**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

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

DECLARATION OF MICHEAL BUCKNER IN OPPOSITION TO THE DEBTORS' MOTION TO REJECT COLLECTIVE BARGAINING AGREEMENTS AND TO MODIFY RETIREE BENEFITS PURSUANT TO 11 U.S.C. §§1113 AND 1114

Micheal Buckner declares pursuant to 28 U.S.C. §1746:

1. I am currently employed as a consultant by the United Mine Workers of America ("UMWA"). For my work for the UMWA in connection with the bankruptcy of the Debtors I am compensated at the rate of $2,000 per month. I make this declaration in opposition to the Debtors' proposed motion to reject collective bargaining agreements and to modify retiree benefits pursuant to 11 U.S.C. §§1113 and 1114. This declaration is based upon my own personal knowledge, my review of the record in this matter, and published materials that are available with which I frequently consult in the course of my work for the UMWA. I am competent to testify to all facts contained in this declaration.

2. I have a Master of Science Degree in Industrial Relations that I received from the West Virginia University Graduate School of Business and Economics in 1975.

3. Prior to becoming a consultant for the UMWA, I was employed as the Director of Research for the UMWA, a position that I held between 1982 and 2005 when I retired from the UMWA. Prior to becoming Research Director, I was employed as the Legislative Director for the UMWA between 1979 and 1982. From 1976 to 1978, I worked as an underground coal miner in northern West Virginia before joining the UMWA staff to work in its Legislative Department.

4. In addition to my consulting activities with the UMWA, I also serve on the board of trustees for the UMWA 1974 Pension Plan (1974 Plan), the UMWA Cash Deferred Savings Plan (CDSP) and the UMWA Retiree Bonus Account Plan (Retiree Bonus Plan". I have served as a trustee for the 1974 Plan and the CDSP since 2005, and as a trustee for the Retiree Bonus Plan since its creation in 2012 pursuant to the 2011 NBCWA.

5. I have also served as a trustee appointed by the UMWA on the UMWA Combined Benefit Fund (CBF), the UMWA 1992 Benefit Plan (1992 Plan) and the UMWA 1993 Benefit Plan (1993 Plan) at various times from 2005 to 2012. I also served as a special trustee for the 1992 Plan during the Westmoreland bankruptcy in the mid-1990s. From 2000-2005 I served as a trustee on the UMWA 1978 Retired Construction Workers Benefit Plan and the UMWA 1985 Construction Workers Pension Plan.

6. In my capacity as first Research Director and then a consultant for the UMWA, I participated in the negotiations that led to the 1984, 1988, 1993, 1998, 2002, 2007 and 2011 National Bituminous Coal Wage Agreements (NBCWA). In those negotiations, I served as chairman of the UMWA benefits subcommittee that handled issues related to pensions and health care. One of my main roles during negotiations has been to provide the UMWA negotiators with information on the coal industry and the signatory employers' position within

the coal industry. In doing so, I often reviewed corporate filings with the U.S. Securities and Exchange Commission (SEC), including annual 10-K reports, quarterly 10-Q reports, periodic 8-K filings and other reports filed by coal industry employers. I also often reviewed and analyzed data on coal industry producers and consumers filed by coal companies and coal consumers with various federal government agencies, including the Mine Safety and Health Administration (MSHA), the Federal Energy Regulatory Commission (FERC), the U.S. Department of Energy (DOE), the U.S Department of Commerce (DOC), and the U.S. Department of Labor (DOL) to evaluate coal production and consumption, and labor issues. As both the Director of Research and consultant during negotiations, I was also often asked to cost out the value of contract proposals.

7. Furthermore, my duties required that I maintain a particular knowledge of the history and background of the UMWA and the coal mining industry, as well as of the health and safety issues affecting miners. Beginning with my work as Legislative Director and continuing as Director of Research and as a consultant, I have been involved in legislative and regulatory efforts to address health and safety issues involving miners. To that end, I have worked closely over the years with the UMWA Department of Occupational Safety and Health and have assisted in the preparation of testimony by various UMWA officials before legislative and regulatory bodies. In performing these duties I often reviewed reports from MSHA and the National Institute for Occupational Safety and Health (NIOSH) related to health and safety matters affecting coal miners.

8. Moreover, in addition to monitoring and overseeing the operations of the Funds in delivering benefits to the Funds' sick and elderly beneficiary population of retired coal miners and their dependents and survivors, my duties as a trustee on the CBF, 1992 Plan and 1993 Plan

included direct involvement in shaping and administering programs adopted by the Funds designed to address the beneficiaries' special needs. These programs included, among others, the MineRx[1] program, a geriatric care management (GCM) program, a care coordination program, a chronic obstructive pulmonary disease (COPD) program, a hospital transition program, and a caregiver support program.

9. I have attached a list of the sources and materials that I considered in the course of preparing this declaration as Exhibit A to my declaration. The purpose of this declaration is to explain the importance of health care to the UMWA and its members and to provide a brief history of the miners' efforts to improve health care in the coalfields. I also will address some of the issues raised in declarations presented by Debtors' witnesses, based on my review of data, charts and other information presented by the Debtor', as well as other sources of information indicated herein.

10. Coal miners risk their lives, lungs and limbs each day so the rest of us can live in comfort. The coal that they mine keeps the lights on, and the heating and air conditioning systems working throughout America and provides for the modern comforts we too often take for granted. Whether it is electricity that furnishes heat and light to our homes, the steel that goes into our ships, railroads, buildings and cars, or hundreds of other products that depend on coal as a raw material or for the process steam used in manufacturing processes, the coal they mine makes all of our lives more comfortable.

11. Coal miners in underground mines face many dangers in their work. Many of them work in complete darkness with the only source of light sometimes being the cap light they

[1] The MineRx program, also known as the Prescription Drug Care Coordination Program, is an initiative to help physicians advance the quality and effectiveness of the prescription drug therapies they provide to their elderly and chronically ill patients. The program covers some 6,000 Funds beneficiaries and 480 providers in southwestern Pennsylvania.

wear on their hard hat, which illuminates the immediate area directly in front of them, or the lights on the machines they operate. They are constantly in danger from roof and rib falls, fires, explosions of methane gas or coal dust, electrocution, and the accidents that come from operating heavy equipment in confined spaces with limited visibility. In the ten-year period between 2003-2012 the Mine Safety and Health Administration (MSHA) reported that there were 47,585 work-related injuries in the bituminous coal industry, including 298 fatal injuries, 32,809 non-fatal injuries that resulted in lost work time and 14,478 injuries that did not involve lost work days.[2] These injuries occurred among a production work force of 81,205 workers on average throughout the ten-year period, and ranged from a low of 69,485 workers to 89,979 workers. Through March 22nd of this year eight coal miners were killed on the job, including six underground miners and two surface miners. In 2012 the injury incidence rate in U.S. underground coal mines was 5.09 injuries per 200,000 hours worked.[3] This compares to injury incidence rates of 3.5 in all private industry, 3.9 in the construction industry and 4.4 in the manufacturing industry.[4]

12. The rigors of coal mining can lead to serious long-term damage to miners' health. They are exposed to high levels of noise from machinery. Their demanding physical labor, often involving bending and lifting heavy weights such as mine supplies or equipment parts, can cause not only acute injuries, but can also cause lifelong chronic damage to backs and knees. They are exposed to coal dust that over time can choke the breath of life out of them. If they survive the day-to-day dangers on the job over their mining careers, they risk developing progressive,

[2] *Mine Injuries and Worktime Quarterly*, Mine Safety and Health Administration, U.S. Department of Labor, http://www.msha.gov/ACCINJ/ALLCOAL.HTM.
[3] *Mine Injuries and Worktime Quarterly*, Mine Safety and Health Administration, U.S. Department of Labor, http://www.msha.gov/STATS/PART50/WQ/2012/table1.pdf.
[4] *Industry Injury and Illness Data*, Bureau of Labor Statistics, U.S. Department of Labor, http://www.bls.gov/iif/oshwc/osh/os/ostb3191.pdf.

irreversible lung damage through coal workers pneumoconiosis (CWP), or black lung disease, and other respiratory diseases due to exposures to silica, diesel exhaust and chemicals.

13. Attached to this declaration as exhibit B are slides that depict what coal dust can do to a miner's lungs. The slides, which are pictures of actual lung slices obtained in autopsies, compare samples of healthy lung tissue to the lungs of miners with simple pneumoconiosis (with and without emphysema) and progressive massive fibrosis.[5] These slides show the accumulation of coal dust in the lungs over time and the destruction of lung tissue. Figure 1 shows the lungs of a schoolteacher who was 90 years old at the time of death. Figure 2 shows the lungs of a younger person who was never exposed to coal dust on the job. Figure 3 shows the changes that occur in the lungs early in the development of black lung disease, which can occur in as little as 10-15 years of mining. Figures 4 and 5 show the more advanced changes in the lung associated with simple pneumoconiosis with focal emphysema. Finally, Figures 6 through 8 show the devastation of the lungs of miners who have contracted progressive massive fibrosis (PMF), the most disabling and deadly form of the disease.

14. Disturbingly, NIOSH, a division of the Centers for Disease Control, U.S. Department of Health and Human Services, reports that the prevalence of working miners who show x-ray evidence of PMF is also trending up after years of decline, and is showing up in miners who have as little as 10 years of mining experience.[6] These are miners whose entire mining careers post-date the passage of the landmark 1969 Coal Mine health and Safety Act and the implementation of new dust standards in 1973. Miners who breathe coal dust over long periods often report shortness of breath and an increasing inability to complete routine activities

[5] *Black Lung*, Lorin E. Kerr, M.D., Director, United Mine Workers of America Department of Occupational Health, 1972.
[6] *Current Intelligence Bulletin 64: Coal Mine Dust Exposure and Associated Health Outcomes—A Review of Information Published Since 1995*, National Institute for Occupational Safety and Health, April 2011, http://www.cdc.gov/niosh/docs/2011-172/.

such as walking up stairs or other simple exercises without losing their breath. These conditions become worse as the disease progresses and miners often report an inability walk short distances or to sleep without sitting up because of the wracking cough that accompanies black lung.

15. In a 1995 study[7], NIOSH found that exposures to respirable coal mine dust over a working lifetime "are associated with the development of occupational respiratory diseases, including simple coal workers' pneumoconiosis (CWP), progressive massive fibrosis (PMF), and chronic obstructive pulmonary disease (COPD). Epidemiological studies have clearly demonstrated that miners have an elevated risk of developing simple CWP, PMF or deficits in lung function when they are exposed to respirable coal mine dust over a working lifetime at the current Mine Safety and Health Administration (MSHA) permissible exposure limit (PEL) of 2 mg/m^3. Coal miners who are exposed to respirable crystalline silica are also at risk of developing silicosis or mixed-dust pneumoconiosis." As part of the 1995 study, NIOSH recommended reducing the respirable dust standard to 1 mg/m^3. The current MSHA PEL in 2013 remains at 2 mg/m^3 despite the longstanding recommendation by NIOSH to reduce the standard and despite the clear intention of Congress that the standard should be set at a level that coal miners should be able to work a full career in coal mining without suffering "material impairment of health or functional capacity."

