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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
PATRIOT COAL CORPORATION, ***et al.,***	**Case No. 12-12900 (SCC)**
Debtors.	**(Jointly Administered)**

THE POST-HEARING PROPOSED FINDINGS OF FACT OF THE UNITED MINE WORKERS OF AMERICA IN SUPPORT OF ITS MOTION PURSUANT TO 28 U.S.C. § 1412 AND RULE 1014, FED. R. BANKR. PROC., TO TRANSFER THE CASE TO THE SOUTHERN DISTRICT OF WEST VIRGINIA

PROPOSED FINDINGS OF FACT

The Debtors and Their Creditors

1. Patriot Coal Corporation is the direct or indirect parent of each of the Debtors. (Declaration of Mark N. Schroeder, dated July 9, 2012 ("Schroeder Decl. I") (Dkt. No. 4.), ¶ 16.)

2. "The Debtors' corporate headquarters and executive offices are located in St. Louis, Missouri." (Declaration of Mark N. Schroeder, dated August 27, 2012 ("Schroeder Decl. II") (Dkt. No. 426), ¶ 8.)

3. Patriot Coal's corporate headquarters is located in St. Louis, Missouri at 12312 Olive Boulevard, Suite 400, ZIP code 63141. (Voluntary Petition of Patriot Coal Corp., Case No. 12-12900 (Dkt. No. 1).)

4. The October 22, 2007 Separation Agreement, Plan of Reorganization and Distribution between Peabody Energy Corporation ("PEC") and Patriot indicates that:

> Patriot is a wholly-owned subsidiary of PEC formed for the purposes of taking title to the stock of certain PEC subsidiaries, the assets and liabilities of which constitute the coal mining business of PEC in West Virginia, all coal mines and certain coal reserves in Kentucky and certain coal reserves in the states of Ohio and Illinois.

(Separation Agreement (UMWA Omnibus Reply, Ex. E) (emphasis added).)

5. An October 22, 2007 Information Statement to stockholders of Peabody Energy Corporation described, in part, the rationale behind Patriot Coal's spin-off from Peabody by stating:

> Through separation, each company will be able to more narrowly focus on core business priorities to drive stockholder value. Peabody's asset base continues to evolve as a global coal investment, positioned to maximize stockholder value from its global reach. Patriot's asset base in Appalachia and the Illinois Basin is positioned to maximize stockholder value as a leading eastern U.S. producer. Peabody's management believes that a separate focus on these distinctive value creation philosophies will allow each set of operations to unlock value not currently being realized.

(Peabody Info. Statement (Ex. D to UMWA Omnibus Reply) (emphasis added).)

6. Chief Marketing Officer Robert W. Bennet lives in West Virginia and has offices in Charleston and in St. Louis, Missouri. (Schroeder Decl. II, ¶ 11.)

7. Charles A. Ebetino, the Debtors' Senior Vice President, Global Strategy and Corporate Development, maintains offices in Charleston, West Virginia and St. Louis, Missouri. (Schroeder Decl. II, ¶ 11.)

8. None of the Debtors' eight board members is located in New York. (Schroeder Decl. II, ¶ 13.)

9. Since Patriot's creation in 2007, none of Patriot's 55 Board of Directors meetings have been held in New York. One was conducted in-person in West Virginia. Most in-person meetings were held in St. Louis, Missouri; one in-person meeting was held in Texas and another in Florida. The remaining Board meetings were conducted via telephone. (Schroeder Decl. II, ¶ 14.)

10. The Debtors' principal business is "the mining and preparation of metallurgical coal and thermal coal." (Schroeder Decl. I, ¶ 6.)

11. The Debtors' mining operations are located in Appalachia and the Illinois Basin. Appalachia operations are in West Virginia. Illinois Basin operations are in Kentucky. (Form 10-Q filed with the Securities and Exchange Commission on August 9, 2012 ("Form 10-Q"), at 43; Stipulation of Facts for the Purposes of a Hearing on the Motions to Transfer Venue ("Stip."), ¶ 1 (Dkt. No. 546).)

12. The Debtors conduct mining operations at twelve active mining complexes—nine in West Virginia and three in Kentucky. (Stip., ¶ 3(e).)

13. "The Debtors own, lease or hold under other arrangements coal reserves, surface property and other real estate interests in various counties in many states, including Illinois, Indiana, Kentucky, Missouri, Ohio, Pennsylvania and West Virginia." (Schroeder Decl. I, ¶ 7.)

14. Debtors own or lease over 47,000 acres of land in West Virginia alone. (*Id.*, Ex. A, Sched. 6.)

15. Of the 15 largest lessors from whom Debtors lease property, six are located in West Virginia. The other nine lessors are headquartered in various states, including Tennessee, Virginia, Kentucky, Pennsylvania, and Missouri. Debtors have not indicated that any lessors are headquartered in New York. (Schroeder Decl. II, ¶ 35.)

