UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DISTRICT

In re:	)	CHAPTER 11
	)	
PATRIOT COAL CORPORATION	)	CASE NO. 12-51502
	)	
Debtor.	)	Hearing Date: December 17, 2013
	)	@ 9:30 A.M.

OBJECTION OF OLD REPUBLIC INSURANCE COMPANY TO PROPOSED CURE AMOUNT

Old Republic Insurance Company ("ORINSCO"), by and through its undersigned counsel, hereby objects to the above-captioned debtors' (the "Debtors") proposed cure amount in connection with the Debtors' proposed assumption and assignment of a certain claims servicing agreement [Contract ID: LIT003] pursuant to the Debtors' Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Plan"). In support of its objection, ORINSCO states as follows:

BACKGROUND

1. On or about January 1, 1987, ORINSCO agreed to undertake the claims handling responsibility for Peabody Energy Corporation and/or its affiliates (collectively, "Peabody") with respect to certain Traumatic Liability and Occupational Disease Liability claims, including claims under their Federal Black Lung self-insured program and various State workers compensation programs.

2. On or about February 9, 1988, Peabody and ORINSCO executed a Claims Service Agreement (as subsequently modified by the parties, the "CSA"), which memoralized that agreement.

3. In or about 2007, Peabody spun-off its coal production operations to debtor Patriot Coal Company ("Patriot").

4. Following the 2007 spin-off to Patriot, ORINSCO continued to administer Peabody's self-insured programs under the terms of the CSA, until Patriot terminated the CSA.

5. On December 9, 2011, ORINSCO filed a lawsuit against Patriot in the U.S. District Court for the Western District of Pennsylvania (Civil Action No. 11-1556) (the "Patriot PA Litigation") seeking to recover $1,499,408.00, which was due from Patriot upon termination of the CSA. A copy of the complaint filed by ORINSCO in the Patriot PA Litigation (the "Complaint") is attached hereto as Exhibit 1.

6. Patriot filed an answer and counterclaim asserting that ORINSCO breached the CSA by failing to reimburse Patriot for a $523,160 surplus in the loss fund and denied liability for the $1,499,408.00 as an improper "Termination Fee". This loss fund is still being held by ORINSCO, however, the amount held is $ 584,939 (the "Loss Fund"). ORINSCO answered Patriot's counterclaim. Patriot's counterclaim and ORINSCO's answer thereto are attached hereto as Exhibit 2 and Exhibit 3.

7. The Patriot PA Litigation is currently stayed due to the instant bankruptcy case.

8. On November 27, 2013, the Debtors filed, in accordance with and pursuant to the Plan, Plan Schedule 9.2(a): Executory Contracts and Unexpired Leases to Be Assumed (the "Assumption and Cure Schedule").

9. The Assumption and Cure Schedule sets forth the CSA as a contract to be assumed and assigned under the Plan and states the cure amount of $0.00. [Dkt. No. 5074, Contract ID LIT003]

ARGUMENT

10. It is hornbook bankruptcy law that in order for a debtor to assume and assign an executory contract, it must, among other things, cure any defaults under such contract. *See* 11 U.S.C. 365(b)(1). As set forth above and in the Complaint, pre-petition, Patriot was in default of the CSA in the amount of $1,499,408.00. The Debtors, however, in explicably propose a cure amount of $0.00 for the CSA. Patriot's assertion in its counterclaim that the amounts claimed by ORINSCO are some sort of improper termination fee and not amounts owed under the CSA is complete nonsense. On October 11, 2011, ORINSCO provided to Patriot an accounting of the $1,499,408.00 owed in painstaking detail. A copy of this correspondence is attached hereto as Exhibit 4.

11. Therefore, ORINSCO requests that this Court condition the assumption and assignment of the CSA on the Debtors curing the $1,499,408.00 default in cash on the effective date of the Plan.

December 9, 2013

Respectfully Submitted,

/s/ Margaret M. Anderson
Margaret M. Anderson

Margaret M. Anderson (pro hac vice)
Ryan T. Schultz (pro hac vice)
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Exhibit "1"

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Old Republic Insurance Company, Plaintiff, v. Patriot Coal Corporation, Defendant.	Civil Action No. Electronically Filed JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Old Republic Insurance Company ("ORINSCO"), by and through its attorneys, Dennis A. Watson, Esquire, Holly M. Whalen, Esquire, and Grogan Graffam, P.C. files the within Complaint and in support thereof avers as follows:

A. Jurisdiction and Venue

1. Plaintiff ORINSCO is a Pennsylvania corporation with offices located at 133 Oakland Avenue, Greensburg, Pennsylvania 15601.

2. Defendant Patriot Coal Corporation ("Patriot") is a corporation formed under the laws of the State of Delaware and having its home office in St. Louis, Missouri.

3. With respect to all matters alleged in this Complaint, Patriot is the successor in interest to Peabody Holding Company, Inc. ("Peabody"), a corporation formed under the laws of the State of New York.

4. Jurisdiction is conferred pursuant to 28 U.S.C. § 1332 as the parties have diverse citizenship and the amount in controversy exceeds $75,000.00 exclusive of interest and costs.

5. Venue is properly located in the Western District of Pennsylvania as the agreements at issue in this action were formed in the District and ORINSCO's obligation thereunder were performed in this District, and, therefore a substantial part of the events giving rise to this claim took place in this District, 28 U.S.C. § 1391.

B. History of ORINSCO - Patriot Relationship

6. ORINSCO incorporates herein as if set forth in full paragraphs 1 – 5 of this Complaint.

7. On or about January 1, 1987, ORINSCO entered into an agreement with Peabody whereby ORINSCO undertook the claims handling responsibility for Peabody's divisions, subsidiaries and affiliates, including Peabody Coal Company and Eastern Associated Coal Company with respect to their Traumatic Liability and Occupational Disease Liability claims, including claims under their Federal Black Lung self-insured program and various State workers' compensation programs.

8. These types of claims can result in awards to successful claimants that are paid over the course of the claimant's lifetime on a monthly basis. In such event, the claims file remains open until the claim obligation terminates.

9. The agreement between ORINSCO and Peabody was memorialized in a Claims Service Agreement ("CSA") signed on February 9, 1988 as subsequently modified by the parties pursuant to Amendments and correspondence. A true and correct copy of the CSA together with Amendment Nos. 1 through 8 is attached hereto as Exhibit A.

10. Pursuant to the CSA, ORINSCO began handling claims for a substantial portion of Peabody's Federal Black Lung self-insured program.

11. Pursuant to the CSA, ORINSCO provided investigation and claim adjustment services for Peabody and acted on behalf of Peabody in all matters relating to the handling and disposition of the claims or losses assigned to it by Peabody.

12. Under the terms of the CSA, ORINSCO's fees were earned and due on a per-assigned claim basis with such fees to be paid on a monthly basis pursuant to a formula set forth in the CSA. Under the formula, ORINSCO's fees were earned upon first report of the claim to ORINSCO, but payments to ORINSCO were to be made on the applicable percentage basis of losses and/or expenses paid on that claim until that claim closed. Therefore, for claims resulting in an award to a claimant, ORINSCO's fees would likewise be paid until the successful claimant's right to monthly payments ended.

13. On or about January 1, 1988, Peabody decided to take back certain claims handling responsibilities in-house and, in turn, removed from ORINSCO the claims handling responsibility relating to certain claims under the CSA, including some portions of Peabody's self-insured Federal Black Lung claims.

14. On or about July 1, 1992, Peabody returned responsibility for claims handling of Peabody Coal Company's self-insured Federal Black Lung claims to ORINSCO. *See* July 1, 1992 correspondence of Peabody attached hereto as Exhibit B.

15. Upon returning the administration of Peabody Coal Company's self-insured Federal Black Lung claim to ORINSCO, Peabody assigned to ORINSCO all existing self-insured claims being administered by Peabody prior to July 1, 1992, and all new and re-opened self-insured claims received after July 1, 1992, at the agreed upon fee schedule set forth in ORINSCO's May 13, 1992 quote. *See* May 13, 1992 correspondence of ORINSCO attached hereto as Exhibit C.

16. In order to formally memorialize their renewed duties and obligations, ORINSCO and Peabody executed a sixth amendment to the CSA on or about April 20, 1993. *See* Exhibit A at ORINSCO 35.

17. Amendment No. 6 to the CSA sets forth the amount of fees to be paid to ORINSCO for its "General Administration and Administrative Legal Costs for Servicing of Federal Occupational Disease Claims under Part C, Title IV, of the Federal Coal Mine Health & Safety Act of 1969 as amended and all Federal laws supplementary thereto" for those claims assigned to ORINSCO on or after July 1, 1992. Id. at ¶3.

18. On or about June 20, 1996, ORINSCO and Peabody executed a new Claim Service Agreement ("CSAII") which governed ORINSCO's administration and handling of certain state workers' compensation claims and Federal Black Lung self-insured claims on behalf of Peabody received after October 1, 1995. ORINSCO is not making any claims in this action premised on CSAII.

19. Upon information and belief, in or about 2007, Peabody's coal production operations, including those of Peabody Coal Company and Eastern Associated Coal Company, were spun-off to Patriot.

20. Upon information and belief, as a result of its spin-off from Peabody, Patriot accepted and assumed, without modification, all ongoing obligations and responsibilities of Peabody relating to Peabody's Agreements with ORINSCO for ORINSCO's administration and handling of Peabody's self-insured claim programs.

21. From or about the date Patriot acquired Peabody's coal production operations until September 1, 2011, Patriot performed, without modification, the obligations and responsibilities

previously undertaken by Peabody, relating to Peabody's Agreements with ORINSCO for ORINSCO's administration and handling of Peabody's self-insured claim programs.

22. Patriot is the successor in interest and/or assignee of Peabody as to any agreements or dealings with ORINSCO relating to the administration and handling of Peabody and Patriot's Traumatic Liability and Occupational Disease Liability claims, including claims under their Federal Black Lung self-insured program and various State worker's compensation programs.

23. Effective September 1, 2011, Patriot transferred responsibility on all self-insured Federal Black Lung exposures from ORINSCO to another entity.

24. This action seeks payment for obligations incurred by Patriot with respect to various claims assigned to ORINSCO prior to September 1, 2011, exclusive of obligations under CSAII.

COUNT I
OLD REPUBLIC INSURANCE COMPANY v. PATRIOT COAL CORPORATION
BREACH OF CONTRACT RELATING TO PEABODY SELF-INSURED FEDERAL BLACK LUNG CLAIMS REASSUMED BY ORINSCO FROM PEABODY AS OF JULY 1, 1992 AND NEW AND RE-OPENED CLAIMS RECEIVED AFTER JULY 1, 1992

25. ORINSCO incorporates herein as if set forth in full paragraphs 1 – 24 of this Complaint.

26. Amendment No. 6 to the CSA set forth the schedule of fees to be paid to ORINSCO for its administration and handling of existing self-insured claims that had been previously administered by Peabody as well as new and re-opened claims received after July 1, 1992. *See* Exhibit A at ORINSCO 37.

27. Specifically, Amendment No. 6 to the CSA provided:

> II. Servicing of Claims – Loss Administration Expense

> A. Assumption of existing self-insured claims currently administered by Peabody.
>
> 1. The LAE for servicing this class of Federal Occupational Disease claims will be **7% of incurred losses** less paid losses thru July 1, 1992 **collected on a paid basis.**
>
> B. New and re-opened claims received after July 1, 1992.
>
> 1. The LAE for servicing this class of Federal Occupational Disease claims will be **4% of incurred losses collected on a paid basis.**

Exhibit A at ORINSCO 37. (Emphasis added.)

28. Accordingly, ORINSCO was to be paid 7% of incurred losses for servicing the existing self-insured claims administered by Peabody prior to July 1, 1992. Payment for such incurred losses would be collected by ORINSCO over time as the claims were paid out.

29. Further, ORINSCO was to be paid 4% of incurred losses for servicing new and re-opened claims received after July 1, 1992. Payment for such incurred losses would be collected by ORINSCO over time as the claims were paid out.

30. Pursuant to the CSA, "Incurred Losses" is defined as:

> "Incurred Losses" – shall mean the total of all losses for indemnity and medical benefits actually paid, reserves for unpaid losses, Direct Loss Adjustment Expenses, federal trust fund interest incurred before or after judgement for occupational disease awards and interest accrued before or after judgement on traumatic injury awards and judgements.

Exhibit A at ORINSCO 2.

31. For approximately 20 years, under the terms of the CSA and as demonstrated by the course of performance between Peabody and ORINSCO and then Patriot and ORINSCO, ORINSCO would send to Peabody and then Patriot a monthly invoice inclusive of billing for 7% of paid losses, i.e., indemnity paid and/or expenses paid on all self-insured Federal Black Lung claims, whether awarded or not, which were reassumed by ORINSCO from Peabody as of July 1, 1992, and, in turn, Peabody and then Patriot would promptly pay such invoices in full.

32. Additionally, for approximately 20 years, under the terms of the CSA and as demonstrated by the course of performance between Peabody and ORINSCO and then Patriot and ORINSCO, ORINSCO would send to Peabody and then Patriot a monthly invoice inclusive of billing for 4% of paid losses, i.e., indemnity paid and expenses paid only on claims for which indemnity was paid, for all new Peabody self-insured Federal Black Lung claims assigned to ORINSCO between July 1, 1992 and October 1, 1995, and, in turn, Peabody and then Patriot would promptly pay such invoices in full.

33. On or about September 1, 2011, and without the agreement of ORINSCO, Patriot stopped paying ORINSCO the fees owed ORINSCO for the prior handling of Peabody's self-insured Federal Black Lung claims either reassumed by ORINSCO on July 1, 1992 or assigned to ORINSCO between July 1, 1992 and October 1, 1995.

34. Pursuant to Amendment No. 6 of the CSA, ORINSCO's right to payment of its fees for such claims was earned upon ORINSCO's receipt or assignment of each particular claim as a percent of the incurred loss on that claim. Therefore, Patriot's obligation to pay ORINSCO's fees continues until the incurred loss on each particular claim is determined by closure, whether by dismissal of the claim or because the successful claimant's right to monthly payments has been terminated.

35. Under the terms of the CSA, ORINSCO's right to payment on each claim and Patriot's obligation to pay continues for each assigned claim even if the CSA is terminated and the claims transferred from ORINSCO. In the absence of continuing fee payments upon termination, ORINSCO's right to payment on each claim is to be determined against the ultimate value of the incurred loss as presently stated.

36. Specifically, the CSA provides in part:

> In the event this Agreement is terminated, the Old Republic shall, at Peabody's request, continue to service until final disposition, all claims which have been reported to the Old Republic during the time this Agreement was in effect. Upon Peabody's request, Old Republic will deliver to Peabody, or to its designated representatives, all files, documents, records and reports in Old Republic's possession which pertain to accidents, occurrences and claims serviced by Old Republic under this Agreement. **Such transfer of files and future servicing will not result in any reduction or return of the Loss Administration Expense previously due or paid to Old Republic except that it shall be based only on the ultimate value of Incurred Losses based on the claims which were reported to the Old Republic during the time this Agreement was in effect.** Except for liability and obligations under paragraphs 5 and 6 above for services performed prior to this date of termination, following the delivery of such files, documents, records and reports, Old Republic shall be released from all further liability and obligations hereunder.

Exhibit A at ORINSCO 9-10, ¶15. (Emphasis added.)

37. Accordingly, pursuant to terms and conditions of the Amendment No. 6 to the CSA and ¶15 thereof, as of available figures from July 2011, ORINSCO is entitled to approximately Three Hundred Fifty-Eight Thousand, Seven Hundred Thirty Dollars ($358,730.00) based on fees due against the present ultimate value of Incurred Losses, inclusive of reserves for unpaid losses, that are over and above fees already collected against Paid Losses through that date as set forth above, for the prior handling of those self-insured Federal Black Lung claims reassumed by ORINSCO from Peabody as of July 1, 1992, and still open on July 1, 2011.

38. Similarly, under the terms and conditions of Amendment No. 6 to the CSA and ¶15 thereof, as of available figures from July 2011, ORINSCO is entitled to approximately Ninety-Seven Thousand, Six Hundred Sixty-Seven Dollars ($97,667.00) in additional fees against the present ultimate value of Incurred Losses related to awarded Federal Black Lung claims received after July 1, 1992, and prior to October 1, 1995, and still open on July 1, 2011.

39. In addition to the fees owed to ORINSCO related to awarded Federal Black Lung claims received between July 1, 1992 and October 1, 1995, ORINSCO is also entitled to additional fees against the present ultimate value of Incurred Losses related to claims which were

received during that time period but were still pending in the adjudicative process on July 1, 2011. As of available figures from July 2011, such fees owed to ORINSCO total approximately One Hundred Seventeen Thousand, Eight Hundred Forty Dollars ($117,840.00).

40. Finally, as to such still pending claims which were received by ORINSCO between July 1, 1992 and October 1, 1995, the CSA provides that ORINSCO is to be paid its fee against the value of the additional Direct Loss Adjustment Expenses to be incurred and included in Incurred Loss while such pending claims moved toward decision.

41. As to those additional fees, ORINSCO is owed approximately Five Thousand, Eight Hundred and Ninety-Two Dollars ($5,892.00) as of July 2011.

42. Patriot has not paid such additional fees against Incurred Losses to ORINSCO. ORINSCO has likely incurred additional fee losses since figures were available from July 2011. It will appropriately supplement its claim as such amounts are determined.

43. Thus, Patriot has breached its contractual duty to ORINSCO.

WHEREFORE, Old Republic Insurance Company demands judgment against Patriot Coal Corporation for a sum in excess of $75,000.00, together with interest and costs of suit.

COUNT II
OLD REPUBLIC INSURANCE COMPANY v. PATRIOT COAL CORPORATION BREACH OF CONTRACT RELATING TO EASTERN ASSOCIATED COAL COMPANY CLAIMS

44. ORINSCO incorporates herein as if set forth in full paragraphs 1 – 43 of this Complaint.

45. In addition to Peabody's self-insured Federal Black Lung program which it contracted with ORINSCO to administer and service, Peabody also had a separate, pre-CSA self-insured program relating to Eastern Associated Coal Company ("Eastern") mines operated in West Virginia.

46. Peabody requested that ORINSCO administer and service the Eastern self-insured program effective April 1, 1987.

47. On or about March 25, 1987, Peabody and ORINSCO agreed that the claims administration and services for the Eastern program would be pursuant to the terms and obligations of the CSA with ORINSCO fees earned and due upon the report or assignment of each claim, subject to monthly payment calculated on the formula set forth in the CSA.

48. Such agreement was confirmed by ORINSCO by letter dated July 15, 1987. *See* July 15, 1987 correspondence attached hereto as Exhibit D.

49. Specifically, as to the Eastern program, ORINSCO was to be paid as follows:

> III. SERVICING OF OCCUPATIONAL DISEASE CLAIMS
>
> The Loss Administration Expense for servicing state and federal occupational disease claims **occurring during 1987 shall be 5% of Incurred Losses, but shall be collected by Old Republic from Peabody on the basis of Paid Losses, whether paid by Old Republic, or in the event of termination, by Peabody or its designated representative if Peabody elects to relieve Old Repbulic [sic] of future handling after termination in accordance with Paragraph 15.** . . . Paid Losses prior to April 1, 1987 for Eastern Associated Coal Corporations's federal occupational disease claims shall be excluded from Incurred Losses for the purpose of calculating the Loss Administration Expense attributable to these claims.

Exhibit A at ORINSCO 15. (Emphasis added.)

50. Claims handling responsibilities for Eastern stayed with ORINSCO under the CSA even when Peabody reassumed the claims handling responsibility for non-Eastern self-insured Federal Black Lung claims from January 1, 1988 through July 1, 1992, per ¶¶13 and 14 herein.

51. Amendment No. 6 to the CSA, which became effective on or about July 1, 1992, unified the billing factors applicable to the Eastern program with the servicing of other self-insured Federal Black Lung claims of Peabody on a going forward basis thereafter.

52. For approximately 24 years under the terms of the March 25, 1987 Contract, the memorialization thereof per ¶49 herein, and as demonstrated by the course of performance between Peabody and ORINSCO and then Patriot and ORINSCO, ORINSCO administered and handled the Eastern program claims pursuant to the terms of the CSA.

53. Therefore, for approximately 24 years under the terms of the March 25, 1987 Contract, the memorialization thereof per ¶49 herein, and as demonstrated by the course of performance between Peabody and ORINSCO and then Patriot and ORINSCO, ORINSCO sent to Peabody and then to Patriot a monthly invoice inclusive of billing for 5% of paid losses, i.e. indemnity paid and/or expenses paid on all self-insured Federal Black Lung claims, whether awarded or not, relating to the Eastern program that were reported to ORINSCO prior to the July 1, 1992 pricing unification noted herein at ¶51, pursuant to the terms of the CSA. In turn, fees on new Eastern claims reported thereafter, are, therefore, otherwise accounted for in Count I.