16. In a 2011 update[8] to the 1995 study, NIOSH reported that "after a long period of declining CWP prevalence, recent surveillance data indicate that the prevalence is increasing" and that "coal miners are developing CWP at relatively young ages (< 50 years.)" Indeed, after several decades of declining prevalence of black lung among miners, NIOSH data show rates of

[7] *Criteria for a Recommended Standard: Occupational Exposure to Respirable Coal Mine Dust*, National Institute for Occupational Health and Safety, September 1995, http://www.cdc.gov/niosh/docs/95-106/.
[8] *Current Intelligence Bulletin 64: Coal Mine Dust Exposure and Associated Health Outcomes—A Review of Information Published Since 1995*, National Institute for Occupational Safety and Health, April 2011, http://www.cdc.gov/niosh/docs/2011-172/.

CWP among working miners have doubled beginning in the mid-1990s. NIOSH researchers have not definitively determined why the rates of CWP have increased recently, but they have offered several possible reasons, including "excessive exposure due to increases in coal mine dust levels and duration of exposure (longer working hours), and increases in crystalline silica exposure."[9] In a report to the Governor on the 2010 explosion disaster at Upper Big Branch (UBB) mine in West Virginia, an independent investigative panel[10] found that 71% of the miners killed in the explosion showed autopsy evidence of CWP.[11] The report noted "of the 17 UBB victims with CWP, five of them had less than 10 years of experience as coal miners." The ages of the victims showing evidence of CWP ranged from 25 years old to 61 years.

17. In addition to respiratory diseases, long-term exposure to coal dust is linked to ischemic heart disease (IHD). In a 2011 peer-reviewed article in the American Journal of Industrial Medicine, NIOSH researchers concluded "there was an increased risk of mortality from IHD associated with cumulative exposure to coal dust."

18. In addition to coal mine dust, underground miners are often exposed to diesel particulate matter (DPM) and aerosol gases from underground diesel equipment. Diesel particles are extremely small compared to other coal mine dust aerosols and tend to behave similarly to surrounding gases. Thus DPM aerosols "have much longer residence times in a mine atmosphere than larger mechanically generated particles, which are removed from the atmosphere quite quickly by gravitational settling. In addition, a large portion of diesel particles is deposited in the human respiratory tract in comparison to larger aerosols. These small diesel

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[9] *Current Intelligence Bulletin 64: Coal Mine Dust Exposure and Associated Health Outcomes—A Review of Information Published Since 1995*, National Institute for Occupational Safety and Health, April 2011, http://www.cdc.gov/niosh/docs/2011-172/.

[10] *Upper Big Branch, Report to the Governor*, Governor's Independent Investigation Panel, May 2011.

[11] Of the 29 victims, five did not have sufficient lung tissue available to make a determination related to CWP. Seventeen of the 24 victim's autopsies revealed CWP.

aerosols will penetrate deeply into regions of the human lung where gas exchange occurs, potentially increasing the health risks associated with long-term exposure to diesel aerosols."[12] In a peer reviewed study of underground non-metal miners recently published in the Journal of the National Cancer Institute (JNCI), NIOSH-funded researchers reported that "exposure to diesel exhaust increases the risk of mortality from lung cancer."[13]

19. Underground miners are also subject to muscular-skeletal stresses from heavy lifting required on the job and from long-term operation of heavy equipment over uneven and bumpy surfaces. Miners often are required to drag heavy electrical cables, shovel coal along coal ribs[14] and conveyor belt lines, and carry rock dust bags, brattice curtain and fan tubes for directing air flow, cement blocks to build permanent stoppings[15], and roof bolts and crib blocks[16] to support the mine roof. These activities often lead to long term problems with back, neck, knee, hip and other muscular-skeletal conditions. Repetition in the use of mining equipment controls leads to problems with carpal tunnel syndrome. In addition, miners who work long years in damp mining conditions often report problems with arthritic conditions.

20. Surface coal miners are not exposed to all the same dangerous and potentially life-threatening hazards as underground coal miners but nonetheless face many hazardous conditions. They can be exposed to accidents caused by heavy equipment, the use of explosives, highwall and roadway cave-ins, or even drowning in sediment ponds. Surface miners also are

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[12] *Report of Investigations 9687, Diesel Aerosols and Gases in Underground Mines: Guide to Exposure Assessment and Control*, National Institute for Occupational Safety and Health, October 2011, http://www.cdc.gov/niosh/mining/works/coversheet748.html.

[13] *The Diesel Exhaust in Miners Study: A Cohort Mortality Study With Emphasis on Lung Cancer*, Journal of the National Cancer Institute, June 6, 2012, http://jnci.oxfordjournals.org/content/104/11/869.full.pdf+html.

[14] Ribs are the side walls of a mine heading or roadway after the coal has been cut. After the coal has been removed, the headings consist of a mine bottom, roof and ribs. Coal that falls off the shuttle cars as it moves from the mine face to the belt conveyor has to be removed so it does not accumulate along the coal rib.

[15] Stoppings are permanent walls built across the mine entries in underground mines to ensure that the ventilation system provides fresh air where it is needed and to isolate the air in old workings.

[16] Crib blocks are constructions of wooden timbers built to provide additional support to the mine roof.

exposed to injury from equipment brake failure on steep haulage roads with poor embankments, and subject to falls from working on equipment repairs and maintenance at extreme heights. They also have occupational disease exposure through coal dust and silica dust exposure as noted in recent NIOSH studies and exposure to high levels of noise.

21. Workers in preparation plants, which clean and separate the coal from waste products before it is shipped to the ultimate customer, are also exposed to environmental stresses that can affect their health, including coal dust, chemicals used to clean and separate coal and waste material, and noise. Workers who operate heavy machinery, such as bulldozers to maintain coal stockpiles, risk suffocation from accidents that result in the machine being covered by coal in hidden cavities where voids exist that cause equipment to sink into the coal pile. And like surface miners, prep plant workers also are exposed to injury from falls from working on equipment repairs and maintenance at extreme heights.

22. As a result of the nature of their work, coal miners have always put a high value on health care because they know they are at significant risk of acute injury and disease resulting from mining. Coal miners have also put special emphasis on retiree health care benefits because they understand that working in the mines is likely to cause chronic and disabling physical conditions for which they will need medical care following their retirements. For example, retired miners have a high incidence of heart, lung, back and joint problems. In 2004 and again in 2009, the UMWA Health and Retirement Funds commissioned studies[17] by Mercer Health & Benefits (Mercer) and Verisk Health, Inc. to study the relative illness burden of Funds beneficiaries. The Mercer study concluded that the illness burden in the Funds' population of retirees was 32.4% higher than in a geographically similar Medicare population. Among its findings were that the Funds beneficiaries had significantly higher burden of illness in the

[17] *Health Status Assessment Project*, Mercer Health & Benefits and Verisk Health, Inc., August 2009.

following categories: Congestive heart failure—63.3% higher incidence, cardio-respiratory conditions—31.6% higher incidence, vascular problems—21.1% higher incidence, lung problems—31.0% higher incidence, cerebro-vascular problems—27.5% higher incidence.[18]

23. A review of the letters from retirees submitted to the Court in this case demonstrates that Patriot's miners and retirees share the same problems that Mercer highlighted among the Funds population. Many of them report significant health problems such as heart and lung disease, cancer, and muscular-skeletal conditions. Many of them also report the need for significant quantities of medications to address their various chronic conditions.

24. An October 2012 report[19] from NIOSH on morbidity and disability of workers in the mining industries showed the cumulative effects of mining on workers. It showed that while on average mining workers report higher morbidities than other workers in a number of categories, workers over age 65 report significantly higher morbidities than other workers. For example, among mine workers over age 65, 9.5% reported their health status as worse than it was in the previous 12 months compared to only 6.1% of all workers over age 65; 15.4% reported more than 6 lost work days in the previous year compared to only 10.5% of all workers over age 65; 28.7% reported health conditions that required of special equipment such as a cane, wheelchair or a special telephone compared to only 4.4% of all workers over age 65; 68.3% reported functional limitations compared to only 43.7% of all workers over age 65; 66.9% reported hearing difficulties compared to only 32.8% of all workers over age 65. While these data cover all mining sectors and not just coal mining, I believe the substantially higher morbidities reported among older miners than the average older worker are indicative of the cumulative health effect of long years working in a mine.

[18] *Health Status Assessment Project*, Mercer Health & Benefits and Verisk Health, Inc., August 2009, Exhibit 5.
[19] *Morbidity and Disability Among Workers 18 Years and Older in the Mining Sector, 1997-2007*, National Institute for Occupational Safety and Health, October 2012, http://www.cdc.gov/niosh/docs/2012-155/pdfs/2012-155.pdf.

25. As a result of the health conditions that are common among coal miners, they have always placed a high value on their health benefits, both during and after their working lives. A 1939 study by the Bureau of Cooperative Medicine[20] found that many miners expressed the view that "an improvement in medical conditions would mean more to us than a raise in pay." The 1990 Coal Commission[21] found "Health care benefits are an emotional subject in the coal industry, not only because coal miners have been promised and guaranteed health care benefits for life, but also because coal miners in their labor contracts have traded lower pensions over the years for better health benefits." Relying on these findings, the Coal Commission found that it was appropriate to guarantee health benefits for retired coal miners for life, culminating in the Coal Act of 1992 that guaranteed health benefits for miners who retired and took their pensions by September 30, 1994.

26. The U.S. General Accounting Office said in a 2002 report:[22] "We acknowledge that the retired coal miners traded lower pensions for the promise of future health care benefits."

27. For example, the average UMWA pensioner in the 1974 Pension Plan had a monthly pension benefit of $586.27 in 2012. The average surviving spouse benefit was $444.65 per month. A 2010 study[23] by the National Coordinating Committee for Multiemployer Plans (NCCMP) showed that median pension benefit for multiemployer plans was $908 per month, an amount that the NCCMP described as "an extremely modest benefit level under any standard."

28. Prior to the creation of the UMWA Health and Welfare Funds in 1946, medical care in the nation's coalfield communities consisted of a pre-paid system based on deductions

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[20] *Medical Care in Selected Areas of the Appalachian Bituminous Coal Fields*, The Bureau of Cooperative Medicine, March 1, 1939.
[21] *Coal Commission Report: A Report to the Secretary of Labor and the American People*, The Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits, November 1990.
[22] *Retired Coal Miners Health Benefit Funds: Financial Challenges Continue,* U.S. General Accounting Office, April 2002.
[23] *The Road to Recovery: The 2010 Update to the NCCMP Survey of the Funded Status of Multiemployer Defined Benefit Plans*, National Coordinating Committee on Multiemployer Pension Plans.

from the miners' paychecks. Under this system, coal companies deducted money from the miners' pay and hired doctors to provide medical services to the miners. In many cases this was necessary because the isolated, rural areas where coal was produced did not attract medical professionals and only the lure of guaranteed income could induce doctors to set up practice in coalfield communities. Over time, the company doctor system came to be viewed by the miners as inefficient, wasteful and harmful to their interests. As a result, miners began to demand changes in the provision of medical care in the coalfields.