16. Of the 99 entities that comprise the Debtors which have filed for relief under chapter 11, only two of the entities—PCX Enterprises, Inc. and Patriot Beaver Dam Holdings, LLC—are organized under the laws of New York. (Schroeder Decl. I, ¶ 7.)

17. "The Debtors determined that the Southern District of New York is the optimal venue for the Debtors' chapter 11 cases and in the best interests of the Debtors, their creditors and other stakeholders and these estates." (Schroeder Decl. I, ¶ 43.)

18. Of the remaining 97 filing entities of the Debtors, the states of residence listed on the Voluntary Petitions are as follows: West Virginia (where 54 entities are located); Missouri (where 40 entities are located); and Kentucky (where three entities are located). (Debtors' Voluntary Petitions, Case Nos. 12-12898 to 12-12911, 12-12913, 12-12914, and 12-12916 to 12-12999, Dkt. No. 1 for each.)

19. Thirty-seven of the 99 entities were formed in West Virginia. (Schroeder Decl. II, ¶ 7.)

20. None of the Debtors' 50 largest unsecured creditors is located in New York, while 20% of the 50 largest unsecured creditors are located in West Virginia, more than any other state. (Revised List of Creditors Holding the 50 Largest Unsecured Claims, Dkt. No. 98.)

21. The 20 equipment lessors with whom Debtors have entered into master equipment leases are headquartered in several states, including California, Connecticut, Illinois, and New Jersey. Debtors have not indicated that any equipment lessors are headquartered in New York. (Schroeder Decl. II, ¶ 19.)

22. None of the issuers of Debtors' surety bonds is in New York; the issuers of Debtors' surety bonds are located in various states, including Tennessee, Minnesota, Pennsylvania, Connecticut, and New Jersey. (Schroeder Decl. I, Ex. A, Sched. 5; UMWA Motion, Ex. D (Patriot Creditors).)

23. None of the issuers of Debtors' letters of credit is in New York; these issuers are located in North Carolina, Ohio, and Pennsylvania. (Schroeder Decl. I, Ex. A, Sched. 5; UMWA Motion, Ex. D (Patriot Creditors).)

24. As of July 11, 2012, New York entities appear to hold the largest amounts of Debtors' senior unsecured notes and unsecured convertible notes. (Schroeder Decl. II, ¶¶ 28-31.)

25. The Debtors have secured an $802 million debtor-in-possession ("DIP") financing facility, to be jointly arranged by Citibank, N.A., Bank of America, and Barclays Bank PLC. (Schroeder Decl. I, ¶ 41.)

26. Citibank, N.A., Debtors' DIP agent for the First Out DIP Facility, is located in New York. (Schroeder Decl. II, ¶ 49.)

27. Two of Debtors' Joint Lead Arrangers of Debtors' DIP financing (Citigroup Global Markets, Inc. and Merrill Lynch, Pierce, Fenner & Smith Inc.) are located in New York. (Schroeder Decl. II, ¶ 51.)

28. Debtors' top five secured creditors are located in five different states: Missouri, Ohio, California, Illinois, and New Jersey. (Schroeder Decl. I, Ex. A, Sched. 2.)

29. Patriot Coal's President and Chief Operating Officer, Bennet K. Hatfield, resides in West Virginia and has an office in Charleston, West Virginia and in St. Louis, Missouri. (Schroeder Decl. II, ¶¶ 10-11.)

30. The top 20 vendors of the Debtors for the first six months of 2012 have headquarters located in twelve different states, with five located in West Virginia and two located in New York. (Stip., ¶ 3(g).)

31. As of June 30, 2012, the total value of the Debtors' land and coal interests plus machinery and equipment was over $3.7 billion dollars. (Form 10-Q at 30.)

32. The net value of Debtors' property, plant, equipment and mine development—after applying accumulated depreciation, depletion and amortization to land and coal, machinery and equipment total value—is over $2.6 billion dollars. (*Id.*)

33. In the six months ending on June 30, 2012, Debtors' revenue from mining and other operations in Appalachia was over $859 million. (*Id.* at 45.)

34. Debtors' operating costs for mining and other operations in Appalachia for the six months ending on June 30, 2012 totaled over $681 million. (*Id.*)

35. Debtors' primary sources of cash have included sales of coal production. (*Id.* at 48.)

36. Debtors' primary uses of cash have included costs of coal production, capital expenditures, interest costs, and costs related to acquisitions, and past mining obligations and reclamation. (*Id.*)

37. Debtors have indicated that "[a]t this time, there is no assurance we will be able to restructure as a going concern or successfully propose or implement a plan of reorganization." In fact, Debtors have acknowledged that "the Bankruptcy Case and weak industry conditions and financial markets raise substantial doubt about our ability to continue as a going concern." (*Id.* at 6, 7.) (Emphasis added.)