54. Likewise, for approximately 24 years, Peabody and then Patriot promptly paid said monthly invoices.

55. Therefore, under the terms and conditions of the March 25, 1987 Contract and the CSA, and as of available figures from July 2011, ORINSCO is entitled to approximately Five Hundred Thirty-One Thousand, Seven Hundred and Nine Dollars ($531,709.00) based on fees due against the present ultimate value of Incurred Losses that are over and above fees already collected against Paid Losses through the date as set forth above for the prior handling of those self-insured Federal Black Lung claims related to the Eastern program which were received by ORINSCO after April 1, 1987, or were reported to ORINSCO prior to July 1, 1992.

56. Patriot has not paid such additional fees against Incurred Losses to ORINSCO. ORINSCO has likely incurred additional fee losses since figures were available from July, 2011. It will appropriately supplement its claim as such amounts are determined.

57. Thus, Patriot has breached its contractual duty to ORINSCO.

WHEREFORE, Old Republic Insurance Company demands judgment against Patriot Coal Corporation for a sum in excess of $75,000.00, together with interest and costs of suit.

COUNT III
OLD REPUBLIC INSURANCE COMPANY v. PATRIOT COAL CORPORATION
BREACH OF CONTRACT RELATING TO PEABODY'S RETROACTIVE SELF-INSURED CLAIMS

58. ORINSCO incorporates herein as if set forth in full paragraphs 1 – 57 of this Complaint.

59. On January 1, 2003, Peabody became retroactively self-insured effective back to 1973 for a number of separate Federal Black Lung exposures which had been previously and directly insured by ORINSCO under numerous Workers' Compensation and Excess Workers' Compensation insurance policies and agreements with Peabody.

60. Peabody's retroactive self-insured claims are in addition to Peabody's self-insured Federal Black Lung programs identified previously herein.

61. Pursuant to the fee schedule set forth in the insurance policies and agreements entered prior to Peabody being granted self-insured status on January 1, 2003, ORINSCO was to be paid 5% of paid losses on each Federal Black Lung claim over the course of the claim payments. As directly insured claims, and pursuant to the terms of the policies, claims under the policies would be the claims and responsibility of ORINSCO, such that claims handling would be at the continuous control and discretion of ORINSCO until all such claims were closed. Therefore, said payment arrangements would continue until all such claims were closed, such

that fees collected against paid loss would necessarily and eventually equal fees collected against ultimate incurred losses on such claims.

62. Such payment arrangement was thus consistent with the terms carried over into the CSA, as effected January 1, 1987.

63. Upon Peabody obtaining retroactive self-insured status on January 1, 2003, the separate and distinct body of claims previously insured by ORINSCO since as early as 1973 retroactively became the claims of Peabody.

64. Upon Peabody's obtaining retroactive self-insured status on January 1, 2003, ORINSCO and Peabody and then Patriot contracted, as demonstrated by the course of performance, to abide by the terms of the previous policies and agreements to administer said body of claims at the same 5% of paid losses that Peabody had been paying ORINSCO to administer the claims when such claims were insured by ORINSCO. To the extent new claims on these policies are reported after January1, 2003, they are otherwise accounted for as post-July 1, 1992 claims under Count I.

65. Further, since January 1, 2003, as demonstrated by the course of performance by ORINSCO and Peabody and then Patriot, ORINSCO otherwise administered and handled the retroactively self-insured program claims consistent with the terms of the CSA.

66. Since January 1, 2003, when Peabody was granted self-insured status as to previously insured claims, pursuant to the contract between Peabody and ORINSCO and then Patriot and ORINSCO, and as demonstrated by the course of performance by ORINSCO and Peabody and then ORINSCO and Patriot, ORINSCO sent to Peabody and then Patriot a monthly invoice billing for 5% of paid losses relating to the retroactive self-insured claims.

67. Likewise, since January 1, 2003, Peabody and then Patriot promptly paid the monthly invoices submitted by ORINSCO relating to paid losses for the retroactive self-insured claims consistent with the terms of the CSA.

68. Under the terms and conditions of its contract with Patriot, and as of available figures from July 2011, ORINSCO is entitled to approximately Two Hundred Fifty-Six Thousand, Four Hundred Forty-Three Dollars ($256,443.00) in additional fees against continuing paid losses that are over and above fees already collected against paid losses through July, 2011, related to services it provided with respect to the retroactive self-insured claims for which the individual claimant has been awarded benefits.

69. In addition to the claims for which the claimants have been awarded benefits, ORINSCO also administered and serviced retroactive claims for which the claimants' claims are still pending in the adjudicative process.

70. ORINSCO is entitled to payment relating to those pending claims.

71. Under the terms and conditions of its agreement with Patriot, as of July 2011, ORINSCO is likewise entitled to approximately One Hundred Twenty-Four Thousand, Eight Hundred Eighty-Three Dollars ($124,883.00) in additional fees on the pending claims.

72. Finally, as to the retroactive self-insured claims, ORINSCO is also to receive its fee against the value of additional expenses to be incurred while such pending claims move toward decision.

73. Under the terms and conditions of its agreement with Peabody and/or Patriot, as of July 2011, ORINSCO is entitled to approximately Six Thousand, Two Hundred Forty-Four Dollars ($6,244.00) in such fees on those pending claims.

74. Patriot has not paid those fees to ORINSCO. ORINSCO has likely incurred additional fee losses since figures were available from July 2011. It will appropriately supplement its claim as such amounts are determined.

75. Thus, Patriot has breached its contractual obligations owed to ORINSCO.

WHEREFORE, Old Republic Insurance Company demands judgment against Patriot Coal Corporation for a sum in excess of $75,000.00, together with interest and costs of suit.

Respectfully submitted,

By: /s/Holly M. Whalen

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JURY TRIAL DEMANDED

EXHIBIT A

CLAIMS SERVICE AGREEMENT

THIS AGREEMENT is entered into between Old Republic Insurance Company, Greensburg, Pennsylvania, (herein "Old Republic") and Peabody Holding Company, Inc., St. Louis, Missouri, acting for itself and for its divisions, subsidiaries and affiliates (herein "Peabody").

DEFINITIONS:

"Act" - shall mean part C, Title IV, of the Federal Coal Mine Health & Safety Act of 1969 as amended, all federal laws supplementary thereto, and similar provision of the workers' compensation laws in the Commonwealth of Kentucky or the State of Illinois.

"Traumatic Liability" - shall mean those obligations of Peabody to pay benefits under the workers' compensation laws of the Commonwealth of Kentucky, or State of Illinois excepting those benefits payable by reason of an occupational disease as that term is herein defined.

"Occupational Disease Liability" - shall mean those obligations of Peabody to pay benefits under the Act.

"Direct Loss Adjustment Expenses" - shall mean those expenses which arise from attorneys fees and expenses, medical fees, expert and witness travel expenses and fees, costs of appeal bonds, costs for outside services directly related to the investigation, negotiation, settlement or defense of any claim hereunder or as required for the collection or subrogation on behalf of Peabody including (but not by way of limitation)

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transcript fees, extraordinary travel expense by personnel of Old Republic and its adjustors (but only if required by Peabody), commercial photographers' fees, the cost of obtaining public records and other related costs.

"Incurred Losses" - shall mean the total of all losses for indemnity and medical benefits actually paid, reserves for unpaid losses, Direct Loss Adjustment Expenses, federal trust fund interest incurred before or after judgement for occupational disease awards and interest accrued before or after judgement on traumatic injury awards and judgements.

"Paid Losses" - shall mean the portion of the Incurred Losses that have been paid to or on behalf of the claimant as well as the Direct Loss Adjustment Expenses that have been paid by Old Republic.

"Loss Administration Expense" - shall mean the cost of processing claims incurred by Old Republic which are not Direct Loss Adjustment Expenses. Peabody shall pay Old Republic only the rates established in Exhibit B for Loss Administration Expense regardless of whatever such actual expenses may be.

RECITALS:

1. It is the intent of the parties that Old Republic shall furnish to Peabody services described in Exhibit A, attached hereto in the discharge of Peabody's obligations as a self-insurer under the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended (the "Act"), and of worker's compensation and occupational disease laws of the Commonwealth of Kentucky and the State of Illinois.

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2. It is also the intent of the parties that Old Republic shall provide to Peabody, under a separate agreement, excess insurance coverage for Traumatic Liability coverage as defined herein.

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals and the mutual covenants of the parties set forth herein, THE PARTIES AGREE AS FOLLOWS:

OLD REPUBLIC AGREES:

3. Old Republic shall provide Investigation and Claim Adjustment Services as detailed in Exhibit A, with respect to Peabody's obligations as a self-insurer under the Act and under worker's compensation and occupational disease laws in Kentucky and Illinois for claims which would be assignable to policy periods subsequent to December 31, 1986 as follows:

(a) Old Republic shall establish written procedures for the prompt reporting and recording by Old Republic of all occurrences and claims involving industrial injuries, accidents or diseases as required by workers' compensation law and as set forth in Exhibit A hereto. Old Republic (1) shall maintain files on behalf of and as custodian for Peabody on all Peabody's claims or losses and any other documents and reports pertaining to the services provided herein as may be reasonably requested by Peabody; and (2) shall provide Peabody with such records upon request for as long as Peabody determines it is required by law to maintain them.

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(b) To the extent provided in Exhibit A hereto or otherwise directed by Peabody, Old Republic shall act for Peabody in its capacity as a self-insured employer in all matters relating to the handling and disposition of claims or losses. Old Republic shall make payment, on Peabody's behalf, for such compensation and medical benefits that Peabody may be required to pay pursuant to a voluntary payment agreement by Peabody or an order of the United States Department of Labor or appropriate state office or industrial board. Old Republic shall also make payment on Peabody's behalf for Direct Loss Adjustment Expenses. Old Republic shall not enter into any voluntary settlements for any Traumatic Liability claims for an amount in excess of $10,000 or such lessor amount as Peabody may prescribe in writing (exclusive of benefits paid prior to date of settlement) nor any Occupational Disease Liability claims without the prior approval of Peabody, or its designated agent(s).

(c) Within thirty (30) days after the end of each calendar month, Old Republic shall deliver to Peabody a magnetic data tape, or its equivalent, containing Old Republic's data base on all losses including, but not limited to, each loss depicting the Paid Loss, and the estimated reserve on such loss identifying for each, the portion attributable to indemnity benefits and medical benefits. In addition, the tape shall indicate the Direct Loss Adjustment Expenses which have been paid for each claim. This information shall be furnished to Peabody in the form pre-approved by Peabody.

9/27

(d) With respect to claims which the Old Republic and Peabody consider to be noncompensatory, Old Republic shall prepare defenses of such claims, represent Peabody, to the extent possible, before the U. S. Department of Labor and appropriate state offices or industrial boards, assist attorneys to prepare for hearings, trial or appellate proceedings and otherwise assist Peabody in its defense of any case to the extent permitted by law. Peabody reserves the right to select attorneys to represent it, but the Old Republic shall recommend competent attorneys upon request by Peabody. Copies of invoices for attorneys fees received by Old Republic after September 1, 1987, shall be submitted to Peabody's Legal Department in St. Louis for approval prior to payment by Old Republic.

(e) Old Republic shall assist Peabody in doing all acts and things necessary for Peabody to comply with the requirements of the Act and of the applicable state laws under which Peabody has qualified as a self-insurer, including, but not limited to, maintaining statistical records of claims and disbursements for preparation of the self-insurer's annual report and assisting Peabody in the preparation and filing of all reports required under applicable law.

4. Old Republic represents that in performing this Agreement, its employees and representatives shall be duly qualified and licensed where necessary under applicable state laws.

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5. Old Republic shall be responsible for and shall pay for, all costs incurred by it in performing this Agreement with the exception of those Direct Loss Adjustment Expenses defined herein.

6. Old Republic shall provide, at its expense, fidelity insurance, liability insurance (in limits of not less than $1,000,000 each occurrence) and workmen's compensation insurance covering Old Republic's performance of this Agreement. Such policies shall name Peabody and Affiliates as additional insureds. In addition, Old Republic agrees to indemnify Peabody and hold Peabody harmless against any claims, actions, expenses, losses, liabilities, damages, costs or demands whatsoever together with attorney's fees and expenses arising from and as a result of dishonest or negligent acts of Old Republic's officers, employees or agents.

PEABODY AGREES:

7. Peabody shall pay Old Republic for its services hereunder, fees calculated and payable in accordance with the Schedule of Fees attached to and made a part hereof as Exhibit B. The fees set forth in Exhibit B shall remain in effect through December 31, 1987, and thereafter, may be renegotiated by the parties from time to time; however, it is agreed that the parties will review the fees set forth in Exhibit B not later than December 15, 1987, and by each November 15th thereafter.

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8. Peabody and Old Republic shall establish one or more loss funds in an amount mutually agreed to by Peabody and Old Republic. Old Republic shall use the loss funds to pay Paid Losses and Loss Administration Expenses. At the end of each month Old Republic shall advise Peabody of the amount disbursed therefrom, whereupon Peabody shall promptly reimburse Old Republic for such disbursement, subject to a final monthly reconciliation performed by Old Republic, and independently by Peabody, based upon loss runs or loss computer tapes provided by Old Republic. Any discrepancies shall be resolved by the parties. Any adjustments to the loss funds as a result of the reconciliation shall be made with the next month's loss fund adjustment or as resolved by the parties. If the loss fund becomes inadequate to pay the current month's Paid Losses and Loss Administration Expense, Old Republic shall promptly so notify Peabody and Peabody will thereupon advance additional funds. If, in Peabody's opinion, the loss fund becomes overfunded, Peabody shall be entitled to reimbursement from the loss fund to the extent of such overfunding. Old Republic shall bear no responsibility hereunder to pay such Paid Losses or Loss Administration Expense out of its own funds or the annual charge indicated in Section I of Exhibit B.

9. Except for losses, costs and expenses incurred by Old Republic, of the type described in paragraphs 5 and 6 herein, Peabody agrees to indemnify and hold Old Republic harmless from and against any and all claims, actions, expenses, losses, liabilities, damages, costs or demands whatsoever, together with

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attorney fees and expenses, arising from and as a result of the performance by Old Republic for Peabody of the services described herein.

10. Peabody shall designate, in writing, those of its officers, employees and agents who shall have the power to grant authority to settle claims or to make elections provided for herein and inform Old Republic of all such designations throughout the term of this Agreement.

MUTUAL AGREEMENTS:

11. This Agreement shall remain in full force and effect until ninety (90) days after either party gives written notice of termination to the other provided, however, that this Agreement shall not be terminated prior to December 31, 1987.

12. The services to be performed by Old Republic hereunder shall specifically exclude any services which, now or during the term of this Agreement, may be deemed to be the practice of law.

13. The parties agree that at any time and from time to time upon request of the other party, or as may otherwise be required pursuant to the terms and conditions herein or by law, they shall execute and deliver all papers or documents which may reasonably be required to carry out the terms of this Agreement and shall take any and all lawful steps necessary to carry out the full intent, objects and purposes of this Agreement.

14. Any notice, instruction or election hereunder shall be in writing and delivered by certified or registered mail, return receipt requested, postage prepaid, as follows:

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If to Old Republic, addressed to:

Old Republic Insurance Company
414 West Pittsburgh Street
Greensburg, Pennsylvania 15601
Attention: Louis M. Wasnesky, Vice President

If to Peabody, separately addressed both to the Vice President of Accounting and to the Manager of Workers' Compensation at the following address:

Peabody Holding Company, Inc.
P. O. Box 373
301 North Memorial Drive
St. Louis, Missouri 63166

The parties may change the above names or addresses by giving written notice of such change to the other party.

15. In the event this Agreement is terminated, the Old Republic shall, at Peabody's request, continue to service until final disposition, all claims which have been reported to the Old Republic during the time this Agreement was in effect. Upon Peabody's request, Old Republic will deliver to Peabody, or to its designated representatives, all files, documents, records and reports in Old Republic's possession which pertain to accidents, occurrences and claims serviced by Old Republic under this Agreement. Such transfer of files and future servicing will not result in any reduction or return of the Loss Administration Expense previously due or paid to Old Republic except that it shall be based only on the ultimate value of Incurred Losses based on the claims which were reported to the Old Republic during the time this Agreement was in effect. Except for liabilities and obligations under paragraphs 5 and 6 above for services performed prior to this date of termination, following

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the delivery of such files, documents, records and reports, Old Republic shall be released from all further liability and obligations hereunder.

16. If, during the term of this Agreement, Peabody acquires or disposes of any operation, and desires Old Republic to furnish or cease to furnish services provided for herein with respect to such operation, Peabody shall notify Old Republic of its intention in this regard, and Old Republic shall immediately furnish, or cease, services to and on behalf of such organizations. In the event of any such furnishing of additional services or curtailment of services, the compensation provided in paragraph 7 shall be reasonably adjusted.

17. Old Republic may delegate the performance of any of its responsibilities or rights hereunder to any existing or future subsidiary or affiliate of Old Republic; provided, however, that Old Republic shall promptly notify Peabody of any such delegation and that Old Republic shall guarantee all obligations hereunder, as well as the performance of any responsibilities so delegated.

18. The waiver by either party of a breach by the other party of any provision of this Agreement, shall not operate or be construed as a waiver of any subsequent breach by either party or prevent either party thereafter from enforcing any provision of this Agreement.

19. This Agreement shall be effective January 1, 1987, with respect to servicing of claims under the Act and under the worker's compensation laws of the Commonwealth of Kentucky or State of Illinois.

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20. This Agreement and attachments hereto constitute the entire agreement of the parties regarding matters contained herein. Any amendment or modification of this agreement shall be effective only in a written instrument authorized and executed by Old Republic and Peabody.

21. This Agreement shall be governed by Pennsylvania law.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused this Agreement to be executed by their duly authorized officers.

February 9, 1988

ATTEST:

OLD REPUBLIC INSURANCE COMPANY

By: _____

Title Vice President

ATTEST:

PEABODY HOLDING COMPANY, INC.

By: _____

Title VP - Accounting

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Exhibit A

CLAIMS SERVICES

Field Services/State Claims

Kentucky & Illinois:

- Receive initial injury report from Peabody and file same with appropriate state agency.
- Conduct complete field investigation in accordance with prudent claims procedures, including contact with Peabody, claimant, witnesses and others who may have information relative to the claim.
- Receive and review medical reports to determine appropriateness of treatment and relationship to alleged injury.
- Attend and participate in pre-hearing and settlement conference with counsel and provide all necessary information to counsel in litigated claims.
- Make recommendations regarding claim defense or settlement to Peabody.
- Attend hearings and assist counsel in litigated claims.

Office Administrative Services/State Claims

Kentucky & Illinois:

- Complete and file all requisite forms with appropriate state agencies.
- Establish and maintain adequately documented claims files.
- Participate in insurance industry data banks/clearing houses and obtain and provide to Peabody and/or counsel appropriate data for use in claim review and litigation.
- Provide advice and counsel as requested by Peabody and provide, as necessary, information and assistance to legal counsel approved by Peabody.
- Establish claim reserves estimated in accordance with generally accepted insurance industry standards and provide detailed loss runs and/or computer tapes to meet Peabody requirements.

- Execute settlement/payment agreements in appropriate claims upon approval by Peabody.

- Verify appropriateness of disability and medical benefits in accordance with applicable statutory provisions, and review/audit all medical bills.

- Execute payment of disability and medical benefits in accordance with applicable statutory provisions.

- Initiate and prosecute proceedings authorized by Peabody for contribution, reimbursement or subrogation from or against appropriate federal or state agencies or third parties in accordance with statutory provision.

- Review each open file at least annually.

Office Administrative Services/Federal Claims

All States:

- Establish and maintain adequately documented claims files on referral from Peabody.

- Review claim records and forward copies of state claim files and any other appropriate claims data to legal counsel designated by Peabody.

- File initial controversion in all benefit claims.

- Execute payment agreements in appropriate claims upon approval by Peabody.

- Verify appropriateness of disability and medical benefits in accordance with applicable statutory provisions, recognizing applicable state offsets, and review/audit all medical bills.

- Execute payment of disability and medical benefits in accordance with applicable statutory provisions.

- Establish claim reserve estimates in accordance with generally accepted insurance standards, and provide detailed loss runs and/or computer tapes to meet Peabody requirements.

Other Administrative Services

- Provide complete actuarial services and consultations as required by Peabody for the administration of the workers' compensation program covered by this agreement.