29. Because of nationwide concern about health care matters during the Great Depression, President Roosevelt in 1935 appointed a federal Interdepartmental Committee to Coordinate Health and Welfare Activities. One of the major activities of the committee was to convene a National Health Conference, at which Dr. Walter Polakov, Director of the UMWA Department of Engineering, called for the establishment of "group medicine and group hospitalization" in coal mining communities.

30. Following Dr. Polakov's presentation, the UMWA, through the Good Will Fund of Boston and the Twentieth Century Fund of New York, commissioned a report on medical conditions in the coalfields by the Bureau of Cooperative Medicine. The study concluded that there was a pressing need for medical care reform in the coalfields. In transmitting its report, the authors noted that the medical care system in the coalfields was "inadequate and chaotic" and that medical conditions were "deplorable." They found among the miners "an overwhelming desire for a change in this system of medical care."

31. When the National Bituminous Wage Conference convened in early 1946, a health and welfare fund for miners was the UMWA's top priority. The coal operators rejected the proposal and miners walked off the job on April 1, 1946. Negotiations under the auspices of the

U.S. Department of Labor continued sporadically through April. On May 10, 1946, President Truman summoned John L. Lewis and the coal operators to the White House. The stalemate appeared to break when the White House announced an agreement in principle on a health and welfare fund. Despite the White House announcement, the coal operators still refused to agree to the creation of a medical fund. Another conference at the White House failed to forge an agreement and the negotiations again collapsed.

32. Faced with the prospect of a long strike that could hamper post-war economic recovery, President Truman issued an Executive Order directing the Secretary of the Interior to take possession of all bituminous coal mines in the United States and to negotiate with the union "appropriate changes in the terms and conditions of employment." Secretary of the Interior Julius Krug seized the mines the next day and ordered the miners to return to work. The miners refused, and negotiations continued, first at the Interior Department and then at the White House, with President Truman participating in several conferences.

33. After a week of negotiations, the historic Krug Lewis agreement was announced and the strike ended. It created a welfare and retirement fund to make payments to miners, and their dependents and survivors, in cases of sickness, permanent disability, death or retirement, and other welfare purposes determined by the trustees. The fund was to be managed by three trustees, one to be appointed by the federal government, one by the UMWA and the third to be chosen by the other two. Financing for the new fund was to derive from a royalty of 5 cents per ton of coal produced.

34. The Krug Lewis agreement also committed the federal government to undertake "a comprehensive survey and study of the hospital and medical facilities, medical treatment, sanitary and housing conditions in coal mining areas." The expressed purpose was to determine

what improvements were necessary to bring coalfield communities in conformity with "recognized American standards" for health care.

35. To conduct the study, the Secretary chose Rear Admiral Joel T. Boone of the U.S. Navy Medical Corps. Government medical specialists spent nearly a year exploring the existing medical care system in the nation's coalfields. Their report[24] found that in coalfield communities, "provisions range from excellent, on a par with America's most progressive communities, to very poor, their tolerance a disgrace to a nation to which the world looks for pattern and guidance." The survey team discovered that "three-fourths of the hospitals are inadequate with regard to one or more of the following: surgical rooms, delivery rooms, labor rooms, nurseries and x-ray facilities." The study found that "the present practice of medicine in the coal fields on a contract basis cannot be supported. They are synonymous with many abuses. They are undesirable and in many instances deplorable."

36. Thus the Boone report not only confirmed earlier reports of conditions in the coal mining communities, but also established a strong federal government interest in correcting long-standing inadequacies in medical care delivery. Perhaps most important, it provided a road map for the newly created UMWA Fund to begin the process of reform.

37. Using the Boone Report as a guide, the UMWA Fund initiated programs that made great strides in improving overall medical care in coal mining communities, especially in Appalachia where the greatest inadequacies existed. Recognizing the need for modern hospital and clinic facilities, the Funds constructed ten hospitals in Kentucky, Virginia and West Virginia. The hospitals, known as Miners Memorial Hospitals, provided intern and residency programs for future doctors, and training for professional and practical nurses. Thus, because of the UMWA Funds, young doctors were drawn to areas of the country that were sorely lacking in medical

[24] *A Medical Survey of the Bituminous Coal Industry*, Report of the Coal Mines Administrator, 1947.

professionals. A 1978 Presidential Coal Commission found that medical care in the coalfield communities had greatly improved, not only for coal miners but also for the entirety of the communities, as a result of the UMWA Funds. "Conditions since the Boone Report have changed dramatically, largely because of the miners and their Union—but also because of the Federal Government, State, and coal companies." The Commission found that "both union and non-union miners have gained better health care from the systems developed for the UMWA."[25]

38. Beginning with 1974 NBCWA negotiations, the UMWA and the Bituminous Coal Operators' Association (BCOA) began to alter the structure of the UMWA Funds. In reaction to the passage of the Employee Retirement and Income Security Act of 1974 (ERISA), the bargaining parties separated the single, pooled fund that had previously provided both pensions and health care into separate funds. They further closed off the UMWA 1950 Pension Plan to new entrants and began a new pension plan known as the UMWA 1974 Plan. Miners who left the coal industry prior to 1976 would receive pensions from the 1950 Pension Plan while active miners who worked after 1976 would accrue benefits in the 1974 Pension Plan.

39. For health benefits the bargaining parties created two health funds, the UMWA 1950 Benefit Plan, which would provide health benefits to eligible retirees in the 1950 Pension Plan, and the UMWA 1974 Benefit Plan, which would provide health benefits to eligible retirees in the 1974 Pension Plan and to active miners of signatory coal operators.

40. In 1978, the UMWA engaged in a nationwide strike of about 160,000 miners primarily over what the miners perceived as the coal operators' attempt to dismantle the UMWA Funds. Despite the success of the UMWA Funds in improving medical care for miners in the coalfields, the BCOA insisted in the 1978 negotiations that the Funds no longer provide health

[25] *The American Coal Miner: A Report on Community and Living Conditions in the Coalfields*, President's Commission on Coal, 1980.

benefits to active miners and retirees. Instead, the BCOA proposed single employer plans to replace the multiemployer UMWA Funds structure. After a long, bitter strike and the intervention of the federal government, the parties ultimately forged a compromise. Going forward, active miners and post-1976 retirees would receive health care benefits from their employer through single employer plans that were to be identical to the Funds' health programs. The 1950 Benefit Plan would remain to provide benefits to retirees in the UMWA 1950 Pension Plan. The 1974 Benefit Plan would also remain, but it would become an "orphan" plan that would provide benefits to retirees whose company went out of business.

41. Health care benefits for retired miners remained a sorely disputed issue between coal industry labor and management in the 1980s, as companies sought to walk away from their obligations to retirees and dump those obligations onto the UMWA Funds. Federal courts had issued conflicting decisions in the 1980s, holding that retiree health benefits for coal miners were indeed benefits for life, but allowing employers to evade the obligation to fund those benefits. In the Royal-Nobel[26] line of decisions, the courts found that an employer's obligation to provide lifetime health benefits to retirees ceased upon expiration of the UMWA contract and, if the company did not sign a successor agreement, the lifetime obligation shifted to the UMWA 1974 Benefit Plan. The issue came to a critical impasse in 1989 during the UMWA's negotiations with the Pittston Company. At the expiration of the 1984 NBCWA, Pittston cut off retiree health benefits to approximately 2,000 retirees and surviving spouses and refused to continue participation in the UMWA Funds, while the Union insisted that Pittston had a continuing obligation to the retirees. The UMWA struck Pittston for nearly nine months and thousands of

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[26] *District 29, UMWA v. Royal Coal Co.*, 768 F.2d 588, 590 (4th Cir. 1985) ("Royal I"), *District 29, UMWA v. 1974 Benefit Plan*, 826 F.2d 280, 282 (4th Cir. 1987), cert. denied, 485 U.S. 935 (1988) ("Royal II"), *UMWA v. Nobel*, 720 F. Supp. 1169, 1180 (W.D. Pa. 1989), affirmed without opinion, 902 F.2d 1558 (3d Cir.), cert. denied, 498 U.S. 957 (1990).

UMWA members traveled to southwest Virginia, where Pittston's operations were located, to protest the company's actions. There were massive demonstrations and civil disobedience, and thousands of UMWA members and supporters went to jail. The UMWA was fined $64 million by state courts during the strike, fines that were ultimately overturned by the U.S. Supreme Court.

42. Once again the federal government intervened in a coal industry dispute over health benefits for miners. Secretary of Labor Elizabeth Dole appointed a special "super-mediator," William Usery, who was also a former Secretary of Labor. Ultimately the parties, with the assistance of Secretaries Usery and Dole, came to an agreement. Pittston agreed to reinstate health benefits for its 2,000 retirees. As part of the agreement, Secretary Dole announced the formation of a federal blue ribbon commission[27], which became known as the Coal Commission. The Commission, which included representatives from the coal industry, coal labor, the health insurance industry, the medical profession, academia, and the federal government, made recommendations to Secretary Dole and the Congress for a comprehensive resolution of the retiree health care crisis facing the coal industry and the UMWA Funds. The recommendation was based on a simple, yet powerful, finding of the Coal Commission—"Retired miners have legitimate expectations of health care benefits for life; that was the promise they received during their working lives, and that is how they planned their retirement years. That commitment should be honored." The underlying recommendation was that every company should pay for its own retirees and that new financing mechanisms were needed to provide for orphan retirees. One of the Commission members who endorsed this recommendation was Robert Quenon, president and Chief Executive Officer of Peabody.

[27] *Coal Commission Report*, The Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits, November 1990.

43. Based on the Coal Commission's recommendations, Senator John D. Rockefeller (D. WV) and others introduced legislation, known as the Coal Act that ultimately was signed by President Bush in 1992. Under the Coal Act, all companies (including those that had abandoned their retirees) were required to pay for the cost of their retirees. Orphan retirees, or those without a surviving employer, would be paid out of transfers of surplus pension assets and interest from the Abandoned Mine Land Reclamation Fund. The Coal Act merged the 1950 and 1974 Benefit Plans into a new statutory Combined Benefit Fund (CBF) and provided for the transfer of $210 million from the UMWA 1950 Pension Plan to the CBF. It also created a new UMWA 1992 Benefit Plan, which would serve as an orphan fund for retirees whose former employers went out of business or otherwise ceased providing benefits to retirees covered by the Coal Act.

44. In the wake of the passage of the Coal Act the bargaining parties to the NBCWA were required to once again restructure the UMWA Funds. While the Coal Act resolved issues related to coal miners who retired and took their pensions prior to October 1, 1994, the UMWA recognized that new mechanisms would be required to replace the functions of the 1974 Benefit Plan because as coal companies went out of business in the future, retirees would need a new orphan safety net if they were going to retain their promise of lifetime health benefits. The UMWA proposed a new orphan plan modeled on the 1974 Plan. The BCOA rejected this proposal and a long series of strikes against BCOA member companies began in early 1993 and continued for most of the year.

