
11 haven't sat on the sidelines waiting for just the right moment  
12 to spring this motion. We've done absolutely everything we  
13 could do to get this information. When the union initially  
14 refused to produce it, we tried to purchase it ourselves and we  
15 would have except that we were quoted a prohibitively high  
16 price of just under 30,000 dollars.

17 At that point, we went back to the union to see if  
18 they could negotiate a better price for us. When they didn't,  
19 we once again insisted to the union, it's our right to receive  
20 a complete copy of the Wood Mackenzie forecast. The union  
21 refused again. We didn't stop there. We sent a subpoena to  
22 Wood Mackenzie a week ago in a last attempt to get this  
23 information but they objected and we've simply run out of time.

24 This isn't a gotcha moment. We made very clear from  
25 the beginning that this information was vital to analyzing the

1 Akunuri declaration, to deposing Mr. Akunuri and now to  
2 crossing Mr. Akunuri. The union saw this coming from a mile  
3 away. That's why, Your Honor, Mr. Ho spent ten minutes cross-  
4 examining Mr. Schwartz on a damage control e-mail that he sent  
5 me a little more than a week ago which was well after the  
6 deposition.

7 But that e-mail as Mr. Schwartz testified, is useless.  
8 It listed in summary fashion some of the other Wood Mackenzie  
9 coal price forecasts and stated that if the debtors could make  
10 a "plausible" showing, it would consider producing it to us.

11 Your Honor, aside from the ludicrous position that  
12 somehow the debtors need to make an undefined "plausible"  
13 showing to the satisfaction of the union in order to obtain the  
14 information that it is entitled to, the union failed to provide  
15 the information in the e-mail that would allow the debtors to  
16 even do that. There were no BTU values, no explanation as to  
17 what was meant by terms such as near compliance, mid-sulfur,  
18 super compliance; all the things that Mr. Schwartz testified to  
19 yesterday.

20 And as Mr. Schwartz explained, there's no way that e-  
21 mail could be used to determine what Wood Mackenzie might be  
22 analogous to Patriot Coal's, much less make the plausible  
23 showing the union demanded.

24 Clearly this was a last ditch attempt to build a  
25 record and a poor one at that. The information necessarily to

1 fulfill Dalbert-keeper duty has been withheld by the union.  
2 The prejudice here is real and it is past tense. And the only  
3 available remedy left is to exclude those portions of his  
4 declaration that relied on this information. And for those  
5 reasons, the debtors respectfully request that all portions of  
6 Mr. Akunuri's declaration referencing or relying on the Wood  
7 Mackenzie forecast be stricken from the record and that Mr.  
8 Akunuri be precluded from offering any opinion that is based on  
9 his review of the Wood Mackenzie forecast.

10 Your Honor, that's all I have for argument. I do have  
11 -- I assume you want to hear from Mr. Ho.

12 THE COURT: Correct.

13 MR. RUSSANO: I do have a list of paragraph numbers in  
14 the various declarations but once Your Honor has decided which  
15 way you decide to go, I just want to let you know that I can  
16 provide those.

17 THE COURT: All right. Mr. Ho?

18 MR. HO: Thank you, Your Honor. I want to start by  
19 making the same apology that my colleague, Mr. Perillo, made  
20 for wasting your time because this motion is exactly that; a  
21 wasting of your time because we provided to the debtors exactly  
22 what Rule 26 of the Federal Rules of Civil Procedure required  
23 and this motion is baseless.

24 As you heard from the debtors, Mr. Akunuri did rely on  
25 certain Wood Mackenzie data in performing his analysis. That

1 data was derived from a service which PWC subscribed to through  
2 a contract with Mackenzie. Make no mistake about it; there was  
3 no choice into what terms were in that contract. Wood  
4 Mackenzie has one single contract that it provides to  
5 everybody -- to every single subscriber and that contract says  
6 you cannot provide our data to any third-parties unless you  
7 actually rely on that data in you analysis.

8           There's a very good reason for that dissemination  
9 limitation which is that if that limitation is not in place,  
10 then one subscriber that down to others and pretty soon the  
11 financial incentive to create a type of forecast that all of  
12 have considered in this case, simply wouldn't be there. The  
13 forecasting services simply would go away and disappear if  
14 their product is given away for free.

15           And fortunately, the Wood Mackenzie disclosure  
16 standard is exactly the legal standard imposed by Rule  
17 26(2)(B)(2) of the Federal Rules of Civil Procedure, which is  
18 also incorporated into the Bankruptcy Rules. And what that  
19 says is the only disclosure obligation with respect to expert  
20 materials is the duty to disclose materials actually considered  
21 by the expert in the process of formulating his opinions.

22           Let's talk about the spreadsheet. The Wood Mackenzie  
23 spreadsheet, the only spreadsheet in this document Mr. Akunuri  
24 actually considered in forming his opinions is a very large  
25 spreadsheet that contains coal price forecasts from all over

1 the world and it contains those prices for the next twenty  
2 years.

3 If you're talking about powder basin coal, if you're  
4 talking about coal from Wales, if you're talking about coal  
5 from Australia, that simply has no relevance to the accuracy of  
6 coal price forecast of Patriot coal which are produced in one  
7 of three regions; Western Kentucky, Northern West Virginia, and  
8 Southern West Virginia.

9 And this spreadsheet is not one where you can look at  
10 all the data at once. Because of the size of the data, the  
11 only way to effectively use it is to perform searches using  
12 search criteria that a spreadsheet allows you to put in.

13 And what Mr. Akunuri did in this case was he called  
14 Wood Mackenzie. He gave them descriptions of Patriot Coal  
15 characteristics, specifically heat content and sulfur content,  
16 he asked Wood Mackenzie what are the most comparable types of  
17 coal in your forecast and when he got those answers, that's  
18 what he inputted into the spreadsheet and that's what generated  
19 the two pages that you have in front of you and that we  
20 produced to the debtors upon request.

21 And those are the only actual materials that Mr.  
22 Akunuri considered in the process of forming his opinions. And  
23 pursuant to Rule 26, that actually is the only thing we, as the  
24 union, had the duty to provide to the debtors pursuant to Rule  
25 26.

1 Now in the course of Mr. Akunuri's deposition, it came  
2 about for the first time that the debtor was questioning which  
3 types at Wood Mackenzie coal Mr. Akunuri selected. With  
4 respect to the debtors' comment that Mr. Akunuri had considered  
5 and rejected other forecasts, that was not the Wood Mackenzie  
6 service. That was for the SNL service that only pursuant to  
7 recommendations from Patriot management.

8 We gave to the debtors every single forecast that Mr.  
9 Akunuri actually considered and looked at from the Wood  
10 Mackenzie service. And when we realized that the debtors were,  
11 in fact, questioning the selection of types of coal by Mr.  
12 Akunuri, we gave to the debtor every single category of the  
13 Wood Mackenzie service in each of the three regions where the  
14 debtors produces coal; Southern West Virginia, Northern West  
15 Virginia and the Illinois Basin.

16 There's a reason why we did not provide to the debtor  
17 an explanation of what the categories meant and that's because  
18 that information is not actually available in the Wood  
19 Mackenzie service. The only way to get that information is to  
20 actually call Wood Mackenzie and ask them for information.  
21 That is not something that was in our ability to provide. And  
22 they're the reason why even today the debtors are confused  
23 about what each category meant and that's because they provided  
24 that e-mail that was sent to the debtors, not for the purpose  
25 of actually getting information but for the purpose of

1 litigation. The e-mail was sent to the debtors on April 20th  
2 and it was not provided to Mr. Schwartz until April 29th. That  
3 is why the time is not available for the debtors to make a  
4 request and for us to call Wood Mackenzie to ask them what this  
5 information or these categories actually mean.

6 In summary, Your Honor, we have provided to the  
7 debtors everything that Mr. Akunuri actually considered in  
8 forming his opinions. In addition, when the debtors questioned  
9 it, questioned his selection of categories, we went beyond the  
10 call of duty and provided the debtors everything that was  
11 actually available in the Wood Mackenzie service that was  
12 necessary to evaluate his opinions.

13 The fact that debtors cannot evaluate that opinion  
14 accurately is because of their delay in providing my e-mail to  
15 Mr. Schwartz which made it impossible to get clarification of  
16 Wood Mackenzie as to what these categories mean.

17 For all those reasons, the limited requirements of  
18 Rule 26 should be enforced. We provided to the debtors,  
19 everything Mr. Akunuri actually considered, the requirements of  
20 the rule has been satisfied and the motion to strike portions  
21 of Mr. Akunuri's deposition -- of his declaration should be  
22 denied. Thank you.

23 THE COURT: All right. Thank you. All right, Mr.  
24 Kaminetzky, I'll deny the --

25 MR. RUSSANO: Russano.

1 THE COURT: I'm sorry, Mr. Russano. I'm so sorry, I  
2 keep confusing the two of you.

3 MR. RUSSANO: That's okay. There's a lot of us.

4 THE COURT: I'll deny the debtors' motion. I will let  
5 the declaration stand as it does and I believe you all will  
6 make the appropriate arguments about what weight should be  
7 given to that.

