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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF MISSOURI

Case No. 12-51502

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In the Matter of:

PATRIOT COAL CORPORATION, et al.,

Debtors.

- - - - -x

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

August 20, 2013
10:16 AM

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

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Motion of the Debtors for Entry of an Order Pursuant to 11 U.S.C. Sections 363(b), 1113, 1114(e) and 105(a) and Fed. R. Bankr. P. 9019(a) Authorizing Entry Into Collective Bargaining Agreements and Memorandum of Understanding with the United Mine Workers of America [ECF No. 4460]

Debtors' Motion for Supplemental DIP Financing Order Authorizing, Pursuant to 11 U.S.C. Sections 363 and 364, (i) Amendment to the DIP Financing, (ii) Engagement of the First Out DIP Agent in Connection Therewith, (iii) Payment of Fees Related Thereto, and (iv) Waiver of Bankruptcy Rule 6004(h) Stay [ECF No. 4417]

Debtors' Third Motion for an Order Extending Debtors' Exclusive Periods Within Which to File a Plan of Reorganization and Solicit Votes Thereon [ECF No. 4415]

Application of the Debtors for Authority to Employ and Retain GCP Legal Advisors, LLC as Special Claims Administration Counsel for the Debtors Nunc Pro Tunc to July 15, 2013 [ECF No. 4414]

1

2 Application of the Debtors for Authority to Employ and Retain
3 Duff & Phelps, LLC as Valuation Services Provider for the
4 Debtors Effective July 11, 2013 [ECF No. 4428]

5

6 The Salaried Retiree Committee's Motion to Approve VEBA Trust
7 and to Take Possession of Funds [ECF No. 4409]

8

9 Omnibus Objection to Claims 1449 and others (re Raleigh Mine &
10 Industrial Supply Inc.) by Debtor [ECF No. 4307]

11

12 Omnibus Objection to Claims 2325 and others (re CSE Corp) by
13 Debtor [ECF No. 4308]

14

15 Omnibus Objection to Claims 315 and others (re J.H. Fletcher &
16 Co.) by Debtor [ECF No. 4309]

17

18 Debtors' Objection to Claims of Fairchild International [ECF
19 No. 4317]

20

21 Debtors' Tenth Omnibus Objection to Claims [ECF No. 4331]

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23 Debtors' Eleventh Omnibus Objection to Claims [ECF No. 4332]

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25 Debtors' Twelfth Omnibus Objection to Claims [ECF No. 4333]

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Debtors' Thirteenth Omnibus Objection to Claims [ECF No. 4334]

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PATRIOT COAL CORPORATION, ET AL.

1 P R O C E E D I N G S

2 THE CLERK: The United States Bankruptcy Court for the
3 Eastern District of Missouri is now in session, the Honorable
4 Kathy A. Surratt-States presiding.

5 THE COURT: Good morning. Please be seated.

6 All right. This is the status hearing in the Patriot
7 Coal Corporation case. Let me get appearances first in the
8 courtroom.

9 MR. HUEBNER: Good morning, Your Honor. For the
10 record, I am Marshall Huebner of Davis Polk & Wardwell on
11 behalf of Patriot and its debtor affiliates. With me in the
12 courtroom today are my colleagues from Davis Polk, Elliott
13 Moskowitz and Michelle McGreal.

14 THE COURT: Good morning. Good morning.

15 MR. MOSKOWITZ: Good morning, Your Honor.

16 MR. WILLARD: Good morning, Your Honor. May it please
17 the Court, Greg Willard and Angie Schisler from Carmody
18 MacDonald on behalf of the official unsecured creditors'
19 committee. With me at counsel's table is our cocounsel, Mr.
20 Brad O'Neill, from the Kramer Levin firm.

21 THE COURT: Good morning.

22 MR. PERILLO: Good morning, Your Honor. Fred Perillo
23 on behalf of the United Mine Workers of America. On the
24 telephone today is the general counsel of the United Mine
25 Workers, Mr. Grant Crandall.

PATRIOT COAL CORPORATION, ET AL.

1 THE COURT: All right. Good morning.

2 MS. LONG: Good morning, Your Honor. Leonora Long on
3 behalf of the United States Trustee.

4 THE COURT: Good morning.

5 MS. HUGHES: Good morning. Laura Hughes and Brian
6 Walsh of Bryan Cave, local counsel for the debtors.

7 THE COURT: Good morning.

8 MR. TURNER: Good morning, Your Honor. Marshall
9 Turner, local counsel for Citibank as agent for the first out
10 DIP lenders. Also in the court is lead counsel, Joe Smolinsky,
11 from Weil, Gotshal.

12 MR. SMOLINSKY: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MR. TURNER: And I believe on the phone is Andrea
15 Saavedra.

16 THE COURT: All right. Thank you.

17 MR. COUSINS: Good morning, Your Honor. Steven
18 Cousins of Armstrong Teasdale, here representing Peabody Energy
19 Corporation. I'm joined today by Jack Newman and Paula Wilson
20 of the Jones Day law firm.

21 THE COURT: Good morning.

22 MR. COUSINS: Thank you very much.

23 MR. SCHNABEL: Good morning. Good morning, Your
24 Honor. Eric Lopez Schnabel of Dorsey & Whitney on behalf of
25 U.S. Bank, as indenture trustee to the HoldCo notes.

PATRIOT COAL CORPORATION, ET AL.

1 THE COURT: Good morning.

2 MR. WELCH: Good morning, Your Honor. Richard Welch
3 with Mooney, Green, Saindon, Murphy & Welch on behalf of the
4 UMWA 1974 plan.

5 THE COURT: Good morning.

6 MR. SCHERK: Good morning, Your Honor. Randy Scherck
7 from Lathrop & Gage on behalf of Bank of America, as agent for
8 second out DIP lender. On the phone are lead counsel Margot
9 Schonholtz and Ana Alfonso of the Willkie Farr & Gallagher
10 firm.

11 THE COURT: Good morning.

12 MR. SCHERK: Thank you.

13 MR. DOYLE: Good morning, Your Honor. Dan Doyle,
14 Lathrop & Gage LLP, representing Caterpillar Financial Services
15 Corporation and Caterpillar Global Mining.

16 THE COURT: Good morning.

17 MR. EARLY: Good morning, Your Honor. Blaine Early
18 from Stites & Harbison on behalf of five of the surety
19 companies: Argonaut Insurance, Indemnity National, Travelers,
20 U.S. Specialty, and Westchester Fire.

21 THE COURT: Good morning.

22 MR. ROURKE: Morning, Your Honor. John Rourke,
23 representing the Lexon Surety Group as well as Aspen American
24 Insurance.

25 THE COURT: Good morning.

PATRIOT COAL CORPORATION, ET AL.

1 All right. And then on the phone we have Mr. Resnick
2 on behalf of the debtors.

3 MR. RESNICK: Good morning, Your Honor.

4 THE COURT: Good morning. Mr. Plotko on behalf of the
5 creditors' committee.

6 MR. PLOTKO: Yes. Good morning, Your Honor.

7 THE COURT: Good morning. Ms. Alfonso and Ms.
8 Schonholtz on behalf of Bank of America.

9 MS. ALFONSO: Good morning, Your Honor.

10 MS. SCHONHOLTZ: Good morning, Your Honor.

11 THE COURT: Good morning. Ms. Saavedra on behalf of
12 Citibank.

13 MS. SAAVEDRA: Good morning, Your Honor.

14 THE COURT: Good morning. Mr. Hessler on behalf of
15 the ad hoc group of noteholders.

16 MR. HESSLER: Yes. Good morning, Your Honor.

17 THE COURT: Good morning. Mr. Cohen on behalf of the
18 official committee of salaried retirees.

19 MR. COHEN: Good morning, Your Honor.

20 THE COURT: Good morning. And Mr. Marsico on behalf
21 of the Ohio Valley Coal Company.

22 MR. MARSICO: Yes. Good morning, Your Honor.

23 THE COURT: Good morning.

24 All right. Now that we have the appearances then, Mr.
25 Huebner, I thought we'd take up the docket in the order that

PATRIOT COAL CORPORATION, ET AL.

1 it's printed.

2 MR. HUEBNER: Sure, Your Honor. We are working off of
3 an agenda letter, so if you'd -- I apologize. I just don't
4 know the docket order entry, so if you'd prefer to do it in
5 that order if you would just tell me what each matter is I will
6 handle it as we hit them.

7 THE COURT: All right. Not a problem. And it looks
8 like a lot of the matters have been continued. Let me go
9 through first. The first matter that appears on the printed
10 docket is the motion for authorization to assume or reject
11 unexpired leases. The STB and Arch Coal matter has been
12 continued to September the 24.

13 MR. HUEBNER: That's correct, Your Honor.

14 THE COURT: All right. Then the third omnibus
15 objections to claims, there's been a notice and withdrawal by
16 the LRPB Group by the debtor, but I have a note as well, that
17 that's been continued to September the 24th.

18 MR. HUEBNER: Yes.

19 THE COURT: All right. The motion for relief from
20 stay filed by Kenneth Bevins has been withdrawn.

21 MR. HUEBNER: Hurray.

22 THE COURT: All right. So that'll be denied. Then
23 the fifth omnibus objections to claims, there have been orders
24 on some matters and then the other remaining matters are
25 continued to September 24th.

PATRIOT COAL CORPORATION, ET AL.