38. Debtors have indicated that they "may sell or otherwise dispose of or liquidate assets ... for amounts other than those reflected" in the consolidated financial statements included in Debtors' August 2012 Form 10-Q filing. (*Id.* at 7.)

The New York Debtors

39. The Voluntary Petitions filed by Patriot Beaver Dam Holdings, LLC ("Patriot Beaver Dam") and PCX Enterprises, Inc. ("PCX") both list the address for the offices of Patriot Coal Corporation in St. Louis, Missouri as their street address. (Voluntary Petition of Patriot Beaver Dam Holdings, LLC, Case No. 12-12898, Dkt. No. 1 ("Patriot Beaver Dam Petition"); Voluntary Petition of PCX Enterprises, Inc., Case No. 12-12899, Dkt. No. 1 ("PCX Petition").)

40. PCX was formed under the laws of the State of New York on June 1, 2012. (Stip., ¶ 3(a).)

41. Pursuant to an assumption agreement, effective June 1, 2012, PCX became a guarantor of Patriot's obligations under an Amended and Restated Credit Agreement ("Credit Facility"), which obligation is currently valued at $427 million. (Schroeder Decl. II, ¶ 24-25.)

42. Patriot Beaver Dam was formed under the laws of the State of New York on June 14, 2012. (Stip., ¶ 3(b).)

43. Pursuant to an assumption agreement, effective June 14, 2012, Patriot Beaver Dam also became a guarantor of Patriot's obligations under the $427 million Credit Facility. (Schroeder Decl. II, ¶ 24-25.)

44. The Debtors formed both PCX and Patriot Beaver Dam to ensure that the provisions of 28 U.S.C. § 1408(1) were satisfied, and for no other purpose. (Stip., ¶ 3(d).)

45. PCX has no business operations. (Transcript of the Patriot Coal 341 Meeting on August 23, 2012 ("341 Mtg. Tr.") at 21:1-2) (attached to Omnibus Reply to the Objections to Motion of the United Mine Workers of America pursuant to 28 U.S.C. § 1412 and Rule 104, Fed. R. Bankr. Proc., to Transfer the Case to the Southern District of West Virginia ("UMWA Omnibus Reply") (Dkt. No. 506) as Ex. A.)

46. The Petitions of Patriot Beaver Dam and PCX both list their mailing address as: c/o CT Corporation System, 111 8th Avenue, New York, NY 10011. (Patriot Beaver Dam Petition and PCX Petition.)

47. According to Schroeder, all of Debtors' books and records, including those established post-petition, are located in St. Louis, Missouri. (341 Mtg. Tr. at 14:13-21.)

48. According to Schroeder, "The principal assets of Patriot Coal Corporation, Patriot Beaver Dam Holdings, LLC and PCX Enterprises, Inc. are located in New York." (Schroeder I, Ex. A, Sched. 7.)

49. On the Petitions for Patriot Coal and Patriot Beaver Dam, the location of the principal assets for both of those companies is listed as "New York, NY 10019," with no street

address. (Voluntary Petition of Patriot Coal Corp., Case No. 12-12900, Dkt. No. 1; Patriot Beaver Dam Petition.)

50. The principal asset of Patriot Beaver Dam is a certificate evidencing 100% membership interest in Beaver Dam Coal Co., LLC, held by counsel to Debtors' First Out DIP Agent in New York. (Stip., ¶ 3(c).)

51. On the Petition for PCX, the location of the principal assets is listed as "New York, NY 10021," with no street address. (PCX Petition.)

52. The principal asset of PCX is a Capital One Bank business checking account in New York City, with a value of $97,985. (Stip., ¶ 3(c).)

53. PCX has no employees. (341 Mtg. Tr. at 21:1-4.)

54. PCX has no offices in New York. (341 Mtg. Tr. at 23:6-8, 68:17 to 69:21.)

55. Patriot Beaver Dam has no employees. (341 Mtg. Tr. at 36:13-15.)

56. Patriot Beaver Dam has no offices in New York. (Id. at 36:16-17, 68:17 to 69:21.)

57. Neither PCX nor Patriot Beaver Dam has any real property. (341 Mtg. Tr. at 66:23-25, 67:11-13.)

The Coal Industry in West Virginia and Debtors

58. West Virginia ranks second in the United States among the 24 coal-producing states; New York is not a coal producing state. (See *Coal Facts 2011*, "West Virginia Coal: Fueling an American Renaissance" ("*Coal Facts* 2011") at 7, attached to the Motion of the United Mine Workers of America pursuant to 28 U.S.C. § 1412 and Rule 1014, Fed. R. Bankr. Proc., to Transfer the Case to the Southern District of West Virginia ("UMWA Motion") (Dkt. No. 12.).)