8 MR. RUSSANO: Understood, Your Honor.

9 THE COURT: All right. Thank you.

10 MR. HO: Your Honor, can I present a witness now?

11 THE COURT: You may.

12 MR. HO: Your Honor, I present Mr. Srinivas Akunuri,  
13 the purpose of giving cross and a redirect testimony.

14 THE COURT: All right. Mr. Akunuri, if you --

15 MR. HO: If I may just --

16 THE COURT: Yes.

17 MR. HO: -- say a few more things, Your Honor. Mr.  
18 Akunuri is the valuation principal for PWC's energy practice  
19 based on Houston, Texas and the parties I think have stipulated  
20 that Mr. Akunuri has experience performing valuation analysis  
21 on numerous coal and oil and mining companies which include the  
22 valuation of oil and gas and mining reserve inventory,  
23 intangible assets and contingent consideration using  
24 information such as the location and type of coal being  
25 produced and sold, the outlook regarding prices for each type



1 of coal and the cost structure of the coal companies.

2 THE COURT: All right.

3 MR. RUSSANO: Your Honor, just very briefly. Mr. Ho  
4 speaks quickly sometimes. I want to make sure I followed all  
5 of that. Is that from paragraph 3 --

6 MR. HO: Yes.

7 MR. RUSSANO: -- of his declaration? Understood.  
8 Okay. No objection.

9 THE COURT: All right.

10 (Witness Sworn)

11 THE CLERK: Please have a seat in the witness box,  
12 sir. There's a step up, if you'll please speak directly into  
13 the microphone.

14 CROSS-EXAMINATION

15 BY MR. RUSSANO:

16 Q. Good evening, Mr. Akunuri.

17 A. Good evening.

18 Q. You first became involved in this matter about a month  
19 ago, on March 25th; correct?

20 A. With respect to the declaration, yes, that is correct.

21 Q. You were asked at that time to conduct an analysis of the  
22 economic impact on Patriot's business plan using thermal coal  
23 prices that you deemed to be reasonable; correct?

24 A. Yes.

25 Q. And that is because you don't believe that the forecasted

1 prices in Patriot's business plan are reasonable; correct?

2 A. Based on my review of third-party data; yes.

3 Q. You're not an expert in coal price projections; are you?

4 A. That is correct.

5 Q. You have never yourself prepared for coal forecasts; have  
6 you?

7 A. No.

8 Q. In fact, the firm you're a principal of, PWC, is not even  
9 permitted to provide coal price forecasts; correct?

10 A. That is correct.

11 Q. And you've never --

12 MR. HO: I'm sorry, Mr. Akunuri, can you speak up a  
13 little bit?

14 THE WITNESS: Yeah.

15 Q. And you've never been hired to actually forecast coal  
16 prices; correct?

17 A. Correct.

18 Q. Nor have you ever testified in a litigation or arbitration  
19 regarding coal forecast; is that right?

20 A. Yes.

21 Q. You've never published any articles on coal price  
22 forecasting; right?

23 A. Yes.

24 Q. And you've never done any lectures or teaching on coal  
25 price forecasting; correct?

1 A. Yes.

2 Q. You don't belong to any coal industry associations; do  
3 you?

4 A. No.

5 Q. At your deposition, you testified that it was really  
6 difficult for you to describe stoker coal. Do you recall that  
7 testimony?

8 A. I believe so, yes.

9 Q. And you didn't know at the time you prepared your  
10 declaration whether stoker coals sells at a premium or at a  
11 discount to thermal coal; correct?

12 A. I did not recollect; yes.

13 Q. You also were unsure of the definition for compliance coal  
14 at your deposition; right?

15 A. Yes.

16 Q. Do you know sitting here today the definition of  
17 compliance coal?

18 A. With respect to the various types of coal, there is a  
19 certain element of the sulfur content and at certain sulfur  
20 content levels, you really define whether it's compliance coal,  
21 near compliance, super compliance, et cetera.

22 Q. Do you know at what level how many pounds per ton of  
23 sulfur is -- qualifies a coal as a compliance coal?

24 A. I believe it's about 1.2 pounds of sulfur dioxide.

25 Q. You don't know whether Patriot sells a compliance coal

1 product; do you?

2 A. I believe they do sell compliance coal at one of their  
3 mines.

4 Q. You believe that they do sell a compliance coal product;  
5 correct?

6 A. Yes.

7 Q. And would it surprise you to learn that they don't sell a  
8 compliance coal product?

9 A. Yes.

10 Q. At the time you prepared your declaration, you didn't know  
11 what percentage of Patriot's coal sales came from Central  
12 Appalachian coal; correct?

13 A. Yes.

14 Q. Do you know sitting here today what percentage of  
15 Patriot's coal sales comes from Central Appalachian coal?

16 MR. HO: Your Honor, objection. Mr. Akunuri is not  
17 being tendered as an expert in Patriot's coal production  
18 plants. He's a valuation expert.

19 MR. RUSSANO: Your Honor, if I am interpreting your  
20 look as you're about to overrule the objection, then I will  
21 stop speaking but I'm happy to explain my --

22 THE COURT: Yes, I will overrule the objection and let  
23 him answer the question if he knows.

24 A. I did not do a calculation of what percentage of Patriot  
25 coal was in Central Appalachia; no.

1 Q. And you also don't know what percentage of Patriot's sales  
2 comes from Northern Appalachian coal; do you?

3 A. I cannot recollect right now.

4 Q. You're not an expert in natural gas price forecast either;  
5 are you?

6 A. I do not do any forecasts; correct.

7 Q. Do you recall testifying in your deposition that liquefied  
8 natural gas trains which I'll call LNG trains are "high  
9 pressured rail cars that can carry liquefied natural gas."

10 A. That is correct.

11 Q. And is that still your belief today?

12 A. Yes.

13 Q. Natural gas and thermal coal compete for market share of  
14 the electricity generation market; correct?

15 A. Yes.

16 Q. And you contend in your declaration that as the price of  
17 natural gas increases, electricity generators will switch back  
18 to thermal coal; correct?

19 A. Yes.

20 Q. The price at which that switch will occur varies depending  
21 on the region in which the thermal coal is produced; correct?

22 A. Yes.

23 Q. In other words, the price point at which it becomes  
24 economically viable to switch from gas to coal may be higher or  
25 lower depending on the region; is that right?

1 A. That is correct. It really depends on the price points  
2 and any costs for the transportation costs to the utility that  
3 is they are really serving; yes.

4 Q. Yet in conducting your analysis, you made no attempt to  
5 account for regional variations in price; did you?

6 A. No, that was not my declaration; that's correct.

7 Q. So the answer is no?

8 A. No.

9 Q. Are you aware sitting here today that the majority of the  
10 coal that Patriot produces is Central Appalachian coal?

11 A. Yes.

12 Q. You have no opinion as to Mr. Schwartz's analysis that for  
13 Central Appalachian coal to start to become competitive,  
14 natural gas prices must be at a minimum of four dollars per  
15 million BTU; do you?

16 A. I have not done that analysis.

17 Q. You agree that natural gas prices remain within ranges  
18 that are conducive to some economic switching from coal to gas,  
19 particularly in the eastern markets; correct?

20 A. Yes.

21 Q. And you're aware that Patriot does business in the eastern  
22 markets; correct?

23 A. Yes.

24 Q. I would like to turn now to paragraph 12 of your  
25 declaration. Your declaration is Joint Exhibit 204. And let

1 me know once you're there.

2 A. Yes.

3 Q. Do you see in paragraph 12 where you conclude that "the  
4 trend of coal to gas switching appears to have abated." Do you  
5 see that? It's in the --

6 A. Yes.

7 Q. -- first sentence. Yes?

8 A. Yes.

9 Q. And you cite statistics in that paragraph to -- just  
10 showing that the percentage of US electric generation from  
11 natural gas has gone from thirty-two percent in April 2012 to  
12 twenty-six percent in November 2012; is that right?

13 A. Yes.

14 Q. And you also cite statistics showing that the percentage  
15 of U.S. electricity generation from coal has gone from thirty-  
16 two percent to forty-two percent over that same period in time;  
17 correct?

18 A. Yes.

19 Q. And it's based on those statistics in paragraph 13 of your  
20 declaration that you contend that in looking at paragraph 13,  
21 at the end of 2012, demand for coal trended back to historical  
22 levels; is that right?

23 MR. HO: What paragraph, counsel?

24 MR. RUSSANO: This is paragraph 13.

25 A. Yes.

1 Q. I would like to show you Joint Exhibit 224. Just let me  
2 know when you're there.

3 A. Yes.

4 Q. You saw this document before at your deposition; right?

5 A. Yes.

6 Q. Does this exhibit indicate that as of January 2001, the  
7 market share of natural gas was approximately ten percent?

8 A. 2001?

9 Q. Correct, January '01.

10 A. Yes.

11 Q. And is that consistent with your understanding independent  
12 of this exhibit?

13 A. Yes.

14 Q. The twenty-six percent market share of natural gas as of  
15 November 2012 that you referred to in your declaration is well  
16 above historical levels going back to 2001; is it not?

17 A. That is correct and my testimony again when I was talking  
18 about my declaration was what happened to natural gas prices  
19 over the past three years and what has that done to, you know,  
20 utility companies switching from coal to gas.

21 Q. Understood. I am trying to explore what you meant by  
22 historical levels --

23 A. Sure.

24 Q. -- when you refer in your declaration.

25 A. Yes.



1 Q. You're not aware of any evidence indicating that natural  
2 gas shares will ever return to historical 2001 levels; are you?

3 A. I don't have any information; yes.

4 Q. Okay. Now I am going back to coal and again looking at  
5 Joint Exhibit 224. The market share of thermal coal in January  
6 of 2001 was approximately fifty-five percent; correct?

7 A. Yes.

8 Q. And if you look at figure 2 of your declaration, which  
9 you're probably open to, it's on the same page as paragraph 13.  
10 You might want to take your declaration and just put it aside.  
11 We'll be referring to that frequently.