1 MR. HUEBNER: Yes, Your Honor. The approach that we
2 continue to take for efficiency's sake is that anybody who
3 raises an issue we adjourn and try to work out consensually,
4 and we ask that the orders be entered as to all the rest so we
5 can continue to refine our claims pool, which will be very
6 important, especially as we move into the third major phase of
7 these proceedings.

8 THE COURT: All right. Thank you.

9 All right. Then there's a motion for relief that was
10 filed by Gary Hudson. It's been reset to September the 24th.

11 MR. HUEBNER: Yes, Your Honor.

12 THE COURT: The omnibus objections to claims 1449 and
13 others, what are we doing with that? I have no note on that
14 one.

15 MR. HUEBNER: Your Honor, I think that my colleagues
16 from Bryan Cave will be able to illuminate all of us on that
17 one.

18 THE COURT: All right.

19 MS. HUGHES: Yes. Thank you. I'd be happy to address
20 the claims issues, but if the Court would prefer to talk about
21 the claims issues together after Davis Polk has made its
22 presentation, then I'm happy to do that as well.

23 THE COURT: We can take them up now, because I see
24 no --

25 MS. HUGHES: Okay.

PATRIOT COAL CORPORATION, ET AL.

1 THE COURT: Yes.

2 MS. HUGHES: Yes. Of all the objections that we filed
3 we received one response from an unrepresented creditor, and so
4 as to that single objection we would ask that that be
5 continued. As to all the other claims objections that are on
6 the docket today we've received no responses or have received
7 positive responses from creditors who agree with the substance
8 of the objections, and so we would ask that all of the
9 objections be sustained. I'm happy to talk about any of them
10 in particular if the Court would like.

11 THE COURT: Oh, all right. The first one that comes
12 up is the objection to claim 1449 and others, and it references
13 Raleigh Mine & Industrial Supply Inc.

14 MS. HUGHES: That's right. There are a few claim
15 objections that I would refer to as single creditor objections,
16 as opposed to the omnibus ones. And we formatted them in that
17 way because we thought that it was more efficient to handle all
18 of the different objections from a single creditor, to the
19 extent that there were various objections to raise --

20 THE COURT: All right.

21 MS. HUGHES: -- in a single objection, rather than
22 requiring that creditor to keep track of all the different
23 omnibus objections that have been filed.

24 So as to Raleigh Mine we filed an objection to several
25 of their claims, although I'd like to point out that the

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1 substance of the objections is not particularly unusual for any
2 of these single creditor objections. It's just that, for
3 example, the claim would have been raised against a wrong
4 particular debtor, and that's what the objection seeks to
5 correct.

6 THE COURT: All right.

7 MS. HUGHES: So as to Raleigh Mine we received no
8 response. We would ask that the Court sustain that objection.

9 THE COURT: All right. Then I will sustain that claim
10 objection.

11 All right. The next is the claim objection as to
12 claim 2325 and others regarding CSE Corp.

13 MS. HUGHES: Yes, Your Honor. And exactly the same
14 deal there. We received no response from CSE Corporation.

15 THE COURT: All right. Then I'll sustain the
16 objection.

17 Then there's the objection to claims 315 and others
18 regarding J.H. Fletcher & Company.

19 MS. HUGHES: There we received a response from
20 counsel, and the parties agreed that the most efficient way to
21 handle the objections was to just have the proposed order
22 entered.

23 THE COURT: Oh. All right. Then I will sustain those
24 objections as well.

25 MS. HUGHES: Thank you.

PATRIOT COAL CORPORATION, ET AL.

1 THE COURT: Then there was the objection to claim 799
2 and others regarding Motion Industries.

3 MS. HUGHES: That claim objection was withdrawn, Your
4 Honor.

5 THE COURT: Oh. All right. Then that'll be denied as
6 withdrawn. Thank you.

7 All right. Then on page 2 of the docket there was the
8 objection to claim 3421 and others regarding Fairchild
9 International.

10 MS. HUGHES: Yes. And the substance of this was
11 handled by Davis Polk for reasons of conflict, but I understand
12 from Davis Polk that there has been no response, and so I think
13 that Davis Polk will submit a proposed order on that.

14 THE COURT: All right. Then I'll sustain those
15 objections.

16 Then there's the tenth omnibus objections to claims
17 1288 and others. I see that there was a response by creditor
18 Nancy Smith.

19 MS. HUGHES: Yes. That's the one unrepresented
20 creditor from whom we received a response, and so as to that
21 objection we would ask that the objection be continued, but as
22 to the other objections raised in the tenth omnibus we would
23 ask that the Court sustain the objections for lack of a
24 response.

25 THE COURT: All right. Then we'll continue as to the

PATRIOT COAL CORPORATION, ET AL.

1 one matter regarding Nancy Smith to the September 24th date,
2 and then I'll sustain all the other objections.

3 MS. HUGHES: Thank you.

4 THE COURT: Thank you. Then there's the eleventh
5 omnibus objection to claims.

6 MS. HUGHES: Yes, Your Honor. These are
7 insufficiently documented claims, and there are six claims at
8 issue here. We received no responses from any of the
9 creditors.

10 THE COURT: All right. Then I'll sustain those
11 objections.

12 MS. HUGHES: Thank you.

13 THE COURT: Thank you. Then there's the twelfth
14 omnibus objections.

15 MS. HUGHES: Yes. And this deals with equity claims,
16 and so it's two holders of shares of stock who filed claims
17 against the debtor, and so we received no responses on either
18 of those and ask that the Court sustain the objections.

19 THE COURT: All right. Then I'll sustain those
20 objections.

21 Then there's the thirteenth omnibus objections to
22 claims.

23 MS. HUGHES: And that is superseded and amended
24 claims. And there are fifteen claims at issue there. Again,
25 no responses from any of the creditors. The exhibit, as we

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1 discussed at the last hearing, shows the superseding and
2 surviving claim, so we would ask that the Court sustain the
3 objection as to those.

4 THE COURT: All right. Then I'll sustain those
5 objections.

6 All right. I think that takes care of all the claim
7 objections then for today.

8 MS. HUGHES: It does, Your Honor. As to the fifth
9 omnibus objection, which the Court already mentioned being
10 continued as to certain creditors, for purposes of the record,
11 if I may, I'd like to just announce the names of a few
12 creditors --

13 THE COURT: Certainly.

14 MS. HUGHES: -- that have either had their claim
15 settled or that will have their claims continued to September.

16 THE COURT: All right.

17 MS. HUGHES: The fifth omnibus objection listed
18 several claims to be continued to today, and as to some of the
19 ones mentioned as adjourned claims in the order that was
20 entered, Guyan Service Company has been settled and the
21 objection has been withdrawn. C & A Cutter Head was settled,
22 and we submitted a proposed stipulation last week.

23 THE COURT: All right.

24 MS. HUGHES: Alpha Records Management has been settled
25 and the objection withdrawn. And then Hawthorn Bank was

PATRIOT COAL CORPORATION, ET AL.

1 settled and we submitted a stipulated order last week.

2 THE COURT: All right. Thank you.

3 MS. HUGHES: Then, as to the other creditors who had
4 adjourned claims in that fifth omnibus objection, Robert Johns,
5 the trustee for Panther Branch, we have settled that, and we
6 plan to submit a supplemental order on that fifth omnibus
7 objection later today resolving that objection.

8 THE COURT: All right.

9 MS. HUGHES: And then the same for Petroleum Products.
10 And then there were two creditors that were inadvertently left
11 off of the adjourned claims list from the fifth omnibus order,
12 and so the supplemental order will actually bring those back.

13 THE COURT: All right.

14 MS. HUGHES: And those creditors are Continental Bank
15 and Tire Centers LLC.

16 THE COURT: All right.

17 MS. HUGHES: And the remaining claims are adjourned as
18 noted on the agenda that we submitted.

19 THE COURT: All right. Thank you.

20 MS. HUGHES: And that's all.

21 THE COURT: All right. Thank you, Ms. Hughes.

22 MS. HUGHES: Thank you.

23 THE COURT: All right. Then that brings us to the
24 motion to approve the VEBA trust and to take possession of
25 funds, filed by interested party, official committee of

PATRIOT COAL CORPORATION, ET AL.

1 salaried retirees.

2 MR. HUEBNER: Yes. And, Your Honor, that is someone
3 else's motion, so I will leave it to them to present it.

4 THE COURT: All right.

5 MR. COHEN: Good morning, Your Honor. This is Jon
6 Cohen. I will be presenting that motion this morning.

7 THE COURT: Yes. You may proceed, Mr. Cohen.

8 MR. COHEN: Thank you. Let me indicate that while I
9 can hear the other callers very well I'm having great
10 difficulty hearing the courtroom proceeding, so, please, if you
11 get frustrated because you can't interrupt me just, maybe, give
12 a holler.

13 THE COURT: All right. Thank you, Mr. Cohen.

14 MR. COHEN: Your Honor, the motion to approve the VEBA
15 trust and to take possession of the funds, it was being
16 presented, in large part, because while there was an order
17 entered on April 26th of this year reflecting a resolution of
18 the Section 1114 dispute between the retiree committee and the
19 debtors, it only provided in a very broad manner that the
20 retiree committee was to set up and equitably administer a VEBA
21 trust, but because of the way that the process worked and the
22 type of order that was entered it didn't reflect any material
23 details as to how the monies received by the committees would
24 be specifically utilized or what specific entity would
25 administer the funds received from the debtors after the

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1 retiree committee was no longer an ongoing -- an entity.