- Conduct mine or mine record inspections only to the extent required by excess insurance underwriters.

- Provide detailed statistical loss data as requested by Peabody and maintained in Old Republic loss records.

- Provide cost data comparisons with guaranteed cost and retrospective rated programs including manual and modified rates and experience rating modifications.

- Initiate and prosecute proceedings authorized by Peabody for contribution, reimbursement or subrogation from or against appropriate federal or state agencies or third parties in accordance with statutory provisions.

- Prior to payment by Old Republic, Old Republic shall review for accuracy and reasonableness all bills and statements submitted to it pursuant to the incurred losses provision herein.

Claim Services - General

- Comply with Peabody's claims control and administrative procedures as may be reasonably requested.

- Provide claims information as requested by the authorized representatives of Peabody.

Exhibit B

SCHEDULE OF FEES

I. GENERAL ADMINISTRATION, ADMINISTRATIVE LEGAL COSTS AND ACTUARIAL SERVICE

General administrative, administrative legal costs and actuarial services will be subject to an annual charge of $750,000 for the year 1987. The annual charge will be payable in two equal installments due January 1 and July 1 and shall be in addition to and separate from the other charges and fees scheduled below.

II. SERVICING OF TRAUMATIC INJURY CLAIMS

The Loss Administration Expense for servicing traumatic claims occurring during 1987 shall be 8% of Incurred Losses, but shall be collected by Old Republic from Peabody on the basis of Paid Losses, whether paid by Old Republic, or in the event of termination, by Peabody or its designated representative if Peabody elects to relieve Old Republic of future handling after termination in accordance with Paragraph 15. In the event of termination, this fee shall apply only to Incurred Losses based only on the claims which were reported to the Old Republic during the time this Agreement was in effect.

III. SERVICING OF OCCUPATIONAL DISEASE CLAIMS

The Loss Administration Expense for servicing state and federal occupational disease claims occurring during 1987 shall be 5% of Incurred Losses, but shall be collected by Old Republic from Peabody on the basis of Paid Losses, whether paid by Old Republic, or in the event of termination, by Peabody or its designated representative if Peabody elects to relieve Old Repbulic of future handling after termination in accordance with Paragraph 15. In the event of termination, this fee shall apply only to Incurred Losses based only on the claims which were reported to the Old Republic during the time this Agreement was in effect. Paid Losses prior to April 1, 1987 for Eastern Associated Coal Corporation's federal occupational disease claims shall be excluded from Incurred Losses for the purpose of calculating the Loss Administration Expense attributable to these claims.

AGREEMENT ACKNOWLEDGED BY: DATE:

Louis M. Wasnesky — Sept 27, 1988

Old Republic Insurance Company
Louis M. Wasnesky, Vice President

W. Howard Carson — August 30, 1988

Peabody Holding Company, Inc.
W. Howard Carson, Vice President-Accounting

AMENDMENT NO. 1

CLAIMS SERVICE AGREEMENT

This Amendment No. 1 to the Claims Service Agreement effective January 1, 1987, and executed February 9, 1988, is entered into between Old Republic Insurance Company, Greensburg, Pennsylvania, (herein "Old Republic") and Peabody Holding Company, Inc., St. Louis, Missouri, acting for itself and its subsidiaries (herein "Peabody").

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, Old Republic and Peabody agree to amend the Claims Service Agreement as follows:

1. Paragraph 11 is amended by adding thereto the following sentence. "Notwithstanding the above, this Agreement shall not be terminated by either party at any time prior to December 31, 1990."

2. Paragraph 18 shall be amended by adding the capital letter A at the beginning of the text of said paragraph, and then adding a second paragraph to be and read as follows:

"B. In the event of a material breach of this Agreement by one of the parties, the other party shall, upon service of written notice of the breach upon the party in default, have the right to terminate this Agreement if the party in default has not within ten regular business days

2-20-89

from the receipt of such notice either remedied the breach or furnished the other party adequate assurances of its intent to remedy the breach in a reasonable time under the circumstances. Such Agreement shall be deemed terminated only after the defaulting party has been notified by the other party that the remedy or assurances are not adequate."

3. Paragraph 9 is hereby deleted and inserted in lieu thereof is a new Paragraph 9 which shall read:

"9. Except for losses, costs and expenses incurred by Old Republic of the type described in paragraphs 5 and 6 herein, Peabody agrees to indemnify and hold Old Republic harmless from and against any and all claims, actions, expenses, losses, liabilities, damages, costs or demands whatsoever, together with attorneys' fees and expenses, arising from or as a result of:

(a) the performance by Old Republic for Peabody of the services described herein or of any services similar to those so described;

(b) Any act or omission undertaken upon the written instruction of Peabody personnel designated in writing by the Vice President-Accounting of Peabody with respect

to any claim arising under the Claims Service Agreement; or

(c) the performance by Peabody of any services similar to those described herein or any other act or omission other than at Old Republic's request or instructions, with respect to any claim arising under the Claims Service Agreement."

4. Add a new paragraph to be numbered 22 which shall read:

"22. Fee Changes. Old Republic and Peabody shall review in good faith the fee charges for services provided under the Claims Services Agreement before January 1 of each year through and including January 1, 1990. Where justification is shown, Old Republic shall be entitled to adjust the fee rates for the year following the year in which such review has been undertaken; provided that the total of all adjustments under the Claims Service Agreement and under all other policies issued by the Old Republic to Peabody shall not exceed ten percent (10%) of the total premiums paid under all of the other policies and the fees under said Claims Service Agreement for the year immediately preceding the year the adjustment ~~is~~ ARE to be effective.

ALL PREMIUM ADJUSTMENTS

9/28/88 Jan Witte

9/28/88 Jan Witte

5. This Amendment No. 1 shall be effective January 1, 1987. The amendments herein shall supersede the terms and conditions of the Claims Service Agreement and, in the event of an inconsistency, said amendments herein shall govern. All other terms and conditions of the Claims Service Agreement shall remain in full force and effect and are hereby ratified.

ATTEST:

OLD REPUBLIC INSURANCE COMPANY

By:

Title: Vice President

ATTEST:

PEABODY HOLDING COMPANY, INC.

By:

Title: VP-Accounting

AMENDMENT NO. 2

CLAIMS SERVICE AGREEMENT

This Amendment No. 2 to the Claims Service Agreement effective January 1, 1987, and executed on February 9, 1988, as amended by Amendment No. 1 effective January 1, 1987, is entered into between Old Republic Insurance Company, Greensburg, Pennsylvania, (herein "Old Republic") and Peabody Holding Company, Inc., St. Louis, Missouri, acting for itself and for its subsidiaries and affiliates (herein "Peabody").

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, Old Republic and Peabody agree to amend the Claims Service Agreement as follows:

1. The definition of the word "Act" is hereby amended by deleting that definition and inserting in lieu thereof a new definition which shall read:

> ""Act" - shall mean Part C, Title 4, of the Federal Coal Mine Health & Safety Act of 1969, as amended."

2. The definition of the phrase "Traumatic Liability" is hereby amended by deleting that definition and inserting in lieu thereof a new definition which shall read:

> ""Traumatic Liability" - shall mean those obligations of Peabody to pay benefits under the Workers'

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Compensation laws of the Commonwealth of Kentucky and the states of Arizona, Illinois, Indiana and Montana excepting those benefits payable by reason of an occupational disease as that term is herein defined."

3. The definition of the phrase "Occupational Disease" is hereby amended by deleting that definition and inserting in lieu thereof a new definition which shall read:

""Occupational Disease" - shall mean those obligations of Peabody to pay benefits under the Workers' Compensation laws of the Commonwealth of Kentucky and the states of Arizona, Illinois, Indiana and Montana that are similar to is liabilities under the Act."

4. The recital paragraph numbered 1 is hereby deleted and inserted in lieu thereof is a new recital paragraph numbered 1 which shall read:

"1. It is the intent of the parties that Old Republic shall furnish to Peabody services described in Exhibit A attached hereto in the discharge of Peabody's obligations as a self-insured under the Workers' Compensation and occupational disease laws of the Commonwealth of Kentucky and the states of Arizona, Illinois, Indiana and Montana."

5. Paragraph numbered 3 is hereby amended by deleting the first six lines of said paragraph 3 ending with the words "as follows:" and inserting in lieu thereof twelve new lines to read:

"3. Old Republic shall investigate and provide investigation and claims adjustment services as detailed in Exhibit A attached to this Amendment No. 2 with respect to Peabody's obligations as a self-insurer under the Act for claims filed in the calendar year 1987, Workers' Compensation and occupational disease laws in Kentucky and Illinois for claims which would be assignable to the calendar year subsequent to December 31, 1986, and in Arizona, Indiana and Montana for claims which would be assignable to calendar years subsequent to December 31, 1987."

6. Attached to and incorporated in this Amendment No. 2 are new Exhibits A and B which shall become effective concurrently with this Amendment No. 2.

7. This Amendment No. 2 shall be effective January 1, 1988. The amendments herein shall supersede the terms and conditions of the Claims Service Agreement as amended and in the event of an inconsistency, said amendments herein shall govern.

All other terms and conditions of the Claims Service Agreement as amended shall remain in full force and effect and are hereby ratified.

ATTEST:

OLD REPUBLIC INSURANCE COMPANY

By:

Title: Vice President

ATTEST:

PEABODY HOLDING COMPANY, INC.

By:

Title: VP-Assistant

hibit A

CLAIMS SERVICES

Field Services/State Claims

Arizona, Kentucky, Illinois, Indiana and Montana:

- Receive initial injury report from Peabody and file same with appropriate state agency.
- Conduct complete field investigation in accordance with prudent claims procedures, including contact with Peabody, claimant, witnesses and others who may have information relative to the claim.
- Receive and review medical reports to determine appropriateness of treatment and relationship to alleged injury.
- Attend and participate in pre-hearing and settlement conference with counsel and provide all necessary information to counsel in litigated claims.
- Make recommendations regarding claim defense or settlement to Peabody.
- Attend hearings and assist counsel in litigated claims.

Office Administrative Services/State Claims

Arizona, Kentucky, Illinois, Indiana and Montana

- Complete and file all requisite forms with appropriate state agencies.
- Establish and maintain adequately documented claims files.
- Participate in insurance industry data banks/clearing houses and obtain and provide to Peabody and/or counsel appropriate data for use in claim review and litigation.
- Provide advice and counsel as requested by Peabody and provide, as necessary, information and assistance to legal counsel approved by Peabody.
- Establish claim reserves estimated in accordance with generally accepted insurance industry standards and provide detailed loss runs and/or computer tapes to meet Peabody requirements.

hibit A

- Execute settlement/payment agreements in appropriate claims upon approval by Peabody.

- Verify appropriateness of disability and medical benefits in accordance with applicable statutory provisions, and review/audit all medical bills.

- Execute payment of disability and medical benefits in accordance with applicable statutory provisions.

- Initiate and prosecute proceedings authorized by Peabody for contribution, reimbursement or subrogation from or against appropriate federal or state agencies of third parties in accordance with statutory provision.

- Review each open file at least annually.

Other Administrative Services

- Conduct mine or mine record inspections only to the extent required by excess insurance underwriters.

- Provide detailed statistical loss data as requested by Peabody and maintained in Old Republic loss records.

- Provide cost data comparisons with guaranteed cost and retrospective rated programs including manual and modified rates and experience rating modifications.

- Initiate and prosecute proceedings authorized by Peabody for contribution, reimbursement or subrogation from or against appropriate federal or state agencies or third parties in accordance with statutory provisions.

- Prior to payment by Old Republic, Old Republic shall review for accuracy and reasonableness all bills and statements submitted to it pursuant tot he incurred losses provision herein.

Claim Services - General

- Comply with Peabody's claims control and administrative procedures as may be reasonably requested.

- Provide claims information as requested by the authorized representatives of Peabody.

Exhibit B

SCHEDULE OF FEES

I. GENERAL ADMINISTRATION AND ADMINISTRATIVE LEGAL COSTS

General administrative and administrative legal costs will be subject to an annual charge of $550,000 for the year 1988. The annual charge will be payable in two equal installments due January 1 and July 1 and shall be in addition to and separate from the other charges and fees scheduled below.

II. SERVICING OF TRAUMATIC INJURY CLAIMS

The Loss Administration Expense for servicing traumatic claims occurring during 1988 shall be 8% of Incurred Losses, but shall be collected by Old Republic from Peabody on the basis of Paid Losses, whether paid by Old Republic, or in the event of termination, by Peabody or its designated representative if Peabody elects to relieve Old Republic of future handling after termination in accordance with Paragraph 15. In the event of termination, this fee shall apply only to Incurred Losses based only on the claims which were reported to the Old Republic during the time this Agreement was in effect.

III. SERVICING OF OCCUPATIONAL DISEASE CLAIMS

The Loss Administration Expense for servicing state occupational disease claims occurring during 1988 shall be 6% of Incurred Losses, but shall be collected by Old Republic from Peabody on the basis of Paid Losses, whether paid by Old Republic, or in the event of termination, by Peabody or its designated representative if Peabody elects to relieve Old Repbulic of future handling after termination in accordance with Paragraph 15. In the event of termination, this fee shall apply only to Incurred Losses based only on the claims which were reported to the Old Republic during the time this Agreement was in effect.

AGREEMENT ACKNOWLEDGED BY: DATE:

Louis M. Wasnesky — Sept 26, 1988

Old Republic Insurance Company
Louis M. Wasnesky, Vice President

W. Howard Carson — August 30, 1988

Peabody Holding Company, Inc.
W. Howard Carson, Vice President-Accounting

AMENDMENT NO. 3

CLAIMS SERVICE AGREEMENT

This Amendment No. 3 to the Claims Service Agreement effective January 1, 1987, and executed on February 9, 1988, as amended by Amendment No. 1 effective January 1, 1987 and Amendment No. 2 effective January 1, 1988, is entered into between Old Republic Insurance Company, Greensburg, Pennsylvania, (herein "Old Republic") and Peabody Holding Company, Inc., St. Louis, Missouri, acting for itself and for its subsidiaries and affiliates (herein "Peabody").

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, Old Republic and Peabody agree to amend the Claims Service Agreement as follows:

1. Paragraph 9.(b) is amended by deleting "Vice President-Accounting" and adding in its place "Treasurer".

2. Attached to and incorporated in this Amendment No. 3 is a new Exhibit B which shall become effective concurrently with this Amendment No. 3.

3. This Amendment No. 3 shall be effective January 1, 1989.

All other terms and conditions of the Claims Service Agreement as amended shall remain in full force and effect and are hereby ratified.

ATTEST:

OLD REPUBLIC INSURANCE COMPANY

BY:

TITLE:

ATTEST:

PEABODY HOLDING COMPANY, INC.

BY: Steven F Schaab

TITLE: Treasurer

5-25-89

ORINSCO 0027

EXHIBIT B
(Rev. 1/89)

SCHEDULE OF FEES

I. GENERAL ADMINISTRATION AND ADMINISTRATIVE LEGAL COSTS

General administrative and administrative legal costs will be subject to an annual charge of $550,000 for the year 1989. The annual charge will be payable in two equal installments due January 1 and July 1 and shall be in addition to and separate from the other charges and fees scheduled below.

II. SERVICING OF TRAUMATIC INJURY CLAIMS

The Loss Administration Expense for servicing traumatic claims occurring during 1989 shall be 8% of the first $300,000 of each Incurred Loss, but shall be collected by Old Republic from Peabody on the basis of Paid Losses, whether paid by Old Republic, or in the event of termination, by Peabody or its designated representative if Peabody elects to relieve Old Republic of future handling after termination in accordance with Paragraph 15. In the event of termination, this fee shall apply only to Incurred Losses based only on the claims which were reported to the Old Republic during the time this Agreement was in effect.

III. SERVICING OF OCCUPATIONAL DISEASE CLAIMS

The Loss Administration Expense for servicing state occupational disease claims occurring during 1989 shall be 6% of Incurred Losses, but shall be collected by Old Republic from Peabody on the basis of Paid Losses, whether paid by Old Republic, or in the event of termination, by Peabody or its designated representative if Peabody elects to relieve Old Republic of future handling after termination in accordance with Paragraph 15. In the event of termination, this fee shall apply only to Incurred Losses based only on the claims which were reported to the Old Republic during the time this Agreement was in effect.

AGREEMENT ACKNOWLEDGED BY: DATE:

Old Republic Insurance Company
Louis M. Wasnesky, Vice President — 5/25/89

Peabody Holding Company, Inc.
Steven F. Schaab, Treasurer — 5/5/89

AMENDMENT NO. 4

CLAIMS SERVICE AGREEMENT

This Amendment No. 4 to the Claims Service Agreement effective January 1, 1987, and executed on February 9, 1988, as amended by Amendment No. 1 effective January 1, 1987, Amendment No. 2 effective January 1, 1988 and Amendment No. 3 effective January 1, 1989 is entered into between Old Republic Insurance Company, Greensburg, Pennsylvania, (herein "Old Republic") and Peabody Holding Company, Inc., St. Louis, Missouri, acting for itself and for its subsidiaries and affiliates (herein "Peabody").

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, Old Republic and Peabody agree to amend the Claims Service Agreement as follows:

1. Attached to and incorporated in this Amendment No. 4 is a new Exhibit B which shall become effective concurrently with this Amendment No. 4.

2. This Amendment No. 4 shall be effective January 1, 1990.

All other terms and conditions of the Claims Service Agreement as amended shall remain in full force and effect and are hereby ratified.

ATTEST:

OLD REPUBLIC INSURANCE COMPANY

BY: [signature]

TITLE: Vice President

ATTEST:

PEABODY HOLDING COMPANY, INC.

BY: Steven F. Schaab

TITLE: Treasurer

ORINSCO 0029

EXHIBIT B
(Rev. 1/90)

SCHEDULE OF FEES

I. GENERAL ADMINISTRATION AND ADMINISTRATIVE LEGAL COSTS

General administrative and administrative legal costs will be subject to an annual charge of $550,000 for the year 1990. The annual charge will be payable in two equal installments due January 1 and July 1 and shall be in addition to and separate from the other charges and fees scheduled below.

II. The Loss Administration Expense for servicing traumatic claims occurring during 1990 shall be 8% of the first $300,000 of each Incurred Loss, but shall be collected by Old Republic from Peabody on the basis of Paid Losses, whether paid by Old Republic, or in the event of termination, by Peabody or its designated representative if Peabody elects to relieve Old Republic of future handling after termination in accordance with Paragraph 15. In the event of termination, this fee shall apply only to the Incurred Losses based only on the claims which were reported to the Old Republic during the time this Agreement was in effect.

III. SERVICING OF OCCUPATIONAL DISEASE CLAIMS

The Loss Administration Expense for servicing state occupational disease claims occurring during 1990 shall be 6% of Incurred Losses, but shall be collected by Old Republic from Peabody on the basis of Paid Losses, whether paid by Old Republic, or in the event of termination, by Peabody or its designated representative if Peabody elects to relieve Old Republic of future handling after termination in accordance with Paragraph 15. In the event of termination, this fee shall apply only to the Incurred Losses based only on the claims which were reported to the Old Republic during the time this Agreement was in effect.

AGREEMENT ACKNOWLEDGED BY: DATE:

Louis M. Wasnesky 8/28/90

Old Republic Insurance Company
Louis M. Wasnesky, Vice President

Steven F Schaab 6/4/90

Peabody Holding Company, Inc.
Steven F. Schaab, Treasurer

AMENDMENT NO. 5 TO

CLAIMS SERVICE AGREEMENT

WHEREAS, OLD REPUBLIC INSURANCE COMPANY, Greensburg, Pennsylvania (herein "Old Republic") and PEABODY HOLDING COMPANY, INC., St. Louis, Missouri, for itself, its divisions, subsidiaries and affiliates (herein "Peabody") have heretofore entered into a certain Claims Service Agreement dated February 9, 1988 and certain amendments to said Claims Service Agreement (which amendments are hereby deemed to be "Amendment Nos. 1 thru 4") (herein said Claims Service Agreement together with Amendment Nos. 1 thru 4 is referred to as the "Agreement") and now mutually desire to amend the Agreement in certain respects.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Agreement as of its effective date as follows:

1. The provisions of paragraph 11 notwithstanding, the Agreement shall not be terminable by either party at any time prior to October 1, 1993, in the absence of a material breach by the other party.

2. A new Exhibit B which sets forth Old Republic's fees for General Administration and Administrative Legal Costs for Servicing of Traumatic Injury and Occupational Disease Claims for the period from January 1, 1991 to October 1, 1993 is attached hereto and incorporated into the Agreement.