45. The federal government intervened once again in a coal strike, this time through the offices of Secretary of Labor Robert Reich, who also enlisted the aid of former Secretary William Usery. The parties finally reached an agreement in December 1993. The 1993 NBCWA created a new UMWA 1993 Benefit Plan (1993 Plan) to act as an orphan retiree safety

net for retirees not covered by the Coal Act, but its role would be more limited than the 1974 Benefit Plan. Instead of retired miners becoming eligible for coverage whenever companies ceased providing benefits, the new 1993 Benefit Plan would only provide coverage to retirees whose companies had gone out of business and were no longer financially able to provide the promised benefits. Most importantly, the new contract addressed and ameliorated the effects that the Royal-Nobel federal court decisions had imposed on the NBCWA retiree health system. The 1993 NBCWA specifically required that signatory employers agree to provide their retirees with lifetime health benefits that continued beyond the expiration of the contract, regardless of whether the company continued in the coal business or signed a successor agreement. Among the BCOA member companies who insisted and agreed to the change to the lifetime obligation were Peabody and Arch.

46. In passing the Coal Act, Congress recognized the legitimacy of the Coal Commission's finding that "retired miners are entitled to the health care benefits that were promised and guaranteed them." Without question, Congress intended that the Coal Act should provide "sufficient operating assets" to ensure the continuation of health care to retired coal miners. However, the financial mechanisms underlying the Coal Act's promises were undermined, placing the Coal Act plans in continuing financial crises.

47. A 2002 study by the General Accounting Office (GAO) found that a number of court decisions eroded the financial condition of the Combined Fund–and the legal onslaught on the Coal Act continued. While Congress clearly intended that the Coal Act plans be financially self-sustaining, various court decisions undercut Congressional intent. A 1995 decision by a federal court in Alabama in *NCA v. Chater*[28] overturned the premium determination by the Social Security Administration (SSA) and reduced the premium paid by employers by about

[28] *National Coal Association v. Chater*, 81 F.3d 1077 (11th Cir. 1996).

10%. Over time, the effect of this decision was to remove hundreds of millions of dollars from the financing structure of the Coal Act. A 1999 decision by the same court ordered the CBF to return about $40 million in contributions to the employers, representing the difference between the original SSA premium rate actually paid and the rate established in the *NCA* decision.

48. In 1998, the Supreme Court rendered a decision in *Eastern Enterprises*[29] that struck down the obligation to contribute to the CBF for companies that were signatory to earlier NBCWAs but did not sign the 1974 or later contracts. Those employers were relieved of their contribution obligations in the future and the Combined Fund returned millions of dollars in prior contributions. Most of these retirees became unassigned beneficiaries whose benefits had to be funded from other sources.

49. The cumulative effect of these court decisions threatened a repetition of the problems and re-creation of the crisis of the 1980s that led to the creation of the Coal Act, meaning employers were relieved of liability for their retirees and contributions were significantly reduced from the employers that remain obligated. Compounding the revenue loss stemming from these court decisions was the fact that the escalator used to adjust the CBF's premium for inflation (the medical component of the Consumer Price Index) was inadequate to measure the health care cost increases in this closed group of aging beneficiaries who experience annual increases in utilization. The combination of loss of income, an increasing orphan population and an inadequate escalator led to an imminent financial crisis for Coal Act beneficiaries.

50. Bankruptcies at LTV Steel, Bethlehem Steel, Horizon Natural Resources and other companies further reduced the premiums paid to the CBF, increased orphan costs for the AML fund, and added thousands of orphaned retirees to the UMWA 1992 and 1993 Plans. The

[29] *Eastern Enterprises. v. Apfel*, 524 U.S. 498 (1998).

growth in the orphan population forced a dwindling number of employers to fund a growing burden of health care expenses for retirees who had never worked for them. The magnitude of these bankruptcies, which Congress did not anticipate when it originally enacted the Coal Act, exacerbated the problems of the Coal Act and reinforced the call for a long-term solution.

51. As a result of these problems, in the late-1990s the UMWA Funds began to experience severe financial distress that was only alleviated by emergency appropriations from Congress and innovative demonstration programs with Medicare. On three separate occasions, Senator Robert C. Byrd (D. WV) and other Coal Act supporters convinced Congress to enact emergency appropriations to stave off benefit cuts at the UMWA Combined Benefit Fund. The UMWA Funds entered into a three-year agreement with Medicare in 2001 to initiate a prescription drug demonstration program, whereby the UMWA Funds would be reimbursed for 28% of its Medicare prescription drug costs. In 2004, the demonstration was extended to 2007 and the reimbursement rate was increased to 66% of the Funds' Medicare prescription drug costs.

52. On December 9, 2006, the Senate enacted the Tax Relief and Health Care Act of 2006, which had already passed the House of Representatives. This legislation included provisions that had been advocated by both the UMWA and the coal industry for several years to address the systemic problems with the Coal Act plans. President Bush signed the bill into law on December 20, 2006.

53. The legislation expanded the funding provisions of the Coal Act to cure deficits in the Combined Benefit Fund and to provide support for orphan retirees in both the 1992 Plan and the 1993 Plan. The UMWA Funds now have access to interest earned on the AML Fund, plus up to $490 million per year from the U.S. Treasury.

54. The 2006 amendments to the Coal Act only addressed funding of orphans who began to receive benefits from the 1993 Plan prior to January 1, 2007. Benefits for miners who first become eligible for benefits from the 1993 Plan on or after January 1, 2007, are funded solely through the collectively bargained contribution under the NBCWA.

55. Patriot claims that it needs million per year in savings from the UMWA as part of its §1113 and §1114 proposals. In support of its motions Patriot has proffered several witnesses who have submitted declarations, including declarations from Seth Schwartz and Dale Lucha. Schwartz asserts that Patriot's 1113 and 1114 proposals are "necessary to the company's survival" because companies with "union operations have substantially higher costs per ton to produce coal than non-union producers." He further states that these higher costs are "in the form of higher wages and benefits as well as lower productivity due to work rules mandated by the agreements." Lucha states that Patriot's non-union mines "operate under more flexible work rules and a significantly lower labor cost structure."

56. Schwartz makes the conclusion that Patriot's proposed cuts are necessary, but nowhere in his declaration does he appear to have analyzed the size of the hole that needs to be filled or whether there are other savings in the business plan that could reduce costs, which Patriot has not taken advantage of in its own financial projections. The UMWA and its financial advisors have identified nearly million of savings the company could implement over the next four years (2013-2016), an average of million per year. There is no indication in his declaration that Schwartz looked at any of these savings, or any other potential savings in the business plan, in determining whether the total amount of concessions Patriot has demanded from the UMWA is necessary.

57. The assertions by Schwartz and Lucha that Patriot's Union operations have substantially higher costs per ton than its non-union mines are betrayed by Schwartz's own data. On page 33 of his declaration, Schwartz lays out two tables showing his analysis of Patriot payroll data comparing labor costs at Patriot Union and non-union mines. His comparison of Illinois underground mines shows Union labor costs at per hour and non-union underground labor costs at per hour. On page 39 Schwartz shows his calculation of the productivity of Patriot's Illinois Basin underground mines. Highland's productivity is shown at tons per hour, while Dodge Hill is at tons per hour. If you convert those hourly costs to per ton costs using Schwartz's own figures, you get the following numbers.

	UMWA	**Non-Union**
Cost per Hour		
Tons per Hour		
Cost per Ton		

So while Highland's labor cost per hour may be higher than its non-union mines, Patriot's per ton labor costs at Highland are $ per ton below the costs at Patriot's non-union Dodge Hill mine.

58. Schwartz seems to imply that the only costs that Patriot can or should address are labor costs. Again, his analysis of the Illinois Basin mines shows that at Highland labor costs represent just under % of Highland's total cash costs, yet he concludes that $ million per year in concessions from UMWA workers and retirees is necessary without addressing any of the remaining of costs in general or the million in potential savings identified by the UMWA. In fact, production costs at a mine also include the cost of equipment, supplies, fuel, electricity, taxes, coal lease payments or acquisition of coal reserves, financing and other costs, all of which can be different from mine to mine. As illustrated above in the comparison between

Highland and Dodge Hill, two mines may have exactly the same labor costs per hour but could have different total costs per ton if one mine is more productive. Similarly, two mines may have exactly the same labor costs but different total production costs because of cost factors other than labor, such as if one mine has a longer haulage to get the coal from the coal face where it is mined to the outside where it is loaded onto railcars.

59. Schwartz and Lucha assert that NBCWA work rules impede productivity, but again Schwartz's own data undercut this claim. A mine's productivity and its costs are not composed of just labor input: productivity is also driven by capital investment, geological conditions of the coal reserve, the age of a mine, the condition and maintenance of the equipment used, and the quality of management.

60. Schwartz, however, lays the whole burden of productivity on the workers and their contract, but he cites only two work rules that he claims "lower" productivity—the requirement to have continuous miner helpers and the inability to change crews at the face, also known as a "hot seat exchange." As noted below in paragraph 98, the UMWA views the use of continuous miner helpers and roof bolter helpers as a safety issue. Patriot makes the tacit acknowledgement that continuous miner and roof bolter helpers are a safety issue when it proposes to retain the ability to assign helpers on face equipment at management's discretion. With respect to hot seat exchange, Patriot's own analysis shows that it affects only one of their mines, Black Oak. Both Federal and Highland already permit hot seat exchanges. Furthermore, the UMWA has proposed to allow hot seat exchanges at Black Oak, so Schwartz's description of this issue as a contractual impediment to productivity is misleading, and shows he is not fully apprised of what has transpired in the negotiations between Patriot and the UMWA.

61. Schwartz's chart on page 37 of his declaration shows his faulty logic related to work rules. He provides data on longwall mines in northern Appalachia to compare productivity with Federal #2 in an attempt to demonstrate his claim that work rules are holding back productivity at Federal. However, his own data shows that in 2012 five of the UMWA mines operating under the NBCWA, operating with the same work rules that Schwartz and Lucha claim impede productivity, had better productivity than the non-union Bailey mine. Clearly the work rules under the NBCWA, which are not applicable at Bailey, are not impeding its productivity. Furthermore, the same chart shows productivity at the Bailey mine dropped by more than 20% in 2012 from the previous year. This drop is unlikely to be explained simply by the Bailey work force becoming 20% less efficient from 2011 to 2012.

62. Data from the U.S. Energy Information Administration (EIA), the independent statistical and analytical arm of the U.S. Department of Energy show that Patriot's union mines are above or in line with the average productivity in their respective regions. For example, Schwartz shows productivity at Highland at 3.86 tons per hour in 2011. EIA's most recent Annual Coal Report[30] shows average productivity at underground coal mines in western Kentucky at 3.53 tons per hour, and for the Illinois Basin EIA reports productivity at 3.70 tons per hour. In northern Appalachia, EIA reports average underground productivity at 3.45 tons per hour, which is very similar to Schwartz's calculation of 3.35 tons per hour at Federal #2.