2 Additionally, while the April 26th order reflects that
3 the retiree committee could, or was empowered to ask the
4 debtors to cooperate to have remaining and future life
5 insurance funding redirected into health insurance benefits,
6 there was no mechanism for the retiree committee to notify the
7 affected retirees or to determine if there were any objections
8 to this process from the retirees that were going to be
9 impacted by such a decision. Moreover, the retiree committee
10 did not want to commit to completing a design of a new welfare
11 plan until there was transparency of its intentions and a
12 process where it could put its proposed welfare plan out to the
13 retirees for feedback.

14 I will acknowledge at this point that we have received
15 positive feedback from several retirees informally but have not
16 received any objections formally or informally from any
17 retirees.

18 Consistent with the motion, the retiree committee
19 seeks permission to enter into the VEBA trust document that was
20 attached as Exhibit B to its motion. That VEBA trust will
21 allow it to take the monies provided by the debtors' estate and
22 thereafter into a VEBA trust to provide benefits to the
23 affected retirees on a tax-free basis; and that same agreement
24 defines the eligibility and the proposed use of the funds to be
25 administered by the retiree committee.

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1 All of the money placed into the trust will be used to
2 provide for a health reimbursement type mechanism, which will
3 be limited to providing reimbursement to the affected retirees
4 for COBRA premium costs that they may incur, reimbursement of
5 nonemployer sponsored Medicare gap insurance premiums, or any
6 other type of nonemployer sponsored third-party health
7 insurance premiums.

8 The VEBA trust will further utilize a precise
9 mathematical formula to equitably distribute on a weighted
10 basis reimbursement money to retirees, with pre-Medicare
11 retirees receiving a weighted balance to provide them greater
12 benefits in recognition of the greater impact of their loss of
13 benefits as compared to the Medicare group.

14 Pursuant to the VEBA trust that the committee seeks
15 permission to enter, the retiree committee will appoint a board
16 of trustees, that will be comprised of salaried Patriot
17 retirees, to administer the VEBA trust going forward. And that
18 will be the entity that the retirees will have to or will, I
19 guess, have the benefit of utilizing in the future after the
20 retiree committee is disbanded in conjunction with the eventual
21 emergence of the debtor from this bankruptcy proceeding.

22 Accordingly, Your Honor, the retiree committee
23 requests that this Court grant the retiree's motion.

24 THE COURT: All right. Thank you, Mr. Cohen.
25 Likewise, the Court has received no written objections to the

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1 motion. Are there any parties in the courtroom that wish to be
2 heard regarding this motion? All right.

3 And are there any other parties on the phone, besides
4 Mr. Cohen, that wish to be heard on this matter?

5 All right. Then hearing none, Mr. Cohen, I will grant
6 the motion and approve the VEBA trust.

7 MR. COHEN: Thank you, Your Honor. I did realize this
8 morning that I did not circulate a proposed order to the core
9 group, and if Your Honor would agree I will do so with the core
10 group in the next day or two, make sure that there's no
11 objection to the language, and include the trustee and then
12 present that order to the Court.

13 THE COURT: All right. That'll be fine, Mr. Cohen.
14 Thank you.

15 MR. COHEN: Thank you very much.

16 THE COURT: All right. Next is the application to
17 employ GCP Legal Advisors as special claims administration
18 counsel.

19 MR. HUEBNER: Yes. Yes, Your Honor. For the record,
20 there are no objections to that motion. This is yet another
21 cost-saving device that Patriot is employing. Essentially,
22 they're hiring an individual to work at the company on claims
23 matters, which will be much cheaper than having outside
24 professionals, even the lower cost outside professionals that
25 the company has, so -- it's not really a firm. It's really a

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1 guy, who works through a firm, but hopefully will save the
2 company a whole bunch of money as compared to having we
3 slightly higher-priced hourly professionals and others working
4 on claim resolution issues.

5 And there were no objections. The objection deadline
6 passed a while ago. And we ask that the order be entered.

7 THE COURT: All right. And that's my only question,
8 Mr. Huebner, is that's how it's going to work? The claims,
9 then, are going to go to GCG and not remain with Davis Polk or
10 other counsel?

11 MR. HUEBNER: Yes. It's --

12 THE COURT: They'll work it all out. I have concerns.
13 I realize that certainly the hourly rate is cheaper, but I
14 wanted to make sure that we weren't being duplicative --

15 MR. HUEBNER: Yes.

16 THE COURT: -- of what would be done.

17 MR. HUEBNER: Yes. So the answer is, Your Honor, it's
18 some and some. Obviously there's some very large matters of
19 which Your Honor is aware, some of the adversary proceedings
20 and the like and some of the larger omnibus claims. And
21 outside counsel will still be filing the motions; by and large
22 Bryan Cave and not Davis Polk. We've already shifted almost
23 all of the claims work over to Bryan Cave, because it's just
24 the right way to approach things.

25 The individual underlying GCP is really more in the

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1 nature of an in-house employee who will be working almost full-
2 time on claims-related matters, which should hopefully cut down
3 very substantially. A lot of the negotiations he can have
4 directly and merely then tell the outside counsel I've resolved
5 it at this number. Put that on the next objection. Or this
6 one they just won't resolve. File the objection. So he won't
7 be the outside counsel of record to the Court, but hopefully he
8 can clear away a tremendous amount of the underbrush at much
9 cheaper rates, leaving us, and primarily Bryan Cave, and only
10 in rare instances Davis Polk, only to deal with, sort of,
11 what's left that --

12 THE COURT: All right.

13 MR. HUEBNER: -- he wasn't able to resolve and needs
14 the full legal process to bring the issue to a close.

15 THE COURT: All right. All right. That answers my
16 questions. All right. I have -- as you've indicated there
17 have been no written objections, so I will approve the
18 application, then, to employ.

19 MR. HUEBNER: Thank you very much, Your Honor.

20 THE COURT: Thank you. All right. Next is the third
21 motion to extend the exclusivity period.

22 MR. HUEBNER: Yes, Your Honor. Here, as well, there
23 were no objections. This was discussed with the creditors'
24 committee. Obviously all interested parties had a right to see
25 it, and we're very happy to report that our ninety-day

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1 extension is unopposed/supported, depending on your point of
2 view, and I don't -- if you'd like I could expand more, but I
3 think it's relatively straightforward, and we would ask that
4 the order be entered.

5 THE COURT: All right. And, as you've indicated,
6 there's been no objections, so I'll grant the motion and extend
7 the exclusivity period. Thank you.

8 All right. Next is the motion for a supplemental DIP
9 financing order.

10 MR. HUEBNER: Yes, Your Honor. So, there, as well,
11 there have been no objections, as is typically the case. The
12 core parties in this case, including, obviously, the creditors'
13 committee and other interested parties know what's going on
14 here and, unsurprisingly, liquidity, liquidity, liquidity is
15 the lifeline of a company in Chapter 11. If liquidity is not
16 there, essentially, it is game over, and you go into a very
17 scary and different type of bankruptcy than, hopefully, the one
18 that we will be on until the very end.

19 We, essentially, as I think was presaged some time
20 ago, knew that we would need EBITDA relief in the summer, which
21 has come to pass exactly as we predicted. As Your Honor may
22 remember, there was even some discussion about the specific
23 covenant and the upcoming need to get relief from it at the
24 1113 trial and what it meant for the debtors. And the good
25 news is as we candidly predicted, I believe, at that trial, we

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1 needed relief from a single covenant, albeit a very important
2 one, since EBITDA is a commonly used and sensitive financial
3 metric in credit agreements, in particular in the bankruptcy
4 and distress space, because you're look at, sort of, earnings
5 net of certain issues.

6 So the DIP amendment is relatively straightforward.
7 There are, really, two changes. One, we have relief of the
8 nature that we needed on the EBITDA covenant. Two, in order to
9 continue to pace us our DIP already has a variety of milestones
10 in it, including a, sort of, triggered extension that's coming
11 up, hopefully, in September, assuming, as we hope and expect
12 to, to meet the conditions. The lenders, in order to keep us
13 on pace, to the pace that we believe we're already on, did ask
14 that we insert a new covenant that we have, essentially,
15 committed financing for our exit by October 31. We certainly
16 hope and expect to do that, and so we agreed to that covenant.
17 Obviously if things go on a different track than we hope and
18 expect we'll have to have a conversation with them. But part
19 of the package of certainty that this is moving in the
20 direction that they are looking for, on the originally expected
21 timeline, which does have a backend of December 31 of this year
22 as the current maturity date. In the real world we would more
23 or less need to have financing by October 31st to get closed
24 and funded and exit by December 31 anyway, so, frankly, we
25 don't view this as particularly onerous. We view it as, sort

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1 of, our schedule, and if they insisted on it being a covenant,
2 I mean, you always like fewer covenants rather than more, but
3 it was certainly something that we felt that we could live
4 with.

5 Obviously there are certain fees involved in the DIP.
6 The financial markets are what they are, and, obviously, the
7 view of lenders in general is that this was the package of
8 economic expectations I had when I did this facility. If you
9 are not meeting those expectations my risk profile is
10 different, and changes in risk profile generally result in
11 compensation changes as well.