3. The parties agree to review in good faith the Schedule of Fees attached to the Agreement as Exhibit B on or before each anniversary of the Agreement through and including the January 1, 1993 anniversary. Old Republic shall be entitled to increase the Schedule of Fees for the following contract year after such review. In no event, however, shall any

10-4-91
Orig. M. Hayden

such increase for any one contract year, when considered together with the excess workers' compensation premium rates and the insured program traumatic and occupational disease coverage expense fund charges to be paid to Old Republic by Peabody for the same year under all insurance policies and endorsements issued by Old Republic to Peabody and in force, result in more than a ten percent (10%) increase in the sum of all such fees and premiums to be paid to Old Republic by Peabody under this Agreement and such insurance policies and endorsements for the preceeding year.

4. In all other respects, the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed on the 23rd day of September, 1991.

ATTEST:

OLD REPUBLIC INSURANCE COMPANY

LOUIS M. WASNESKY
VICE PRESIDENT

ATTEST:

PEABODY HOLDING COMPANY, INC.

NAME: JOHN F. LUSKEFSKI
TITLE: VICE PRESIDENT + CFO

EXHIBIT B

SCHEDULE OF FEES

I. GENERAL ADMINISTRATION AND ADMINISTRATIVE LEGAL COSTS

General administrative and administrative legal costs will be subject to an annual charge of $120,000 for 1991 and subsequent years, subject to upward adjustment as provided in Paragraph 3 in Amendment No. 5. The annual charge will be payable in two equal installments due January 1 and July 1 and shall be in addition to, and separate from, the other charges and fees scheduled below.

II. SERVICING OF CLAIMS - LOSS ADMINISTRATION EXPENSE

A. Traumatic Injury

The Loss Administration Expense ("LAE") for servicing traumatic claims occurring during 1991 and subsequent years shall be 8.75% of Incurred Losses, limited to the first $300,000 of each occurrence.

B. Occupational Disease

The LAE for servicing state occupational disease claims occurring during 1991 and subsequent years shall be 7% of Incurred Losses.

C. Payment Terms

1. The LAE for servicing both traumatic injury and occupational disease claims is estimated to be $1,181,250 for 1991. Fifty percent (50%) of the estimated LAE (the "LAE Deposit") shall be paid from Peabody to Old Republic in twelve equal monthly installments beginning January 1 of each year.

2. For each policy year, the LAE Deposit, when added to the charge for general administration and administrative legal costs scheduled above, shall be the minimum fee due to Old Republic.

3. After the LAE as calculated by Old Republic based on Paid Losses exceeds the LAE Deposit, the LAE shall thereafter be collected by Old Republic from Peabody on the basis of Paid Losses. The base amount of Paid Losses

10-4-91

shall include losses paid by Old Republic, or in the event of termination, by Peabody or its designated representative if Peabody elects to relieve Old Republic of future handling after termination in accordance with Paragraph 15. Following the conversion of the calculation of the LAE to a Paid Losses basis, Peabody shall remit payments to Old Republic within ten (10) days following Peabody's receipt of Old Republic's periodic invoices of the actual LAE due Old Republic.

4. In the event of termination of this Agreement, the LAE shall apply to Incurred Losses based only on the claims which were reported to Old Republic during the time this Agreement was in effect.

D. Termination

In the event Peabody gives its written notice of termination of this Agreement at any time prior to October 1, 1993, Peabody shall pay Old Republic a minimum fee upon termination, which shall be considered to be fully earned as of January 1, 1991, in accordance with the following schedule:

Notice of Termination Given:	Minimum Fee:
. Prior to December 31, 1991	$ 887,500
. After December 31, 1991 and Prior to December 31, 1992	$1,638,750
. After December 31, 1992 and Prior to October 1, 1993	$2,169,075

The amount of any fees for general administration and administrative legal costs, and any LAE, previously received by Old Republic from Peabody shall be credited against the minimum fee upon termination due Old Republic. Peabody shall have ten (10) days to deliver payment of the minimum fee upon termination after receiving Old Republic's invoice for the same. In the event payment is not received by Old Republic, Old Republic shall have the right to satisfy this default by collection of the amount due thru a call on any letter(s) of credit held by Old Republic on behalf of Peabody.

AGREEMENT ACKNOWLEDGED BY: DATE:

Old Republic Insurance Company — 7/26/91
Louis M. Wasnesky
Vice President

Peabody Holding Company, Inc. — 9/23/91
JOHN E. LUBYEFSKI
VICE PRESIDENT + CFO

AMENDMENT NO. 6 TO

CLAIMS SERVICE AGREEMENT

WHEREAS, OLD REPUBLIC INSURANCE COMPANY, Greensburg, Pennsylvania (herein "Old Republic") and PEABODY HOLDING COMPANY, INC., St. Louis, Missouri, for itself, its divisions, subsidiaries and affiliates (herein "Peabody") have heretofore entered into a certain Claims Service Agreement dated February 9, 1988 and certain amendments to said Claims Service Agreement (which amendments are hereby deemed to be "Amendment Nos. 1 thru 5") (herein said Claims Service Agreement together with Amendment Nos. 1 thru 5 is referred to as the "Agreement") and now mutually desire to amend the Agreement in certain respects.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Agreement as of its effective date as follows:

1. The provisions of Amendment No. 2 to the Claims Service Agreement are hereby recognized to be effective from January 1, 1988 thru June 30, 1992.

2. As of July 1, 1992 the provisions of Amendment No. 2 to the Claims Service Agreement are hereby eliminated.

3. A new Exhibit B - Federal Act which sets forth Old Republic's fees for General Administration and Administrative Legal Costs for Servicing of Federal Occupational Disease Claims under Part C, Title IV, of the Federal Coal Mine Health & Safety Act of 1969 as amended and all Federal laws supplementary thereto is attached.

4. In all other respects, the Agreement shall remain unchanged and in full force and effect.

5-25-93
Orig. J. Chalkus
P/C: L. Deems

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed on the 30th day of April, 1993.

ATTEST:

OLD REPUBLIC INSURANCE COMPANY

LOUIS M. WASNESKY
VICE PRESIDENT

ATTEST:
ASSISTANT SECRETARY

PEABODY HOLDING COMPANY, INC.

NAME: J.S. HILTON
TITLE: VICE PRESIDENT & CONTROLLER

EXHIBIT B - FEDERAL ACT

SCHEDULE OF FEES

I. General Administration and Administrative Legal Costs

A. Assumption of existing self-insured claims currently administered by Peabody.

1. File conversion fee of $50 per open and closed claim estimated at $45,000 (900 claims x $50).

B. New and re-opened claims received after July 1, 1992.

1. $100 per each new and re-opened claim

plus

2. An annual maintenance charge of $100 per annum, per claim, until the claim is denied and closed or until the claim is placed in an awarded (payment) status. This fee will be charged at the onset of the anniversary month of the reported date.

II. Servicing of Claims - Loss Administration Expense

A. Assumption of existing self-insured claims currently administered by Peabody.

1. The LAE for servicing this class of Federal Occupational Disease claims will be 7% of incurred losses less paid losses thru July 1, 1992 collected on a paid basis.

B. New and re-opened claims received after July 1, 1992.

1. The LAE for servicing this class of Federal Occupational Disease claims will be 4% of incurred losses collected on a paid basis.

III: The General Administration and Administrative Legal Costs described in I. above are subject to annual review and Old Republic shall be entitled to increase the fees. In no event, however, shall any such increase exceed 10% per annum and any adjusted fee structure will apply prospectively only to claims received after that date.

AGREEMENT ACKNOWLEDGED BY:

Old Republic Insurance Company
Name: [illegible]
Title: [illegible]

DATE: JULY 20, 1993

Peabody Holding Company, Inc.
Name: T.S. Hilton
Title: Vice President & Controller

DATE: 4/20/93

AMENDMENT NO. 7 TO

CLAIMS SERVICE AGREEMENT

WHEREAS, OLD REPUBLIC INSURANCE COMPANY, Greensburg, Pennsylvania (herein "Old Republic") and PEABODY HOLDING COMPANY, INC., St. Louis, Missouri, for itself, its divisions, subsidiaries and affiliates (herein "Peabody") have heretofore entered into a certain Claims Service Agreement dated February 9, 1988 and certain amendments to said Claims Service Agreement (which amendments are hereby deemed to be "Amendment Nos. 1 thru 6") (herein said Claims Service Agreement together with Amendment Nos. 1 thru 6 is referred to as the "Agreement") and now mutually desire to amend the Agreement in certain respects.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Agreement as of its effective date as follows:

1. The provisions of Amendment No. 5 and Schedule B attached thereto are hereby eliminated as of September 30, 1992 and replaced with the following provisions and revised Schedule B.

2. The provisions of paragraph 11 notwithstanding, the Agreement shall not be terminable by either party at any time prior to September 30, 1992, in the absence of a material breach by the other party.

3. A new revised Exhibit B which sets forth Old Republic's fees for General Administration and Administrative Legal Costs for Servicing of Traumatic Injury and Occupational Disease Claims for the period from January 1, 1991 to September 30, 1992 is attached hereto and incorporated into the Agreement.

5-25-93
Orig - J Clelkins
Pltf: L. Deems

4. The parties agree to review in good faith the Schedule of Fees attached to the Agreement as Exhibit B on or before each anniversary of the Agreement through and including the January 1, 1992 anniversary. Old Republic shall be entitled to increase the Schedule of Fees for the following contract year after such review. In no event, however, shall any such increase for any one contract year, when considered together with the excess workers' compensation premium rates and the insured program traumatic and occupational disease coverage expense fund charges to be paid to Old Republic by Peabody for the same year under all insurance policies and endorsements issued by Old Republic to Peabody and in force, result in more than a ten percent (10%) increase in the sum of all such fees and premiums to be paid to Old Republic by Peabody under this Agreement and such insurance policies and endorsements for the preceeding year.

5. In all other respects, the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed on the 20th day of April, 1993.

OLD REPUBLIC INSURANCE COMPANY

ATTEST:

LOUIS M. WASNESKY
VICE PRESIDENT

PEABODY HOLDING COMPANY, INC.

ATTEST:

ASSISTANT SECRETARY

NAME: J. S. Hobbs
TITLE: Vice President & Controller

REVISED EXHIBIT B

SCHEDULE OF FEES

I. General Administration and Administrative Legal Costs

General administration and administrative legal costs will be subject to an annual charge of $120,000 for 1991 and subsequent years, subject to upward adjustment as provided in Paragraph 4 in Amendment No. 7. The annual charge will be payable in two equal installments due January 1 and July 1 and shall be in addition to, and separate from, the other charges and fees scheduled below.

II. Servicing of Claims - Loss Administration Expense

A. Traumatic Injury

The Loss Administration Expense ("LAE") for servicing traumatic claims occurring during 1991 and subsequent years shall be 8.75% of Incurred Losses, limited to the first $300,000 of each occurrence.

B. Occupational Disease

The LAE for servicing state occupational disease claims occurring during 1991 and subsequent years shall be 7% of Incurred Losses.

C. Payment Terms

1. The LAE for servicing both traumatic injury and state occupational disease claims is estimated to be $1,181,250 for 1991. Fifty percent (50%) of the estimated LAE (the "LAE Deposit") shall be paid from Peabody to Old Republic in twelve equal monthly installments beginning January 1 of each year.

2. For each policy year, the LAE Deposit, when added to the charge for general administration and administrative legal costs scheduled above, shall be the minimum fee due to Old Republic.

3. After the LAE as calculated by Old Republic based on Paid Losses exceeds the LAE Deposit, the LAE shall thereafter be collected by Old Republic from Peabody on the basis of Paid Losses. The base amount of Paid Losses shall include losses paid by Old Republic, or in the event of termination, by Peabody or its designated representative if Peabody elects to relieve Old Republic of future handling after termination in accordance with Paragraph 15. Following the conversion of the calculation

of the LAE to a Paid Losses basis, Peabody shall remit payments to Old Republic within ten (10) days following Peabody's receipt of Old Republic's periodic invoices of the actual LAE due Old Republic.

4. In the event of termination of this Agreement, the LAE shall apply to Incurred Losses based only on the claims which were reported to Old Republic during the time this Agreement was in effect.

D. Termination

In the event Peabody gives its written notice of termination of this Agreement at any time prior to October 1, 1992, Peabody shall pay Old Republic a minimum fee upon termination, which shall be considered to be fully earned as of January 1, 1991, in accordance with the following schedule:

Notice of Termination Given:	Minimum Fee:
. Prior to December 31, 1991	$ 887,500
. After December 31, 1991 and Prior to September 30, 1992	$1,229,063

The amount of any fees for general administration and administrative legal costs, and any LAE, previously received by Old Republic from Peabody shall be credited against the minimum fee upon termination due Old Republic. Peabody shall have ten (10) days to deliver payment of the minimum fee upon termination after receiving Old Republic's invoice for the same. In the event payment is not received by Old Republic, Old Republic shall have the right to satisfy this default by collection of the amount due thru a call on any letter(s) of credit held by Old Republic on behalf of Peabody.

AGREEMENT ACKNOWLEDGED BY: DATE:

Jan 28, 1993

Old Republic Insurance Company
Louis M. Wasnesky
Vice President

4/20/93

Peabody Holding Company, Inc.

AMENDMENT NO. 8 TO

CLAIMS SERVICE AGREEMENT

WHEREAS, OLD REPUBLIC INSURANCE COMPANY, Greensburg, Pennsylvania (herein "Old Republic") and PEABODY HOLDING COMPANY, INC., St. Louis, Missouri, for itself, its divisions, subsidiaries and affiliates (herein "Peabody") have heretofore entered into a certain Claims Service Agreement dated February 9, 1988 and certain amendments to said Claims Service Agreement (which amendments are hereby deemed to be "Amendment Nos. 1 thru 7") (herein said Claims Service Agreement together with Amendment Nos. 1 thru 7 is referred to as the "Agreement") and now mutually desire to amend the Agreement in certain respects.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Agreement as of its effective date as follows:

1. The provisions of paragraph 11 notwithstanding, the Agreement shall not be terminable by either party at any time prior to October 1, 1995, in the absence of a material breach by the other party.

2. A new Exhibit B which sets forth Old Republic's fees for General Administration and Administrative Legal Costs for Servicing of Traumatic Injury and Occupational Disease Claims for the period from October 1, 1992 to October 1, 1995 is attached hereto and incorporated into the Agreement.

3. The parties agree to review in good faith the Schedule of Fees attached to the Agreement as Exhibit B on or before each anniversary of the Agreement through and including the October 1, 1994 anniversary. Old Republic shall be entitled to increase the Schedule of Fees for the following contract

5-25-93
Orig. J. Chelkis
P/C L. Deems

year after such review. In no event; however, shall any such increase for any one contract year, when considered together with the excess workers' compensation premium rates and the insured program traumatic and occupational disease coverage expense fund charges to be paid to Old Republic by Peabody for the same year under all insurance policies and endorsements issued by Old Republic to Peabody and in force, result in more than a ten percent (10%) increase in the sum of all such fees and premiums to be paid to Old Republic by Peabody under this Agreement and such insurance policies and endorsements for the preceading year.

4. In all other respects, the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed on the 20 day of April, 1993.

OLD REPUBLIC INSURANCE COMPANY

ATTEST:

LOUIS M. WASNESKY
VICE PRESIDENT

PEABODY HOLDING COMPANY, INC.

ATTEST:
ASSISTANT SECRETARY

NAME: T. S. HILTON
TITLE: VICE PRESIDENT & CONTROLLER

EXHIBIT B

SCHEDULE OF FEES

I. General Administration and Administrative Legal Costs

General administration and administrative legal costs will be subject to an annual charge of $270,000 for 1992 and subsequent years, subject to upward adjustment as provided in Paragraph 3 in Amendment No. 8.

II. Servicing of Claims - Loss Administration Expense

A. Traumatic Injury

The Loss Administration Expense ("LAE") for servicing traumatic claims occurring during the October 1, 1992 to October 1, 1993 year and subsequent years shall be 8.75% of Incurred Losses, limited to the first $300,000 of each occurrence.

B. Occupational Disease

The LAE for servicing state occupational disease claims occurring during the October 1, 1992 to October 1, 1993 year and subsequent years shall be 7% of Incurred Losses.

C. Payment Terms

1. The LAE for servicing both traumatic injury and occupational disease claims is estimated to be $1,557,500 for the October 1, 1992 to October 1, 1993 year. Forty percent (40%) of the estimated LAE (the "LAE Deposit") shall be paid from Peabody to Old Republic in twelve equal monthly installments beginning January 1 of each year.

2. For each policy year, the LAE Deposit, when added to the charge for general administration and administrative legal costs scheduled above, shall be the minimum fee due to Old Republic.

3. After the LAE as calculated by Old Republic based on Paid Losses exceeds the LAE Deposit, the LAE shall thereafter be collected by Old Republic from Peabody on the basis of Paid Losses. The base amount of Paid Losses shall include losses paid by Old Republic, or in the event of termination, by Peabody or its designated representative if Peabody elects to relieve Old Republic of future handling after termination in accordance with Paragraph 15. Following

the conversion of the calculation of the LAE to a Paid Losses basis, Peabody shall remit payments to Old Republic within ten (10) days following Peabody's receipt of Old Republic's periodic invoices of the actual LAE due Old Republic.

4. In the event of termination of this Agreement, the LAE shall apply to Incurred Losses based only on the claims which were reported to Old Republic during the time this Agreement was in effect.

D. Termination

In the event Peabody gives its written notice of termination of this Agreement at any time prior to October 1, 1995, Peabody shall pay Old Republic a minimum fee upon termination, which shall be considered to be fully earned as of October 1, 1992, in accordance with the following schedule:

Notice of Termination Given:	Minimum Fee:
. Prior to October 1, 1993	$1,052,000
. After October 1, 1993 and Prior to October 1, 1994	$1,980,000
. After October 1, 1994 and Prior to October 1, 1995	$2,266,650

The amount of any fees for general administration and administrative legal costs, and any LAE, previously received by Old Republic from Peabody shall be credited against the minimum fee upon termination due Old Republic. Peabody shall have ten (10) days to deliver payment of the minimum fee upon termination after receiving Old Republic's invoice for the same. In the event payment is not received by Old Republic, Old Republic shall have the right to satisfy this default by collection of the amount due thru a call on any letter(s) of credit held by Old Republic on behalf of Peabody.

AGREEMENT ACKNOWLEDGED BY: DATE: Jan 28, 1993

Old Republic Insurance Company
Louis M. Wasnesky
Vice President

4-2c.-93

Peabody Holding Company, Inc.

EXHIBIT B

Peabody

PEABODY HOLDING COMPANY, INC.

701 Market Street, Suite 700
St. Louis, Missouri 63101-1826
(314) 342-3400

July 1, 1992

Mr. Robert H. Kennedy
Old Republic Insurance Company
414 West Pittsburgh
Greensburg, PA 15601

RE: FEDERAL BLACK LUNG CLAIMS ADMINISTRATION

Dear Bob:

I want to confirm Peabody's acceptance of Old Republic's proposal to administer Peabody Coal Company's and Eastern Associated Coal Corporation's self-insured federal black lung claims.

As a first step in this endeavor, we will institute transfer of the existing claim files as follows:

1. Awarded Claims in Pay Status
Peabody will make the July indemnity payment to the claimants and then send the completed file to Old Republic via overnight mail. Old Republic will then notify the Department of Labor and the claimant regarding future benefit payments and other administrative matters.

2. Open and Closed Claims
Peabody will prepare for shipment to Old Republic by truck all existing claims. In addition, we will prepare a listing of the claims by individual container. Peabody will forward subsequent correspondence received regarding these claims to Old Republic via express mail. Old Republic will notify the attorneys regarding their administration of these claims.

3. Actuarial Information
Peabody will provide a summary of its black lung data base to Actuarial Risk Services.

Bob, as I indicated, once the files are prepared for shipment, we will ship them via truck to Old Republic. They will be sent in care of John Wright, Vice President - Claims, Old Republic Insurance Company, 770 East Pittsburgh Street (rear), Greensburg, Pennsylvania 15601.

JUL 8 1992

I will be out of the office until July 13. If you have any questions in the meantime regarding the preparation of the files for transfer, please call Sandra Sanders at Peabody in St. Louis.

I look forward to working out the remaining details of transfer with you after my return.