63. Schwartz did not provide productivity calculations of Patriot's central Appalachian mines in his declaration, but I looked at the same data source he used for the northern Appalachian and Illinois Basin comparisons (MSHA) and calculated productivity for two UMWA underground operations (Black Oak and Big Mountain) and compared them to EIA

[30] *Annual Coal Report*, Energy Information Administration, U.S. Department of Energy, November 2012, http://www.eia.gov/coal/annual/.

reported data. EIA reports productivity at underground coal mines in southern West Virginia at 1.62 tons per hour in 2011. For the same period, Big Mountain had a productivity rate of 2.16 tons per hour and Black Oak had a productivity rate of 1.46 tons per hour, which are comparable to the average productivity in the region.

64. I looked at MSHA data for 2011 (note that Big Mountain shut down in 2012) to compare Patriot's underground union mines versus non-union mines in West Virginia. According to this comparison, Schwartz's claim that the NBCWA work rules impede productivity again is proven wrong. Again, Big Mountain had a productivity rate of 2.16 tons per hour and Black Oak had a productivity rate of 1.46 tons per hour. The Federal #2 mine, as shown in Schwartz's declaration had a productivity rate of 3.35 tons per hour. In comparison, the non-union Panther longwall mine had a productivity rate of 2.20 tons per hour and the non-union Brody mine had a productivity rate of 1.49 tons per hour. Clearly, his blanket assertions that Union mines have "lower productivity due to work rules mandated by the agreements" are not supported by the data. In reality, these differences in productivity are caused by many factors, and cannot solely be attributed to work rules.

65. To further analyze assertions by Schwartz and Lucha that UMWA mines have lower productivity due to work rules, and are therefore more costly, I examined data[31] provided to the UMWA during the bargaining process and compared the hourly wage and fringe benefit costs at UMWA-represented Patriot mine complexes with the same hourly wage and fringe benefit costs at Patriot's non-union mine complexes.

31

66. For example, at its UMWA mining complexes (Federal, Big Mountain, Highland, Logan County and Corridor G) the total average labor cost (i.e. hourly wage and fringe benefit costs) per ton of coal produced was in 2011. At its non-union operations (Blue Grass, Dodge Hill, Panther, Paint Creek, and Midland Trail) total labor costs were per ton. Therefore, Patriot's non-union mining complexes cost per ton more on average than its UMWA mining complexes. Comparing the two Patriot longwall operations, Federal #2 had a wage and fringe benefit cost of $ per ton and Panther had a wage and fringe benefit cost of $ per ton. These cost comparisons, which show the full hourly worker wage and fringe benefit costs per ton in an apples-to-apples comparison at UMWA mines and non-union mines, clearly show that Schwartz's and Lucha's major premise—that UMWA contractual work rules impede productivity and increase costs above non-union mines—is undermined by Patriot's own cost data.[32]

67. Schwartz's declaration solely focuses on labor costs, and does not consider whether Patriot's overall cost of extracting coal from its mines is competitive with the overall extracting costs of its competitors. Focusing on labor costs alone cannot determine Patriot's competitive position relative to its competitors, without considering whether Patriot's overal costs of production are competitive with its competitors.

68. The UMWA operations from which Patriot is seeking concessions have historically been among its most profitable operations. Between 2009 and 2012, unionized complexes have accounted for approximately of Patriot's total complex-level EBITDA and were consistently among the Company's most profitable operations. According to Patriot's five-

[32] I did not include retiree health costs in these comparisons because they are not related to the UMWA work rule/mine productivity issues raised by Schwartz and Lucha. Further, even if all of Patriot's union operations were idled, it would still be liable for the retiree health costs. Therefore, it would be more appropriate to treat retiree health costs like other overhead costs, which are not allocated on a mine-by-mine basis.

year business plan, most profitable complexes between 2013 and 2016 are forecasted to be unionized operations, even before taking into account the Patriot's proposed §1113 savings. UMWA workers at Patriot represent of hourly workers but generate about of the company's profit. Patriot's attempt to seek concessions from operations that are already among the most profitable is a misguided attempt to subsidize non-union operations whose profitability has been, and is forecasted to be, significantly below that of unionized mines.

69. While Patriot claims that its §1113 proposal will result in its Union and non-union workers receiving the same compensation,

70. Moreover, Patriot's claim that its non-union workers are paid less than workers covered under the NBCWA is not supported by its own data. The table below shows a comparison of wage rates for common job descriptions for underground equipment operators and electricians at the non-union Panther longwall mine versus the Federal #2 longwall mine under

the NBCWA. As can be seen, in 2012 Patriot paid its employees at the non-union Panther mine workers significantly wages per hour.

[33]

70. According to Schwartz's own data the costs of coal production in Central Appalachia have approximately doubled from 2005 to 2012. Labor costs in the region have not increased by nearly as much during the same time period. Clearly, there are many cost inputs that affect the ultimate cost of coal production, in addition to labor costs.

71. Similarly, Schwartz's own data shows that in Northern Appalachia, total labor costs increased from about \$20 to about \$45 during the same time period. Between 2005 and 2012, the top wage under the NBCWA increased by about \$6.30. Assuming an average production rate of four tons per hour, wage cost per hour thus increased by under \$1.60. Again, the increase in production costs cannot be exclusively, or even primarily explained by an increase in labor costs.

72. In demanding \$ million in savings from the UMWA, Patriot is requesting far more in savings, than is necessary for it to successfully emerge from bankruptcy as a viable economic enterprise. I have reviewed the declaration of Srinivas Akunuri, which primarily focused on Patriot's overly conservative projections of thermal coal prices. I agree with Akunuri's conclusion that natural gas prices have already doubled from their historical lows

[33] *Patriot Coal Non-Union Hourly Rate Adjustments*, Data Room Item 1.2.18.3 PWC 11-30 Item 6

(when adjusted for inflation) in 2012, and that the rise in natural gas prices is likely to continue. Rising natural gas prices will in turn discourage electricity producers from continuing to switch from coal to natural gas power generation, and thus cause an increase in the demand for thermal coal, which should in turn cause rising prices. Indeed, the second half of 2012 clearly showed that the trend to switching to gas bottomed-out in mid-2012 and began to reverse when natural gas prices began to rise. Data from the EIA show that electricity generation from coal fell to a low of just under 33% of total generation in April, 2012 and had grown back to just over 40% by the end of 2012.[34]

Increases in global demand for U.S. thermal coal should also have a positive effect on the pricing of U.S. thermal coal.

73. According to Akunuri's calculations, which I agree with, in 2015 and 2016, Patriot will be able to realize between in revenue than its projections in its five-year business plan assuming the currently projected level of production, and more realistic coal prices.

using more realistic coal prices show that by 2015 no labor or retiree health cuts are necessary for its successful reorganization.

74.

If thermal coal prices recover more quickly than Patriot is projecting, then it may become cost effective for Patriot to produce more coal sooner by bringing back into production currently idle capacity or taking advantage of the UMWA's proposal to permit seven-

[34] *Electric Power Monthly*, U.S. Energy Information Administration, March 2013, http://www.eia.gov/electricity/monthly/.

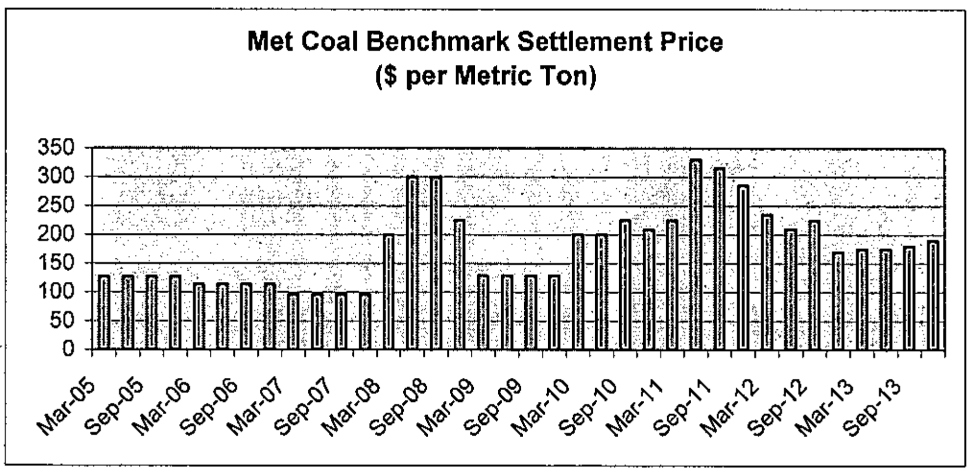
day continuous production. Akunuri's calculations therefore conservatively assumed that in a more positive pricing environment, Patriot's production of thermal coal would remain at the same level as its current projections, rather than increase as prices rise higher than Patriot is projecting. In a rising pricing environment Patriot will likely increase its revenue not only by realizing a greater margin per ton but also by increasing the level of its thermal coal production.

75. I have reviewed the December 2012 Quarterly U.S. Coal Report prepared by Energy Ventures Analysis Inc., the firm that employs Patriot's witness on coal prices, Seth Schwartz. The Quarterly Report projected prices for high volatility metallurgical coal that are the projections of coal prices by Patriot's own five-year business plan. More specifically, while the EVA report project increases in metallurgical coal prices during each year between 2013 and 2016,

76. According to EVA's projections at the end of 2012, total electricity generation in the United States will experience a steady rise from 2012 to 2015. Despite its projection that natural gas prices will remain at below $4 per million Btu through 2015, EVA is nonetheless projecting that more total electricity will be generated using coal during each year between 2013 and 2015, than was generated using coal in 2012. EVA is therefore projecting an increase in domestic demand in thermal coal when compared in 2012 levels. With its existing customer contacts and supply networks Patriot, just like other large producers, are positioned to take advantage of this future increase in demand for thermal coal as projected by EVA.

77. By focusing solely on metallurgical benchmark prices starting in 2011, Patriot misleadingly argues to the Court that the trend in metallurgical coal prices is downward. In fact, at the beginning of 2011 severe supply disruptions occurred in Australia, the world's largest exporter of metallurgical coal, as a result of both heavy floods and labor strikes. The supply disruptions temporarily caused benchmark prices to increase to $330 per ton. As the supply disruptions eased, the benchmark price for metallurgical coal fell back to more normal levels, as would be expected. The reduction of price for metallurgical coal in 2011 and 2012 therefore was evidence of an easing in supply disruptions, rather than evidence for a longer-term trend of decreasing metallurgical coal prices.

78. When viewed on a longer-term basis, prices for metallurgical coal steadily and dramatically increased from less than $50 per ton in the year 2000 to nearly $100 per ton by 2007. Metallurgical coal prices then spiked in both 2008 and 2011 as a result of supply disruptions; which were then followed by price decreases as the supply disruptions eased. The chart below shows benchmark met coal prices from 2005 to projected-2013.[35] Both the peak and



valley for the 2011 supply disruption are higher than the corresponding peak and valley for the 2008 supply disruption, thus supporting an overall trend of increase in metallurgical coal prices.