12 There is a combination of fees to the lenders that are
13 public and described in the motion, and then there is a
14 confidential engagement letter that the Court and the core
15 parties have all seen. And other than that, the structure and
16 priorities of the DIP and the DIP financing order are
17 unchanged, which is great news for everybody, because,
18 obviously, knowing that we have financing until the end of the
19 year has always been a bedrock of this case and the timetable
20 that you need to reorganize a multibillion dollar enterprise.

21 So, we ask, unless somebody surprises me with an
22 unheralded, procedurally improper objection, which will make me
23 very upset, that I can say that there is no one who is looking
24 sideways at this, and we'd request that the order be entered.

25 THE COURT: All right. Certainly there have been no

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1 written responses. Are there any parties in the courtroom that
2 wish to be heard on this motion? All right.

3 Are there any parties on the phone that wish to be
4 heard on this motion?

5 All right. Then hearing none I will grant the motion.

6 MR. HUEBNER: Thank you very much, Your Honor.

7 THE COURT: Thank you. All right. Next that brings
8 us to the motion to expedite hearing on the application to
9 employ Duff & Phelps, LLP (sic) as valuation services provider.

10 MR. HUEBNER: Sure. And, Your Honor, there, as well,
11 this is part of the exit planning. There are a variety of very
12 technical accounting things that need to be done in connection
13 with exit. There's something called fresh start accounting,
14 that for more than twenty years I have managed never to
15 understand, something that I really hope to continue until the
16 end of my career, but luckily other people do understand it,
17 and those people include people like Duff & Phelps. And
18 obviously we view this as a positive sign that we are beginning
19 to work with greater focus and detail on the mechanics that are
20 necessary to actually get Patriot, with all due respect, out of
21 your courtroom and back into the winds of reorganized commerce.

22 THE COURT: All right. I have seen no written
23 objections to the application. Are there any parties in the
24 courtroom that wish to be heard regarding this application?
25 All right.

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1 Are there any parties on the phone that wish to be
2 heard regarding this application?

3 All right. Then I'll grant the motion to expedite the
4 hearing and I'll approve the application to employ.

5 MR. HUEBNER: Thank you very much, Your Honor.

6 THE COURT: Thank you. And then that brings us to the
7 motion to expedite hearing and the motion for order regarding
8 the new collective bargaining agreement.

9 MR. HUEBNER: Yes. So, Your Honor, let me begin with
10 the motion to expedite. Let me begin, as is very often
11 appropriate in this and other fast-moving large cases, by
12 thanking the Court and the Court's staff. Obviously there is a
13 lot going on on this motion and this case in general. As we
14 said, and we meant it, obviously, on our motion to expedite,
15 the timetable is absolutely critical here, and, frankly, there
16 are many very, very tired people on this side of the bench who
17 have been working even during the hearing to continue
18 finalizing all the various documents. We know of no
19 objections. We actually discussed the schedule with certain of
20 the key parties in the case prior to even calling chambers and
21 asking if such a schedule would be possible. Obviously a
22 settlement that is a variant of matters that were heard very
23 extensively, with full notice to many people, is very different
24 than a brand new thing nobody's ever heard of. And, as I'll
25 describe in a few minutes, there -- obviously, the terms are

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1 well described in the motion, and many of them will look
2 relatively familiar, based on things that people have heard in
3 the past. Most importantly, we know of no objection. We
4 believe that we got everybody on side with the schedule, as
5 well as, as I'll describe in a few minutes, with the merits,
6 and knowing of no one who thinks that this matter should not be
7 heard today, we ask that the motion to expedite be granted.

8 THE COURT: All right. And then I'll grant the motion
9 to expedite the hearing.

10 MR. HUEBNER: Thank you very much, Your Honor.

11 So that brings us to, hopefully, the last but not
12 least for today's hearing, which is the fabulous and important
13 and wonderful and milestone news that we have reached a
14 settlement with the UMWA that resolves the issues that are
15 between us. I was sort of getting very excited to announce and
16 remind the Court that I promised you in the beginning that we'd
17 move heaven and earth to settle matters, and then I just have
18 one little settlement, and Ms. Hughes gets up, and she has,
19 like, forty-one settlements today to announce, and I feel like
20 I'm just, sort of, like, piker by comparison.

21 But this is a rather important settlement, and so I'd
22 like to take, if I can, a few minutes just to explain, kind of,
23 where we ended up.

24 THE COURT: Certainly.

25 MR. HUEBNER: There are quite a few moving pieces,

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1 including things that were moving until about midnight last
2 night. We did send over to chambers very, very first thing
3 this morning a black-line of the order and the other documents.
4 I thought that what I might do in a few minutes is actually
5 walk through very quickly the primary changes to the order. I
6 think they really should not be objectionable to any party, and
7 they were continuously circulated over the course of the last
8 three days to the bondholders, the creditors' committee, of
9 course the union, the first lien DIP lenders, the second lien
10 DIP lenders. So this was not something that any primary party-
11 in-interest, as we think about them as seeing for the first
12 time; rather, I can assure you to the bottom of my heart and
13 soul, that every single word of this order was extremely
14 carefully negotiated and focused on by many parties. We were
15 often, sort of, playing a little push me, pull you, as somebody
16 wanted it more like this, and somebody else wanted it more like
17 that, and we ended up very happily. And it was a rather
18 laborious and complex process to actually bring everybody on
19 side with a single form of order that ultimately met
20 everybody's needs.

21 So, we have a fully consensual deal with the union.
22 This is, obviously, one of the most significant, if not the
23 single most significant, development in these cases. As Your
24 Honor knows, almost half of our mining workforce is unionized,
25 and knowing the certainty of both your cost structure on the

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1 labor side -- since labor is possibly the single greatest cost
2 input in mining coal -- but also having, as we said at the 1113
3 hearing, and we meant it then, multiple years of stability of
4 your cost structure; you can't go to the financial markets and
5 ask them to fund you and to fund your exit unless they know
6 what your cost structure looks like and they can examine and
7 analyze your business plan and get comfortable that that cost
8 structure is a viable one that they are comfortable funding.

9 So, essentially, sort of like when you're doing a
10 renovation and the floors aren't in yet, there are just lots of
11 things that you just cannot do at all, as important as they are
12 and as time-sensitive as they are, until the base layer is
13 finished. And so this is a critical milestone that will then
14 free us to run at rather high and intense speed to then go
15 figure out the capital structure, the financing issues, the
16 exit financing structures, et cetera.

17 We're very happy to report, as may have been seen from
18 public news reports, that the ratification vote took place last
19 Friday. We all owe our union brethren a great debt of
20 gratitude as a process matter, because once the deal was agreed
21 to, which, itself, was a very lengthy and complex process, they
22 did move with extreme speed to communicate it, through some
23 extraordinary efforts, including hundreds and hundreds of
24 people attending town hall meetings with personal presentations
25 by President Roberts in one venue, his chief deputy, I believe,

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1 in another venue. And then they scheduled the ratification
2 hearing in advance of this hearing so the Court would know that
3 we were not here on an idle errand, but rather that,
4 essentially, the two conditions precedent to the deal going
5 effective, one is, obviously, the approval of this Court, which
6 is our signature being able to be tendered. The second is the
7 approval of the membership, which is the union's signature
8 being able to be tendered. And so one of those two pieces is
9 now in place at a very high level.

10 There should be no mistake. This is a painful and
11 concessionary contract. That's just Patriot's financial
12 situation, as I think everybody understands, and the fact that
13 the union membership ultimately understood that, and at very
14 high levels -- and eighty-five percent is a very high level, I
15 think, for almost any ratification vote -- but for one that,
16 unfortunately, rolls back and has some takeaways in it is, I
17 think, more remarkable yet in terms of people understanding
18 that, unfortunately, everybody has to do their part if Patriot
19 is to survive, which we hope and believe that it will.

20 So, you won't be surprised, Your Honor, that since
21 May, as we told you, we were not going to seek to impose the
22 Court's ruling, but, rather, we would seek to use it as, sort
23 of, the new framework within which to continue our tireless
24 efforts to reach a consensual settlement with the UMWA, which
25 we did. And so there were negotiations going on, I would say,

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1 virtually every week, and in many cases, multiple days a week,
2 almost -- maybe not quite -- but almost continuously since Your
3 Honor's ruling; and ultimately they led to the deal that is
4 before us.

5 So, fundamentally, what is the deal? The deal
6 provides 130 million dollars or so per year of savings compared
7 to our preexisting CBA and related obligations over the next
8 four years. The changes that were made were many, and they
9 were meant to address the needs and requirements of the UMWA,
10 specifically with how the savings got implemented, and we moved
11 a lot of pieces around and found creative ways to do things a
12 little bit differently, while, at the same time, enabling us to
13 realize the vast majority, I think, probably, actually, more
14 than eighty-five percent -- ironically, it's about the same
15 number as the ratification -- of the dollar amount of savings
16 that we needed.

17 The settlement, fundamentally, is embodied in three
18 documents. One is a new form of collective bargaining
19 agreement, which is a very, very lengthy complicated document.
20 The second is a memorandum of understanding, or MOU. That sets
21 forth a bunch of the primary agreements between the parties
22 that are not, really, sort of, core labor contract matters. It
23 doesn't have work rules and wages and shift differentials and
24 overtime and holiday. That's all in the CBA. The MOU deals
25 with some of the more businessy, structural, sort of,

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1 Bankruptcy Code related things that it was appropriate to do in
2 a separate document, because the MOU, frankly, will not live
3 forever in terms of its operative terms. Most of its terms
4 really relate to the deal and the restructuring, as opposed to
5 that very large, complicated, organic being known as the CBA
6 that governs the daily lives, wages, and benefits of thousands
7 of people on a day-to-day basis.