Very truly yours,

E. J. Senn
Director - Risk Management

EJS:tsm

cc: Sandra Sanders

EXHIBIT C

Old Republic Companies

P.O. BOX 789 GREENSBURG, PENNSYLVANIA 15601

Phone: (412) 834-5000

May 13, 1992

Mr. E. J. Senn, Manager-Risk Management
Peabody Holding Company, Inc.
301 North Memorial Drive
P.O. Box 373
St. Louis, MO 63166

Re: Federal Black Lung Claims Administration

Dear Jay:

Per your request, we have reviewed Old Republic's possible taking over of the handling of Peabody's self-insured Federal O.D. claims. We are able to be this and our quote is as follows:

Assumption of Existing Self-Insured Claims Currently Administered by Peabody:

A. File conversion fee of $50 per open and closed claim estimated at $45,000 (900 x $50) assuming files are in reasonable condition and delivered to Greensburg. In the event additional conversion time required because of file condition, we would like an opportunity to discuss fee adjustment.

A023
600 open
300 closed

B. Incorporate these claims into the existing Peabody Service Agreement at the existing L.C.F. structure which is 1.07 of loss plus legal collected on a paid basis.

New & Re-opened Claims Received After July 1, 1992: — DOES NOT PERTAIN TO REOPENINGS FROM THE ORIGINAL 900 CLAIMS.

A. $100 per each new and re-opened claim.

A024

B. Annual maintenance charge of $100 per annum, per claim, until claim is denied and closed or until claim is placed in an awarded (payment) status. This fee will be charged at the onset of the anniversary month of the reported date.

C. Awarded (payment) status claims will be billed at an L.C.F. of 1.04 of loss plus legal collected on a paid basis.

NOTE: Annually, we would review the new claim charge and annual maintenance charge. However, we will agree to limit the increase to 10% per annum and any revised fee structure will apply prospectively only to claims received after that date.

pc: D. Prentiss
C. Wakefield
L. Peeples

Old Republic Insurance Company

Letter To Mr. E. J. Senn
Sheet No. 2
Date May 13, 1992

Payment of Benefits:

~~Currently Peabody pays ORINSCO a budgeted weekly amount of $415,000 for~~ their various insured ans self-insured programs. This budgeted amount should be adjusted to reflect the increased activity generated by the administration of these additional O.D. claims.

Miscellaneous:

ORINSCO will administer these claims in accordance with our existing procedures which have previously been approved by Peabody.

The basic claims administration requirements have contemplated supplying routine claims statistical information on magnetic tape. Any special actuarial projects or studies should be billed separately.

We contemplate that all files will be coded into the A.R.S. system by 12-15-92.

To the extent available, we would request that Peabody provide statistical data to us on the existing 900 claims via a magnetic tape. This would greatly reduce the time needed to code these claims into our database.

Should this quote be accepted you will need to contact either John Wright or myself as soon as possible so that we can arrange the logistics. This quote will remain valued until July 1, 1992 and may be revoked or modified anytime prior to acceptance. Acceptance shall take effect upon receipt of the written notice of acceptance of this quote from Peabody Holding Company by Old Republic.

Yours truly,

Robert H. Kennedy, ARM
Account Executive

RHK/ljh

EXHIBIT D

Old Republic Companies
P.O. BOX 789
GREENSBURG, PA 15601

July 15, 1987

Mr. [illegible], Vice President
Marsh & McLennan, Inc.
[illegible] Broadway
St. Louis, MO 63102

Re: Peabody Coal Company - Eastern Associated
Coal Company - Black Lung Program

Dear [illegible]:

As you are aware, on April 1, 1987 Old Republic assumed the claims handling responsibility for the referenced operation's federal O.D. claims. This was at the time of Sam's verbal request of Old Republic to do so in our meeting in your office on March 25, 1987. At that time Old Republic agreed to assume claims handling at a cost of no more than contained in the 1987 claims servicing proposal which had previously been accepted by Peabody Holding Company.

On March 30th and 31st Old Republic reviewed this operations files and subsequently assumed the following cases:

[illegible] Awarded Claims
[illegible] Claims Pending Workup for Payment
[illegible] Pending Claims
[illegible] Medical Benefit Only Claims

[illegible] Total Claims

When our review of these cases and our work involved in servicing these claims, this will confirm that our charge will be 5% of incurred claims including legal fees. This charge includes unallocated expense charges only; all allocated expense charges along with medical and indemnity benefits must be funded by Peabody Holding Company. All other obligations of Old Republic and Peabody are to be as contained in the 1987 self-insured service agreement. For the purposes of calculating Old Republic's charge of 5% of incurred claims, payments made prior to 4/1/87 will be deducted from the ultimate incurred value of the claims. A statement of charges due as of June 1987 including an advance loss fund is attached.

Old Republic Companies
P. O. BOX 789
GREENSBURG, PA 15601

Mr. H. R. Schaefler
2
July 15, 1987

If you have any questions or comments please let me know.

Very truly yours,

Louis M. Wasnesky
Vice President

LMW/ljh

Attachment
pc: R. H. Kennedy

Old Republic Companies

PENNSYLVANIA 15601

TWX 510 468 0107

Phone: (412) 834-5000

TRAFCO HOLDING COMPANY
BASIS: SELF-INSURED BILLING
LOSSES VALUED AS OF JUNE, 1987

OCCUPATIONAL DISEASE

Claims Via Old Republic	511,153
Paid Losses	25,558
Loss Contingency	400,000
Loss Fund	936,711
Total	
Previously Paid by Republic	-0-
Currently Due to Republic	936,711

c.rhk//east-sl.phc

Exhibit "2"

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Old Republic Insurance Company, Plaintiff, v. Patriot Coal Corporation, Defendant. Patriot Coal Corporation, Counter-plaintiff, v. Old Republic Insurance Company, Counter-defendant.	)	Civil Action No. 2:11-cv-01556-JFC Electronically Filed

DEFENDANT'S ANSWER, DEFENSES, AND COUNTERCLAIM

Defendant Patriot Coal Corporation ("Patriot"), by and through counsel, hereby files the following Answer, Defenses and Counterclaim to the Complaint filed by Old Republic Insurance Company ("ORINSCO"):

ANSWER

1. Defendant admits the allegations contained in paragraph 1 of the Complaint.

2. Defendant admits the allegations contained in paragraph 2 of the Complaint.

3. Defendant admits Peabody Holding Company, Inc. was a corporation formed under the laws of the State of New York. Patriot denies that it is the successor in interest to Peabody Holding Company, Inc.

4. Defendant admits the allegations contained in paragraph 4 of the Complaint.

5. Defendant admits the allegations contained in paragraph 5 of the Complaint.

6. Defendant incorporates herein as if set forth in full paragraphs 1-5 of this Answer.

7. Defendant lacks knowledge or information sufficient to form a belief as to whether ORINSCO and Peabody entered into an agreement on or about January 1, 1987.

8. Defendant admits that Traumatic Liability and Occupational Disease Liability claims, including claims under the Federal Black Lung self-insured program and various State workers' compensation programs, can result in awards to successful claimants that are paid over the course of the claimant's lifetime on a monthly basis. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 8 of the Complaint.

9. Defendant admits that ORINSCO and Peabody signed a CSA that is dated February 9, 1988 and that the CSA was subsequently modified by ORINSCO and Peabody pursuant to eight written amendments and admits that Exhibit A is a true and correct copy of the CSA together with Amendment Nos. 1 through 8. Defendant lacks knowledge or information sufficient to form a belief as to the truth of whether the CSA was signed on February 9, 1988, whether the CSA was modified by ORINSCO and Peabody pursuant to correspondence, or whether the CSA memorialized any prior agreement between ORINSCO and Peabody.

10. Defendant admits that ORINSCO handled claims for a portion of Peabody's Federal Black Lung self-insured program pursuant to the CSA. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 10 of the Complaint.

11. Defendant admits that ORINSCO provided investigation and claim adjustment services for Peabody pursuant to the CSA. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 11 of the Complaint.

12. Defendant admits that paragraph 12 purports to summarize portions of the CSA relating to the calculation of ORINSCO's fees.

13. Defendant admits the allegations in paragraph 13 of the Complaint.

14. Defendant admits the allegations contained in paragraph 14 of the Complaint.

15. Defendant admits that upon returning the administration of Peabody Coal Company's self-insured Federal Black Lung claim to ORINSCO, Peabody assigned to ORINSCO all existing self-insured Federal Black Lung claims being administered by Peabody prior to July 1, 1992. Defendant denies that Peabody assigned to ORINSCO all new and re-opened self-insured claims received after July 1, 1992. Defendant admits that ORINSCO administered self-insured Federal Black Lung claims pursuant to the portions of the fee schedule set forth in ORINSCO's May 13, 1992 quote that were incorporated into the CSA.

16. Defendant admits that ORINSCO and Peabody executed a sixth amendment to the CSA on or about April 20, 1993. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 16 of the Complaint.

17. Defendant admits that paragraph 17 accurately quotes an excerpt from Amendment No. 6 to the CSA.

18. Defendant admits the allegations contained in paragraph 18 of the Complaint.

19. Defendant denies the allegations in paragraph 19 of the Complaint. Answering further, Peabody Energy Corporation contributed portions of its eastern United States mining operations to Patriot, which was subsequently spun off from Peabody Energy Corporation.

20. Defendant denies that it accepted and assumed, without modification, all ongoing obligations and responsibilities of Peabody relating to Peabody's Agreements with ORINSCO for ORINSCO's administration and handling of Peabody's self-insured claim program. Patriot admits that it accepted and assumed certain obligations and responsibilities of Peabody pursuant to the CSA relating to the administration and handling of certain self-insured claims. Patriot denies the remaining allegations in paragraph 20 of the Complaint.

21. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint, as it is unaware of all of the obligations and responsibilities previously undertaken by Peabody relating to Peabody's Agreements with ORINSCO for ORINSCO's administration and handling of Peabody's self-insured claim programs. Answering further, Patriot has complied fully with all of its obligations pursuant to the CSA.

22. Defendant denies that it is the successor in interest of Peabody. Defendant admits that Patriot assumed responsibility for portions of certain of Peabody's contracts with ORINSCO relating to the administration and handling of certain of Peabody and Patriot's Traumatic Liability and Occupational Disease Liability claims, including certain claims under their Federal Black Lung self-insured program and various State Worker's Compensation programs. Defendant denies the remaining allegations in paragraph 22 of the Complaint.

23. Defendant admits the allegations in paragraph 23 of the Complaint.

24. Defendant admits that this action purports to seek payment for obligations incurred by Patriot with respect to various claims assigned to ORINSCO prior to September 1, 2011, exclusive of obligations under CSAII, but denies that ORINSCO is entitled to any of the relief sought in the Complaint.

25. Defendant incorporates herein as if set forth in full paragraphs 1-24 of this Answer.

26. Defendant admits that Amendment No. 6 to the CSA purports to set forth the schedule of fees to be paid to ORINSCO for its administration and handling of existing self-insured claims that had been previously administered by Peabody as well as new and re-opened claims received after July 1, 1992, but lacks knowledge or information sufficient to form a belief as to whether Amendment No. 6 to the CSA governed the relationship between Peabody and ORINSCO with regard to the administration and handling of those claims.

27. Defendant admits that paragraph 27 of the Complaint accurately quotes an excerpt from Amendment No. 6 to the CSA, with the exception of the bold type, which is not contained in Amendment No. 6 to the CSA.

28. Defendant admits that paragraph 28 of the Complaint purports to summarize a portion of Amendment No. 6 to the CSA.

29. Defendant admits that paragraph 29 of the Complaint purports to summarize a portion of Amendment No. 6 to the CSA.

30. Defendant admits that paragraph 30 accurately quotes an excerpt from the CSA.

31. Defendant lacks knowledge or information sufficient to form a belief as to whether ORINSCO ever sent a monthly invoice to Peabody inclusive of billing for 7% of paid losses, *i.e.*, indemnity paid and/or expenses paid on all self-insured Federal Black Lung claims, whether awarded or not, which were reassumed by ORINSCO from Peabody as of July 1, 1992, or whether Peabody ever paid such invoices in full. Defendant admits that ORINSCO sent monthly invoices to Patriot inclusive of billing for 7% of paid losses, *i.e.*, indemnity paid and/or expenses paid on certain self-insured Federal Black Lung claims, whether awarded or not, which purportedly were reassumed by ORINSCO from Peabody as of July 1, 1992, and that Patriot promptly paid such invoices in full.

32. Defendant lacks knowledge or information sufficient to form a belief as to whether ORINSCO ever sent to Peabody a monthly invoice inclusive of billing for 4% of paid losses, *i.e.*, indemnity paid and expenses paid only on claims for which indemnity was paid, for all new Peabody self-insured Federal Black Lung claims assigned to ORINSCO between July 1, 1992 and October 1, 1995, or whether Peabody ever paid such invoices in full. Defendant admits that ORINSCO sent monthly invoices to Patriot inclusive of billing for 4% of paid losses, *i.e.*, indemnity paid and expenses paid only on claims for which indemnity was paid, for certain new Peabody self-insured Federal Black Lung claims purportedly assigned to ORINSCO between July 1, 1992 and October 1, 1995, and that Patriot promptly paid such invoices in full.

33. Defendant denies that on or about September 1, 2011, it stopped paying fees owed to ORINSCO for the prior handling of Peabody's self-insured Federal Black Lung claims either reassumed by ORINSCO on July 1, 1992 or assigned to ORINSCO between July 1, 1992 and October 1, 1995.

34. Defendant admits that paragraph 34 of the Complaint purports to summarize a portion of Amendment No. 6 to the CSA.

35. Defendant denies the allegations in paragraph 35 of the Complaint.

36. Defendant admits that paragraph 36 of the Complaint accurately quotes an excerpt from the CSA, with the exception of the bold type, which is not contained in paragraph 15 of the CSA.

37. Defendant denies the allegations in paragraph 37 of the Complaint.

38. Defendant denies the allegations in paragraph 38 of the Complaint.

39. Defendant denies the allegations in paragraph 39 of the Complaint.

40. Defendant denies the allegations in paragraph 40 of the Complaint.

41. Defendant denies the allegations in paragraph 41 of the Complaint.

42. Defendant admits that it has not made payments to ORINSCO for the amounts alleged in paragraphs 37 through 41 of the Complaint, but denies that it has any past, present or future obligation to make such payments. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 42 of the Complaint.

43. Defendant denies the allegations in paragraph 43 of the Complaint.

44. Defendant incorporates herein as if set forth in full paragraphs 1-43 of this Answer.

45. Defendant denies that Peabody had a separate, pre-CSA self-insured program relating to Eastern Associated Coal Company mines, but admits that Peabody had a separate pre-CSA self-insured program relating to Eastern Associated Coal Corp. mines.

46. Defendant admits the allegations contained in paragraph 46 of the Complaint.

47. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the Complaint.

48. Defendant admits that ORINSCO sent a letter to Marsh & McLennan dated July 15, 1987, but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 48 of the Complaint.

49. Defendant admits that paragraph 49 of the Complaint accurately quotes an excerpt from the CSA, with the exception of the bold type, which is not contained in Exhibit B to the CSA.

50. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Complaint.

51. Defendant admits the allegations contained in paragraph 51 of the Complaint.

52. Defendant lacks knowledge or information sufficient to form a belief as to whether ORINSCO administered and handled the Eastern program claims pursuant to the terms of the CSA.

53. Defendant lacks knowledge or information sufficient to form a belief as to whether ORINSCO sent to Peabody a monthly invoice inclusive of billing for 5% of paid losses, i.e. indemnity paid and/or expenses paid on all self-insured Federal Black Lung claims, whether awarded or not, relating to the Eastern program that were reported to ORINSCO prior to the July 1, 1992 pricing unification noted herein at ¶51, pursuant to the terms of the CSA. Defendant admits that ORINSCO sent to Patriot a monthly invoice inclusive of billing for 5% of paid

losses, i.e. indemnity paid and/or expenses paid on all self-insured Federal Black Lung claims, whether awarded or not, relating to the Eastern program that purportedly were reported to ORINSCO prior to July 1, 1992. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 53 of the Complaint.

54. Defendant lacks knowledge or information sufficient to form a belief as to whether Peabody paid invoices received from ORINSCO. Defendant admits that Patriot promptly paid invoices received from ORINSCO relating to self-insured Federal Black Lung claims relating to the Eastern program that purportedly were reported to ORINSCO prior to July 1, 1992.

55. Defendant denies the allegations in paragraph 55 of the Complaint.

56. Defendant admits that it has not made payments to ORINSCO for the amounts alleged in paragraph 55 of the Complaint, but denies that it has any past, present or future obligation to make such payment. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 56 of the Complaint.

57. Defendant denies the allegations in paragraph 57 of the Complaint.

58. Defendant incorporates herein as if set forth in full paragraphs 1-57 of this Answer.

59. Defendant admits that on January 1, 2003, Peabody became retroactively self-insured for certain Federal Black Lung exposures which had been previously and directly insured by ORINSCO under numerous Workers' Compensation and Excess Workers' Compensation insurance policies and agreements with Peabody. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 59 of the Complaint.

60. Defendant lacks knowledge or information sufficient to form a belief as to the allegations in paragraph 60 of the Complaint.

61. Defendant lacks knowledge or information sufficient to form a belief as to the allegations in paragraph 61 of the Complaint.

62. Defendant lacks knowledge or information sufficient to form a belief as to the allegations in paragraph 62 of the Complaint.

63. Defendant lacks knowledge or information sufficient to form a belief as to the allegations in paragraph 63 of the Complaint.

64. Defendant lacks knowledge or information sufficient to form a belief as to whether, upon Peabody's obtaining retroactive self-insured status on January 1, 2003, ORINSCO and Peabody contracted, as demonstrated by the course of performance, to abide by the terms of the previous policies and agreements to administer said body of claims at the same 5% of paid losses that Peabody had been paying ORINSCO to administer the claims when such claims were insured by ORINSCO. Defendant denies that ORINSCO and Patriot contracted, as demonstrated by the course of performance, to abide by the terms of the previous policies and agreements to administer said body of claims at the same 5% of paid losses that Peabody had been paying ORINSCO to administer the claims when such claims were insured by ORINSCO. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 64 of the Complaint.

65. Defendant lacks knowledge or information sufficient to form a belief as to whether, as demonstrated by the course of performance by ORINSCO and Peabody, ORINSCO otherwise

administered and handled the retroactively self-insured program claims consistent with the terms of the CSA. Defendant denies that, as demonstrated by the course of performance by ORINSCO and Patriot, ORINSCO otherwise administered and handled the retroactively self-insured program claims consistent with the terms of the CSA.

66. Defendant lacks knowledge or information sufficient to form a belief as to whether, since January 1, 2003, pursuant to the contract between Peabody and ORINSCO, and as demonstrated by the course of performance by ORINSCO and Peabody, ORINSCO sent to Peabody a monthly invoice billing for 5% of paid losses relating to the retroactive self-insured claims. Defendant admits that ORINSCO sent to Patriot a monthly invoice billing for 5% of paid losses relating to certain retroactive self-insured claims, but denies that such invoices were sent pursuant to a contract between Patriot and ORINSCO.

67. Defendant lacks knowledge or information sufficient to form a belief as to whether, since January 1, 2003, Peabody promptly paid the monthly invoices submitted by ORINSCO relating to paid losses for the retroactive self-insured claims consistent with the terms of the CSA. Defendant admits that Patriot promptly paid the monthly invoices submitted by ORINSCO relating to paid losses for certain retroactive self-insured claims, but denies that the payment of such invoices was pursuant to a contract between Patriot and ORINSCO.

68. Defendant denies the allegations in paragraph 68 of the Complaint.

69. Defendant admits the allegations in paragraph 69 of the Complaint.

70. Defendant denies the allegations in paragraph 70 of the Complaint.

71. Defendant denies the allegations in paragraph 71 of the Complaint.

72. Defendant denies the allegations in paragraph 72 of the Complaint.

73. Defendant denies the allegations in paragraph 73 of the Complaint.

74. Defendant admits that it has not made payments to ORINSCO for the amounts alleged in paragraphs 68, 71 and 73 of the Complaint, but denies that it has any past, present or future obligation to make such payments. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 74 of the Complaint.

75. Defendant denies the allegations in paragraph 75 of the Complaint.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. Old Republic's claims, or parts thereof, are barred by the doctrines of waiver and estoppel.

3. Old Republic's claims, or parts thereof, are barred by the doctrine of accord and satisfaction.

COUNTERCLAIM

For its Counterclaim against Plaintiff Old Republic Insurance Company ("ORINSCO"), Defendant Patriot Coal Corporation ("Patriot") states as follows:

PARTIES

1. Patriot is a Delaware corporation with its principal place of business in St. Louis, Missouri.

2. ORINSCO is a Pennsylvania corporation with its principal place of business in Greensburg, Pennsylvania.

JURISDICTION AND VENUE

3. Jurisdiction is conferred pursuant to 28 U.S.C. §1332 as the parties have diverse citizenship and the amount in controversy exceeds $75,000.00 exclusive of interest and costs.