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[35] Data provided by Patriot, *Presentation to the United Mine Workers of America*, November 15, 2012.

Indeed the benchmark price in late-2012 was 77% higher than the benchmark price in 2007, even after the price spike from the supply disruptions had disappeared.

79. Other market trends also support a recovery of metallurgical coal prices in 2013. For example, according to a report by the investment bank Dahlman Rose & Company, on July 1, 2012 Australia implemented taxes on mining profits and gas emissions. According to the same report, labor costs for Australian mining have also risen faster than labor costs in North America. If the Dahlman report is accurate, these factors will increase the costs of production for Australian metallurgical coal, which will have the effect of increasing the competitiveness of North American metallurgical coal in the world market.

80. Over the past decade, increased Chinese steel production has been a primary driver of higher metallurgical coal prices. According to a statement by the Chinese Ministry of Industry and Information Technology on February 8th, 2013, Chinese steel production is expected to increase by 4.6% in 2013, which is higher than the 3.1% increase rate in 2012; and would reverse the slight reduction in Chinese steel production in the second half of 2012, which was noted in Huffard's declaration. Such an increase in steel production, if it materializes, will increase global demand for coking coal, and support an increase in coking coal prices. Going forward, economic activity in China and India will inevitably increase the market for metallurgical coal.

81. One large U.S. coal producer[36] recently presented data at an energy conference that showed world steel production is expected to increase from 1.4 billion tonnes of crude steel in 2012 to 2.0 billion tonnes in 2020, a 43% increase this decade. The presentation further

[36] Presentation by John Eaves, President and CEO, Arch Coal, Inc. to the Howard Weil 41st Annual Energy Conference, New Orleans, March 20, 2013.

showed that global metallurgical coal demand is expected to grow from 0.9 billion tones in 2010 to 1.4 billion tones in 2020, an increase of nearly 56%.

82. Another large U.S. coal producer[37] recently presented data at another mining conference that projected global seaborne trade of metallurgical coal to grow from about 200 million tonnes in 2010 to over 350 million tonnes in 2020 and to 500 million tons by 2030. This represents a 75% growth in seaborne met coal trade by 2020 and 150% by 2030.

83. Patriot's competitors also are forecasting an improvement in market conditions in the near future. Arch Coal recently advised its investors "there are positive indications of a potential recovery in demand and pricing over the course of 2013."[38] Walter Energy recently said "there are clear signs of improving trends in global demand and pricing for met coal."[39] And James River Coal recently advised "the met coal market is seeing clear signs of increased demand from Asia."[40]

84. I have also been asked to address Patriot's contention that because mines under the Gateway contracts have lower wages and benefits than other mines covered by the NBCWA, all of the remainder of Patriot's unionized operation should also have reduced wages and benefits. Patriot's contention is incorrect both because the wages and benefits at Gateway are higher than the wages and benefits that Patriot is offering to the UMWA in its §1113 proposals, and because eliminating pension and retiree health benefits at other UMWA mines would negate the very purpose of the UMWA in entering into the Gateway agreements.

85. Furthermore, no one was being asked to give up retiree health care or pensions by taking a job at the Gateway mines. Unlike Patriot's §1113/§1114 proposals, while the terms and

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[37] Presentation by Alpha Natural Resources to the BMO Capital Markets 22nd Global Metals & Mining Conference, February 26, 2013.
[38] Arch Coal, Inc. 8k Filing, February 5, 2013.
[39] Walter Energy 8k Filing, February 5, 2013.
[40] James River Coal 8k Filing, March 8, 2013.

conditions were different at Gateway, no Patriot employee lost any right to retiree health care and no Patriot employee's pension was affected. While the Gateway agreement did not call for participation in the 1974 Plan, Patriot miners under the agreement had full transfer rights to Patriot's other operations that were participating in the 1974 Plan. Thus, when a job opened up at one of Patriot's NBCWA mines that is a participant in the 1974 Plan, the Gateway miners had a right to bid on those jobs and continue their accrual of pension credit. This transfer right is above and beyond the rights conferred to miners under the NBCWA. Under the NBCWA, working miners are only free to bid on jobs that are available at their own mines and do not have the ability to transfer between mines. Upon layoff, they can list the mines of the employer they wish to be considered for job recall on their panel form, but they do not have the right as active employees to bid on jobs at mines other than their own. The UMWA and its members viewed this provision of the Gateway as an attractive and important feature that would allow miners the choice of earning higher wages and 401(k) contributions at Gateway or to bid to other NBCWA mines to accrue further pension credit and vesting credit toward retiree health care. Because Patriot's §1113 proposal seeks to withdraw from the 1974 Plan, its guts one of the features of the Gateway agreements that was most attractive to UMWA members. Similarly its proposals gut the ability of the Gateway miners to accrue additional credit to vest lifetime health benefits by transferring to an NBCWA mine.

86. There are four mines covered by the Gateway agreements: The Gateway Eagle mine, the Farley Eagle Mine, the Campbell's Creek #10 mine and the Sugar Maple Mine. Compared to Patriot's other mines in West Virginia, these mines are tiny, with Gateway Eagle, Campbell's Creek, and Farley Eagle currently staffed by 41, 34, and 34 miners respectively. Campbell's Creek and Farley Eagle previously were operated by Patriot through a contractor,

and did not employ any Patriot miners directly before Patriot decided to switch the mines from contractor-operated to Patriot operated.

87. The agreement to a contract other than the NBCWA was first made with Patriot at the Gateway Eagle Mine in January 2011. Patriot official Dale Lucha approached the UMWA and stated that if the UMWA complied with a set of preconditions, Patriot would agree to recognize the union and offer jobs at Gateway Eagle to UMWA members. These conditions included non-participation in the 1974 Plan, no accrual towards retiree health eligibility unless the employee was killed or permanently disabled while working, and management subcontracting rights. Given the small size of the Gateway Eagle operation, the UMWA was not concerned about the subcontracting proposal, given that there was not a lot of work available that Patriot could have subcontracted from Gateway Eagle.

88. At the time, the Rivers Edge Mine, which was employing around 70 UMWA miners, was scheduled to close. The UMWA was concerned about preserving work opportunities for its members, and knew that if it did not agree to Patriot's conditions and Patriot made Gateway Eagle a contractor or non-union operation, it would face a long and difficult fight to make a contractual claim for the Gateway Eagle work. The UMWA therefore agreed to Patriot's condition of excluding pension and retiree health from the Gateway Eagle agreement, provided it could accommodate the union's goal of maximizing its employees' earning of wages, pension credits, and retiree health eligibility over their working lifetimes.

89. As explained above in my declaration, historically the UMWA in negotiating the NBCWA traded off lower wages and pensions in return for providing its members with eligibility for retiree health care, given that coal miners tend to have substantially higher medical expenses during their retirement years than the average population. In order to agree to Patriot's

proposal to eliminate the retiree health and pension from the Gateway CBAs, the UMWA in return negotiated a wage rate that was $3.50 higher than the NBCWA (with a 2013 re-opener to adjust for increases in the NBCWA), as well as a 401(k) contribution rate of $6 per hour worked,

To provide a simple illustrative example, a miner working 2,000 hours per year at Gateway would be entitled to $12,000 in employer contributions into his 401(k).

Based on 2,000 hours worked and an average wage rate of $26 per hour, the miner would be entitled to in employer contributions into his 401(k).[41]

90. In addition to the higher wages and 401(k) contributions at Gateway Eagle, the UMWA also negotiated for rights for employees at Gateway Eagle to transfer to other UMWA represented mines where, pursuant to Article XX of the NBCWA, they could earn retiree health eligibility and pension credits. The UMWA thereby secured for all of its members, through transfers between UMWA mines, the opportunity to both earn pension and retiree health benefits, and to earn higher wages and an additional retirement income through the 401(k) plan once they had earned sufficient pension and retiree health credits at other mines. Therefore, eliminating the right of miners to earn pension and retiree health credits at other UMWA mines eliminates the very purpose, which was explained to Patriot during negotiations, that motivated the UMWA to agree to the pension and retiree health provisions of the Gateway Eagle agreement.

[41] It should be noted that Patriot has proposed to significantly reduce wages for certain classifications in its §1113 proposal, reducing some rates to $20 per hour. Such miners would earn even less employer 401(k) contribution.

91. After the UMWA and Patriot reached agreement on Gateway Eagle, Patriot approached the UMWA about making a similar agreement for Sugar Maple. It was agreed during those negotiations that because Sugar Maple was an even smaller operation than Gateway Eagle, Patriot could not afford the wages and benefits at Gateway Eagle. Patriot therefore agreed to pay at Gateway Eagle a wage equal to the UMWA rate, as well as 401(k) contributions of \$2.50 per hour. Again to illustrate, a miner at Sugar Maple working 2,000 hours a year would be entitled to \$5,000 in employer contributions into his 401(k), compared to a miner working under the Patriot §1113 proposal who would be entitled to in employer contributions into his 401(k) for working the same hours.

92. Similarly, when Patriot approached the UMWA about making similar agreements for its short-term projects at the Farley Eagle and Campbell's Creek #10 mines, the UMWA was faced with the problem of layoff of union Patriot miners at nearby operations, in particular due to the closure of the Big Mountain Complex. The UMWA therefore used the Sugar Maple agreement as a model to make an agreement for the Farley Eagle and Campbell's Creek #10 mines, in order to attempt to secure work opportunities for its laid off members at the Farley Eagle and Campbell's Creek #10 mines.

93. At the Sugar Maple, Farley Eagle, and Campbell's Creek #10 mines, the UMWA agreed to vary the NBCWA package of benefits, in part, because it wanted to secure opportunities (through transfer) for additional members to earn pension and retiree health credits; and to provide a work opportunity with higher compensation for employees who have already earned their pension and retiree health credits. The very purpose of these agreements are therefore eliminated, if employees no longer have the opportunity to earn pension and retiree health credits anywhere in Patriot's unionized operations.

94. Peabody Energy spun off Patriot Coal to its shareholders in October 2007. All of the mines that were signatory to the NBCWA were included in the spin off, including operations that had been closed for years. In addition to the spun off assets, Peabody placed most of its NBCWA retiree health liabilities in Patriot, even the retiree liabilities from long-closed operations that would never produce any revenue for Patriot. Peabody could not include all of its NBCWA retiree liabilities in the spin off, because if it had Patriot would have been insolvent at the outset, with more liabilities than it had assets. To address this problem, Peabody and Patriot agreed that Peabody would retain liability for certain UMWA retirees that were described in a liability assumption agreement. Under the spin off agreements, Patriot would administer the benefits for the Peabody-assumed retirees and Peabody would reimburse Patriot for the costs.