12 A. Okay.

13 Q. I may have an extra copy, so you don't have to struggle  
14 with the binder.

15 A. Do you have an --

16 Q. I think we have -- I'm looking. I may have spoken too  
17 soon.

18 MR. RUSSANO: Your Honor, may I approach the witness?

19 THE COURT: You may.

20 MR. HO: Can I look at it first?

21 MR. RUSSANO: Of course.

22 A. Okay, thank you.

23 Q. Okay. So, I was directing your attention to figure 2 of  
24 the declaration which again is on -- it's right below numbered  
25 paragraph 13; do you see that?

1 A. Yes.

2 Q. And figure 2 of your declaration shows that coal share of  
3 electricity generation was just under fifty percent as recently  
4 as December of 2008; right?

5 A. Yes.

6 Q. The forty-two percent as of November 2012 that you  
7 referred to in paragraph 13 is well below historical highs  
8 including highs as recently as 2008; correct?

9 A. That's correct.

10 Q. Are you aware of any evidence indicating that the market  
11 share of thermal coal will ever return to historical highs of  
12 fifty percent or greater?

13 A. I don't have any information but one of the reasons when  
14 you look at the -- what happened over the last three, four  
15 years with respect to fracking of gas and the ability to get  
16 more gas out, one of the things you have to look at to see, you  
17 know, what is the price of natural gas expected to be and at  
18 what point in time is coal going to be more economical compared  
19 to gas.

20 Q. Understood and we're going to get to your conclusions  
21 regarding natural gas in just a bit.

22 A. Okay.

23 Q. But just so the record's clear, you're not aware of any  
24 evidence indicating that the market share of thermal coal will  
25 ever return to historical highs of fifty percent or greater;

1 are you?

2 A. No.

3 Q. Exhibit 224 in figure 2 of your declaration indicate that  
4 natural gas and coal prices tend to rise or fall depending on  
5 the season; would you agree with that?

6 A. Exhibit?

7 Q. Exhibit 224.

8 A. Oh.

9 Q. The chart we were looking at a moment ago, as well as  
10 figure 2 of your declaration.

11 A. Yes.

12 Q. Is that a yes to my question or a yes, you understand  
13 where we're looking?

14 A. I -- sorry, I just got to 224.

15 Q. Okay. Let me now ask the question again. Exhibit 224 and  
16 figure 2 of your declaration indicate that natural gas and coal  
17 prices tend to rise or fall depending on the season; would you  
18 agree with that?

19 A. Yes.

20 Q. And do you agree that Exhibit 224 and figure 2 indicate  
21 that coal prices tend to fall in the summer and rise in the  
22 winter?

23 A. Yes.

24 Q. And do you agree that Exhibit 224 and figure 2 indicate  
25 that natural gas prices tend to rise in the summer and fall in

1 the winter?

2 A. Yes.

3 Q. Have you personally done any analysis on the seasonal  
4 variations in coal prices?

5 A. No.

6 Q. The comparison of electricity generation shares in  
7 paragraph 12 of your declaration doesn't take into account  
8 seasonal price variations; right?

9 A. It does not.

10 Q. I would like to move now to figure 3 of your declaration  
11 which is on page 8, as well as numbered paragraphs 15 to 18 of  
12 your declaration. Let me once you've oriented yourself.

13 A. Yes.

14 Q. You cite to four factors that you believe point to an  
15 increase in natural gas prices and those factors are natural  
16 gas storage levels, natural gas rig counts, natural gas  
17 production and liquefied natural gas projects; is that correct?

18 A. Yes.

19 Q. I would like to spend a few minutes talking about the  
20 first factor, storage -- inventory storage levels of natural  
21 gas. You write in paragraph 15 of your declaration that a  
22 decline in storage levels is "an indicator of a potential  
23 trend" in the natural gas market; do you see that?

24 A. Yes.

25 Q. You agree that natural gas prices may not actually

1 increase just because storage levels decrease; correct?

2 A. Yes.

3 Q. But your testimony is that since reaching highs in 2012,  
4 natural gas storage levels have fallen approximately twenty-one  
5 percent which you believe will result in an increase in the  
6 price of both natural gas and thermal coal; correct?

7 A. Yes.

8 Q. Natural gas storage levels rise and fall depending on the  
9 season; right?

10 A. Yes.

11 Q. They typically rise in the summer months as natural gas is  
12 stockpiled for the winter months; correct?

13 A. Yes.

14 Q. And then they generally drop during the colder months;  
15 correct?

16 A. Yes.

17 Q. The winter of 2011 to 2012 was an unusually warm winter;  
18 right?

19 A. I haven't done seasonality analysis.

20 Q. Let me direct your attention to your deposition transcript  
21 which I don't think you have. So, give me one moment.

22 MR. RUSSANO: Your Honor, do you have a copy of Mr.  
23 Akunuri's deposition?

24 THE COURT: No.

25 MR. RUSSANO: No. Let me pass one up to you, as well.

1 THE WITNESS: Thank you.

2 MR. RUSSANO: I'll take it back at the end. It's very  
3 heavy.

4 Q. Can you turn to page -- just give me one moment --

5 MR. RUSSANO: Apologies, Your Honor.

6 THE COURT: Okay.

7 Q. If you could turn to 107, page 107 of your deposition.

8 Are you there?

9 A. Yes.

10 Q. And I'm reading beginning on line 14:

11 "Q. Do you agree that the winter of 2011-2012 was unusually  
12 warm?

13 "A. Yes."

14 Do you see that?

15 A. Yes.

16 Q. Do you recall that testimony?

17 A. Yes.

18 Q. Is that still your testimony today?

19 A. Yes.

20 Q. That winter of 2012-2012 was, in fact, the warmest winter  
21 in over sixty years; correct?

22 A. You asked me that question and I said I don't know.

23 Q. You still don't know?

24 A. Right.

25 Q. I would like you to turn to Joint Exhibit 226. And if you

1 could turn to page 36 of that document -- before we do that,  
2 this is a document that you considered in preparing your  
3 declaration; correct?

4 A. Yes.

5 Q. Okay. Are you at page 36?

6 A. Yes.

7 Q. Do you see at the bottom of the chart where it indicates  
8 that the winter of 2011 to '12 was the warmest winter in over  
9 sixty years by 223 heating dates?

10 A. Yes.

11 Q. Do you have any reason to disagree with the data in that  
12 chart?

13 A. No, other than seeing this; no.

14 Q. If you could turn to page 37 of that document, do you  
15 agree that this page sets forth five-year inventory level  
16 averages for natural gas?

17 A. Yes.

18 THE COURT: Mr. Akunuri, I need you to speak into that  
19 microphone.

20 THE WITNESS: Sorry.

21 THE COURT: Please.

22 THE WITNESS: Sorry, Your Honor.

23 THE COURT: Um-hum.

24 Q. Do you see where it says that storage levels following the  
25 2011-2012 winter were "954 billion cubic feet over the five-

1 year average?" Do you see where it says that?

2 A. Yes.

3 Q. Do you have any reason to doubt the accuracy of that  
4 statement?

5 A. No.

6 Q. When you measured the decline in natural gas levels in  
7 your declaration, your starting measuring point was in March  
8 2012, after the unusually warm winter; correct?

9 A. Yes.

10 Q. And you measured that against the levels of natural gas in  
11 March 2013 after a more normal winter; correct?

12 A. Excuse me. Yes.

13 Q. And the March 2013 levels were still over 200 billion  
14 cubic feet greater than they had been in March 2011; correct?

15 A. Yes.

16 Q. If it helps, you can refer to your declaration, Exhibit C.  
17 Is your answer correct?

18 A. Yes.

19 Q. The twenty-one percent decline you cite in your  
20 declaration between March 2012 and March 2013 is attributable  
21 more to the historically warm winter than to any long term  
22 decrease in storage levels. Don't you agree with that?

23 A. Yes, I was trying to make a point about how natural gas  
24 prices have doubled during that time.

25 Q. Okay. But I am asking you a different question here.



1 A. All right.

2 Q. I understand your overall point.

3 A. Yes.

4 Q. Your answer to my question is yes; correct?

5 A. Yes.

6 Q. Turning back to your declaration, figure 3, as well as  
7 paragraph 16 of your declaration, this is regarding declining  
8 rate counts; do you see that?

9 A. Yes.

10 Q. And you opine that the reduction in rate count indicates a  
11 reduction in production levels of natural gas which will in  
12 turn lower supply and increase prices; correct?

13 A. Yes.

14 Q. You're familiar with what horizontal drilling is; right?

15 A. Yes.

16 Q. Horizontal drilling technology enables more natural gas to  
17 be produced from fewer rigs; correct?

18 A. Yes.

19 Q. And natural gas can also be produced from oil rigs;  
20 correct?

21 A. Yes.

22 Q. The number of operating oil rigs approximately quadrupled  
23 in the three years between October 2008 and October 2012;  
24 right?

25 A. Yes.

1 Q. I would like to show you Joint Exhibit 222. Let me know  
2 once you're there.

3 A. Yes.

4 Q. This is one of the document you considered when preparing  
5 your declaration; right?

6 A. Yes.

7 Q. If you could turn to page 4 of that document, line 1. Do  
8 you see that? The page numbers are right at the bottom.

9 A. Yes, yes.

10 Q. Would you agree that there has been a breakdown of the  
11 traditional relationship between rate count and natural gas  
12 production?

13 A. Yes.

14 Q. Thank you. You could put that aside. In fact, do you  
15 agree that the natural gas -- that natural gas production has  
16 continued to grow in spite of a declining number of natural gas  
17 rigs; right?