4. Venue is properly located in the Western District of Pennsylvania, as a substantial part of the events giving rise to this claim took place in this District, 28 U.S.C. § 1391.

THE CLAIMS SERVICE AGREEMENT

5. On or about February 9, 1988, ORINSCO entered into a written Claims Service Agreement (the "CSA") with Peabody Holding Company, Inc. ("Peabody"). Pursuant to the CSA, ORINSCO undertook the claims handling responsibility for Peabody's divisions, subsidiaries and affiliates with respect to certain of their Traumatic Liability and Occupational Disease Liability claims, including claims under their Federal Black Lung self-insured program and various State workers' compensation programs assigned to it by Peabody between January 1, 1987 and October 1, 1995 (collectively, the "Claims").

6. Through October 1, 1995, ORINSCO and Peabody executed eight written amendments to the CSA. A true and correct copy of the CSA, together with Amendment Nos. 1 through 8, is attached as Exhibit A to ORINSCO's Complaint.

7. Among ORINSCO's obligations under the CSA were to pay, on behalf of Peabody, compensation and medical benefits to successful claimants and "Direct Loss Administration Expenses," which include "attorneys fees and expenses [and] costs for outside

services directly related to the investigation, negotiation, settlement or defense of any claim . . . ." (CSA at p. 1).

8. The CSA obligated Peabody to pay "Loss Administration Expenses" to ORINSCO, which the CSA defines to mean "the cost of processing claims incurred by Old Republic which are not Direct Loss Adjustment Expenses . . . ." (CSA at p. 2). The CSA specifies that "Peabody shall pay Old Republic only the rates established in Exhibit B for Loss Administration Expenses regardless of whatever such actual expenses may be." (CSA at p. 2).

9. Paragraph 8 of the CSA specifies that Peabody and ORINSCO "shall establish one or more loss funds in an amount mutually agreed to by Peabody and Old Republic" and that ORINSCO "shall use the loss funds to pay Paid Losses and Loss Administration Expenses." (CSA at ¶8). The CSA defines "Paid Losses" to include indemnity and medical benefits and "Direct Loss Administration Expenses that have been paid by Old Republic." (CSA at p. 2).

10. Paragraph 8 of the CSA also specifies that "[i]f, in Peabody's opinion, the loss fund becomes overfunded, Peabody shall be entitled to reimbursement from the loss fund to the extent of such overfunding . . . ." (CSA at ¶8).

11. Following a spin-off from Peabody Energy Corporation in 2007, Patriot assumed certain obligations under the CSA from Peabody. ORINSCO continued to administer certain Claims for Patriot pursuant to the CSA and other agreements and policies until September 1, 2011, at which time Patriot transferred responsibility for administering all self-insured Federal Black Lung Claims from ORINSCO to another entity.

THE LOSS FUND

12. In 1992, Peabody and ORINSCO established a loss fund in connection with the Claims administered by ORINSCO pursuant to the CSA. Subsequent to the expiration of the CSA, Peabody and ORINSCO entered into subsequent agreements and policies that governed the administration of additional Claims assigned to ORINSCO after October 1, 1995. The loss fund was used by ORINSCO to pay Paid Losses and Loss Administration Expenses for claims administered pursuant to the CSA, and claims expenses, indemnity and medical payments to successful claimants, and compensation to ORINSCO for the administration of Claims assigned to ORINSCO after October 1, 1995 (collectively, "Paid Losses and Loss Administration Expenses").

13. Through September 2011, Peabody, and then Patriot, made weekly payments to ORINSCO to fund the loss fund in an amount that Peabody, and then Patriot, estimated would cover Paid Losses and Loss Administration Expenses. Each month, ORINSCO reconciled the amount of Paid Losses and Loss Administration Expenses incurred each month against the amount of funds in the loss fund, and refunded any surplus in the loss fund to Peabody, and then Patriot.

14. On October 19, 2011, ORINSCO sent a memorandum, titled "Patriot Coal Company September 2011 Variable Charges" (the "Variable Charge Memorandum"), showing that through the end of September 2011, the loss fund contained $900,000. The Variable Charge Memorandum showed that ORINSCO was withholding $276,840 from the loss fund to cover Paid Losses, Loss Administration Expenses, and other charges with which Patriot agreed, that had been incurred by ORINSCO through September 2011. Patriot did not dispute that

ORINSCO was entitled to withhold $276,840 for Paid Losses, Loss Administration Expenses, and for other charges incurred through September 2011.

15. The Variable Charge Memorandum also stated that ORINSCO "will no longer require a weekly funding" and that it would "hold a monthly loss fund of $100,000" for certain traumatic and state occupational disease Claims that Patriot agreed that ORINSCO would continue to administer for Patriot after the termination. Patriot does not dispute that ORINSCO is presently entitled to hold a monthly loss fund of $100,000 for the administration of those Claims.

THE UNAUTHORIZED "TERMINATION FEE"

16. The Variable Charge Memorandum also stated that "[p]lease note the inclusion of our fee as a result of Patriot terminating the Federal FBL claims servicing agreement . . ." and included a charge of $1,499,408 for a "Fed. O.D. Self-Insured Termination Fee."

17. The CSA does not authorize ORINSCO to collect a "Termination Fee," nor does the CSA authorize ORINSCO to use the loss fund for the payment of anything other than Paid Losses and Loss Administration Expenses. ORINSCO's unauthorized "Termination Fee" does not constitute "Paid Losses," nor does it constitute "Loss Administration Expenses."

18. Patriot immediately objected to the "Fed. O.D. Self-Insured Termination Fee" and sent an adjusted statement to ORINSCO demanding that ORINSCO refund the remaining $523,160 in the loss fund. ORINSCO has refused to refund the remaining $523,160 to Patriot.

19. Patriot and ORINSCO have not entered into any other express or implied contract, agreement or arrangement that entitles ORINSCO to charge a "Termination Fee," or

that authorizes ORINSCO to withhold funds from the loss fund for any purpose other than the payment of Paid Losses and Loss Administration Expenses in connection with Claims.

BREACH OF CONTRACT

20. Patriot repeats and realleges all of the allegations in paragraphs 1-19 of this Counterclaim as if fully set forth herein.

21. Patriot has performed all of its obligations under the CSA and has fully compensated ORINSCO for administering the Claims assigned to it pursuant to the CSA.

22. The CSA expressly provides that ORINSCO only "shall use the loss funds to pay Paid Losses and Loss Administration Expenses." (CSA at ¶8). Without Patriot's express or implied consent, ORINSCO is withholding funds from the loss fund to pay an unauthorized "Termination Fee." ORINSCO's unauthorized use of the loss fund to pay an unauthorized "Termination Fee" constitutes a breach of the CSA.

23. The CSA expressly provides that if "[i]f, in Peabody's opinion, the loss fund becomes overfunded, Peabody shall be entitled to reimbursement from the loss fund to the extent of such overfunding . . . ." (CSA at ¶8). As set forth in the Variable Charge Memorandum, Patriot and ORINSCO have agreed that the proper amount of the loss fund for future payments of Paid Losses and Loss Administration Expenses is currently $100,000. The loss fund currently contains a surplus of $523,160, and Patriot has demanded reimbursement for the surplus amounts in the loss fund. ORINSCO's refusal to refund surplus funds due and owing to Patriot from the loss fund following a determination by Patriot that the loss fund is overfunded constitutes a breach of the CSA.

24. As a result of the foregoing, ORINSCO has breached its obligations under the CSA, thereby causing Patriot to sustain damages in excess of $75,000, exclusive of interest and costs.

WHEREFORE, Patriot demands judgment against ORINSCO dismissing ORINSCO's Complaint, together with a judgment on Patriot's Counterclaim, and such other and further relief as this Court deems just and proper.

Respectfully submitted,

By: /s/ Daniel C. Garfinkel

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Motions for admission *pro hac vice* to be filed

Exhibit "3"

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Old Republic Insurance Company, Plaintiff, v. Patriot Coal Corporation, Defendant.	Civil Action No. 11-1556 Judge Joy Flowers Conti Electronically Filed

ANSWER AND AFFIRMATIVE DEFENSES TO DEFENDANT PATRIOT COAL CORPORATION'S COUNTERCLAIM

Plaintiff Old Republic Insurance Company ("ORINSCO"), by and through its counsel, files the following Answer to Defendant Patriot Coal Corporation's Counterclaim (Document No. 7) and states:

ANSWER TO COUNTERCLAIM

PARTIES

1. Upon information and belief, admitted.

2. Admitted.

JURISDICTION AND VENUE

3. Admitted.

4. Admitted.

THE CLAIMS SERVICE AGREEMENT

5. Admitted.

6. Admitted.

7. ORINSCO admits that paragraph 7 of Patriot's Counterclaim purports to paraphrase, summarize or characterize portions of the February 9, 1988 Claims Service

Agreement ("CSA"). ORINSCO denies that Paragraph 7 of Patriot's Counterclaim accurately states the definition of "Direct Loss Adjustment Expenses" as that term is defined in the CSA. Further, to the extent Patriot attempts to paraphrase, summarize or characterize the CSA, ORINSCO denies that it accurately paraphrases, summarizes or characterizes the CSA and agreement between ORINSCO and Patriot. The CSA is a written document which speaks for itself.

8. ORINSCO admits that Paragraph 8 of Patriot's Counterclaim accurately quotes portions of the definition of "Loss Administration Expense" as that term is defined in the CSA. Further, ORINSCO admits that paragraph 8 of Patriot's Counterclaim otherwise purports to paraphrase, summarize or characterize portions of the CSA. To the extent Patriot attempts to paraphrase, summarize or characterize the CSA, ORINSCO denies that it accurately paraphrases, summarizes or characterizes the CSA and agreement between ORINSCO and Patriot. The CSA is a written document which speaks for itself.

9. ORINSCO admits that paragraph 9 of Patriot's Counterclaim accurately quotes portions of the CSA. Further, ORINSCO admits that paragraph 9 of Patriot's Counterclaim otherwise purports to paraphrase, summarize or characterize portions of the CSA. To the extent Patriot attempts to paraphrase, summarize or characterize the CSA, ORINSCO denies that Patriot accurately paraphrases, summarizes or characterizes the CSA and agreement between ORINSCO and Patriot. The CSA is a written document which speaks for itself.

10. ORINSCO admits that Paragraph 10 of Patriot's Counterclaim accurately quotes a portion of Paragraph 8 of the CSA. To the extent Patriot attempts to paraphrase, summarize or characterize the CSA, ORINSCO denies that it accurately paraphrases, summarizes or

characterizes the CSA and agreement between ORINSCO and Patriot. The CSA is a written document which speaks for itself.

11. ORINSCO denies that Patriot assumed only certain obligations under the CSA from Peabody in 2007. To the contrary, upon information and belief, as a result of its spin-off from Peabody, Patriot accepted and assumed, without modification and during the course of performance thereafter, all ongoing obligations and responsibilities of Peabody relating to Peabody's Agreements with ORINSCO for ORINSCO's administration and handling of Peabody's self-insured claim programs.

THE LOSS FUND

12. Admitted.

13. ORINSCO admits that until September 2011, Peabody and then Patriot have made weekly payments to ORINSCO to fund the loss fund. ORINSCO denies that the amount of the loss fund was determined solely by Peabody or Patriot.

14. ORINSCO admits that it sent to Patriot a Memorandum dated October 19, 2011 which summarized the September 2011 Variable Charges owed to ORINSCO by Patriot. It is denied that ORINSCO was only owed $276,840 for Paid Losses, Loss Administration Expenses and other charges. To the contrary, at the time the October 19, 2011 Memorandum was sent to Patriot, ORINSCO was owed an additional $1,499,408.00 in Loss Administration Expenses pursuant to the CSA as demanded and set forth more fully in ORINSCO's Complaint in this action. By way of further response, ORINSCO incorporates herein by reference its Complaint (Document No. 1) filed in this action.

15. ORINSCO admits that paragraph 15 of Patriot's Counterclaim accurately quotes a portion of the October 19, 2011 Memorandum. To the extent Patriot attempts to paraphrase,

summarize or characterize the October 19, 2011 Memorandum, ORINSCO denies that it accurately paraphrases, summarizes or characterizes the October 19, 2011 Memorandum and agreement between ORINSCO and Patriot. The October 19, 2011 Memorandum is a written document which speaks for itself. ORINSCO admits that as of October 19, 2011, it was entitled to hold a monthly loss fund of at least $100,000.00.

THE UNAUTHORIZED "TERMINATION FEE"

16. ORINSCO denies that paragraph 16 of Patriot's Counterclaim accurately quotes the October 19, 2011 Memorandum. ORINSCO further denies that it included a purported unauthorized "Termination Fee" in the October 19, 2011 Memorandum. To the contrary, at the time the October 19, 2011 Memorandum was sent to Patriot, ORINSCO was owed an additional $1,499,408.00 in Loss Administration Expenses pursuant to the CSA as demanded and set forth more fully in ORINSCO's Complaint in this action. The "Fed. O.D. Self-Insured Termination Fee" as set forth in the October 19, 2011 Memorandum included only Loss Administration Expenses which ORINSCO was owed under the CSA. By way of further response, ORINSCO incorporates herein by reference its Complaint (Document No. 1) filed in this action.

17. ORINSCO denies that the "Fed. O.D. Self-Insured Termination Fee" as set forth in the October 19, 2011 Memorandum does not constitute "Loss Administration Expenses". To the contrary, at the time the October 19, 2011 Memorandum was sent to Patriot, ORINSCO was owed an additional $1,499,408.00 in Loss Administration Expenses pursuant to the CSA as demanded and set forth more fully in ORINSCO's Complaint in this action. The "Fed. O.D. Self-Insured Termination Fee" as set forth in the October 19, 2011 Memorandum included only Loss Administration Expenses which ORINSCO was owed under the CSA. By way of further

response, ORINSCO incorporates herein by reference its Complaint (Document No. 1) filed in this action.

18. ORINSCO admits that by correspondence dated October 27, 2011, Patriot advised ORINSCO that it disputed the charge of $1,499,408.00 and advised ORINSCO that Patriot was due $523,160.00. ORINSCO further admits that it refused to pay Patriot the $523,160.00 as it was being held by ORINSCO as a setoff against the $1,499,408.00 in Loss Administration Expenses ORINSCO was owed by Patriot pursuant to the CSA. ORINSCO has demanded and set forth more fully its claims for the unpaid Loss Administration Expenses in its Complaint in this action. By way of further response, ORINSCO incorporates herein by reference its Complaint (Document No. 1) filed in this action.

19. ORINSCO admits that there is no express or implied contract requiring Patriot to pay a *per se* "Termination Fee", however, the CSA explicitly provides ORINSCO the right to withhold and/or collect the full amount of Loss Administration Expenses incurred with respect to its handling and administration of claims on behalf of Peabody and then Patriot. The unpaid Loss Administration Expenses are the precise damages ORINSCO seeks to collect in this action. The funds withheld by ORINSCO include only Loss Administration Expenses which ORINSCO was owed under the CSA. ORINSCO is entitled to withhold such funds pursuant to the CSA as well as by right of setoff. By way of further response, ORINSCO incorporates herein by reference its Complaint (Document No. 1) filed in this action.

BREACH OF CONTRACT

20. ORINSCO incorporates herein as if set forth in full Paragraphs 1-19 of this Answer and Affirmative Defenses to Counterclaim and ORINSCO's Complaint (Document No. 1) filed in this Action.

21. ORINSCO specifically denies that Patriot has performed all of its obligations under the CSA or that Patriot has fully compensated ORINSCO for its handling and administration of claims assigned to it by Peabody and/or Patriot pursuant to the CSA. By way of further response, ORINSCO incorporates herein by reference its Complaint (Document No. 1) filed in this action.

22. ORINSCO admits that paragraph 22 of Patriot's Counterclaim purports to paraphrase, summarize or characterize portions of the CSA. ORINSCO denies that Patriot accurately paraphrases, summarizes or characterizes the CSA and agreement between ORINSCO and Patriot. The CSA is a written document which speaks for itself. Further, ORINSCO denies that it is withholding funds from the loss fund to pay an unauthorized "Termination Fee" or that it has breached the CSA. To the contrary, ORINSCO has only withheld amounts owed to it for Loss Administration Expenses pursuant to the CSA as demanded and set forth more fully in ORINSCO's Complaint in this action. By way of further response, ORINSCO incorporates herein by reference its Complaint (Document No. 1) filed in this action.

23. ORINSCO admits that paragraph 23 of Patriot's Counterclaim accurately quotes a portion of Section 8 of the CSA. However, to the extent paragraph 23 of Patriot's Counterclaim purports to paraphrase, summarize or characterize the CSA, ORINSCO denies that Patriot accurately paraphrases, summarizes or characterizes the CSA and agreement between ORINSCO and Patriot. ORINSCO denies that the loss fund is overfunded. To the contrary, the amounts withheld by ORINSCO are amounts owed to it for Loss Administration Expenses pursuant to the CSA as demanded and set forth more fully in ORINSCO's Complaint in this action. By way of further response, ORINSCO incorporates herein by reference its Complaint (Document No. 1) filed in this action. ORINSCO denies that it has breached the CSA.

24. ORINSCO is advised and avers that the averments contained in Paragraph 24 of Patriot's Counterclaim are conclusions of law to which no response is required. To the extent a response is required, ORINSCO denies liability in any sum or manner whatsoever.

WHEREFORE Old Republic Insurance Company demands judgment in its favor and against Patriot Coal Corporation.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

ORINSCO asserts a right of setoff for any monies owed to it by Patriot.

SECOND DEFENSE

Patriot fails to state a claim upon which relief may be granted.

WHEREFORE Old Republic Insurance Company demands judgment in its favor and against Patriot Coal Corporation.

Respectfully submitted,

GROGAN GRAFFAM, P.C.

/s/Holly M. Whalen
DENNIS A. WATSON, ESQUIRE
Pa. I.D. No. 25500
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Pa. I.D. No. 84878
Four Gateway Center, 12th Floor
Pittsburgh, PA 15222
(412) 553-6300

Attorneys for Plaintiff
Old Republic Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer to Counterclaim as served via this Court's ECF system to all counsel of record, including the following, on the 5th day of March 2012:

Matthew F. Burger, Esquire
Daniel C. Garfinkel
Buchanan Ingersoll & Rooney, PC
One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, PA 15219

Jill B. Berkeley, Esquire
Seth D. Lamden, Esquire
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street, Suite 1700
Chicago, IL 60602-3801

Attorneys for Defendant Patriot Coal Corporation

/s/Holly M. Whalen

Exhibit "4"

OLD REPUBLIC INSURANCE COMPANY
133 Oakland Avenue, P.O. Box 789, Greensburg, PA 15601
724-834-5000

October 14, 2011

Jill B. Berkely, Esquire
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street
Chicago, Illinois 60602-3801
jberkeley@ngelaw.com

Re: ORIC FBL Claims Servicing Fees for Peabody/Patriot Coal Self-Insured Programs

Dear Ms. Berkely:

Your July 21, 2011 reply to the July 6, 2011 letter of Mr. Robert D. Lloyd at Old Republic (ORIC) on this matter has been referred to my attention. Consistent with your reply, Patriot has not continued payment to ORIC since control over the above referenced claims files was transferred to US&C effective September 1, 2011. Accordingly, please find our demand of $1,499,408 enclosed and detailed below.

While we disagree with your general contention that "[nothing] set forth in Exhibit B to the CSAII [has] any applicability to claims made after September 30, 2000," (p. 3), the reality is that the bulk of ORIC's claim will arise from the early (i.e. pre-September 30, 2000) years of claims occurring under the Claim Service Agreements involved here, and the first of them in particular anyway.

Indeed, ORIC's position is that under any and all agreements involved here, we are ultimately entitled to be paid for handling Peabody/Patriot's self insured claims by applying the agreed upon billing factors for any particular claim year or period against the incurred loss value of those claims occurring in that year or period. Even per the post September 30, 2000 Schedules that you cite, that is the fundamental right and term of payment, "without offset for prior per annum charges" separately paid.

Notwithstanding the same, however, and to Peabody's bargained for, cash flow benefit, it has been the 20+ year practice under the CSA and CSAII to collect payment only by applying the agreed upon billing factors for those pre-September 30, 2000 years (and after) against a monthly updated paid loss or modified incurred loss basis, rather than against the actual incurred loss basis itself.

Consequently, what ORIC simply seeks in the bulk of its claim is to capture this fee differential for those early years between what we've been collecting all this time under the CSAs versus what we are ultimately entitled to from applying the agreed upon billing factors to the ultimate incurred loss values on those claims instead.

Indeed, and again, under whatever agreement is involved, it has been the consistent contractual right to be ultimately paid by applying the agreed upon factors against this latter basis.