59. West Virginia produced 143 million tons of coal in 2010. (*Id.* at 8.)

60. Debtors control approximately 1.9 billion tons of "proven and probable" coal reserves, 1.2 billion tons of which are located in Debtors' Appalachia operations in West Virginia. (Form 10-Q at 43.)

61. "Federal and state regulatory authorities impose obligations on the coal mining industry in a wide array of areas, including employee health and safety, permitting and licensing requirements, environmental protection, the reclamation and restoration of mining properties after mining has been completed, surface subsidence from underground mining and the effect of mining on surface and groundwater quality and availability." (Schroeder Decl. I, ¶ 30.)

62. The West Virginia Attorney General, Darrell V. McGraw (the "Attorney General"), filed a joinder to the UMWA's motion on August 20, 2012 in which he states that, "The State of Virginia and her citizens have a significant interest in the resolution of the matters that will arise in these consolidated cases, and I therefore respectfully request that they be decided within her borders." (WV Atty. Gen. Joinder, ¶ 6 (Dkt. No. 390).)

63. In his joinder, the Attorney General has acknowledged that Debtors employ, and provide health care benefits to, thousands of West Virginia citizens, and has expressed concern that the "loss of health care benefits to citizens of the State of West Virginia" that may result from this bankruptcy "would have adverse economic repercussions" for the state. (WV Atty. Gen. Joinder, ¶ 5.)

64. In 2010, Patriot Coal Group operated four of West Virginia's top 20 largest producing mines and was the third largest coal producer in West Virginia. (*Coal Facts* 2011 at 10.)

65. Debtors employ diverse mining methods, including surface mining, underground continuous mining, and underground longwall production. (Schroeder Decl. I, ¶ 10.)

66. Currently, 264 mining permits have been issued to (or operated by) Debtors by the WVDEP. (Declaration of Roland B. Doss in Support of Sureties' Reply Memorandum ("Doss Decl."), ¶ 6 (Dkt. No. 502-1).)

67. Debtors currently hold 157 water discharge permits issued by the WVDEP. (Doss Decl., ¶ 6.)

68. "The Debtors ship coal to domestic and global electricity generators, industrial users, steel mills and independent coke producers via rail and river transportation routes and ocean-going vessels." (Schroeder Decl. I, ¶ 11.)

69. "Coal is responsible for more than 12% of West Virginia's gross state product." (*Coal Facts* 2011 at 20.)

70. In 2011, the five largest producers of coal in the Appalachia and Illinois Basin region (Alpha Natural Resources, Inc., CONSOL Energy Inc., Alliance Resource Partners, L.P., Patriot Coal, and Peabody Coal) accounted for 54% of total coal production in the region. (Schroeder Decl. I, ¶ 14.)

71. "In 2011, Debtors sold a total of 31.1 million tons of coal." (Schroeder Decl. I, ¶ 11.)

72. Coal mining contributes over $26 billion to the West Virginia economy and over 60,000 West Virginia families depend on the coal industry for their livelihoods. (*Coal Facts* 2011 at 5.)

73. With the idling of certain of Debtors' operations during 2012, approximately 1,000 employee and contractor positions were eliminated. (Schroeder Decl. I, ¶¶ 26, 40.)

74. "West Virginia's coal industry pays for nearly $3.4 billion in annual direct wages." (*Coal Facts* 2011 at 20.)

75. In 2010, 22,599 employees worked in "direct" mining jobs in West Virginia; 29,512 employees worked for mining contractors. (*Id.* at 14.)[1]

76. Debtors employ more than 4,000 people in active status, working in both full-time and part-time positions. An additional approximately 645 people employed by Debtors are on some form of leave or an inactive status. (Schroeder Decl. I, ¶ 15 and n2.)

77. Debtors' employees include miners, engineers, truck drivers, mechanics, electricians, administrative support staff, managers, directors and executives. (Schroeder Decl. I, ¶ 15.)

78. Ninety-eight percent of the electricity in West Virginia is generated by coal. (*Coal Facts* 2011 at 20.)

79. West Virginia imposes a 5% severance tax on the selling price of mined coal. In 2010, the severance tax generated more than $400 million for the state, of which $30 million was distributed to all of West Virginia's counties and municipalities. (*Id.* at 15.)

80. "The coal industry and the coal-burning electric generating industry together represent nearly 60% of the business taxes paid to the State of West Virginia." (*Id.* at 20.)

Litigation and Investigation Involving the Debtors

81. Debtors are defendants in several pending lawsuits in West Virginia state court and federal district court. (See generally Form 10-Q.)