18 A. Yes.

19 Q. Year over year, monthly production of natural gas has  
20 increased every month since early 2010; has it not?

21 A. Yes.

22 Q. If you could go back to Joint Exhibit 226 which I believe  
23 we've looked at before. Once again, this is a document you  
24 considered when preparing your declaration; correct?

25 A. Yes.

1 Q. Turn to page 20 of that document. Are you there?

2 A. Yes.

3 Q. Do you agree with the conclusion set forth in the title of  
4 the chart on page 20 which states that "Shale gas rig counts  
5 peaked in 2010, yet production has grown eight billion cubic  
6 feet per day since 2010." Do you agree with that statement?

7 A. Yes.

8 Q. You can put that aside. I would like to now turn to the  
9 third of four factors you cite in your declaration in figure 3.  
10 Are you there?

11 A. Yes.

12 Q. Now in paragraph 17 of your declaration, you argue that at  
13 current natural gas prices, natural gas producers in a number  
14 of regions may not be incentivized to produce natural gas  
15 because of high break-even points; is that a fair summary of  
16 your argument?

17 A. Yes.

18 Q. If you could turn to Joint Exhibit 227.

19 A. Yes.

20 Q. This is a document you considered in preparing your  
21 declaration; correct?

22 A. Yes.

23 Q. In fact, your analysis in paragraph 17 about break-even  
24 points is based entirely on this presentation; correct?

25 A. Yes.

1 Q. Was this presentation ever published in any industry  
2 publication?

3 A. I do not know.

4 Q. Has it ever been peer-reviewed?

5 A. This is -- this is a document prepared by Bobby Tudor, the  
6 CEO of Tudor Pickering, which is considered the -- one of the  
7 best investment banks in the area with respect to oil and gas.  
8 So when you say peer-reviewed, I don't know what you mean by  
9 peer-reviewed.

10 Q. Have other firms reviewed this document?

11 A. So, other analysts do quote Tudor Pickering with respect  
12 to some of the data that they present.

13 Q. Have they quoted this document?

14 A. I don't know if this particular document was quoted.

15 Q. Now you say this was prepared by a Mr. Bobby Tudor;  
16 correct?

17 A. Yes.

18 Q. Do you know if -- I see Mr. Tudor's name on the top of the  
19 document; correct?

20 A. Yes.

21 Q. Do you know if Mr. Tudor personally prepared this  
22 document?

23 A. He presented this document but he has a number of analysts  
24 that work for him. I'm sure it's a Tudor Pickering  
25 presentation document. So he probably is not the only one that

1 had a hand in preparing this.

2 Q. Do you know for certain who performed the analysis  
3 underlying this presentation?

4 A. No, I do not.

5 Q. Do you know if there's a more recent Tudor Pickering  
6 break-even analysis?

7 A. No.

8 Q. Do you know if there are other break-even point analysis  
9 that you -- that are available?

10 A. I haven't seen any.

11 Q. So you don't know?

12 A. I don't know.

13 Q. If you could turn to page 10 of the document. The  
14 analysis on this page is based on an assumption that a ten  
15 percent rate of return is required; correct?

16 A. Yes.

17 Q. Some companies might be willing to accept a rate of return  
18 that is less than ten percent; correct?

19 A. Yes.

20 Q. And for those companies, the break-even points would be  
21 less than what is reflected in this presentation; correct?

22 A. Yes.

23 Q. Break-even points can also decrease in response to  
24 improvements in technology; right?

25 A. Yes.

1 Q. If you could turn to Joint Exhibit 223.

2 A. Yes.

3 Q. You authored this document; right?

4 A. Yes.

5 Q. And you wrote it sometime in 2010 or 2011; correct?

6 A. Yes.

7 Q. If you turn to page 4, the last sentence on the page, you  
8 wrote about continuing advancements in fracturing technology;  
9 correct? Do you see that?

10 A. The last -- did you say last paragraph?

11 Q. The last sentence on page 4.

12 A. Yes.

13 Q. Sitting here today, you continued to expect that there  
14 will be advancements in fracturing technology; right?

15 A. Yes.

16 Q. The last factor you identify in figure 3 of your  
17 declaration, as well as paragraph 18, is with respect to  
18 decreasing supply of natural gas is a result of increasing  
19 number of liquefied natural gas exports; is that right?

20 A. And you claim that these exports will remove approximately  
21 2.5 trillion cubic feet of natural gas per year by 2019; right?

22 A. At the time of my declaration; yes.

23 Q. At the time you prepared your declaration --

24 A. Yes.

25 Q. -- that was your claims.

1 A. Yes.

2 Q. Is that still your claim?

3 A. I have more recent data that show that it's more like nine  
4 trillion cubic feet of LNG exports between -- over the next six  
5 to eight years.

6 Q. Have you produced any of that data to the debtors?

7 A. I had prepared an updated exhibit. I don't know if that  
8 actually made it to you.

9 MR. RUSSANO: Your Honor, I would move to strike the  
10 answer. We haven't received any of the information that Mr.  
11 Akunuri is referring to. We haven't received this exhibit. I  
12 can walk through with Mr. Akunuri what he testified to at his  
13 deposition. Needless to say, completely different than what he  
14 is saying right now.

15 THE COURT: Mr. Ho?

16 MR. HO: Yes, Your Honor. For the record, this  
17 document was not prepared until last Saturday after the time  
18 for the exchange of exhibits. Therefore, we did not enter it  
19 to the debtors pursuant to the schedule that Your Honor  
20 actually entered. Counsel is free to question the witness  
21 concerning his new projections.

22 THE COURT: Is the document here?

23 MR. HO: The document is not here because we do not  
24 intend to offer it given your scheduling order.

25 MR. RUSSANO: Your Honor, I don't know what to say to

1 that. I think the -- in my view, it's obviously your decision,  
2 but I don't see how the answer can stand. We haven't seen it.  
3 We have no idea what he's talking about. All I have is his  
4 declaration.

5 THE COURT: Yes, I think we're going to have to go  
6 with what the declaration says and not look at what updated  
7 information for more recent data.

8 MR. RUSSANO: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 MR. RUSSANO: If I could just have one moment, Your  
11 Honor.

12 THE COURT: Yes.

13 (Pause)

14 Q. Mr. Akunuri, I would like to change topics and discuss  
15 your critique of Patriot Coal price forecast as being  
16 understated; okay? You were not involved in any calls with  
17 Patriot management regarding the appropriate selection of which  
18 SNL coal forecast to use to compare with the coals that Patriot  
19 produces; were you?

20 A. There was a call we had specifically on March 14th.

21 Q. I just want to be, "call we had." Were you on that call,  
22 you personally?

23 A. I was not on the call. I was out of the country.

24 Q. You are referring to a call that your team at PWC had with  
25 Patriot management regarding the selection of SNL coal price



1 forecast; correct?

2 A. Yes.

3 Q. Actually that call occurred before you were retained to  
4 provide the analysis in your declaration; correct?

5 A. That is correct.

6 Q. You personally have never participated in a call with  
7 Patriot management regarding the subject matter of your  
8 declaration; have you?

9 A. No.

10 Q. There was a member of your team, Mr. Kevin Ramoutar, who  
11 selected the SNL coal forecast to use in the analysis in your  
12 declaration; correct?

13 A. Yes.

14 Q. Turning to figure 4 of your declaration, are you there?

15 A. Yes.

16 Q. Mr. Ramoutar determined which prices to include in the row  
17 "Patriot Business Plan Forecast;" correct?

18 A. After the call with management -- are you asking after the  
19 call with management, he came back to me with the feedback with  
20 the seal from management on which coal prices to select to be  
21 most appropriate and I asked him to prepare the calculations.

22 Q. I'm actually asking a narrower question which is did -- is  
23 it Mr. Ramoutar who determined which prices to include in the  
24 row entitled "Patriot Business Plan Forecast?"

25 A. Yes.

1 Q. You've mentioned the call with Patriot management a couple  
2 of times, so let's talk a little bit about that. Patriot  
3 management requested that several adjustments be made with  
4 respect to the SNL coal price forecast; right?

5 A. Yes.

6 Q. And your team made those adjustments?

7 A. Yes.

8 Q. You personally didn't make the adjustments; right?

9 A. Under my supervision; yes.

10 Q. Did you ever participate in a call with Wood Mackenzie  
11 regarding the subject of your declaration prior to drafting  
12 your declaration?

13 A. No.

14 Q. There was a call between Wood Mackenzie and PWC but once  
15 again, Mr. Ramoutar conducted that call; correct?

16 A. Yes.

17 Q. Mr. Ramoutar also performed the initial calculations  
18 contained in Exhibit F of your declaration; correct?

19 A. Yes.

20 Q. Wood Mackenzie is a forecasting service that its customers  
21 subscribe to; right?

22 A. Yes.

23 Q. Once you subscribe to the Wood Mackenzie service you have  
24 access to their forecasts for a period of months; correct?

25 A. Correct.

1 Q. And PWC subscribed to the Wood Mackenzie forecast for the  
2 purpose of assisting in this matter; correct?

3 A. Yes.

4 Q. You relied on the Wood Mackenzie forecasting service in  
5 developing your testimony; right?

6 A. Yes.

7 Q. Specifically, your conclusion that Patriot's thermal coal  
8 price projections are understated is based in part on your  
9 assessment of the Wood Mackenzie forecast; right?

10 A. Yes.

11 Q. Likewise, your conclusion that Patriot underestimated the  
12 revenue it received from 2013 to 2016 is based in part on the  
13 Wood Mackenzie forecast; right?