95. At the time of the spin off, Peabody advised the UMWA that it would retain all eligible retirees described in the liability assumption agreements. In fact, the UMWA believes Peabody has failed to provide coverage to nearly 500 NBCWA retirees who, pursuant to the terms of the Peabody/Patriot liability assumption agreement, were eligible for coverage from Peabody. Even though the UMWA has brought this error to Patriot's attention on numerous occasions during the §1113/§1114 bargaining, Patriot has been slow to act, only recently initiating an arbitration proceeding against Peabody on the issue. The UMWA estimates the cost to Patriot of the nearly 500 NBCWA retirees Peabody should have been paying for under the liability assumption agreements is approximately $12 million per year. Patriot's failure to enforce the liability assumption agreements has further exacerbated its financial condition and has unnecessarily increased its demands for concessions from the UMWA workers and retirees.

96.

97. I was also asked to provide an estimate of what the administrative costs of setting up and administering a VEBA might be. In my opinion, a reasonable assumption of the administrative cost for the VEBA is 7.5% of claims processed. Given the expectation of $ million in claims processed per year, I would expect administrative costs for the VEBA to be $ million per year. While both Patriot and the UMWA have proposed that the UMWA Funds administer the VEBA, so far there has been no agreement with the Funds to administer the VEBA. If the UMWA needs to administer the VEBA, then a large portion of the million cash contribution from Patriot would need to be spent on start-up and administrative costs, thus further decreasing the amount of benefits that the contribution can purchase for Patriot's retirees.

98. Schwartz's analysis of the amount of Patriot's long term labor and environmental liabilities is similarly misleading, because it fails to take into account any of the proposals the UMWA has made on the issue of retiree health care and a VEBA. Schwartz calculates Patriot's long-term labor liabilities at $1.89 billion, composed of $1.61 billion in retiree health obligations and $289 million in Coal Act and workers compensation obligations. He also calculates long-term environmental liabilities at $0.72 billion, for a total long-term liability of about $2.6 billion. He then divides this total by 24.4 million tons sold in 2012 to derive his estimate that Patriot's total labor and environmental long-term liability is $107.03 per ton. Under the current UMWA proposal, Patriot's non-Coal Act retiree health liability is replaced by a VEBA supported by a cash infusion from an outside investor, $400 million of preferred stock, and future profit sharing payments.

99. Assuming Schwartz's other liability numbers, Patriot's total long-term labor liability under the current UMWA counterproposal is therefore $289 million. Adding in his estimate of environmental liabilities of $0.72 billion, the total labor and environmental long-term liability would be reduced from Schwartz's estimate of $2.6 billion to approximately $1.0 billion, a reduction of about 61.4% as a result of the UMWA counterproposal. Using 2012 coal sales numbers as Schwartz does, Patriot's total long-term labor and environmental liability per ton sold under the current UMWA counterproposal is reduced from $107.03 per ton to $41.35 per ton.

100. In preparing this declaration, I also reviewed the work papers that Patriot attached to the declaration of Dale Lucha in support of its sought work rule modifications. In my opinion, Patriot's calculations of savings from these work rule modifications are either wrong or misleading; and that Patriot's work rule modifications may even reduce its productivity and cost effectiveness.

101.

102.

Under the NBCWA "regular work attendance shall be required for all Employees and all absences must be accounted for."[42] Management has the right under the NBCWA to impose progressive discipline on workers who make "a habit of laying off for single days other than for good cause or proven sickness." Under the NBCWA an "irregular worker" is subject to progressive discipline if he accumulates three unexcused absences in a 30-day period or six unexcused absences in a 180-day period. Under the progressive discipline the irregular worker ultimately can be discharged if he continues to accumulate unexcused absences. Under the Gateway contracts, management can also utilize progressive discipline for irregular workers who accumulate two days of unexcused absences in a 30-day period or three days in a 180-day period. Management already has the tools to progressively discipline, and ultimately discharge, irregular workers in the existing contracts.

Based on my experience in the coal industry, it is my opinion that Patriot's new attendance policy, especially in light of its proposal to eliminate up to 19 paid leave days, will lead to the loss of experienced union miners, leading Patriot to both spend money hiring and training their replacements, and to lose efficiency while their replacements get up to speed.

105. In his declaration Lucha opines that "due to advances in technology, helpers are no longer necessary" on continuous mining machines and roof bolting machines. While Lucha in his declaration claims that eliminating helpers will eliminate positions and therefore save labor costs, in the UMWA's view having a helper is a safety issue; despite the use of remote control miners and other technological advances, operation of these machines is still among the

[42] National Bituminous Coal Wage Agreement, Article XXII, Section (i).

most hazardous jobs in the mine. In February of this year, a young continuous miner operator at a non-union mine in Illinois was killed when he was crushed between the tail of the continuous mining machine and the coal rib as he was repositioning his remote controlled miner from one cutting place to another.[43] Had this miner operator had a miner helper to assist him as he was repositioning his machine, he may have been able to avoid becoming trapped and crushed between the tail of the machine and the coal rib. Also this year a roof bolter was killed in one of Patriot's non-union mines when he was bolting the roof and was struck by a large piece of roof rock that was about 6 foot by 6 foot in length and about 5 inches thick.[44] Again, had the roof bolter had a helper to assist him he may have been able to detect the danger before the miner was killed by the roof fall. In my opinion, eliminating helpers will increase the risk of injury and fatality for Patriot's employees. Any increase in the accident and injury rate for Patriot's employees will increase Patriot's costs by increasing its workman's compensation liabilities, and also cause Patriot to incur additional costs to replace injured workers.

I hereby declare under 28 U.S.C. §1746 that the foregoing is true and accurate to the best of my knowledge.

Dated this 11th day of April, 2013.

/s/Micheal Buckner
Micheal Buckner

[43] *2013 Preliminary Accident Reports, Fatalgrams and Fatal investigation Reports*, U.S. Mine Safety and Health Administration, http://www.msha.gov/fatals/fabc2013.asp.
[44] *2013 Preliminary Accident Reports, Fatalgrams and Fatal investigation Reports*, U.S. Mine Safety and Health Administration, http://www.msha.gov/fatals/fabc2013.asp.

Exhibit A

Sources Considered

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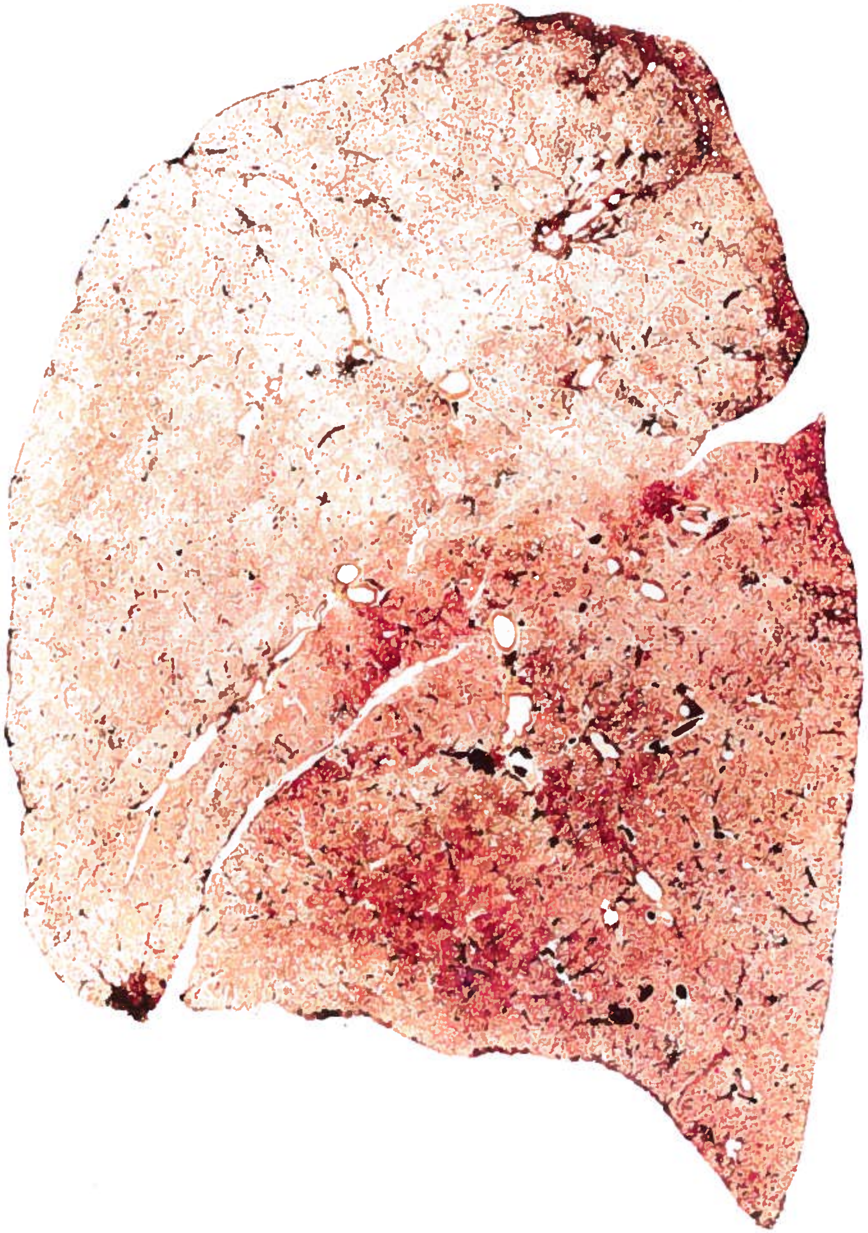

FIGURE 1.—Healthy tissue of 90-year-old schoolteacher.