82. Debtors are also subject to the terms of consent decrees in connection with lawsuits filed against them in recent years. (*Id.*)

83. In 2007, the West Virginia Department of Environmental Protection ("WVDEP") filed an action in West Virginia state court against Debtor Hobet Mining, LLC ("Hobet"),

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[1] "Direct" mining jobs do not include support staff positions, such as mechanics, construction workers, machinists, and supply clerks. (*Coal Facts* 2011 at 14.)

claiming that the Debtor exceeded effluent limits related to Hobet's permits under the National Pollutant Discharge Elimination System ("NPDES"). (Form 10-Q at 16.)

84. In 2007, the Ohio Valley Environmental Coalition, Inc. ("OVEC") filed an action against Debtor Apogee Coal Company, LLC ("Apogee") in U.S. District Court in West Virginia pursuant to the citizen suit provision of the Clean Water Act, claiming that Apogee exceeded effluent limits for selenium. (*Id.* at 17.)

85. In 2008, OVEC and another environmental group filed an action against Hobet in U.S. District Court in West Virginia involving the same NPDES permits at issue in the 2007 state court action against Hobet. The 2008 federal action, however, focused on the selenium limits. (*Id.* at 17.)

86. In October 2009, OVEC and other environmental groups filed an action against Hobet in U.S. District Court in West Virginia alleging that Hobet violated effluent limits for selenium at the Hobet Surface Mine No. 22. (*Id.* at 17.)

87. On April 23, 2010, the WVDEP filed an action in West Virginia state court against Debtor Catenary Coal Company, LLC ("Catenary") alleging that the Debtor had discharged selenium from its surface mining operations in violation of its NPDES permits and surface mining permits. In this action, WVDEP is seeking fines, penalties and injunctions against Catenary. (*Id.* at 17.)

88. On June 11, 2010, the WVDEP filed an action in West Virginia state court against Apogee, claiming that the Debtor discharged certain pollutants—including selenium—in violation of its NPDES permits and other permits in connection with the Surface Mining Control and Reclamation Act ("SMCRA"). In this action, WVDEP is seeking fines and penalties and injunctions prohibiting Debtor Apogee from discharging pollutants, including selenium. As of

the August 2012 filing of Debtors' Form 10-Q, no trial date is scheduled in this action. (*Id.* at 18.)

89. In February 2011, OVEC and two other environmental groups filed an action against Debtors Patriot, Apogee, Catenary, and Hobet in U.S. District Court in West Virginia alleging violations of 10 NPDES permits and certain SMCRA permits relating to outfalls created prior to Debtors' acquisition of Magnum Coal Company in July 2008. (*Id.* at 18-19; Schroeder I, ¶ 9.)

90. Debtors are subject to consent decrees approved by the U.S. District Court on March 19, 2009 for the federal actions filed against Apogee in 2007 and Hobet in 2008. (Form 10-Q at 17.)

91. On September 1, 2010, the district court found Apogee in contempt of the March 2009 consent decree. (*Id.* at 18.)

92. On March 15, 2012, Debtors entered into a comprehensive consent decree in connection with the February 2011 federal litigation, wherein Patriot agreed to comply incrementally with applicable selenium discharge limits in operations covered by NPDES permits within a span of deadlines starting on March 15, 2014, with the last deadline on March 15, 2017. Patriot also agreed to waive its rights to mine certain coal reserves and to pay $7.5 million in civil penalties. (*Id.* at 19.)

93. Apogee and eight other defendants— including Monsanto Company, Pharmacia Corporation, and Akzo Nobel Chemicals, Inc.—have been sued in West Virginia state court by plaintiffs alleging personal injury caused by exposure to dioxin generated by a facility owned and operated by certain of the other defendants. Apogee is alleged to be liable as the successor to the liabilities of another company that owned or controlled a dumpsite that received dioxin-

contaminated material from the facility. In total, 243 similar lawsuits have been served on Apogee, all identical except for the plaintiffs. As of June 30, 2012, 47 of the actions have been dismissed. Under the terms of an applicable lease, Monsanto has assumed the defense of these lawsuits and has agreed to indemnify Apogee for any related damages. (*Id.* at 21-22.)

94. The state of West Virginia is conducting an investigation (along with the U.S. attorney's office) regarding one or more of the Debtors' employees alleged to have made inaccurate entries in official mine records at the Federal No. 2 mine. (*Id.* at 22.)

The UMWA

95. Some of the Debtors are signatories to labor agreements with the UMWA, known as the National Bituminous Coal Wage Agreement of 2011 (the "NBCWA"). "Since 1950, the NBCWA has been negotiated by the UMWA and the Bituminous Coal Operators' Association." (Schroeder Decl. I, ¶ 34.)