14 A. Yes.

15 Q. And your opinion that Patriot has overstated its need for  
16 savings is also based on the Wood Mackenzie forecast; correct?

17 A. SNL and Wood Mackenzie; yes.

18 Q. The Wood Mackenzie service forecasts a variety of types of  
19 coals, not just those that are listed in your declaration;  
20 right?

21 A. Yes.

22 Q. PWC selected which of Wood Mackenzie's forecast to use to  
23 compare it to the coals that Patriot produces; right?

24 A. Yes.

25 Q. And Patriot management was never consulted in connection

1 with the selection of Wood Mackenzie coal price forecasts;  
2 correct?

3 A. Yes.

4 Q. If you could turn to page 21 of Exhibit F of your  
5 declaration.

6 A. Is that -- is it in this binder?

7 Q. Oh, it should be.

8 THE COURT: Exhibit F, is that --

9 MR. RUSSANO: Exhibit F.

10 THE COURT: -- is that behind 210?

11 MR. RUSSANO: Exhibit F. It's behind it; yes. It's  
12 behind it.

13 THE COURT: I think it's Exhibit 210.

14 MR. RUSSANO: Oh, is it Exhibit 210? Let me confirm  
15 that. It should be behind his declaration; yes.

16 THE COURT: Well, let me see, because it seems to be  
17 exhibit -- yes, they seem to be following along.

18 THE WITNESS: Yeah, I got it. Yes.

19 Q. Do you see in footnote 1 where it says that with respect  
20 to the Wood Mackenzie coal forecast it reads, "Based on  
21 discussions with management, this forecast is the most  
22 appropriate for coal produced at the Midland Trail Complex;" do  
23 you see that? It's footnote 1.

24 A. Yes, on page 22?

25 Q. On page 21, but it also --

1 A. 21; yeah.

2 Q. -- appears on page 22 and elsewhere.

3 A. Yes.

4 Q. And I think you've -- you've essentially answered my next  
5 question which is that a similar statement appears in various  
6 places throughout the document; right?

7 A. Yes.

8 Q. And just so we're clear, PWC never spoke with Patriot  
9 management about which Wood Mackenzie forecast to select;  
10 correct?

11 A. We only had SNL discussions, not Wood Mackenzie.

12 Q. Okay. Thank you. Patriot management disagreed with PWC's  
13 initial selections of SNL coal price forecast; didn't they?

14 A. They did because we did not have enough information; yes.

15 Q. And you were able to get that information by talking with  
16 the company.

17 A. Yes, that's correct.

18 Q. Did Wood Mackenzie suggest that you utilize a compliance  
19 product forecast for some of Patriot's coals?

20 A. Yes.

21 Q. What is the date of the Wood Mackenzie forecast you used  
22 in performing your analysis?

23 A. The latest forecast they had was as of November 2012.

24 Q. Are you aware that there has been a decline in  
25 international demand for domestic coal between the end of 2012

1 and the first quarter of 2013?

2 A. Yes, generally, yes.

3 Q. Are you aware that international prices for coal have

4 fallen over that same time period?

5 A. Through March; yes.

6 Q. Are you aware that other coal exporting countries aside

7 from the United States have increased production?

8 A. I don't have that information.

9 Q. You don't know one way or the other?

10 A. No.

11 Q. Did you make any adjustments to the Wood Mackenzie

12 forecast to reflect changed market circumstances since November

13 2012?

14 A. I did not.

15 Q. Do you agree generally that using the most recent

16 available information is the best way to conduct a forecasting

17 analysis; right?

18 A. It is but my analysis is really more of a long term

19 nature. So, I have used the most recent data that was

20 available. To me, when you look at long term forecasts you

21 really -- stock prices on a monthly basis -- on a daily basis,

22 they fluctuate. So, when we discuss with Wood Mackenzie

23 analysts, they still believed that these forecasts in their

24 view as of the date of my declaration are most appropriate for

25 '14, '15 and '16.

1 Q. But again, Mr. Akunuri, just to make sure we have a clear  
2 answer to my question, you do agree generally that using the  
3 most -- using the most recent available information is the best  
4 way to conduct the forecasting analysis; correct?

5 A. Yes.

6 Q. In paragraph 21 of your declaration, I'll give you a  
7 moment to get there.

8 A. Yes.

9 Q. In that paragraph, you assert that Patriot's profitability  
10 is significantly improved under the coal forecast you've used;  
11 correct?

12 A. Yes.

13 Q. And you're basing that claim on your estimates of  
14 Patriot's improved revenue utilizing the SNL and Wood Mackenzie  
15 coal forecast; correct?

16 A. Yes.

17 Q. And your analysis is reflected in figure 5 of your  
18 declaration; right?

19 A. Yes.

20 Q. It's not always the case that increased revenues results  
21 in increased profit; is it?

22 A. Generally, yes. There will always be some variable  
23 expenses associated with that.

24 Q. Isn't it possible that increasing production costs can  
25 drive the price of coal up but nonetheless decrease profit

1 margin (audio glitch from 6:16:52 to 6:16:56) haven't analyzed  
2 Patriot's cost structure; have you?

3 A. No.

4 Q. And you haven't compared Patriot's cost structure to that  
5 of its competitors; have you?

6 A. No.

7 Q. And you never analyzed whether Patriot's costs might  
8 increase as its revenues increase; have you?

9 A. No.

10 Q. Do you know whether Patriot pays royalties for the coal  
11 itself?

12 A. Yes.

13 Q. You do know that?

14 A. Yes.

15 Q. Do those royalties -- are those royalties a percentage of  
16 the price for which it is sold -- the coal was sold?

17 A. Generally, yes.

18 Q. And the amount of the royalty payments will have an impact  
19 on the profitability; correct?

20 A. Yes.

21 Q. Figure 5 doesn't make any provision for the royalties that  
22 Patriot has to pay; correct?

23 A. Yes.

24 Q. It does include --

25 A. It doesn't.



1 Q. It doesn't include. Those royalty payments were excluded  
2 from the prices you include in the section titled "Patriot  
3 Business Plan Forecast;" correct?

4 A. Yes.

5 Q. Your revenue analysis also does not include metallurgical  
6 coal sales and revenues; does it?

7 A. That's correct.

8 Q. Do you know what percentage of Patriot's revenues met coal  
9 represents?

10 A. I don't know the number on top of my head.

11 Q. You don't have an opinion as to whether or not Patriot's  
12 met coal price forecasts are reasonable; do you?

13 A. I haven't done that analysis.

14 Q. Do you know what percentage of Patriot's revenues Patriot  
15 is forecasting met coal sales to represent in the coming years?

16 A. I haven't done the met coal analysis. So I don't know.

17 Q. So you don't know?

18 A. I don't know.

19 Q. Your revenue analysis does not include stoker coal sales  
20 and revenue; does it?

21 A. It does not.

22 Q. Do you know what percentage of Patriot's revenues stoker  
23 coal represents?

24 A. I understand it is very small but I don't know the  
25 percentage.

1 Q. You don't know?

2 A. No.

3 Q. You don't have an opinion as to whether or not Patriot's  
4 stoker coal price forecasts are reasonable; do you?

5 A. I haven't done the analysis.

6 Q. So you have no opinion?

7 A. No opinion.

8 Q. On figure 5, you have several lines labeled "Total  
9 Unpriced Tons" and "Total Priced Tons;" do you see that?

10 A. Yes.

11 Q. And the unpriced tons represent coal that had not been  
12 sold by Patriot at the time the business plan was created;  
13 correct?

14 A. Correct.

15 Q. And the priced tons represents coal that had been sold at  
16 the time the business plan was created; correct?

17 A. Yes.

18 Q. When accounting for priced tons, you used a forecasted  
19 price from the business plan rather than the actual prices at  
20 which the coal was sold; right?

21 A. With respect to the priced tons?

22 Q. With respect to the priced tons.

23 A. Yes.

24 Q. Why did you do that?

25 A. I didn't have the detailed analysis on priced tons versus

1 unpriced tons, so I looked at the by mine level, what is the  
2 total effective price and I have used that number.

3 Q. Can average heat content for coal from the same mine vary  
4 from year-to-year?

5 A. Yes.

6 Q. Do you know why that is?

7 A. It just depends on, you know the quality and the heat  
8 content that is actually delivered -- does move from time to  
9 time, although at not -- the variable is limited but there's  
10 still a change from year-to-year.

11 Q. If the heat content varies from year-to-year, and holding  
12 everything else equal, that would impact the market price of  
13 the coal; correct?

14 A. Yes.

15 Q. Do you know if Patriot forecasts the expected yearly  
16 average BTU at its mining complexes?

17 A. No, I do not.

18 Q. Do you know what the actual BTU per pounds were at the  
19 Federal complex in 2012? If helpful, you might refer to  
20 Exhibit F, page 14, of your declaration.

21 A. The information I was given was 13,183.

22 Q. Do you know what the forecasted -- forecasted -- heat  
23 content at the Federal complex is for 2013?

24 A. No, that's the number I was given and based on our team's  
25 call with management, they suggested that we use that number.