8 And then the third document, Your Honor, which I'm
9 going to talk about in a few minutes, because it's a little bit
10 funky, is the VEBA funding agreement or the VFA, which was
11 negotiated, really, over the last several days. We were all
12 sprinting on that one to get it done in time for the hearing.

13 So, as Your Honor knows, the union jointly represented
14 and represents both the active workers under 1113 and the
15 retirees, who are UMWA retirees, unlike Mr. Cohen, who we heard
16 from a few minutes ago, who, of course, represents the nonunion
17 retirees. The union agreed at the beginning of the case, and
18 was and is the representative of the UMWA retirees.

19 So the 1113 settlement, fundamentally is in the CBA,
20 and that is what reflects the new savings and work rules and
21 wage structure and paid time off and holidays and shift
22 differentials and all sorts of things, probably a list of about
23 a hundred long of the things that were addressed in the new
24 CBA.

25 Also very importantly, Your Honor, is that we are

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1 staying in the 1974 pension plan. As Your Honor remembers,
2 there was a fair amount of discussion about the benefit plans
3 at many junctures in this case, and what we said all along was
4 as long as we can get comfort that our pension rates will not
5 rise to an unsustainable level that would make withdrawing from
6 the plan and potential paying those out over time under ERISA
7 just simply cheaper and more sustainable for us than staying in
8 the plan, we would be delighted to stay in the plan. We have
9 no inherent desire to withdraw. We just need to be able to
10 afford it and have a business plan that the market believes is
11 financeable.

12 So happily, in, I think, what is probably the only
13 truly confidential side letter, because for lots of reasons
14 it's not appropriate to make the precise terms of the union's
15 agreements with us on the pension issues public, because this
16 is a multiemployer plan, and there are lots of other people
17 involved as well, we were able to hammer out the terms of the
18 assurances that we need with the union, and happily, while we
19 are still withdrawing from the two smaller plans, the bonus
20 plan and the '93 benefit plan, the big plan, the pension plan,
21 which was always, sort of, possibly the main event in this
22 case, and Your Honor heard the funds say there could be over a
23 one billion dollar joint and several claim, and that would
24 dilute everybody else's recoveries and possibly dilute them
25 down to zero, and there were lots of reasons why the stars

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1 aligned into having us stay in the plan, and we're very
2 delighted to announce that we were able to do so.

3 In fact, ironically, it is the continued premia for
4 that plan that actually account for the majority of the spread
5 between 150 million dollars in savings originally contemplated
6 by our 1113 proposals and the 130 million ultimately achieved.

7 Then there is the 1114 settlement, Your Honor, which,
8 at its base, provides for the transition of both the provision
9 and the administration of retiree benefits to a newly
10 established by the UMWA VEBA trust.

11 So, again, this is a complicated deal, and I'm only
12 summarizing at a very high level, but, simply stated, through
13 the end of this year, through the end of calendar year 2013,
14 the debtors will continue to provide their retiree benefits.
15 There are a variety of funding sources for that that are set
16 forth in the VEBA funding agreement. There's there fifteen
17 million dollars that was always part of our -- even 1113
18 proposal -- 1114 proposal, rather, excuse me -- in the early
19 days, and there are other funding sources there to address
20 that, but as a matter of mechanics, we are still providing the
21 benefits, because getting a VEBA up and running and having it
22 actually buy insurance for thousands of people and send out
23 notices and transition the coverage, and where do premiums get
24 paid, and who is administering it, is just a complicated issue.
25 It's not something that you can turn on in a matter of a week

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1 or two or three or four. And, so, as a matter of accommodation
2 as part of the global deal, while we had originally
3 contemplated being out of the retiree healthcare benefits
4 business, frankly, by this summer, possibly even now, we
5 agreed, as part of the negotiation, to continue that function
6 until the end of the year.

7 Then, Your Honor, starting on 1/1/14, the VEBA itself
8 will provide -- administer the benefits. There is a lot of
9 detail in Article 20 of the CBAs, which was a very carefully
10 calibrated and negotiated structure, because there were a lot
11 of different issues at play here. But from the economic
12 perspective, the debtors, I think -- a probably a reasonable
13 way to super-summarize it, and I don't think this should be
14 parsed too carefully, because the documents speak for
15 themselves -- but I think it's fair to say that the debtors
16 don't have further economic liability for retiree benefits
17 after January 1st, 2014, with the caveat there's a lot of
18 structural stuff in there that probably I would only ruin if I
19 tried to summarize it, because every word was very carefully
20 negotiated.

21 And then right now, what the VFA provides is that the
22 debtor is going to fund the VEBA through a contribution of
23 between thirty-five to thirty-eight percent of the equity of
24 reorganized Patriot. That's prong number 1. Your Honor
25 probably remembers, thirty-five percent was our offer as part

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1 of proposal number 5. There are certain circumstances related
2 to whether our friends at Peabody and to what extent they
3 continue to pay for the so-called Peabody assumed group that
4 will result in the thirty-five percent going potentially as
5 high as thirty-eight percent. So that's prong number one of
6 the funding from the debtor in the VFA, which is the equity
7 piece.

8 Then again, as may be remembered from the trial, the
9 two other pieces, we stuck to what we said we were going to.
10 It'd been negotiated into a form that's now reflected in a
11 document. There are per ton royalty payments that go to the
12 VEBA based on the tons of coal that are mined on an annual
13 basis. And there is a profit-sharing mechanism to allow a
14 union to share in what hopefully will be upside as the coal
15 markets recover, and Patriot, god willing, with its new
16 sustainable cost structure, is able to benefit from that rise
17 in market pricing and profitability.

18 But I also want to be clear, because I think that we
19 should leave nobody with a misimpression, that while it is an
20 unbelievably critical first step, the VEBA funding agreement,
21 in its current form, is not the last step. Because the union
22 ultimately does not want equity. Equity doesn't buy health
23 insurance next week or next month or next year; cash buys
24 health insurance.

25 And so there's a commitment, and the way the documents

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1 are structured, are that there is a contemplated amendment to
2 be coming to the VFA in which we all will be working together
3 as hard and as fast as we can to seek to monetize possibly all
4 three elements of the current consideration provided for in the
5 VFA. And so what the union has in there is they have a
6 termination right of the CBA if we are unable to ultimately all
7 reach agreement, which obviously will involve third parties who
8 have cash, since we don't have cash, right, of the nature and
9 amount that the union, I think, would like to see go into the
10 VEBA. And so now that we have our cost structure fixed,
11 essentially, we can now turn together back to the market, to
12 other market participants, and say okay, here's the structure,
13 here -- essentially, I mean, we're kind of hanging a "For Sale"
14 sign as it were, on the consideration being tendered to the
15 union under the VEBA, and the union has a contractual right to
16 have that sale agreed to.

17 And so the two termination conditions in the CBA that
18 relate to the as-yet-to-be-found-and-negotiated amendment to
19 the VFA relate both to the ability to reach an amendment that
20 provides them with satisfactory payments in the first place,
21 and then secondly, just to keep everybody honest -- which we
22 had certainly no problem at all with -- there's a concept that
23 appears a few times in the documents, that the initial investor
24 payment under the amended VFA has to be timely made.

25 So if -- I'll just make stuff up, this is

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1 hypothetical, just to sort of save the point -- if they find
2 somebody that agrees to buy their stock for X million dollars
3 under the following structure, and the first payment is to be
4 made on the effective date in the amount of one-fifth of X
5 million dollars, that payment has to actually be made on the
6 effective date, as was promised to them in the amendment to the
7 VFA, and if it's not, they have the termination right of sort
8 of the whole deal.

9 So this is an element that is still to come. And
10 look, we live in a real world. Nobody knows right now, because
11 we can't know yet -- we just laid the floors. Now we've got to
12 go kind of build the cabinets. We don't know the form or the
13 value of this monetization effort, because that's what we're
14 now going to embark on right now as part of the debtors'
15 overall capital structure for emergence, which itself is not
16 yet known. How much is debt? Do we do preferred stock? Do we
17 do converts? What does it all look like? How does the union's
18 piece fit into that?

19 Those things just can't be known yet. It's not like
20 someone knows them and we're not ready to describe them. We've
21 only inked this deal; the deal was ratified one business day
22 ago, literally Friday night. It's now kind of basically
23 Tuesday morning, last I checked. So that's the next big thing,
24 which is now to figure out on the union side, as part of our
25 overall capital structuring, what we can get from the market in

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1 terms of securities, capital structure, et cetera, and then
2 what the union's piece of that looks like. And that will be
3 reflected in an amended VFA.

4 So in terms of the law, Your Honor, I mean, there are
5 no objections, so I don't think I will spend more than about
6 twenty seconds on the law. But this is a 9019 settlement of
7 inordinately complicated matters. I think if I were to tick
8 down the factors for 9019, every one of them would be sort of
9 like in the no-brainer grand-slam category.

10 The issues are extremely complex. They would be
11 brutal to litigate. The union obviously does, in their view,
12 and I'm not going to say to the contrary at this juncture, have
13 the right to call a strike that could be fatal for the company,
14 if the issues were not resolved. And it just resolves so many
15 things in this case and enables us to move forward.