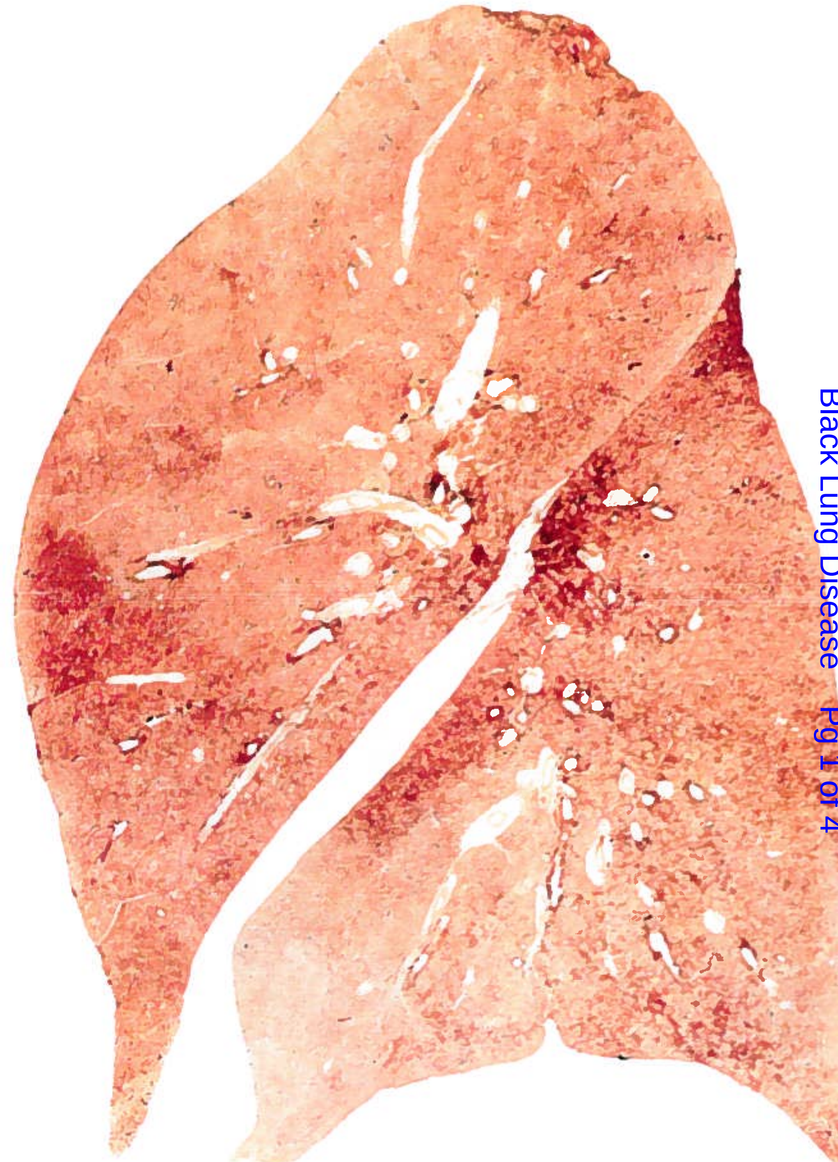

FIGURE 2.—Healthy tissue.

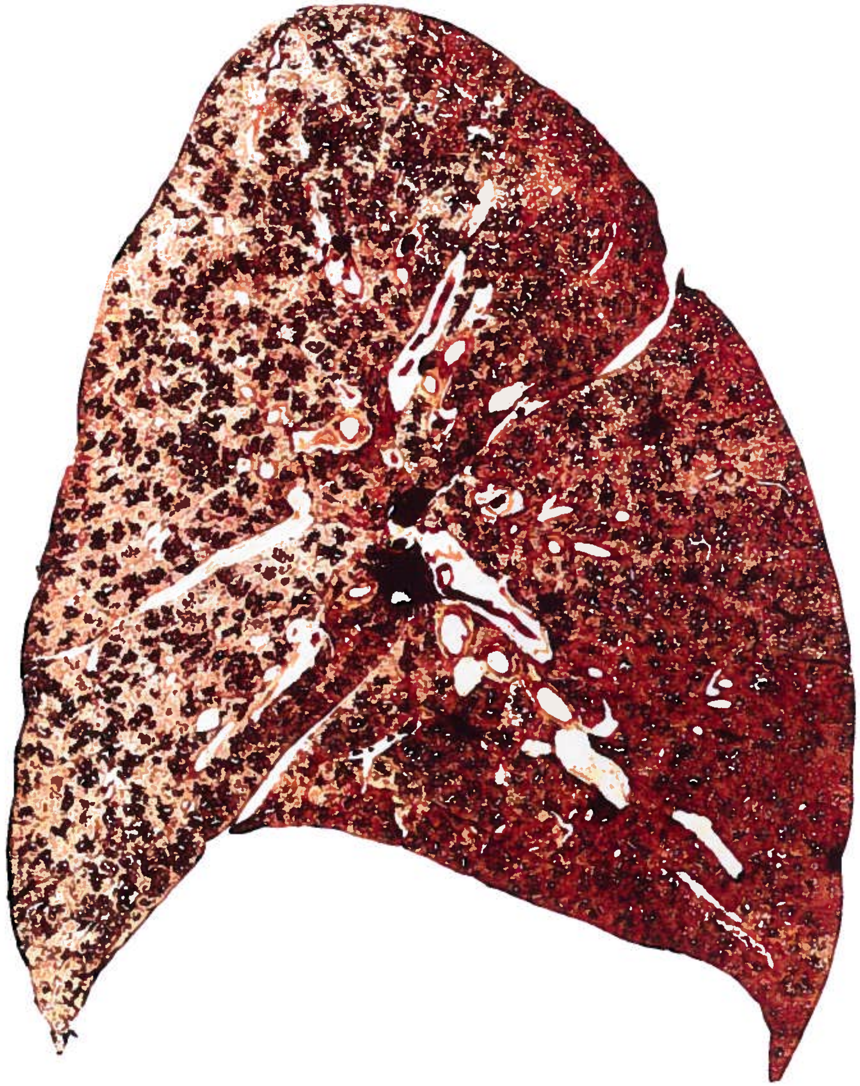

FIGURE 3.—Simple pneumoconiosis.

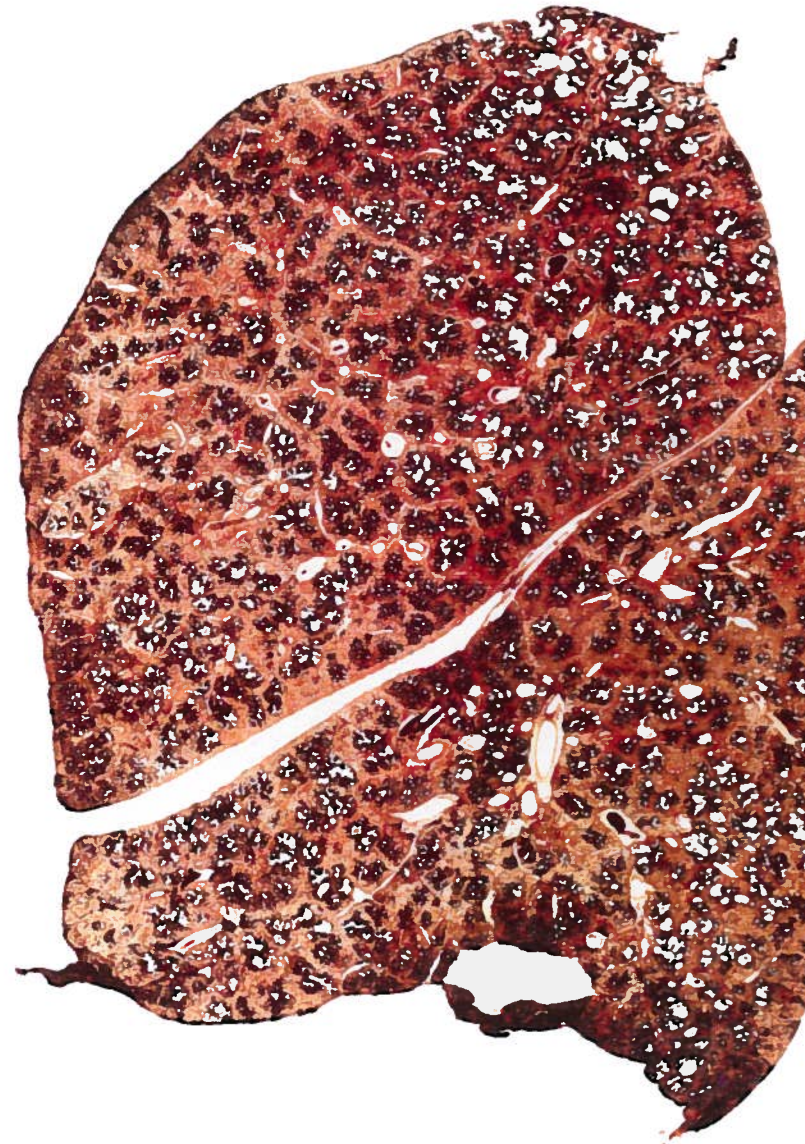

FIGURE 4.—Simple pneumoconiosis with focal emphysema.

FIGURE 5.—Simple pneumoconiosis with focal emphysema.

FIGURE 6.—Progressive massive fibrosis.

FIGURE 7.—Progressive massive fibrosis.

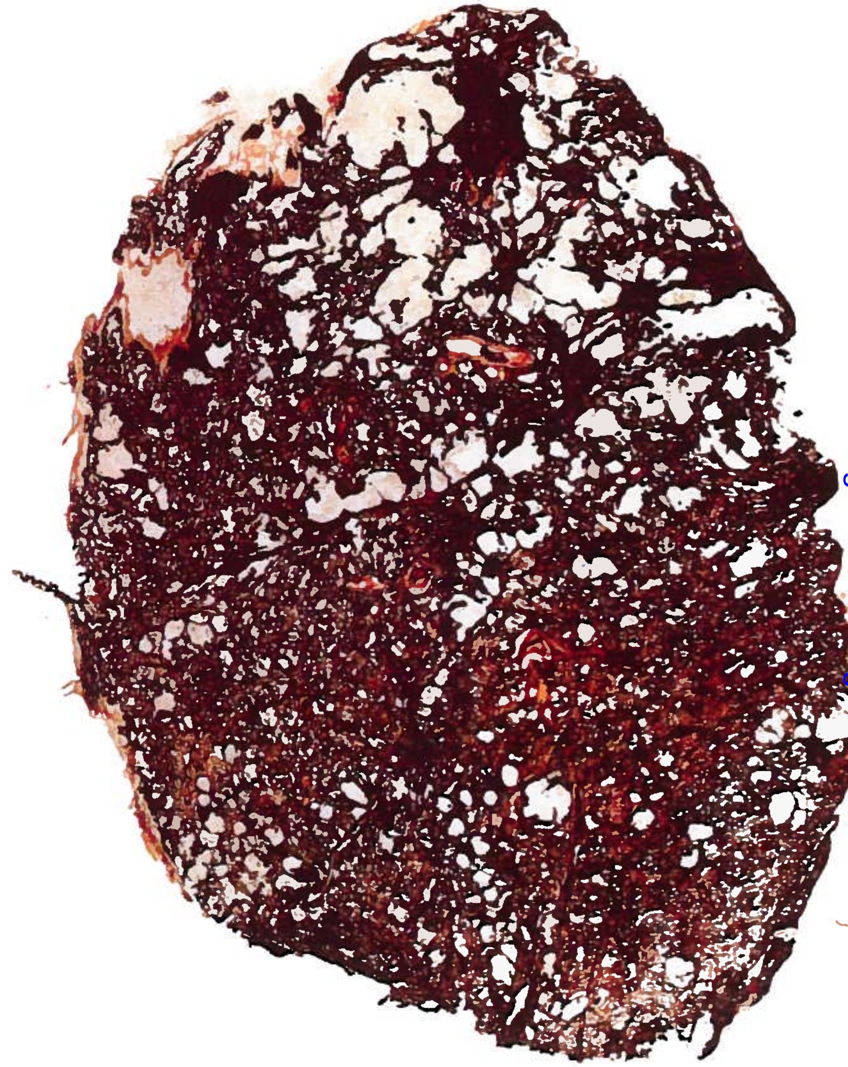

FIGURE 8.—Progressive massive fibrosis—death from heart failure—46 years in the mines.