Therefore, ORIC demands full payment of the same, whether, per the CSA and CSAII provisions previously cited by Mr. Lloyd, this payment is to be made by continuing a payment stream to us at the agreed upon factor/rate until all claims are actually paid out to their final incurred value by us or by someone else, or whether by payment to us of the equivalent lump sum value thereof of $1,499,408, as was noted above.

* * * * * *

As is detailed below, the history of the claims handling relationship between ORIC and Peabody for their self-insured FBL claims is long and varied. While the effort is made to be succinct in the description, that very complexity and history necessitates considerable explanation of long standing billing practices and the calculations involved. Under the circumstances, and in light of our long, amicable history of cooperation on these matters, ORIC freely invites a larger, informal discussion of the history that follows.

For Peabody self-insured FBL claims assumed July 1, 1992

As you may know, ORIC began handling the Traumatic and OD claims for a substantial portion of Peabody's self-insured program starting and pursuant to the January 1, 1987 effective date of the CSA. Thereafter, starting January 1, 1988, Peabody took back the claims handling responsibility for the FBL claims alone in-house, only to return the responsibility to ORIC effective July 1, 1992, pursuant to a sixth Amendment to the CSA that updated the billing factors on a going forward basis under a new Exhibit B as follows:

II. Servicing of Claims – Loss Administration Expense [LAE]

A. Assumption of existing self-insured claims current administered by Peabody.

1. The LAE for servicing this class of Federal Occupational Disease claims will be **7% of incurred losses** less paid losses thru [sic] July 1, 1992 **collected on a paid basis.**

B. New and re-opened claims received after July 1, 1992.

1. The LAE for servicing this class of Federal Occupational Disease claims will be **4% of incurred losses collected on a paid basis.** [emphasis added].

In practice then, and per Exhibit 1 hereto, this agreement reflected Peabody's acceptance of ORIC's underlying proposal to charge a flat LCF of 1.07 of loss plus legal collected on a paid basis for all assumed (pending or awarded) pre-7/92 claims and to alternately charge an LCF of 1.04 of loss plus legal collected on a paid basis, though only as claims were awarded from claims received post 7/92.

Consequently, and again, for nearly 20 years, it has been the intended, consistent and unquestioned practice to send Peabody/Patriot a monthly invoice billing for 7% of paid losses—i.e. indemnity paid, and/or expenses paid, whether on awarded claims or not—on all claims re-assumed by ORIC from Peabody as of July 1, 1992. Likewise, for nearly 20 years, it has been the intended, consistent and unquestioned practice to send Peabody/Patriot a monthly invoice billing for 4% of paid losses—i.e. indemnity paid, but only expenses paid on claims for which that indemnity was paid[1]—on all Peabody self-insured FBL claims received subsequent to July 1, 1992.

In either case, however, and regardless how collected, the ultimate right remains to be paid on the incurred basis as excerpted above. Indeed, and as Mr. Lloyd further noted, Section 15 of the CSA further reinforces the point that a termination of the claims handling relationship would result in the Loss Administration Expense [LAE] being due "on the ultimate value of Incurred Losses based on the claims which were reported to the Old Republic during the time [the] Agreement was in effect," regardless any LAE previously due or paid.

In turn then, as of July, 2011, per Exhibit 2 hereto, ORIC has collected some $789,953 in fees by applying the contractual 7% factor against paid losses of $11,285,047 made on claims that were assumed for handling by ORIC from Peabody as of July 1, 1992.[2] However, based upon paid losses to date, outstanding indemnity reserves for the awarded claims, and reasonable reserves for indemnity on the few remaining pending claims from this period, these claims have an ultimate, incurred value of $16,409,762.[3] Consequently, applying the contractual 7% factor to

[1] Note that the pre 7/92 practice of also assessing the fee against expenses on claims that were successfully defended was supplanted in practice by a nominal, annual "per claim" fee arrangement for the post 7/92 period.

[2] The $11,285,047 figure starts from zero as of July 1, 1992, so as to exclude losses paid by Peabody on these claims prior to July 1, 1992, in compliance with Section II(A)(1) of Exhibit B to the sixth Amendment to the CSA cited above.

Note also that Exhibits 2 and all those thereafter are simply excerpted copies of recent monthly invoices sent to Patriot; subsequent loss payments made through August 30, 2011 will change the final numbers slightly, but the point remains that these are substantially the same monthly invoices that have been paid for nearly 20 years.

[3] Note that the contractual definition of "Incurred Losses" under the applicable CSA includes "reserves for unpaid losses." In this regard, outstanding indemnity reserves for awarded claims are based on established award rates as applied against standard life expectancy tables. Reserves for indemnity on pending claims are discussed subsequently with respect to the post-7/92 years where more and substantial claims are pending. Note also that all calculations of incurred loss used throughout this reply include standard 4% discounting. (Cont'd on next page...)

that basis means that $1,148,683 in total fees at their present value would have been collected over time for this period. Therefore, ORIC makes as part of its demand the $358,730 difference between the $789,953 collected and $1,148,683 due now.

For Peabody self-insured FBL claims received after July 1, 1992 through October 1, 1995

Similarly, per Exhibit 3, under the first column tracking claims received after July 1, 1992 through the October 1, 1995 effective date of the CSAII, ORIC has collected some $177,108 in fees by applying the contractual 4% factor against paid losses of $4,427,697 made on awarded Peabody self-insured FBL claims received by ORIC in that period.[4] However, based upon their established award rates and their paid losses to date, these claims have an ultimate, incurred value of $6,869,374, assuming the claims will be paid out to their conclusion, per standard life expectancy tables. Consequently, applying the contractual 4% factor to that basis means that $274,775 in total fees at their present value would have been collected over time for this period. Therefore, ORIC makes as part of its demand this additional difference of $97,667 between the $177,108 collected and the $274,775 due now for this subsequent period.

In addition to the claims awarded in this period, however, ORIC is handling a number of claims that are still in pending status from that period for which continuing payment or the present value thereof is likewise due to us as well. Again, per the contractual definition of "Incurred Losses," per Section 15 of the CSA, and per provisions of the CSA previously cited in Mr. Lloyd's letter of July 6, 2011, Incurred Losses "shall mean the total of all losses . . . actually paid"—inclusive of "reserves for unpaid losses"--on claims that were reported to ORIC during the time the CSA

(Cont'd from previous page...)

Note also that the definition of "Incurred Losses" under the applicable CSA likewise includes "Direct Loss Adjustment Expenses"—i.e. expenses "directly related to the investigation, negotiation settlement or defense of any claim." (Emphasis added). Again, therefore, paid claim expenses (i.e. paid loss) paid by ORIC on un-awarded claims from this pre 7/92 period are counted in this Incurred Loss valuation; the valuation does not, however, include any expense reserve for pending claims transferred to US&C, nor does any other "Incurred Loss" valuation stated in any exhibit to this letter. Likewise, ORIC does not currently seek to assess its fee against any such value for this period. Similarly, while this definition of "Incurred Losses" would continue to permit the assessment of this fee against any and all claims expenses, that has not been the practice post 7/92, per note 1.

[4] Note that the 4% factor is applied only to loss and expense paid on awarded claims, as represented by the $4,427,697 figure, rather than to the total "paid loss" figure of $8,419,068 appearing directly above it on Exhibit 3; the latter figure includes expenses on claims that were successfully defended. Again, however, and notwithstanding the CSA's definition of "Incurred Losses" to include expenses paid on any claims (per the second paragraph of note 3), the practice was that post 7/92 "Incurred Losses" would include the percentage fee applied against paid indemnity and paid expenses on any claim to the extent that claim was awarded, whereas pre 7/92, "Incurred Losses" would include the percentage fee applied against paid indemnity and expense paid on any claim, whether awarded or not (See also, again, Exhibit 1 and note 1 hereto).

was in effect, whether paid by us, by Peabody, or their designated representative if ORIC is/was relieved of future claims handling responsibilities.

For such pending claims then, ORIC determines a reduced reserve by applying a statistical, historical win ratio rate for claims in the same adjudicative status against the value of a full award as determined by standard actuarial tables and the claimants' applicable award rate. In turn, the cumulate value of such reserves should fairly approximate the ultimate Incurred Loss value of awarded claims from the body of such pending claims attributable to this period[5]

In turn then, to determine the cumulative value of such reserves on said pending claims from the billing excerpt (Exhibit 3) provided, you need to first exclude the $3,991,371 value of expenses paid on successfully defended claims[6] from the $13,806,749 "incurred loss" value appearing at the top of the column for this same time period. In turn, the difference between this $9,815,378 remainder and the $6,869,374 noted as the incurred loss for "awarded incurred claims" represents the cumulative value of such reserves on said pending claims for claims received in the post July 1, 1992 period through the October 1, 1995 effective date of the CSAII. Applying the 4% factor then to that $2,946,004 difference yields an additional amount due of $117,840; therefore, ORIC makes the same a part of its additional demand for this period.

Finally for this time period, the basic 4% fee factor would also be applied to additional expenses to be incurred while these pending claims moved toward decision. Using a very conservative 5% expense ratio for OD claim awards, the $2,946,004 in statistically determined awards on these pending claims would yield a remaining expense of $147,300. In turn then, applying the 4% factor to that $147,300 yields an additional amount due of $5,892; therefore, ORIC makes the same a part of its additional demand for this period.

For Peabody self-insured FBL claims occurring October 1, 1995 through termination

Beginning October 1, 1995 onward, ORIC and Peabody entered into the new CSAII that changed the billing framework to allow collection of the Federal OD claims handling fee/factor up front upon award to the incurred (vs. paid) loss value of that award, but, the key point remains, per Article 1 and Exhibit B to the CSAII, that the factor is to be applied to "incurred losses"[7] on all claim Exposures occurring during the contractual period as follows:

[5] However, and in general, the smaller the number of pending claims, the greater the likelihood that the win ratio reserving method will actually understate the ultimate exposure. In other words, for instance, the impact of one actual loss can readily overwhelm the cumulative reserves set up for a smaller body of claims reserved at a low ratio, per their adjudicative status.

[6] Again, per Footnote 4, the $3,991,371 value is determined as the difference between the $8,419,068 figure for total "paid loss" and the $4,427,697 figure for paid loss on "awarded paid claims."

[7] Note that the CSAII provides no new or alternate definition to the term "Incurred Losses" from the original CSA.

ALL PRICING CONSIDERS SERVICING TO CONCLUSION

. . .

FEDERAL OCCUPATIONAL DISEASE CLAIMS

. . . **When claims are placed into an indemnity payment status, a loss conversion fee of 4.0% will be applied to incurred losses** inclusive of allocated loss adjustment expenses, **without offset for the prior per-annum charges**. . . [emphasis added].

Thus, per the second column of Exhibit 3 covering the effective date of the CSAII to October 1, 2000, you can see that the consistent, 4% fee applied across the years has already been assessed and collected up to the incurred value (indemnity plus expense) of the awarded claims only occurring in that period.[8]

Consistent with the discussion above, and as further argued in footnote below, ORIC continues to believe that it is entitled to a continuing payment stream (or the present value thereof) of contractual fees on claims reported in this period and thereafter that are still pending as turned over to US&C, if and as they are ultimately awarded and paid.[9] By separate yet similar

[8] Note that the $248,314 loss conversion fee calculated against $6,207,843 in incurred losses on awarded claims in this new contractual period is nonetheless carried below as the loss conversion fee charged against the smaller, actual paid loss basis for those awarded claims (i.e. in contrast with the first column of Exhibit 3, which is calculated under the CSA instead). Also, and as before, the outstanding indemnity value on these awarded claims that is included in this $6,207,843 incurred value is also determined simply by applying a claimant's awarded rate against standard life expectancy tables. The specific value of the same is represented by the $2,948,242 difference between the $3,259,601 in awarded paid claims and the total $6,207,843 in incurred losses on awarded claims.

[9] As previously referenced in Mr. Lloyd's letter of July 6, 2011, the CSAII provides that fees are to be paid on an incurred loss basis upon any award on any claim Exposure occurring in this period as "Servic[ed] To Conclusion," whether paid by us, by Peabody, or their designated representative if ORIC is/was relieved of future claims handling responsibilities.

Moreover, as is also the case with the post September 30, 2000 pricing schedules, such payment is to be made "without offset for prior per annum charges" —i.e, regardless that nominal annual fees were already collected for them while pending. Indeed, the practice in this period of deferring collection until award—much like the practice of collecting only on a paid (vs. incurred) loss basis in the prior period-- were all effectively bargained for discounts to Peabody from ORIC's typical charges for Peabody's specific, cash flow benefit—i.e. all in exchange for an anticipated, long term commitment of ORIC's resources and efforts and/or the right to compensation for the same (as a disincentive), should that commitment be terminated.

Moreover, regarding the years subsequent to September 30, 2000, as Mr. Lloyd's earlier letter suggested, the post September 30, 2000 Schedules merely updated the agreed upon billing factors used in the billing program for the self insured programs—a billing program that was structured and remained in place and practice throughout from both the CSA and CSA II. By mutual agreement and understanding, however, this was done simply in lieu of additional amendments to CSAII--amendments that otherwise did no more than (Cont'd on next page...)

calculations not presented here (due to their further, extensive length), we believe that we would be owed an additional $108,673 for fees on such pending claims occurring from October 1, 1995 through September 30, 2000, and $1,262,367 for still pending claims occurring thereafter.

Notwithstanding the same, however, and for the purposes of encouraging further discussion and amicable settlement, ORIC reserves the right to add these amounts to its demand as need be later.

For Peabody's Eastern Associated self-insured FBL claims handling program

In addition to the portion of Peabody's self-insured FBL program discussed above, Peabody also had a separate, pre-existing self-insured program that it turned over to ORIC for claims handling effective April 1, 1987, for its Eastern Associated Coal Company (Eastern) mines operated out of West Virginia. In turn then, per the July 15, 1987 letter previously enclosed with Mr. Lloyd's letter of July 6, 2011, Peabody and ORIC agreed that the claims handling for the Eastern program would be pursuant to the terms and obligations of the January 1, 1987 CSA.

Thus, while the original and subsequent Schedule As to the CSA does not specifically incorporate the Eastern program, the original Schedule of Fees appearing as Exhibit B to the CSA does so by specific reference. That Schedule itself is specifically dated August 30, 1988 by Peabody's signature. As such, it is subsequent to the January 1, 1988 point where Peabody reassumed the claims handling responsibility for all the non-Eastern claims that were originally the subject of the CSA. Consequently, and in conjunction with the letter of July 15, 1987, it is clear that the intent and effect was to incorporate the terms of the CSA for the Eastern claims handling program as follows:

(Cont'd from previous page...)

acknowledge the reality of the continuing extension of its terms anyway. Indeed, aside from the insertion of differing fee factors and annual fees set forth each year, the pricing language on the post September 30, 2000 Schedules are stated in virtually identical terms to terms stated on Exhibit B to the CSAII as quoted above.

In fact then, nothing otherwise changed the ongoing applicability of the CSA and CSAII or the billing structure under them. Indeed, nothing about updating the CSA and CSAII billing factors on Schedules to a separate Insurance Agreement relieved, terminated or otherwise replaced the remaining 20 some pages of obligations and account specific instructions agreed upon for handling these particular claims under the CSA and CSAII from September 30, 2000 onward either. In fact, and contrary to your conclusion that "for more than a decade, Old Republic has [instead] readily accepted payment for claim services pursuant to the annually-increased fee structure set forth in the endorsements to the Old Republic policies" (p. 4), the actual reality and course of dealing through today is that Peabody/Patriot has readily accepted and unquestioningly paid invoices that were billed openly and consistently within the framework set out by the CSA and CSA II for nearly 20 years.

III. SERVICING OF OCCUPATIONAL DISEASE CLAIMS

The Loss Administration Expense for servicing state and federal occupational disease claims occurring during 1987 shall be **5% of Incurred Losses, but shall be collected by Old Republic from Peabody on the basis of Paid Losses, whether paid by Old Republic, or in the event of termination, by Peabody or its designated representatives if Peabody elects to relieve Old Repbulic [sic] of future handling after termination in accordance with Paragraph 15.** [emphasis added].

Indeed, as a separate program, claims handling responsibilities for Eastern stayed with ORIC when, effective January 1, 1988, Peabody otherwise reassumed the claims handling responsibility for the non-Eastern claims that were originally the subject of the CSA, as was noted above.

Consequently, as with the July 15, 1987 letter, and subject to the CSA as intended, ORIC continued to quote separate billing factors for the Eastern program thereafter under the CSA, until the Eastern billing factors were unified with the up-dated billing factors stated to the program under Ex. B, Section II(B) of Amendment No. 6 to the CSA, as was noted above—i.e. with the return of claims handling responsibility on all of Peabody's self-insured FBL claims to ORIC, effective July 1, 1992. Likewise, beginning October 1, 1995, the Eastern program was explicitly incorporated into the CSAII thereafter, pursuant to Exhibit A to the same.

In turn then, and as has been the practice for 24 years, ORIC has handled the claims accordingly, subject to the provisions of the CSA and CSAII as cited herein and by Mr. Lloyd previously, such that ORIC is entitled to a continued payment stream (or the present value thereof) up to the incurred value of such claims, as they continue to be handled by US&C.

In this regard then, the billings for the post July 1, 1992 period of the Eastern program have already been subsumed in the discussion relevant to the data presented in Exhibits 3.

However, per the discussion above, and subject to the provisions of the CSA noted above, including Section 15 thereof, fees due for claims handling on Eastern claims opened prior to July 1, 1992 must be separately calculated, pursuant to Exhibit 4 hereto. Again, as with Exhibit 2 covering the non-Eastern, pre July 1, 1992 portion of the program, ORIC has collected some $3,018,823 in fees by applying the annual contractual factor against paid losses (to Peabody's cash flow benefit) totaling $60,354,739.[10] However, based upon paid losses to date, outstanding indemnity reserves for the awarded claims, and reasonable reserves for indemnity on the very

[10]The $60,354,739 figure starts from zero as of April 1, 1987, so as to exclude losses paid by Peabody on these claims prior to April 1, 1987, in compliance with the balance of Section III to the original Exhibit B to the CSA quoted above. $60,287,904 of this $60,354,739 is tracked to the 1987 year insofar as this represents losses paid on the 1870 claims transferred in bulk from Peabody to ORIC on this program as of April 1, 1987, pursuant to the July 15, 1987 letter previously attached as an exhibit to Mr. Lloyd's letter of July 6, 2011.

few remaining pending claims from this period, these claims have an ultimate incurred value of $70,981,171.[11] Consequently, applying the annual contractual factors to that basis means that $3,550,532 in total fees at their present value would have been collected over time for this period on this Eastern program. Therefore, ORIC makes as part of its demand the **$531,709** difference between the $3,018,823 collected and $3,550,532 due now.

For Peabody's retroactively self-insured FBL claims as of January 1, 2003

In addition to the portions of Peabody's self-insured FBL program discussed above, note that effective January 1, 2003, Peabody became retroactively self-insured for a number of its separate exposures that were otherwise and long before directly insured by ORIC. As such, FBL claims handling fees were separately stated in multiple Insurance Agreements, all of which were consistent in their charge of a "Loss Administration Expense" fee of 5% of Paid Loss. In that sense then, they were consistent too with the "Loss Administration Expense" fee of 5% of Incurred Loss as set up in the CSA for the original self insured program and the subsequent self insurance program for Eastern as was noted above. Indeed, as insured claims, they belonged to ORIC, such that they would, by definition, be serviced by ORIC to conclusion—i.e. to the point where Paid Loss would ultimately equal Incurred Loss anyway. In turn, and again, the pricing reflected this expectation.

Consequently, while the various agreements state that the pricing is to be against Paid Losses and did not, for the reasons noted, see a need, per the CSA and CSAII, to state or contemplate the consequence should ORIC's services be terminated and replaced, ORIC's position remains that it is entitled to a continuing payment stream (or the present value thereof) in this regard up to the incurred value of such claims as they continue to be handled by US&C otherwise.

Accordingly, per Exhibit 5 hereto, and again to Peabody's bargained for, cash flow benefit, ORIC has collected some $415,354 in fees by applying the contractual 5% factor against paid losses of $8,307,073 made on Peabody self-insured FBL claims that were previously insured directly by ORIC. However, based upon paid losses to date and outstanding indemnity awards

[11] Again, per footnote 2, the contractual definition of "Incurred Losses" under the applicable CSA includes "reserves for unpaid losses." In this regard, outstanding indemnity reserves for awarded claims are again based on established award rates as applied against standard life expectancy tables. Reserves for indemnity on pending claims were discussed previously with respect to the post-7/92 years where more and substantial claims are pending. Likewise, as before, all calculations of incurred loss used throughout this reply include standard 4% discounting.