16 And so again, I won't really say more than that, but I
17 think that both under 363 and under 19 (sic), it is just simply
18 beyond any possible question that the legal standards have been
19 more than amply satisfied.

20 Your Honor, what I would propose to do now, if it
21 matches the Court's desires and pleasure, is to just quickly
22 walk through a black-line of the order. We of course had
23 copies and have copies available in court. This is against the
24 version that was filed on the GCG Web site at the time of the
25 initial filing. They're really virtually all in the nature of

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1 clarifications, Your Honor, with the one structural change
2 which is relatively subtle, that now there is an actual VFA,
3 although, again, it is subject to amendment and change, as
4 opposed to the VFA also being in the "to come" category.

5 The way it works now is that amendment number one to
6 the VFA, what I think of as the monetization amendment, that's
7 what's now in the "to come" category. So the order needed a
8 few little tweaks to acknowledge the fact that there is
9 actually a VFA now, it's not just something that we sort of
10 hope to do.

11 So would that be okay, Your Honor, at this juncture --

12 THE COURT: Yes, certainly.

13 MR. HUEBNER: -- to quickly walk through the black-
14 line.

15 THE COURT: Um-hum.

16 MR. HUEBNER: So I would begin on page 2, Your Honor.
17 So the first change is what I just said. It's just -- now, it
18 just contemplates that there is an actual VFA. The second
19 change which -- we live in a paranoid world these days. So
20 some people were of the view on all different sides -- it
21 wasn't just one party -- that they didn't want there to be any
22 question that the generic further assurance languages in there
23 "take such further actions", somehow gave us the authority,
24 rather sneakily I would note, if anybody thought it was going
25 to do that, to go and do some huge amendment and raise a bunch

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1 of money and give liens and all sorts of stuff like that.

2 So we were delighted to add in the end, once we
3 understood what the parties' concerns were, because they were
4 legitimate and we were happy to address them, that nothing in
5 the paragraph exempts the debtors from seeking approval for any
6 transaction that requires such approval under the Bankruptcy
7 Code.

8 So we know what 363 means. We know what ordinary
9 course is. If it's outside the ordinary course, which I'm
10 guessing any material amendment to the VFA that says in lieu of
11 equity you're getting X gazillion dollars, I would be hard
12 pressed to imagine any lawyer on the planet would ever say that
13 that's ordinary course. And we will very likely be back before
14 the Court if and when we are fortunate enough to have a
15 monetization amendment that turns one or all of the forms of
16 consideration in the VFA into cash.

17 On the top of page 3, Your Honor, that's just
18 mechanical, now that there is a form of VFA. The next one, the
19 union just wanted to make it clear, which was correct, that
20 until the new documents are actually signed, they're not valid
21 and binding. So they now have the authority to sign them, by
22 virtue of their ratification vote, assuming that Your Honor is
23 willing to enter the order, we will have the ability to sign
24 them. And then we will go sign them, and then they will be
25 binding and effective.

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1 The next paragraph changes sort of basically say the
2 same thing. They're just reminding us that the documents have
3 their terms and conditions and need to be executed, which they
4 will.

5 On the bottom of page 4, Your Honor, the union, again,
6 they sort of view the we are all now done and the deal is as we
7 would have it to be, and now we're just back to being a regular
8 company and a regular union with a CBA, is the date on which
9 the plan has gone effective, because the plan -- one of the
10 other remaining termination conditions, is that the plan cannot
11 be inconsistent with the CBA, which of course it won't and it
12 can't, as a plan's a plan and a CBA is a CBA. And I can't even
13 imagine how they would be inconsistent, and that they get this
14 initial investor payment.

15 So what the change on the bottom of paragraph 4 does,
16 it triggers, essentially, the effectiveness of the releases to
17 the day that both of those two things have happened, that the
18 initial investor payment is made to them, again, a term that
19 doesn't -- we don't know it means yet, but it's whatever the
20 first payment is -- let me just back up and say it like this.

21 In the real world, I think we all think that if the
22 union is able to monetize -- let's just for simplicity's sake
23 say -- the equity in the current form of the VFA, it may well
24 not be somebody saying here's payment in full; I'll take your
25 equity. It'll be a payment stream over time that in lieu of

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1 equity you'll get the following payment stream.

2 And so the initial investor payment, which if I were a
3 betting man, I would bet would get paid on the effective date
4 of a plan, and the union does not want it to happen after that,
5 which we agree with that -- that's sort of like a very
6 important trigger date -- so that's what this initial investor
7 payment concept means, which we all have discussed at great
8 length and agreed to which is, if there's a stream of payments,
9 the first payment has to be made as the triggering event for
10 the termination right under the CBA to sunset, and the release
11 and the other sort of "we are now done" type provisions like
12 the one I'm describing now, to become effective.

13 Paragraph 5 is just more words for the release and
14 indemnification provisions. And then on the top -- sorry, I
15 meant, page 5, Your Honor. I apologize --

16 THE COURT: Um-hum.

17 MR. HUEBNER: -- they're not paragraph numbers.

18 And then the final change is on page 7. So I want to
19 explain it just for a minute so that I hope that it will be
20 fair to everybody, and I apologize if anyone who is involved in
21 this negotiation feels that I am subtly or otherwise not
22 perfectly casting their position.

23 It was very important to the union, with which we had
24 no disagreement, that the actual living, breathing CBA between
25 us be a bilateral document. There's no right for a creditor in

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1 a case to say I think that at that mine there were an
2 inappropriate number of supervisors or safety things
3 implemented. Right?

4 What's happening under the CBA in terms of what I call
5 the guts of the labor agreement and the living, breathing labor
6 world, is really not something in which other parties really
7 should be getting involved. On the other hand, we are a
8 debtor. And to the extent that we need to make motions to the
9 bankruptcy court, again, hypothetically we do a monetization
10 structure and we come to the Court, it was very important to
11 lots of other parties that the language in the CBA essentially
12 saying this is bilateral, not be read by anybody, certainly not
13 by the Court as saying you have no rights to come to the
14 hearing and express your view that the debtor has not satisfied
15 363 or that this is an inappropriate amendment.

16 What if hypothetically we wanted to grant
17 superpriority liens, right, in connection with new financing
18 being put in by somebody to take out the union's equity? Well,
19 clearly the DIP lenders would say you're out of your mind, like
20 literally you're a crazy person if you think I'm going to be
21 barred from coming into court if you started trying to put
22 priming liens in place in this VFA amendment and then say, oh,
23 but remember the CBA says it's just bilateral, nobody else is a
24 party-in-interest.

25 So what we realized after a fair number of

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1 conversations, is that there wasn't really a real dispute here,
2 because the parties were talking about two different things.
3 And so the CBA does have a -- this is a two-party contract
4 provision with nobody else sort of getting in our faces about
5 it and the like. Again, that's not what the document actually
6 says, that's me being colloquial and summarizing it. I believe
7 the phrase "getting in our faces" nowhere appears in the CBA,
8 just for the record.

9 But then on the bankruptcy side, this new paragraph
10 which was very important to multiple parties and is correct and
11 appropriate and was agreed to by all, is that to the extent
12 that we are making motions before the Court and invoking the
13 bankruptcy process, obviously people's rights are what they
14 are. We're not allowed by contract to agree that they can't
15 come and speak at the next hearing.

16 So it took a little while for us to get there, because
17 we were moving extremely quickly and there were many
18 complicated moving pieces, but that resolved the last of the
19 issues.

20 So Your Honor, that's kind of it. I certainly could
21 walk through the black-line of the MOU if that were the Court's
22 pleasure, but I think that's -- that's the contract, and there
23 it is. So I frankly stand ready to answer any other questions.
24 But barring that, I would like to end where I began, which is
25 this is a monumental and momentous day for Patriot; the fact

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1 that we have an agreement of great complexity and
2 sophistication with our union is a huge leap forward for our
3 company and its likely exit from Chapter 11.

4 We have a lot of work left to do. There should be no
5 mistake about that. We're not ready tomorrow morning to file a
6 plan. There's a lot of capital markets work that now needs to
7 be done. But now the table has been set for doing all that.
8 And then on a personal note, I do want to issue a thank you and
9 sort of an apology to lots of people who are in the room and on
10 the phone. We worked almost literally around the clock, and
11 there were about eight parties who viewed themselves, in most
12 cases correctly, about being directly, absolutely, intensely,
13 and personally interested and involved.

14 We were fielding comments from all parties almost
15 literally around the clock. People worked with extreme good
16 cheer, even through the occasional pinch points. And
17 especially where we had frankly somebody saying I need X and
18 somebody saying I need not-X, and we had to figure out how to
19 resolve two literally completely contradictory sets of strongly
20 held positions.

21 But I do want to thank everybody involved, because
22 there really were a fair number of heroes, frankly, Your Honor,
23 in getting us to this place. Most importantly, frankly, Your
24 Honor, I think the genuine heroes are actually the clients on
25 both sides, because while the lawyers exchanged lots of stuff,

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1 good and bad, in the real world, day after day after day after
2 day, Cecil Roberts personally and Ben Hatfield personally sat
3 in the room for hours and hours and hours working through
4 issues of great complexity and frankly great pain that affect
5 real people's lives in a very difficult way, but had to be
6 addressed to get Patriot a strong chance of survival.

7 And so to the extent anybody gets a cape and a
8 uniform, Your Honor, I think it is most assuredly Mr. Hatfield
9 and Mr. Roberts. And with that, my presentation is complete.