- 1 Q. Management told you to use 13,183 --
- 2 A. That's the number --
- 3 Q. -- on a call?
- 4 A. -- that's the number we received from management; yes.
- 5 Q. You personally received that from management?
- 6 A. My team did.
- 7 Q. Who at your team was told that for 2013 to use 13,183 as a
- 8 heat content --
- 9 A. My --
- 10 Q. -- for 2013?
- 11 A. My director, Kevin.
- 12 Q. Your director, Kevin. And who told Kevin from management
- 13 that he should use 13,183 as a heat content?
- 14 A. I believe there were a number of people on that call
- 15 including Bob Bennett from Patriot management, Blackstone and
- 16 Alix Partners.
- 17 Q. That wasn't my question who was on the call.
- 18 A. Yeah.
- 19 Q. I would like to know who at Patriot told Mr. Ramoutar that
- 20 for 2013, the appropriate heat content to use was 13,183?
- 21 A. I don't remember exactly but the -- when I look at the
- 22 footnote, it does show a document, a data room item.
- 23 Q. So you don't know if anyone from Patriot told Mr. Ramoutar
- 24 to use 13,183 for 2013?
- 25 A. No.

1 Q. Do you know what the forecasted heat content at the  
2 Federal complex is for 2014?

3 A. No, we made the same assumption across all the four years.

4 Q. So your analysis just assumes that the actual BTU per  
5 pound for 2012 would remain the same in subsequent years;  
6 correct?

7 A. Yes.

8 Q. If, in fact, the heat content goes down and assuming  
9 everything else remains the same, the market price for that  
10 call also goes down; correct?

11 A. Yeah, it's the same -- the price probably will fluctuate  
12 up or down, depending on the actual heat content delivered.

13 Q. But heat content going down holding other variables  
14 constant, reduces prices; correct?

15 A. Yes.

16 Q. What are add-on taxes?

17 A. Various coal production taxes.

18 Q. Are you finished?

19 A. Severance taxes, black lung tax, some of the reclamation  
20 taxes, et cetera.

21 Q. At the time of your deposition, you didn't know the  
22 specific add-on taxes that were applicable to Patriot's coals;  
23 did you?

24 A. No, I did not.

25 Q. You didn't know what the Federal Black Lung Tax was at the

1 time of your deposition; did you?

2 A. I couldn't define it for you; yes.

3 Q. You couldn't define it or you didn't know what it was?

4 A. I didn't know what it was exactly; yes.

5 Q. Do you know today?

6 A. Yes.

7 Q. Can you describe to me what it is?

8 A. It's related to, you know, some of the standards that were  
9 agreed to prior to 1973 with related to workers facing lung-  
10 related issues and it was a fund that was created for that  
11 purpose.

12 Q. And you learned that information after the deposition;  
13 correct?

14 A. Yes.

15 Q. And after you prepared your declaration; correct?

16 A. Yes.

17 Q. At the time of your deposition, you didn't know which  
18 entities the Federal Black Lung Tax is levied on; did you?

19 A. No.

20 Q. Do you know today?

21 A. Not exactly; no.

22 Q. At the time of your deposition, you didn't know how much  
23 the Federal Black Lung Tax is; did you?

24 A. No.

25 Q. Do you know today?

1 A. I can't recollect on the top of my head.

2 Q. You didn't know in your deposition whether the Federal  
3 Black Lung Tax differed between surface and underground mines;  
4 did you?

5 A. No.

6 Q. Do you know today?

7 A. I believe there is a difference; yes.

8 Q. Do you know what that difference is?

9 A. I don't.

10 Q. At the time of your deposition, you didn't know which  
11 entities the Federal Reclamation Tax is levied on; did you?

12 A. No.

13 Q. Do you know today?

14 A. No.

15 Q. You didn't know how much the Federal Reclamation Tax is at  
16 the time of your deposition; right?

17 A. No.

18 Q. Do you know today?

19 A. No.

20 Q. And you didn't know whether it differs between surface and  
21 underground mines; did you?

22 A. No.

23 Q. Do you know today?

24 A. No.

25 Q. At the time of your deposition, you weren't aware that

1 there's a special reclamation tax in West Virginia; were you?

2 A. No.

3 Q. Do you know today?

4 A. No.

5 Q. And you also didn't know at the time of your deposition  
6 what the severance tax is; did you?

7 A. I knew what a severance tax was but I didn't know what the  
8 impact of that on Patriot's revenues was.

9 Q. If you could turn to your deposition, page 215.

10 A. Yes.

11 Q. Line 4, it begins:

12 "Q. Do you know what the severance tax is?

13 "A. I can't explain to you exactly what it is."

14 Do you recall that testimony?

15 A. Yes.

16 Q. Is that testimony accurate?

17 A. Yes.

18 Q. At the time of your deposition it was accurate?

19 A. Yes.

20 Q. Do you know today what the severance tax is?

21 A. Not for Patriot exactly, no.

22 Q. I'm sorry, could you just speak up?

23 A. Not for Patriot, no.

24 Q. At the time of your deposition, you didn't know whether or  
25 not the various add-on taxes we just discussed are paid by the



1 coal seller; did you?

2 A. No.

3 Q. Do you know sitting here today?

4 A. Yes.

5 Q. Do you know that they're paid by the seller?

6 A. Yes.

7 Q. And you learned that after your deposition?

8 A. Yes.

9 Q. And after you prepared your declaration?

10 A. Yes.

11 Q. Returning to figure 5 of your declaration, you excluded  
12 the various add-on taxes from the projected coal prices that  
13 you attribute to the Patriot business plan; correct?

14 A. Yes.

15 Q. And at your deposition, you testified that the SNL and  
16 Wood Mackenzie price forecast you used in figure 5 also do not  
17 include add-on taxes; do you recall that testimony?

18 A. Yes.

19 Q. And you testified that you would be surprised to learn  
20 that the SNL and Wood Mackenzie coal price forecasts are  
21 actually inclusive of add-on taxes; do you recall that  
22 testimony?

23 A. Yes.

24 Q. Sitting here today, do you still believe that the SNL and  
25 Wood Mackenzie price forecasts do not include add-on taxes?

1 A. Since the deposition, there is a document on SNL's  
2 information which explains their methodology. They  
3 specifically say that they exclude taxes and we had discussions  
4 with them. They -- basically they presented that it was a  
5 misstatement on their part. So since then, I have corrected my  
6 calculations to include add-on taxes.

7 Q. So there was confusion between your team and SNL about  
8 whether or not the add-on taxes are included; is that right?

9 A. Yes.

10 Q. And you didn't know at the time that the SNL forecast, in  
11 fact, includes the add-on taxes; right?

12 A. Yes.

13 Q. And you didn't know that because your team isn't --  
14 they're not experts in coal price forecasting; right?

15 A. Yes.

16 Q. You've never done that before; correct?

17 A. Yes.

18 Q. Same goes for Wood Mackenzie; correct?

19 A. Yes.

20 Q. You would therefore agree, would you not, that the  
21 analysis in figure 5 is not an apples-to-apples comparison  
22 because the taxes have been excluded from the Patriot business  
23 plan forecast but they've been included in the SNL and Wood  
24 Mackenzie forecast; do you agree with that statement?

25 A. Yes.

1 Q. And the effect of including the taxes in the Patriot  
2 business plan forecast would be to increase the projected  
3 business plan revenues; correct?

4 A. Yes.

5 Q. Any other confusion between SNL and Wood Mackenzie and  
6 your team that you're aware of sitting here today?

7 A. No.

8 MR. RUSSANO: Your Honor, if I could just have a  
9 couple of moments, I would like to discuss with my team  
10 regarding the testimony you struck earlier before. If I could  
11 just have a few moments?

12 THE COURT: All right.

13 (Counsel confer)

14 MR. RUSSANO: Your Honor, thank you for your  
15 indulgence. It was productive and you'll be happy to hear I  
16 don't have any further questions right now.

17 THE COURT: All right. Thank you. Mr. Ho, if you  
18 have some brief redirect?

19 MR. HO: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. HO:

22 Q. Mr. Akunuri, is there a correlation between a rise in  
23 natural gas prices and coal to gas switching?

24 A. Yes.

25 Q. What is the correlation?

1 A. As -- you know, for electric utilities when natural gas  
2 prices become expensive and if coal prices are from the  
3 economic perspective makes sense, they will probably switch  
4 immediately to using coal.

5 Q. And assuming natural gas prices rise to 450 or 475 per  
6 million BTU what effect would that have on coal to gas  
7 switching?

8 A. One is definitely it will slow down any switching from  
9 coal to gas and secondly, there might be some for certain  
10 utility companies it might be economical to switch back from  
11 gas to coal.

12 Q. Would that include the Central Appalachian region?

13 A. Yes.

14 Q. If you go to paragraph 13 of your declaration --

15 A. Yes.

16 Q. -- do you see the reference to historical levels?

17 A. Yes.

18 Q. What time period are you referring to there?

19 A. February to June 2012. Oh, are you talking about figure  
20 2?

21 Q. No, I'm talking about the reference to historical levels  
22 of pricing --

23 A. I --

24 Q. -- historical levels of --

25 A. Oh, I apologize, which paragraph is it?

1 Q. 13.

2 A. Yes.

3 Q. Do you see that a demand -- the reference to demand for  
4 coal trended back to historical levels?

5 A. Yes.

6 Q. What historical time period were you referring to in that  
7 phrase?

8 A. I was really referring to the last three years of data.

9 Q. Do you recall counsel asking you a number of questions  
10 about coal supply and demand in 2001?

11 A. Yes.

12 Q. Do coal prices in 2012 and beyond have anything to do with  
13 coal supply and demand in 2001?

14 A. No.

15 Q. Do you remember counsel asking you whether the Tudor  
16 Pickering analysis was peer-reviewed?

17 A. Yes.

18 Q. In the energy industry, do analysts frequently write peer  
19 reviews or written reviews of each other's analysis?