96. The UMWA headquarters is located in Triangle, Virginia. (Declaration of Michael Buckner, dated August 31, 2012 ("Buckner Decl.") (Dkt. No. 507), ¶ 4.)

97. Debtors comprise the second largest employer of miners represented by the United Mine Workers of America ("UMWA") in the United States. (Schroeder Decl. I, ¶ 34.)

98. Approximately 42% of the Debtors' employees are represented by the UMWA, under collective bargaining agreements. (*Id.*, ¶ 15.)

99. Debtors have indicated that "[t]he NBCWA contains many provisions that restrict the ability of signatory employers to deploy labor and operate their mines in a flexible and cost-effective manner, which puts signatory companies at a cost disadvantage with their union-free competitors." (Schroeder Decl. I, ¶ 35.)

100. Debtors claim that "[o]ver the years, an extensive and costly package of pension and non-pension benefits for active and retired miners has evolved under successive NBCWAs, including funding benefits for tens of thousands of retired mineworkers whose employers are no longer in business." (Schroeder Decl. I, ¶ 35.)

101. Debtors have indicated, moreover, that they currently contribute $12,000 per year to the UMWA 1974 Pension Plan (the "1974 Pension Plan") for each of their unionized employees, and that this amount is projected to increase to more than $27,000 per employee by 2017, and more than $46,000 per employee by 2020. (Schroeder Decl. I, ¶ 35.)

102. Debtors claim that in 2011, they paid $48,185 per active union employee to provide healthcare benefits and that Debtors' obligations under the NBCWA, and other UMWA agreements, will cost them over $100 million this year, and their "liabilities" related to these benefits "are estimated to exceed $1.3 billion in the aggregate." (Schroeder Decl. I, ¶ 35.)

103. "The Debtors provide health care and other benefits to 10,286 primary insureds and 12,145 beneficiaries, amounting to a total of 22,431 individuals covered by the Debtors' benefit plans." (Schroeder Decl. I, ¶ 15.)

104. As of July 2012, "there are approximately 11,860 retirees covered as primary insureds under benefit plans administered by Debtors." The retirees reside in 41 states: approximately 38% live in West Virginia; approximately 50% live in the nearby Illinois Basin coal region, which includes Illinois, Indiana, and Kentucky. Debtors have not stated the percentage of retirees, if any, who reside in New York. (Schroeder Decl. II, ¶ 39.)

105. Of the 11,860 retirees, 10,388 are union members. The 10,388 unionized retirees reside in 39 states: approximately 39% live in West Virginia; approximately 50% live in the nearby Illinois Basin. (Schroeder Decl. II, ¶ 40.)

106. The UMWA's International Union President, Cecil Roberts, is a fifth generation coal miner and a West Virginia resident. (Buckner Decl., ¶ 4.)

107. A bargaining team has been established in order to conduct negotiations pursuant to § 1113 with Debtors. (*Id.* at ¶ 3.)

108. In addition to Union President Cecil Roberts, the negotiating team will be composed of three International District Vice Presidents who oversee jurisdictions in which Debtors conduct active mining operations. The International District Vice Presidents are: Joe Carter, Mike Caputo, and Steve Earle. (*Id.*)

109. Joe Carter is a fourth generation coal miner who works from the UMWA offices in Charleston and Beckley, West Virginia. Mr. Carter is a resident of Stanaford, West Virginia. (*Id.* at ¶ 5.)

110. Within Mr. Carter's district alone, District 17, there are seven active UMWA locals and six retiree UMWA locals that are directly affected by this case. The active locals include over 1,200 coal miners who work at facilities operated by the Debtors. The retiree locals include over 4,000 retirees. (*Id.*)

111. Mike Caputo is a third generation coal miner who works from the UMWA office in Fairmont, West Virginia. Mr. Caputo resides in Rivesville, West Virginia. Within Mr. Caputo's district, District 31, is Patriot's Federal No. 2 mine, a large active underground coal mine located in West Virginia. (*Id.* at ¶ 6.)

112. "The UMWA's procedure for negotiating and ratifying collective bargaining agreements covering its members is set forth in the Union's Constitution." (*Id.*, ¶ 2.)

113. The UMWA's Constitution contains a number of provisions which enable the Union membership's involvement in developing the Union's bargaining proposals. (*Id.*)

114. Article 19 of UMWA's Constitution (*Id.*, Attachment A) sets forth, in pertinent part:

(a) Section 1. For each collective agreement covering members in two or more Districts, there shall be established a Negotiating Committee. (*Id.* at 125.)

(b) Section 2. Prior to the beginning of negotiations for an agreement, the International District Vice President shall convene a District Conference including elected representatives from all Local Unions in the District having members covered by that Agreement. The purpose of the District Conference shall include obtaining suggestions, views and recommendations reflecting the desires of the members as to what demands should be made and what priorities should be set in the negotiations. (*Id.* at 126.)