10 THE COURT: All right. Thank you, Mr. Huebner. I
11 have one questions. I did -- I looked at the order and the
12 red-line order -- the black-line. Thank you for going over
13 that with me this morning. I did not read the collective
14 bargaining agreement. It's a little lengthy.

15 I did go over the memorandum of understanding, and I
16 had only one question. In page 5 of the MOU at paragraph 6,
17 where it talks about the litigation trust being funded upon
18 emergence from bankruptcy, I assume that means upon
19 confirmation of a plan, or does it --

20 MR. HUEBNER: I think --

21 THE COURT: -- or what does it mean?

22 MR. HUEBNER: -- not.

23 THE COURT: I guess I shouldn't --

24 MR. HUEBNER: Yeah, I think not, Your Honor.

25 THE COURT: -- assume.

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1 MR. HUEBNER: So when we say "emergence from
2 bankruptcy", and I apologize, people often use that
3 synonymously with the "effective date" of the plan, which is
4 the substantial consummation, which is the technical term under
5 the Code of a plan of reorganization.

6 Now, all of the mechanics about what goes where,
7 really are designed to take effect on the effective date. And
8 so the capital structure will be new, the DIPs will be paid off
9 or rolled, certain entities may be -- certain debtors may be
10 folded up or liquidated, and the litigation trust may be
11 formed.

12 There's also, obviously, always the possibility that
13 the primary litigations get settled between now and the
14 effective date, in which case we may not need the litigation
15 trust. And so that's sort of the reset date for a lot of
16 things. So the use of "effective date" or "date of emergence"
17 is in fact, intentional. Confirmation, of course, is the
18 Court's blessing that we may now go and close on this plan.
19 There will then be a time lag, usually, measured in a small
20 number of weeks, before we do it. And it would be when we do
21 it, that all the funding and all the sources and uses and all
22 the restructurings and all the transfers, in this case, of
23 causes of action, as opposed to assets, would be contemplated
24 to take place.

25 I think that's relatively typical, by the way. Often

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1 litigation trusts are set up in connection with emergence,
2 because among other things, the committee will be disbanding
3 around that time. They would then nominate their members for
4 it. It's just -- that's kind of like the closing of lots of
5 things, and this would be contemplated as one of those things.

6 THE COURT: All right. Thank you. All right, then I
7 have no other questions. Are there other parties that wish to
8 be heard on this motion in the courtroom? Mr. Perillo?

9 MR. PERILLO: Your Honor, if you would indulge me in a
10 few brief remarks?

11 THE COURT: Certainly.

12 MR. PERILLO: First, the UMWA urges the Court to grant
13 the motion and to enter the order as it has been presented to
14 you in written form.

15 I want to add that while I am not in disagreement with
16 Mr. Huebner as to any of the points that he's made today, his
17 summary is not a complete detailed summary of all of the terms
18 of the various agreements, which are quite voluminous. And the
19 fact that he has omitted something in his summary -- for
20 example, he omitted the existence of the reopener clause --
21 does not mean, of course, that there is no reopener clause.

22 If people want to learn what is in the contract,
23 they're actually going to have to pick it up and read the
24 document.

25 I have a few other remarks about the approval. It was

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1 in 1970, Your Honor, that the Supreme Court of the United
2 States, in a famous case known as H.K. Porter, which is found
3 at 397 U.S. 99, defined the role of the federal courts in the
4 approval of labor settlements. The court said at the time that
5 it's fundamental to our -- excuse me -- the fundamental premise
6 of our national labor policy is freedom of contract. And the
7 court said that that policy means -- I'm quoting -- "private
8 bargaining under governmental supervision of the procedure
9 alone without any official compulsion over the actual terms of
10 the contract."

11 And so I believe that the Court's role today is a
12 rather limited one, in light of the fact that apart from the
13 union and the employer, and in the absence of any illegality --
14 I mean, you can't make a contract to commit an illegal act --
15 there is no other party on earth that has the power to regulate
16 what terms the union and the employer would put into their
17 labor agreement.

18 And notwithstanding the existence of 9019 and Section
19 105 of the Code, that would still be the rule. And I'd cite to
20 you the Continental Airlines case found in 907 F.2d 1500, where
21 the court observed, citing the H.K. Porter case I just pointed
22 out to you, that there is a strong federal labor policy -- I'm
23 quoting now, "precluding judicial modifications of the
24 substantive terms of labor agreements. We cannot agree that
25 the Congress intended for the broad equitable powers of the

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1 bankruptcy court to be exercised in a manner that would
2 undermine that longstanding and important federal labor
3 policy."

4 The court went on to say, "The bankruptcy court has no
5 greater authority to modify the labor portions of the
6 settlement than any federal court would otherwise have." And
7 so the court concluded under both Section 105 and Rule 9019
8 that the bankruptcy court, and I'm quoting again, "did not have
9 the authority to condition its approval of the negotiated
10 settlement upon modifications to the lawful labor provisions
11 thereof."

12 So, Your Honor, what the Court is actually doing today
13 is looking to see whether we have violated any substantive
14 provisions of the Code in our settlement. And if we have not,
15 that truly is the end of the matter. And I believe no party
16 thinks that we have violated any substantive provisions of the
17 Code.

18 If, in the future, there are amendments to documents
19 such as the VFA, and absent any illegality on the part of what
20 the union and the employer do -- and I certainly believe all
21 parties will endeavor not to break any laws -- then those
22 modifications, while they may be presented for approval in the
23 comfort sense, are actually up to the union and the employer
24 alone. And that is prevailing law in the United States and has
25 been for more than forty years.

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1 For that reason, Your Honor, I would liken our
2 position today as people who have stopped at a green light and
3 are asking the police officer for permission to go through it.
4 But we really had the power to go through it all along anyway,
5 provided we weren't doing something else illegal, like
6 speeding.

7 So for that reason, Your Honor, I join in the things
8 that Mr. Huebner said and I believe that we are taking a belt
9 and suspenders approach here to approval of this agreement.
10 And having said that, I would urge the Court to approve the
11 agreement, on the terms as they were laid out.

12 THE COURT: All right, thank you.

13 MR. PERILLO: Thank you, Your Honor.

14 THE COURT: Thank you. Are there other parties that
15 wish to be heard on this motion? Mr. Schnabel?

16 MR. SCHNABLE: Thank you, Your Honor. Very briefly,
17 Eric Lopez Schnable on behalf of the U.S. Bank as trustee.

18 Your Honor, as our response stated, we're really here
19 about process. And I think the changes in the order and the
20 statements we've heard today make clear that the confirmation
21 process here is being perfected. And we're not really -- this
22 Court is not taking step one in confirmation. What's really
23 occurring here is that two parties have agreed to a framework
24 of what a plan might look like, although it's only, as Mr.
25 Huebner said, step one of many subsequent steps.

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1 So our concern, obviously, is process, that our
2 holders and other creditors have the protections afforded to
3 them under the Bankruptcy Code. And we don't believe this
4 order or this bilateral agreement impedes that in any way.

5 And obviously, as we stated, we do think a consensual
6 resolution is a good step and we're happy to see that, although
7 we don't take a position with respect to the substance of the
8 settlement.

9 THE COURT: All right.

10 MR. SCHNABEL: Thank you, Your Honor.

11 THE COURT: Thank you. All right. Are there other
12 parties that wish to be heard on this motion in the courtroom?

13 All right. And are there other parties on the phone
14 that wish to be heard on this motion?

15 All right. Then hearing none, Mr. Huebner?

16 MR. HUEBNER: Your Honor, just a couple of very quick,
17 tiny closing thoughts.

18 Let me certainly agree very completely with Mr.
19 Perillo. If I -- if anyone thought I gave a summary of the
20 CBA, it was the worst summary ever in the history of the world.
21 I left a million things out, including, for example, the
22 limited reopener that he referenced. So please forgive me if I
23 created a misimpression I was walking through the CBA. It is
24 very complicated and very long, and I certainly could never
25 have summarized it with justice.

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1 Although I do note that if somebody wants to
2 understand the deal without reading the whole thing, the motion
3 does purport to lay out several pages of bullet points which
4 might be helpful as a cheat sheet -- it can't be relied upon --
5 but it is there in case anybody in the public is curious about
6 it.

7 I'm not quite sure that I agree with Mr. Perillo on
8 the law. We've had many philosophical debates about the proper
9 role of the bankruptcy court in the interplay. I don't know if
10 the light is yellow or green or red and whether you hold a
11 clicker or not. Happily we don't need to resolve, because I
12 think what everybody agrees on is that this form of order, word
13 by word by word by word, is wonderful and great, and everyone I
14 have ever met wants it entered. And so without having to
15 resolve whether we "could have signed it without your
16 approval", either as to the retirees under 1114 or the union, I
17 think we can leave the intellectual debate for sort of having a
18 beer, and address what we have before us, which is a fully
19 agreed order.

20 In terms of Mr. Schnabel; to be clear, Your Honor,
21 what his statement that he filed said was that they wanted to
22 ensure that nothing in the order affected SubCon. I don't know
23 how anybody could have possibly have read anything in the order
24 as affecting SubCon. But just again to give the investing
25 public and the world comfort that I -- it doesn't build a Mr.

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1 Potatohead and it doesn't affect SubCon. It just affects a
2 bilateral deal between us and the union its two capacities as
3 1113 and 1114 representative.