20 A. No.

21 Q. If you look at Exhibit 3 -- I'm sorry, Exhibit 223, which  
22 you looked at earlier --

23 A. Yes.

24 Q. -- if you look at the bottom on page 4.

25 A. Yes.

1 Q. And that is a sentence referring to fracking; right?

2 A. Yes.

3 Q. What is the time period that sentence is talking about?

4 A. It's talking about between 2010 and 2050.

5 Q. Is it talking about anything that will happen within the  
6 next ten years?

7 A. No, this is really over a forty-year period.

8 Q. Do you remember counsel asking you a series of questions  
9 about how in Exhibit F in Wood Mackenzie materials there's a  
10 reference to a discussion with management?

11 A. Yes.

12 Q. Why is that phrase in the Wood Mackenzie materials if you  
13 never actually had a discussion with Patriot concerning the  
14 Wood Mackenzie forecasts?

15 A. Basically what we were trying to say is that we made the  
16 same adjustments that we discussed with SNL -- on SNL.

17 Q. Assuming you're producing the same number -- same amount  
18 of coal, will production costs go up as the coal price go up?

19 A. It's not necessary; no.

20 Q. Do you remember counsel asking you certain questions about  
21 your assumption that the priced tons are going to be sold on --  
22 at market prices?

23 A. Yes.

24 Q. We've heard earlier testimony in this case that Patriot's  
25 priced tons are actually priced at a higher level than market

1 prices. Assuming that be the case, have you understated  
2 Patriot's revenue in Exhibit 5?

3 A. If the price that I am using for the priced tons is  
4 higher, yes, that would increase the revenues.

5 Q. Do you remember counsel asking you a series of questions  
6 about natural gas and other economic factors?

7 A. Yes.

8 Q. In your opinion, in analyzing the reasonableness of  
9 Patriot's price -- coal price forecasts, is it more important  
10 to look at actual coal price forecasts or is it more important  
11 to look at economic factors without considering their impact on  
12 coal pricing?

13 A. The SNL and Wood Mackenzie prices already considered the  
14 economic factors in developing their forecasts.

15 Q. Therefore which one is more important?

16 A. SNL and Wood Mackenzie's.

17 Q. Do you remember counsel asking you a number of questions  
18 about the Wood Mackenzie service?

19 A. Yes.

20 Q. What Wood Mackenzie materials did you use in performing  
21 your analysis?

22 A. We were given access to their -- through their Web site to  
23 their spreadsheet and again, Wood Mackenzie is a global service  
24 and they have prices for forecasts for a number of coal --  
25 types of coal for all over the world. It's a global service

1 and so, we discussed with their analysts as to what is most  
2 appropriate based on the criteria we suggested to them.

3 Q. How many spreadsheets did you use?

4 A. It was really one big spreadsheet that has based on such  
5 criteria you get what you ask for.

6 Q. What type of data was available in that spreadsheet?

7 A. It was like a -- for each type of forecast, it's by  
8 region, by -- for example, by -- in North America, U.S.,  
9 Australia, et cetera. In the United States, it's based on  
10 state, whether it's like for example, again with respect to  
11 West Virginia, there's South West Virginia and North West  
12 Virginia, Illinois Basin, like Western Kentucky, for example.  
13 And then it's based on BTU content and sulfur content.

14 Q. And did you review -- did you receive an e-mail that was  
15 sent to Mr. Russano on April 20, 2013?

16 A. Yes.

17 Q. And did that list the types of coal that's available on  
18 the Wood Mackenzie forecast?

19 A. Yes.

20 Q. Did that e-mail list all types of coal that's available on  
21 Wood Mackenzie forecast for Southern West Virginia?

22 A. Yes.

23 Q. Did that e-mail list all types of coal that's available on  
24 the Wood Mackenzie forecast for Northern West Virginia?

25 A. Yes.



1 Q. Did that e-mail list all types of coal for which a Wood  
2 Mackenzie is available for Western Kentucky?

3 A. Yes.

4 Q. Does the Wood Mackenzie -- and those categories are  
5 defined using specific technical terms at Wood Mackenzie;  
6 right?

7 A. Yes.

8 Q. In the Wood Mackenzie service, is there any definitions  
9 for those terms?

10 A. Not in that spreadsheet. I haven't seen any.

11 Q. You testified earlier today you used the SNL service;  
12 right?

13 A. Yes.

14 Q. What month of the service did you use?

15 A. The latest forecast was as of February 28, 2013.

16 Q. The latest by what time?

17 A. Latest, as of the date of my declaration or as of sitting  
18 here today.

19 Q. You testified earlier that you did not personally  
20 participate in the discussions with Patriot management; right?

21 A. Yes.

22 Q. What did you review concerning that discussion with  
23 Patriot management?

24 A. My team had that call and then I was out of the country  
25 and I had a discussion with them as to what management

1 suggested with respect to changes in the selection of the  
2 forecast, as well as management suggested other changes with  
3 respect to transportation differentials and I asked them to go  
4 ahead and make those changes.

5 Q. Did your team give you any written document describing  
6 their conversation with Patriot management?

7 A. They had typed up a memo; yes.

8 Q. Is it normal practice for you to review these memos from  
9 your team?

10 A. Yes.

11 Q. And has Patriot ever claimed to you that information on  
12 that memo is not accurate? It's not what they actually said to  
13 your team?

14 A. No.

15 Q. During their discussion with Patriot management, did  
16 Patriot management make a recommendation on subjects other than  
17 just the selection -- selecting the type of coal?

18 A. Yes.

19 Q. What other types of recommendations did they make?

20 A. They also suggested that we make adjustments for actual  
21 transportation costs, as well as sulfur -- sulfur-content  
22 related costs.

23 Q. Did they also make recommendations on transportation  
24 costs?

25 A. Yes.

1 Q. Were all the recommendations that Patriot management  
2 adopted?

3 A. Yes.

4 Q. In your opinion, is it appropriate to compare types of  
5 coal without adjusting for sulfur and heat content?

6 A. No.

7 Q. How did you adjust for heat content in your analysis?

8 A. I did a percentage difference; for example, if an SNL  
9 forecast had like 12,000 BTU, if the period -- mine had 12,050  
10 for example, I would make that percentage difference allocation  
11 and, you know, adjust the priced SNL forecast up or down based  
12 on that.

13 Q. Are you aware, is it also possible to adjust for BTU by  
14 using a certain dollar amount per hundred BTU?

15 A. Yes.

16 Q. Why did you choose to use a percentage method?

17 A. I didn't have any other information, so that's the other  
18 method that we have used in the past, so that's how we have --  
19 done the analysis.

20 Q. But they have used it in the past concerning what types of  
21 engagements?

22 A. Other coal engagements, coal valuation engagements.

23 Q. Have you redone your calculations to adjust for heat  
24 content using the dollar per hundred BTU method?

25 A. As requested yesterday, I did.

1 Q. And did that analysis also adjust for a possible lower  
2 future heat content at Federal?

3 A. Yes.

4 Q. What was the reduction in revenue for 2015?

5 A. About 7.5 million.

6 Q. What was the reduction in revenue for 2016?

7 A. About 8.4 million.

8 Q. I'm going to refer you to the fourth reply declaration,  
9 which I believe is Exhibit 148, if that's right.

10 UNIDENTIFIED SPEAKER: Where are you looking?

11 MR. HO: The fourth reply declaration. 149 --

12 UNIDENTIFIED SPEAKER: 148.

13 MR. HO: 148.

14 Q. Can you turn to 148?

15 A. Okay.

16 Q. I'm going to ask you to turn to --

17 MR. RUSSANO: Let me get there.

18 MR. HO: Okay.

19 MR. RUSSANO: Turn to the number -- where are we  
20 turning?

21 MR. HO: Turn to Exhibit 5.

22 A. Yes.

23 Q. Okay. So, under SNL, do you see the number 42.263 million  
24 in 2015?

25 A. Yes.

1 Q. If we're going to adjust for heat content as Patriot  
2 suggests, would we just subtract the 7.5 million dollar number  
3 from the 42.263 million dollar number?

4 A. Yes.

5 Q. Similarly, for 2016, will we just subtract the 8.5 million  
6 dollar number from the 34.397 million dollar number?

7 MR. RUSSANO: Your Honor, I'm going to object. These  
8 numbers that counsel is referring to and the witness has  
9 referred to, 8.5 million dollar number, we haven't seen this  
10 analysis. It's never been produced to us. There's no  
11 document. We never had an opportunity to test it. We never  
12 had an opportunity cross -- to examine Mr. Akunuri with  
13 consultation with our coal price forecasting expert. This is  
14 brand new analysis. It wasn't asked about in the cross-  
15 examination and I would ask you to sustain the objection.

16 MR. HO: Your Honor, this is simple math based on Mr.  
17 Schwartz's testimony yesterday. And this information we should  
18 be allowed to present in responding to his testimony explaining  
19 that his complaints do not completely wipe away the savings  
20 from SNL and Wood Mackenzie.

21 THE COURT: All right. I've overrule the objection.

22 Q. What was your assumption in terms of how much adjustment  
23 to make per hundred BTU?

24 A. It was fifty cents for Illinois Basin. Ninety cents for  
25 all other mines except for Federal -- for Federal, there was no

1 adjustment necessary because what I -- there is information I  
2 received yesterday was the SNL and it was about 13,000 and  
3 Federal BTU was at 13,000.

4 MR. RUSSANO: Your Honor, I apologize to get up again  
5 but once again, Mr. Akunuri is talking information that he  
6 received yesterday and I have no idea what information he  
7 received. We never had an opportunity to look at it and now  
8 he's testifying to it, supplementing his analysis for the first  
9 time.