(c) Section 3. The Negotiating Committee shall decide the demands to be made in negotiations and the policies and priorities to be followed in negotiations. When the Negotiating Committee arrives at what it believes is the most favorable proposed agreement which can be reached, it shall submit that proposed agreement to a ratification vote by all members covered by the proposed agreement. (*Id.*)

(d) Section 4. All International Executive Board Members, International Representatives, District Representatives and any other members of the Negotiating Committee shall be obligated to use their best efforts to explain to the members the agreement recommended by the Negotiating Committee. Where practicable, the International District Vice President shall reconvene the District Conference to explain the agreement. Members of the Negotiating Committee, International Representatives, District Representatives shall attend any Local Union Meeting where the proposed agreement is being discussed for the purpose of explaining it. (*Id.* at 126-127.)

(e) Section 5. For each collective agreement covering members in only one District, the International President shall chair the Negotiating Committee, and together with the elected District officials, headed by the International District Vice President for that District and elected rank and file Negotiating Committee members, shall negotiate contract agreements. Any agreements recommended by the Negotiating Committee shall be subject to a ratification vote by all members covered by this Agreement. (*Id.* at 127.)

(f) Section 6. Ratification votes shall be held in each Local Union which has members covered by the agreement, and shall be conducted no less than 48 hours following a full explanation of the proposed agreement and full opportunity for discussion and debate. Only working members, or working members who have been sick or temporarily disabled, or members who are unemployed and on the mine panel or recall list at the time of the vote, shall be eligible to vote. Voting shall be by secret ballot and shall be held at such times and places as to make it convenient for all eligible working members to vote. No agreement shall be effective until it has been approved by a majority vote of all the valid ballots cast by participating members. (*Id.* at 127-128.)

115. "[T]entative collective-bargaining agreements are submitted to the membership for ratification by secret ballot vote." (Buckner Decl., ¶ 2.)

116. Under the UMWA Constitution, the membership makes the final decision regarding whether to accept or reject negotiated terms. (*Id.*)

117. If there are hearings in this case involving the modifications to the UMWA's collective bargaining agreements, and/or modifications to retiree health benefits of UMWA members, the UMWA will present workers and retirees, most of whom live in or near southern West Virginia, as witnesses. (*Id.*, ¶ 9.)

118. Workers and retirees who are not called as witnesses but who would nonetheless be affected by modifications to their wages and benefits have an interest in attending and observing hearings pertinent to those issues and if the hearings are held in New York City, it would impose a hardship on those wanting to attend. (*Id.*)

119. Any strikes by the UMWA involving the Debtors would occur at the Debtors' active union-labor operations, all but one of which are located in West Virginia. (*Id.* at ¶ 2.)

Debtors' Responses to Financial Constraints

120. In the first six months of 2012, Debtors idled a portion of the metallurgical coal production in their Appalachia operations. Production of metallurgical coal was reduced at the Debtors' Rocklick and Wells mining complexes in the first quarter of 2012. (Form 10-Q at 43-44.)

121. In February 2012, Debtors closed their Big Mountain mining complex, located in West Virginia in response to weakening demand for thermal coal. (*Id.* at 43.)

122. In the second quarter of 2012, a mine in Debtors' Corridor G complex was also idled in an effort to decrease production. (*Id.* at 44.)

123. Mark N. Schroeder ("Schroeder"), Chief Financial Officer of Patriot Coal Corp., testified at the § 341 meeting that the Debtors filed for chapter 11 relief because the Debtors had "liabilities that we are trying to overcome. We have obligations that we are trying to overcome" and that the Debtors would be able to "overcome those liabilities" by "[t]rying to gain control over the costs that we incur in mining our coal." (341 Mtg. Tr. at 44:19-25, 45:1-4.)

124. Schroeder testified that, "Our costs are very high today and we need to find ways to lower the costs that we incur in mining the coal and selling the coal then to the public." (*Id.* at 45:7-9.)

125. Discussions among the Debtors' board members regarding DIP financing and other issues culminating in Debtors' decision to file for bankruptcy started within the three months prior to the July 9, 2012 filing. (*Id.* at 16:12 to 17:10.)

126. Debtors have stated that they have "substantial and unsustainable legacy costs, primarily in the form of medical benefits and pension obligations." (Schroeder Decl. I, ¶ 33.)

127. Debtors have pointed out that "[p]ursuant to the NBCWA and similar UMWA collective bargaining agreements, certain of the Debtors are required to make significant pension contributions to a multi-employer pension fund under the UMWA 1974 Pension Plan (the "1974 Pension Plan"). (Schroeder Decl. I, ¶ 36.)