Similarly per footnote 2, note that the definition of "Incurred Losses" under the applicable CSA also includes "Direct Loss Adjustment Expenses"—i.e. expenses "directly related to the investigation, negotiation settlement or defense of any claim." (Emphasis added). Therefore, paid claim expenses (i.e. paid loss) paid by ORIC on un-awarded Eastern claims from this pre 7/92 period are counted in this Incurred Loss valuation, but the valuation does not otherwise include any expense reserve for pending claims transferred to US&C as ORIC does not currently seek to assess its fee again any such value for this period of the Eastern program.

for awarded claims in this category, these claims have an ultimate, incurred value of $13,435,938.[12] Consequently, applying the contractual 5% factor to that basis means that $671,797 in total fees at their present value would have been collected over time for this category of claims. Therefore, ORIC makes as part of its demand the **$256,443** difference between the $415,354 collected and the $671,797 due now.

In addition to the awarded claims in this category, however, ORIC was handling a number of previously insured claims that are still in pending status as well. In turn then, per Exhibit 6 hereto, the cumulative value of the win ratio determined reserves on those pending claims, or, effectively, the reasonable expectation of total loss to be paid out on such pending claims, is $4,421,168, consistent with the discussion on determining such reserves above. Therefore, insofar as we have collected 5% on $1,923,513 in paid losses (expense) to date, ORIC has the reasonable expectation of having been able to collect an additional 5%, or **$124,883**, on the $2,497,655 difference between the present paid and ultimate incurred; accordingly, ORIC makes the same an additional part of its demand.

Likewise, determining the expense basis on these $2,497,655 worth of pending claims per the process discussed earlier yields a reasonable expectation of $124,833 in additional expense associated with that reserve. In turn then, applying the 5% LAE fee to the same yields and additional fee amount due to ORIC of **$6,244** for the pending claims in this category.

* * * * * *

In sum then, the total $1,499,408 claim of ORIC is determined by adding up the bold and underscored elements noted above as follows:

$ 358,730 - fee on outstanding (o/s) Incurred Loss, reported pre 7/92, per CSA

97,667 - fee on o/s Incurred Loss (awarded), reported 7/92 - 10/1/95, per CSA
117,840 - fee on o/s Incurred Loss (pending), reported 7/92 - 10/1/95, per CSA
5,892 - fee on o/s Incurred Loss expense (pending), reported 7/92 - 10/1/95, per CSA

531,709 - fee on outstanding Incurred Loss, reported pre 7/92 for Eastern, per CSA

256,443 - fee on o/s Paid (Incurred) Loss, 1/03 RetroSI program
124,883 - fee on o/s Paid (Incurred) Loss (pending), 1/03 Retro SI program
6,244 - fee on o/s Paid (Incurred) Loss expense (pending), 1/03 Retro SI program

[12] Again, outstanding indemnity reserves for these awarded claims are based on established award rates applied against standard life expectancy tables and include a standard 4% discounting.

$1,499,408[13]

In closing then, I note simply that over the course of years, ORIC has made a substantial investment in staffing and infrastructure to cement the long term relationship with Peabody that was mutually sought and further encouraged by the cash flow benefits of the pricing structures discussed above. Under the circumstances, ORIC continues to believe that it remains entitled to the complete or continuing benefit of the bargain made—i.e. regardless whether claims handling is completed by us or by US&C. Likewise, insofar as the files were formally released to US&C's custody effective September 1, 2011, we would request that funding of the demand be finalized within thirty (30) days of this summary of charges.

Again, however, we recognize the inevitable complexity and cooperative history of such a long relationship, and, in turn, we are more than willing to discuss the terms and parameters of compensation informally and in the interim.

Sincerely,

Martin E. Bertocchi
Ass't. V.Pres./Sec./Gen. Counsel

m.bertocchi@orinsco.com
724-838-5476 (direct)

Enclosures

cc: R. Lloyd
A. Slotter
M. Preziosi
M. Laskowitz (mike.laskowitz@aon.com)
S. LeRoy, III, Esq.

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[13] To the extent that they have not yet been separately paid, ORIC likewise includes a demand for payment of $8,280 for physical file transfer fees incurred per Mr. Lloyd's letter of August 11, 2011 to Mr. Robert Mead, V.Pres. and Treasurer, Patriot. In turn, Mr. Mead accepted those charges by email dated August 12, 2011.

Likewise, per the relevant discussion above, ORIC reserves the right to assert an additional demand for some $1,371,040 in fees associated with transferred, pending claims occurring October 1, 1995 through termination.

Peabody

Ex. 1

PEABODY HOLDING COMPANY, INC.

701 Market Street, Suite 700
St. Louis, Missouri 63101-1826
(314) 342-3400

July 1, 1992

Mr. Robert H. Kennedy
Old Republic Insurance Company
414 West Pittsburgh
Greensburg, PA 15601

RE: FEDERAL BLACK LUNG CLAIMS ADMINISTRATION

Dear Bob:

I want to confirm Peabody's acceptance of Old Republic's proposal to administer Peabody Coal Company's and Eastern Associated Coal Corporation's self-insured federal black lung claims.

As a first step in this endeavor, we will institute transfer of the existing claim files as follows:

1. Awarded Claims in Pay Status
Peabody will make the July indemnity payment to the claimants and then send the completed file to Old Republic via overnight mail. Old Republic will then notify the Department of Labor and the claimant regarding future benefit payments and other administrative matters.

2. Open and Closed Claims
Peabody will prepare for shipment to Old Republic by truck all existing claims. In addition, we will prepare a listing of the claims by individual container. Peabody will forward subsequent correspondence received regarding these claims to Old Republic via express mail. Old Republic will notify the attorneys regarding their administration of these claims.

3. Actuarial Information
Peabody will provide a summary of its black lung data base to Actuarial Risk Services.

Bob, as I indicated, once the files are prepared for shipment, we will ship them via truck to Old Republic. They will be sent in care of John Wright, Vice President - Claims, Old Republic Insurance Company, 770 East Pittsburgh Street (rear), Greensburg, Pennsylvania 15601.

← THIS HAS BEEN DISCUSSED PER DISCUSSIONS W/ CRG INVOLVING Jay Sams, MANAGEMENT CLAIMS 8-26-92

Joe: WASILESKY
DENNIS
WRIGHT

JUL 6 1992 7-6-92

I will be out of the office until July 13. If you have any questions in the meantime regarding the preparation of the files for transfer, please call Sandra Sanders at Peabody in St. Louis.

I look forward to working out the remaining details of transfer with you after my return.

Very truly yours,

E. J. Senn
Director - Risk Management

EJS:tsm

cc: Sandra Sanders

Old Republic Companies

P.O. BOX 789 GREENSBURG, PENNSYLVANIA 15601

Phone: (412) 834-5000

May 13, 1992

Mr. E. J. Senn, Manager-Risk Management
Peabody Holding Company, Inc.
301 North Memorial Drive
P.O. Box 373
St. Louis, MO 63166

Re: Federal Black Lung Claims Administration

Dear Jay:

Per your request, we have reviewed Old Republic's possible taking over of the handling of Peabody's self-insured Federal O.D. claims. We are able to be this and our quote is as follows:

Assumption of Existing Self-Insured Claims Currently Administered by Peabody:

A. File conversion fee of $50 per open and closed claim estimated at $45,000 (900 x $50) assuming files are in reasonable condition and delivered to Greensburg. In the event additional conversion time required because of file condition, we would like an opportunity to discuss fee adjustment.

A023
60% open
30% closed

B. Incorporate these claims into the existing Peabody Service Agreement at the existing L.C.F. structure which is 1.07 of loss plus legal collected on a paid basis.

New & Re-opened Claims Received After July 1, 1992: — DOES NOT PERTAIN TO REOPENINGS FROM THE ORIGINAL 900 CLAIMS.

A. $100 per each new and re-opened claim.

A024

B. Annual maintenance charge of $100 per annum, per claim, until claim is denied and closed or until claim is placed in an awarded (payment) status. This fee will be charged at the onset of the anniversary month of the reported date.

C. Awarded (payment) status claims will be billed at an L.C.F. of 1.04 of loss plus legal collected on a paid basis.

NOTE: Annually, we would review the new claim charge and annual maintenance charge. However, we will agree to limit the increase to 10% per annum and any revised fee structure will apply prospectively only to claims received after that date.

pc: D. Prentiss
C. Wagnessky
L. Deems
R. Fullmer

Old Republic Insurance Company

Letter To Mr. E. J. Senn
Sheet No. 2
Date May 13, 1992

Payment of Benefits:

Currently Peabody pays ORINSCO a budgeted weekly amount of $415,000 for their various insured ans self-insured programs. This budgeted amount should be adjusted to reflect the increased activity generated by the administration of these additional O.D. claims.

Miscellaneous:

ORINSCO will administer these claims in accordance with our existing procedures which have previously been approved by Peabody.

The basic claims administration requirements have contemplated supplying routine claims statistical information on magnetic tape. Any special actuarial projects or studies should be billed separately.

We contemplate that all files will be coded into the A.R.S. system by 12-15-92.

To the extent available, we would request that Peabody provide statistical data to us on the existing 900 claims via a magnetic tape. This would greatly reduce the time needed to code these claims into our database.

Should this quote be accepted you will need to contact either John Wright or myself as soon as possible so that we can arrange the logistics. This quote will remain valued until July 1, 1992 and may be revoked or modified anytime prior to acceptance. Acceptance shall take effect upon receipt of the written notice of acceptance of this quote from Peabody Holding Company by Old Republic.

Yours truly,

Robert H. Kennedy, ARM
Account Executive

RHK/ljh

Peabody

PEABODY HOLDING COMPANY, INC.

301 North Memorial Drive
P.O. Box 373
St. Louis, Missouri 63166
(314) 342-3400

April 1, 1992

Mr. Louis M. Wasnesky
Vice President
Old Republic Insurance Company
414 West Pittsburgh Street
Greensburg, Pennsylvania 15601

RE: REQUEST FOR PROPOSAL OF FEDERAL BLACK CLAIM ADMINISTRATOR

Dear Lou:

Peabody is seeking a claim service provider to administer its self-insured federal black lung claims for its subsidiaries, Eastern Associated Coal Corporation and Peabody Coal Company. We have identified your organization as possessing the capabilities to administer our claims to Peabody's exacting standards and in a manner acceptable to the U. S. Department of Labor.

Your proposal to administer Peabody's self-insured black lung claim program should address the following:

A. SCOPE OF PEABODY PROGRAM

1. Assumption of self-insured claims currently administered by Peabody

This includes approximately 900 claims filed between January 1, 1988 and the present. Approximately 300 plus are closed, 600 plus are open at various stages of adjudication and 6 have been awarded and are in pay status.

2. Future self-insured claims

Estimated at 250 annually.

B. CLAIM ADMINISTRATION SERVICE REQUIREMENTS

Refer to schedule of BASIC CLAIM ADMINISTRATION REQUIREMENTS hereto.

Rec'd L. Deaver 4-13-92

APR 2 1992

C. PAYMENT OF BENEFITS

1. All indemnity and medical benefits plus direct claim administration expenses to be paid by claim administrator. You are to indicate methods of funding your loss payment account.

D. CLAIM SERVICE FEES

1. Your fee schedule must itemize individual services to include:

   a. Assumption of the existing 900 plus self-insured claims. It shall include entering actuarial data (supplied by Peabody in tape or disk format), administrating open claims to conclusion and initiating payment of indemnity and medical benefit awarded claims.

   b. Administration of new self-insured claims.

2. Indicate whether fees are for services on an annual basis or for administration of claims to conclusion.

E. WE WILL ENTERTAIN QUOTES FOR A ONE YEAR AND THREE YEAR PROGRAM.

F. EVALUATION AND SELECTION AGENDA

1. Solicit claims service provider interest: April 8, 1992.

2. Formal written proposals due at Peabody: May 15, 1992.

3. Completion of review by Peabody that may include an on-site visit of service provider: June 8, 1992.

4. Selection of service provider: June 15, 1992

5. Initiate the transfer of the existing program to service provider: July 1, 1992.

Please contact me by April 8, 1992 indicating your interest in presenting a formal proposal to Peabody.

You may contact me at 314/342-7748 if you have any questions.

Very truly yours,

E. J. Senn
Manager - Risk Management

EJS:tsm

Attachments

Ex. 2

PEABODY / PATRIOT COAL COMPANY
FEDERAL O.D. PRE 7/92 SELF-INSURED PROGRAM

CUMULATIVE / MONTHLY REPORT
ANALYSIS OF OCC. DISEASE INCURRED / PAID CLAIMS

ALL TIME - 07/2011	
INCURRED LOSS:	ALL YEARS
Incurred loss	16,409,762
loss conversion factor	7.000%
loss conversion fee	1,148,683
converted incurred loss	17,558,445
PAID LOSS:	
paid loss	11,286,047
loss conversion factor	7.000%
loss conversion fee	789,953
converted paid loss	12,075,000

#358,130

MONTH - 07/2011	
INCURRED LOSS:	ALL YEARS
Incurred loss	49,648
loss conversion factor	7.000%
loss conversion fee	3,475
converted incurred loss	53,123
PAID LOSS:	
paid loss	32,314
loss conversion factor	7.000%
loss conversion fee	2,262
converted paid loss	34,576

map/excel/peabody pre july 1992 o.d. self-insured exhibit

PEABODY / PATRIOT COAL COMPANY
FEDERAL O.D. POST 7/92 SELF-INSURED PROGRAM

CUMULATIVE/MONTHLY REPORT
ANALYSIS OF OCC. DISEASE INCURRED/PAID CLAIMS

ALL TIME - 07/2011	P.Y.'s 7/1/92 to 10/1/95	P.Y.'s 10/1/95 to 10/1/00	P.Y. 10/1/00 to 10/1/01	P.Y. 10/1/01 to 10/1/02	P.Y. 10/1/02 to 10/1/03	P.Y. 10/1/03 to 10/1/04	P.Y. 10/1/04 to 10/1/05	P.Y. 10/1/05 to 10/1/06	P.Y. 10/1/06 to 10/1/07	P.Y. 10/1/07 to 11/1/08	P.Y. 11/1/08 to 11/1/09	TOTAL
INCURRED LOSS:	13,806,749	11,774,261	2,635,989	3,006,592	4,643,296	2,812,882	3,909,308	2,008,729	1,557,575	1,459,367	14,036,629	61,151,324
Incurred loss	8,869,374	8,207,843	572,717	6,823	1,846,137	954,627	1,086,525	388,189	0	196,697	0	18,128,913
awarded incurred claims	4.000%	4.000%	4.000%	4.25%	4.50%	4.725%	5.040%	5.140%	5.330%	5.600%	5.780%	
loss conversion factor	274,775	248,314	22,909	290	83,076	45,106	54,761	19,952	0	11,015	0	760,197
loss conversion fee	14,081,524	12,022,575	2,658,895	3,006,882	4,728,372	2,857,988	3,964,069	2,028,681	1,557,525	1,470,682	14,036,629	61,911,521
converted incurred loss												
PAID LOSS:	8,419,069	8,238,458	1,545,824	1,403,146	1,869,068	1,032,418	1,546,095	554,261	383,853	492,205	796,227	24,280,423
paid loss	4,427,697	3,259,801	300,050	6,823	522,099	248,814	419,643	83,789	0	42,673	0	9,111,129
awarded paid claims	4.00%	4.00%	4.00%	4.25%	4.50%	4.725%	5.040%	5.140%	5.330%	5.600%	5.780%	
loss conversion factor	177,108	248,314	22,909	290	83,076	45,106	54,761	19,952	0	11,015	0	582,530
loss conversion fee	8,596,176	8,488,772	1,568,583	1,403,436	1,952,144	1,077,524	1,600,859	574,213	383,853	503,220	796,227	24,942,953
converted paid loss												
MONTH - 07/2011												
INCURRED LOSS:	24,555	77,973	91,591	628	190,954	24,189	-38,970	92,788	-192,546	786,115	1,059,181	
Incurred loss	3,628	171	0	28	672,419	14	388,169	0	0	0	984,424	
awarded incurred claims	4.000%	4.000%	4.250%	4.500%	4.725%	5.04%	5.14%	5.33%	5.60%	5.78%	0	
loss conversion factor	145	7	0	1	27,047	1	19,952	0	0	0	47,152	
loss conversion fee	24,700	77,980	91,591	629	217,901	24,200	-17,018	92,788	-192,546	786,115	1,108,339	
converted incurred loss												
PAID LOSS:	26,234	35,535	11,824	10,352	104,849	19,876	53,185	1,973	9,174	78,995	351,798	
paid loss	14,081	12,411	0	3,829	121,733	2,557	83,788	0	528	0	239,028	
awarded paid claims	4.000%	4.000%	4.250%	4.500%	4.725%	5.04%	5.14%	5.33%	5.60%	5.78%	0	
loss conversion factor	563	7	0	1	27,047	1	19,952	0	0	0	47,571	
loss conversion fee	26,797	35,542	11,824	10,353	131,898	19,877	83,737	1,973	9,174	78,995	409,359	
converted paid loss												

NOTE: THE LCF FOR THE PROGRAM PERIODS 10/1/95 THROUGH PRESENT IS TAKEN ON AWARDED INCURRED CLAIMS VERSUS AWARDED PAID CLAIMS

mapl//acct svcs//peabody patriot monthly billings/patriot post 7-92B exhibit

Ex. 3

Ex. 4

PEABODY / PATRIOT COAL COMPANY
EASTERN SELF-INSURED PROGRAM

CUMUALTIVE / MONTHLY REPORT
ANALYSIS OF OCC. DISEASE INCURRED / PAID CLAIMS

ALL TIME - 07/2011

INCURRED LOSS:	THRU 1987	1988 - 91	1992	TOTAL
Incurred loss	70,895,007	25,016	61,148	70,981,171
loss conversion factor	5.000%	6.000%	7.000%	
loss conversion fee	3,544,750	1,501	4,280	3,550,532
converted incurred loss	74,439,757	26,517	65,428	74,531,703
PAID LOSS:				
paid loss	60,287,904	25,016	41,819	60,354,739
loss conversion factor	5.000%	6.000%	7.000%	
loss conversion fee	3,014,395	1,501	2,927	3,018,823
converted paid loss	63,302,299	26,517	44,746	63,373,562

MONTH - 07/2011

INCURRED LOSS:	THRU 1987	1988 - 91	1992	TOTAL
Incurred loss	14,339	0	3,809	18,148
loss conversion factor	5.000%	6.000%	7.000%	
loss conversion fee	717	0	267	984
converted incurred loss	15,056	0	4,076	19,132
PAID LOSS:				
paid loss	88,298	0	3,809	92,107
loss conversion factor	5.000%	6.000%	7.000%	
loss conversion fee	4,415	0	267	4,682
converted paid loss	92,713	0	4,076	96,789

map/excel/peabody eastern self-insured

Ex. 5

PEABODY / PATRIOT COAL COMPANY
RETROACTIVE FEDERAL O.D. 1/2009 SELF-INSURED PROGRAM - AWARDED CLAIMS

CUMULATIVE / MONTHLY REPORT
ANALYSIS OF OCC. DISEASE INCURRED / PAID CLAIMS

ALL TIME - 07/2011	
INCURRED LOSS:	ALL YEARS
incurred loss	13,435,938
loss conversion factor	5%
loss conversion fee	671,797
converted incurred loss	14,107,735
PAID LOSS:	
paid loss	8,307,073
loss conversion factor	5%
loss conversion fee	415,354
converted paid loss	8,722,427

$256,443

MONTH - 07/2011	
INCURRED LOSS:	ALL YEARS
incurred loss	-91,584
loss conversion factor	5%
loss conversion fee	-4,579
converted incurred loss	-96,163
PAID LOSS:	
paid loss	47,601
loss conversion factor	5%
loss conversion fee	2,380
converted paid loss	49,981

map/excel/peabody retro fed od sl awarded

Ex. 6

PEABODY / PATRIOT COAL COMPANY
RETROACTIVE O.D. 1/2003 SELF-INSURED PROGRAM - PENDING CLAIMS

CUMULATIVE / MONTHLY REPORT
ANAYLSIS OF OCC. DISEASE INCURRED / PAID CLAIMS

ALL TIME - 07/2011	
INCURRED LOSS:	ALL YEARS
Incurred loss	4,421,168
PAID LOSS:	
paid loss	1,923,513

MONTH - 07/2011	
INCURRED LOSS:	ALL YEARS
Incurred loss	87,305
PAID LOSS:	
paid loss	22,173

map/excel/peabody retroactive fed od sl january 2003 pending