10 MR. HO: Your Honor, and that's exactly what  
11 information Mr. Schwartz testified to yesterday, which was the  
12 adjustment was ninety center for Central Appalachia, sixty  
13 cents for Northern Appalachia and forty-five to fifty cents for  
14 the Illinois Basin and we simply asked Mr. Akunuri to use those  
15 numbers to make adjustments to his forecast.

16 THE COURT: And adjustments in the forecast that are  
17 included in his declaration?

18 MR. HO: Right, to make further adjustments. Assuming  
19 Patriot is right on how heat contents should be adjusted, what  
20 is the actual revenue.

21 MR. RUSSANO: Your Honor, this is not information in  
22 his declaration.

23 THE COURT: Yes, it sounds like you want to make some  
24 adjustments to the declaration. I'll sustain the objection.

25 Q. You testified earlier that royalties may go up as prices

1 go up.

2 A. Yes.

3 Q. Would that also be true for severance taxes?

4 A. Yes.

5 Q. In his reply declaration, Mr. Schwartz said that the  
6 combination of severance taxes and royalties wipe away the  
7 increase of revenue by about ten percent. Do you agree with  
8 that?

9 A. Yes.

10 Q. How were the Wood Mackenzie categories selected in your  
11 analysis?

12 A. It was really based on discussions with their analysts and  
13 the search criteria that we were looking at to match mine by  
14 mine.

15 Q. Do you recall the conversations with counsel concerning  
16 selecting compliance coal?

17 A. Yes.

18 Q. I just want the record to be clear, why did you choose to  
19 select compliance coal?

20 A. It was really we were looking at the heat content and the  
21 sulfur content, not really looking at definition whether it's  
22 compliance or non-compliance.

23 Q. Why did you decide to select compliance coal for specific  
24 types of coal?

25 A. Simply looking at the heat content and the sulfur dioxide

1 from that coal.

2 Q. Did anyone make a recommendation on that subject to you?

3 A. No.

4 MR. HO: I have nothing further.

5 MR. RUSSANO: This should be brief, Your Honor.

6 RE-CROSS-EXAMINATION

7 BY MR. RUSSANO:

8 Q. Mr. Akunuri, if you could turn to your declaration, page  
9 21 again. We've worn this page out. Once you're there, let me  
10 know.

11 A. Page --

12 Q. Page 21, I apologize, of Exhibit F of your declaration.

13 Are you there, sir?

14 A. No, give me a moment. Yes.

15 Q. And the footnote that I asked you about and then on  
16 redirect you were asked about where it says, "Based on  
17 discussions with management, this forecast is most appropriate  
18 for coal produced at Midland Trail complex." Do you see that?

19 A. Yes.

20 Q. And we already discussed during your direction examination  
21 that there was never -- no one at PWC ever talked to anyone at  
22 Patriot management about the Wood Mackenzie forecast; correct?

23 A. Yes.

24 Q. And I believe you testified on redirect that when you  
25 wrote, "Based on discussions with management," you were



1 referring to discussions regarding the SNL price forecast;  
2 correct?

3 A. Yes.

4 Q. Are the SNL and Wood Mackenzie forecasts identical?

5 A. No.

6 Q. You could put that aside. You on redirect, you referred  
7 to having looked at one big spreadsheet from Wood Mackenzie; do  
8 you recall that?

9 A. Yes.

10 Q. That big spreadsheet included coal pricing forecast for  
11 coals that you ultimately decided not to use in your revenue  
12 analysis; correct?

13 A. Yes.

14 Q. Do you recall testifying briefly about an e-mail that was  
15 sent to me from counsel; do you recall that?

16 A. Yes.

17 Q. Do you know if Wood Mackenzie produces any FOB barge  
18 forecasts?

19 A. I don't recall.

20 Q. Do you know what FOB barge means?

21 A. Yes.

22 Q. What does it mean?

23 A. Using barge -- using -- price based on using barge as  
24 opposed to like for example rail.

25 Q. Is it standard in the coal price forecasting business to

1 have forecasts for FOB barge coals?

2 A. Yes.

3 MR. HO: Objection. Vague. I believe his -- that  
4 question should be specific to state.

5 THE COURT: I believe it should.

6 MR. HO: Given that different states have different  
7 coals, that question should be specific to a state and  
8 location. The question is vague as asked.

9 THE COURT: All right.

10 MR. RUSSANO: Your Honor?

11 THE COURT: Rephrase it.

12 MR. RUSSANO: I'll make it easy. I can rephrase the  
13 question.

14 THE COURT: All right. Thank you.

15 Q. Is it typical in the coal price forecasting business  
16 referring to Southern West Virginia to forecast an FOB barge  
17 coal?

18 A. Yes.

19 Q. And does Wood Mackenzie publish forecasts for FOB barge  
20 coals in West Virginia?

21 A. I believe that e-mail had the South West Virginia and --

22 Q. For FOB barge?

23 A. Whatever they had, so I --

24 Q. Would it surprise you that there was no FOB barge forecast  
25 in the e-mail?

1 A. I did not recollect.

2 Q. What coal seams does Patriot mine?

3 A. I'm sorry, what?

4 Q. What coal seams does Patriot mine?

5 MR. HO: Objection. Beyond the scope of the redirect.

6 MR. RUSSANO: Your Honor, I'm just trying to get at  
7 the scope of the Wood Mackenzie forecast. I'd ask for a little  
8 latitude since we did not get the Wood Mackenzie forecast. So,  
9 I'm just trying to explore his knowledge of different coal  
10 seams and what forecasts might be provided for them.

11 MR. HO: Your Honor, he had a chance to ask these  
12 questions the first time. He's looking for a second bite at  
13 the apple.

14 THE COURT: I'll overrule the objection, Mr. Russano,  
15 but I don't want to spend the whole rest of the time like this.

16 MR. RUSSANO: Okay, okay. I'll be very brief. I get  
17 the hint.

18 THE COURT: And I know where you're going with that,  
19 as well. I don't want you think I don't know.

20 MR. RUSSANO: Okay. I'll ask two more questions, Your  
21 Honor.

22 Q. Have you heard of the Pittsburgh seam?

23 A. Yes.

24 Q. Do you know what states Pittsburgh seam coal is mined out  
25 of?

1 A. Primarily Pennsylvania and some Ohio but -- then North  
2 West Virginia.

3 MR. RUSSANO: Your Honor, no further questions.

4 THE COURT: All right. Mr. Ho, anything else for this  
5 witness?

6 MR. HO: No questions, Your Honor.

7 THE COURT: All right. Thank you, sir. You may step  
8 down. Okay. I think that wraps up our witnesses for the day.  
9 We will reconvene then tomorrow at 9 o'clock where we'll start  
10 with Mr. Buckner, Mr. Cobin and Mr. Mandarino. All right.  
11 We'll be in recess until tomorrow morning at 9:00 a.m.

12 MR. RUSSANO: Thank you, Your Honor.

13 THE COURT: Thank you.

14 (Whereupon these proceedings were concluded at 6:54 PM)

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I N D E X

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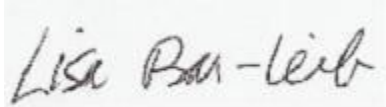
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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.



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LISA BAR-LEIB  
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New York, NY 10040  
Date: May 3, 2013

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UNITED STATES BANKRUPTCY COURT  
Eastern District of Missouri  
Thomas F. Eagleton U.S. Courthouse  
111 South Tenth Street, Fourth Floor  
St. Louis, MO 63102

In re: Debtor(s):  
Patriot Coal Corporation

Case No.: 12-51502 -A659

CHAPTER 11

**Notice of Filing of Transcript and of Deadlines Related to Restriction and Redaction**

To: All Persons of Record at Hearing

A transcript of the proceeding held on May 1, 2013 was filed on May 3, 2013.

The following deadlines apply:

If you wish to have personal data identifiers redacted from the transcript, a *Request for Transcript Redaction* must be filed within 7 days of the date of this notice: May 10, 2013. Personal data identifiers **include: social security numbers, financial account numbers, names of minor children, and dates of birth**. If no such request is filed within the allotted time, the Court will presume redaction of personal data identifiers is not necessary.

Any party seeking redaction shall file a *Statement of Transcript Redactions* identifying the location of the personal data identifiers sought to be redacted within 21 days of the date of this notice: May 24, 2013. The party filing the statement shall serve it by regular mail upon all parties at the hearing and shall include a Certificate of Service listing the date and parties served. The *Statement of Transcript Redactions* event will be restricted from public view and cannot be served electronically through the CM/ECF system. If no *Statement of Transcript Redactions* is filed within the allotted time, the Court will presume redaction of personal identifiers is not necessary.

Any party may file a response in opposition to the Statement within 7 days of the date the Statement is filed using the *Response to Statement of Transcript Redactions* event. If a response in opposition to the Statement is filed, the Court will rule on the matter. If a hearing is needed, the Court will send notice of hearing.

If a request for redaction is filed, the redacted transcript is due within 31 days of the date of this notice: June 3, 2013.

The transcript may be made available for remote electronic access upon expiration of the restriction period, which is 90 days from the date of filing of the transcript: August 1, 2013, unless extended by court order. However, during this 90-day period the transcript is available for viewing only during normal business hours at the Clerk's office.

Any questions regarding the transcript process should be directed to Matt Parker, Director of Courtroom Services, at (314) 244-4801.

FOR THE COURT:

/s/Dana C. McWay  
Clerk of Court

Dated: 5/3/13

**Copies Mailed To:**

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Rev. 12/10