128. According to Debtors, the contributions required by the 1974 Pension Plan have increased in recent years and will continue to increase in the near future. According to Debtors, in 2007, the contribution rate to the 1974 Pension Plan was $2.00 per hour worked and is currently $5.50 per hour. In May of 2012, the UMWA and the BCOA notified all employers that under the Pension Protection Act, contributions to the 1974 Pension Plan would increase to a minimum of $12.50 in 2017 and to a minimum of $21.50 by 2020. (Schroeder Decl. I, ¶ 36.)

129. "Currently, the Debtors' annual contribution to the 1974 Pension Plan is approximately $22 million. In addition, the NBCWA also requires the Debtors to contribute $1.50 per hour worked to the 2012 Retiree Bonus Account Trust, which will make an annual payment of either $455 or $580 to each participant in the 1974 Pension Plan in 2014, 2015 and 2016. The Debtors are also required to contribute $1.10 per hour worked to the UMWA 1993 Benefit Plan through 2016, which provides health benefits to UMWA retirees whose last employer is no longer in business." (Schroeder Decl. I, ¶ 36.)

130. In 2008, Debtors acquired Magnum Coal Company ("Magnum"), which at the time was one of the largest coal producers in Appalachia, "controlling more than 600 million tons of proven and probable coal reserves." Magnum had previously attained its own substantial assets and liabilities when it acquired Arch Coal, Inc. (Schroeder Decl. I, ¶ 9.)

131. "[A]s a result of the spin-off from Peabody and the acquisition of Magnum, the Debtors assumed certain liabilities relating to former employees and retirees of Peabody and Arch who retired prior to the formation of Patriot." Debtors claim that their "return to long-term viability depends on their ability to achieve savings with respect to these liabilities." (Schroeder Decl. I, ¶¶ 9, 33.)

132. Debtors have also cited governmental regulation and the costs of compliance as among the factors leading to their financial difficulties, saying: "The regulatory environment, both with respect to customers who use coal and the operation of coal mining companies, has also contributed to the Debtors' current financial situation. Specifically, the regulation of electricity generators has made it increasingly difficult for companies to use coal as an energy source and may lead to further reduction in the amount of coal consumed by the electricity

generation industry. At the same time, the Debtors are faced with dramatically increasing costs to comply with environmental laws and other governmental regulations." (Schroeder Decl. I, ¶ 27.)

133. Certain of the Debtors commenced breach of contract actions against two of its customers—Keystone Industries LLC and Bridgehouse Commodities Trading Limited—in West Virginia state court because the events giving rise to the causes of action in those cases occurred in West Virginia. (UMWA Omnibus Reply, Ex. B (*Patriot Coal Sales LLC v. Keystone Industries LLC*) at ¶¶ 2-6 and Ex. C (*Patriot Coal Sales LLC v. Bridgehouse Commodities Trading Ltd., et al.*) at ¶¶ 1-7.)

Debtors' Legal Counsel in These Proceedings and Attorneys' Fees
<u>in New York and West Virginia</u>

134. Debtors have engaged the following West Virginia legal counsel, at the rates indicated:

(a) Pullin, Flanagan, Brown & Poe, PLLC, 901 Quarrier St., Charleston, WV 25309, rates of $120-135 per hour. (Dkt. No. 324.)

(b) The Rose Law Office, 300 Summers St., Charleston, WV 25301, at $300 per hour. (Dkt. No. 325.)

(c) Betts Hardy & Rodgers, PLLC, 500 Lee St., East, Suite 800, Charleston, WV 25301, at $165-255 per hour. (Dkt. No. 343.)

(d) Dinsmore & Shohl LLP, 900 Lee St., Suite 600, Charleston, WV 25301, at $155-$355 per hour. (Dkt. No. 345.)

(e) Flaherty Sensabaugh Bonasso PLLC, 200 Capitol St., Charleston, WV 25301, at $175-$225 per hour. (Dkt. No. 346)

(f) Simmerman Law Office, PLLC, 254 East Main St., Clarksburg, WV 26301, at $125-$250 per hour. (Dkt. No. 360)

(g) Steptoe & Johnson PLLC, 400 White Oaks Blvd., Bridgeport, WV 26330, at $90-$245 per hour. (Dkt. Nos. 361, 379.)

135. The following are legal fees for New York attorneys in these proceedings:

(a) Debtors' counsel, Davis Polk & Wardwell LLP, has a blended hourly rate for partners of $959.13 and for associates of $664.74. (Dkt. No. 400.)

(b) Counsel for the Creditors Committee, Kramer Levin Naftalis & Frankel LLP, bills partners at $1,025- $675 per hour and associates at $765-$375 per hour. (Dkt. No. 444.)

Dated: October 5, 2012
New York, NY

Respectfully submitted,

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