4 And so the fact that I waited to see if anyone else
5 wanted to speak and nobody wanted to speak to the negative,
6 leads me to be able to make the delighted statement that as we
7 expected and hoped and trusted, since the objection deadline
8 was yesterday morning, and we were keeping pretty much
9 everybody at the core of the case involved step-by-step, there
10 are no detractors, no objectors. The words of the order are
11 completely agreed to. There could certainly be another tweak
12 or two, technical glitches and the like. The committee, for
13 example, has caught one that I think we've already all agreed
14 it's just sort of a typo that we need to fix in these
15 voluminous underlying documents.

16 But we are absolutely ready and would all but implore
17 the Court to please enter the order in the form that it was
18 tendered so that we can announce that both signatures are ready
19 to be affixed to the documents, and we can go on from there to
20 help finish saving this company.

21 THE COURT: All right. Thank you, Mr. Huebner.

22 All right. Then if hearing nothing else, I have
23 reviewed the motion and the various agreements, the responses
24 that have been provided in writing by the creditors' committee
25 and U.S. Bank. Those are responses, not objections. So I can

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1 find for the record that there have been no objections to the
2 motion. And I will grant the debtors' motion under 9019(a) and
3 approve the settlement with the United Mine Workers of America.

4 Let me just say that I would like to thank the debtors
5 and the union for all of their hard work to reach this
6 consensual resolution of this matter. I know that it was a
7 difficult task. I would have liked to have ordered a similar
8 compromise resolution. But as you all know, Congress did not
9 allow for such discretion to bankruptcy judges, under the
10 Bankruptcy Code, when presented with these issues.

11 You are to be commended for your work and the
12 progression that this will allow for the debtors to move
13 towards reorganization. Thank you.

14 All right. Then Mr. Huebner, is there anything else
15 then, this morning?

16 MR. HUEBNER: Your Honor, I think that, as is obvious,
17 Michelle McGreal always tells me what to do and say. So that
18 concludes the main hearing. I think there is a status
19 conference on some Peabody litigation matters that is separate
20 from the agenda and the docket. And I think that Mr. O'Neill,
21 of the creditors committee would purport to frame that for the
22 Court, if that's okay?

23 THE COURT: All right. Mr. O'Neill?

24 MR. O'NEILL: Good morning, Your Honor.

25 THE COURT: Good morning.

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1 MR. O'NEILL: You'll recall that the Peabody 2004
2 process was before Your Honor back in April. You entered an
3 order. And I wanted to take a moment to provide you with an
4 update on what's going on.

5 I guess let me begin with the good news. The good
6 news is that the process has been overwhelmingly a cooperative
7 one. And the parties have managed on a consensual basis to
8 resolve over -- the overwhelming majority of issues, perhaps
9 all issues. But I don't want to be too optimistic. I'm sure
10 there'll be something.

11 The bad news is that we've been doing an awful lot of
12 cooperating. The process has been extraordinarily lengthy and
13 laborious. It started back in January when we provided a form
14 of subpoena to Peabody. And it's been ongoing since then.
15 Over the eight months since that began, we have -- I've had, I
16 think, over thirty conference calls relating to this. I have
17 an avalanche of e-mails from Jones Day and Armstrong Teasdale
18 concerning issues relating to this production.

19 We spent six weeks negotiating the terms of the 2004
20 order. We spent ten weeks negotiating a confidentiality
21 agreement. We've spent the better part of four months
22 negotiating a very complex set of computer search terms.

23 On top of the fact that it has been so lengthy and so
24 laborious, Your Honor, it is almost entirely preliminary. To
25 date, we have received about 3,000 documents. Those are all

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1 hard-copy documents or images of hard copy documents. But we
2 have received virtually no electronic documents; I mean, a
3 handful. I've received far more e-mails from Jones Day than I
4 have from Peabody, Your Honor.

5 And given that it's been eight months, we want to know
6 when we're going to start to see that stuff, the electronic
7 discovery, and as importantly, when this process is reasonably
8 going to be completed.

9 We put questions like that to Peabody and they told
10 us, essentially, they don't feel that they're under any
11 obligation to tell us what the status of the electronic review
12 and production is. And so we decided to raise the issue with
13 you, just to find out what's going on. I mean, this is a
14 process that's been going on a long a time. It's consuming a
15 lot of estate resources. And we'd like to know when it's going
16 to -- when we're going to see what we set out to get and when
17 we can reasonably expect for it to -- for that part of the
18 investigation to be complete.

19 THE COURT: All right. Thank you. Mr. Moskowitz?

20 MR. MOSKOWITZ: Good morning, Your Honor. For the
21 record, Elliott Moskowitz, of the law firm of Davis Polk and
22 Wardwell, representing the debtors.

23 Your Honor, I'll just speak very briefly. We have
24 been -- the debtors have been working closely together with the
25 committee in connection with the Peabody investigation. I rise

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1 only to echo the comments that Mr. O'Neill mentioned. We too
2 have been -- we share Mr. O'Neill's and the committee's
3 frustration with the pace of production. We've been at this a
4 very long time. Some of the pacing and some of the lack of
5 information that's come forth from Jones Day and from Peabody
6 has been, frankly, befuddling. And I think at this point, all
7 we're asking for is to try to hold Peabody's feet to the fire a
8 little bit, in terms of moving things along.

9 We've asked them for a timetable for production. It's
10 a completely reasonable request. It's ordinary course in
11 litigation. They should know by now how much material they
12 have to review, how many people they will devote to undertake
13 that review. There are technologies that people can bring to
14 bear. I don't have to get too granular. The point is, we
15 simply need to know when this process will end so the 2004
16 process can be completed and the investigation can be completed
17 promptly. So for those reasons, we share in the committee's
18 frustration and echo the request for a timetable for Peabody.

19 And I will just note in closing that the fact that
20 we're here this morning is actually a bit ironic, because while
21 Peabody has been dragging its feet with respect to the
22 production in this case, they have somehow found the time to
23 propound discovery requests in another litigation against the
24 debtors -- this is in the litigation that the union has brought
25 against Peabody. So they're busy with propounding discovery in

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1 that litigation against the debtors, while dragging their feet
2 in this litigation.

3 This morning is not the morning to discuss that other
4 set of discovery requests. But we are -- rest assured that we
5 are studying those requests and will respond in due course.

6 Thank you, Your Honor.

7 THE COURT: All right. Thank you.

8 MR. Cousins?

9 MR. COUSINS: Good morning, again, Your Honor. Steven
10 Cousins of Armstrong Teasdale.

11 Mr. Jack Newman of Jones Day will be responding to the
12 comments made by counsel for the creditors' committee and
13 counsel for the debtor and also will be providing Your Honor
14 with a status report.

15 I will only enter a prefatory comment to Mr. Newman's
16 comments, and that is, I've been personally involved in about
17 eighty-five percent of -- along with Ms. Wilson -- of the
18 status conferences and the discovery conferences, and I can
19 just assure you, Your Honor, that we've been proceeding --
20 Peabody's been proceeding in good faith. They've made some
21 enormous requests upon us, mammoth requests, and we've sort of
22 gone through those item-by-item and spent a lot of good time,
23 and I think we've made a lot of progress, which I think has
24 been understated here today.

25 And I think we have demonstrated a track record of

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1 showing cooperation, not only with respect to dealing with the
2 2004 Peabody -- the request of Peabody, but also just
3 historically looking at how we handled the 2004 requests made
4 by the salaried retirees. We of course resolved that. Also
5 looking at the way we handled the 2004 request made of Duffs
6 and made of Morgan Stanley; we've resolved that. And of course
7 with the respect to this third-party litigation, what counsel
8 fails to tell you is that we voluntarily gave them a
9 two-week -- a thirteen-day extension to respond to the third-
10 party subpoena, which we think is quite a legitimate
11 expression, again, of the cooperation that we've brought to
12 bear.

13 But for the particulars, I'll let Mr. Newman go into
14 that for you.

15 THE COURT: All right. Thank you. Mr. Newman?

16 MR. NEWMAN: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. NEWMAN: Jack Newman from Jones Day on behalf of
19 Peabody. Your Honor, let me remind the Court, although it
20 really goes without saying, there's no motion before the Court
21 here; really is no dispute that's been brought to the Court.

22 There have been lots of disputes. There's been
23 considerable contentiousness, even hostility on occasion. This
24 has been an enormously difficult process, more difficult than I
25 think any of us, at least on our side, had ever encountered

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1 before. Peabody has honored every agreement it's made. It's
2 been working on the 2004 and the agreements that were made in
3 connection with that. And the reason that nobody has been
4 before the Court, is because Peabody has worked very hard in
5 these difficult circumstances, to resolve the issues.

6 Just as a little bit of history on the electronic
7 documents, Your Honor. There are a whole set of paper
8 documents separately. But just on the electronic documents,
9 recall that the Court entered its Rule 2004 order and the
10 confidentiality order on June 7th. There's a separate
11 production going on -- this doesn't have to do with the
12 separate litigation that has been called for -- or that has
13 referred to -- but there's a separate production going on in
14 connection with two 2004 subpoenas that have been issued in
15 this proceeding to financial advisors; and we have been
16 involved in that also. And confidentiality orders there were
17 entered at the end of June.

18 Recall that there was a request for mailboxes of
19 twenty-three people on fifteen sets of backup tapes -- and I
20 emphasize sets, because it's more than one tape for each of the
21 days -- plus all of the documents on shared drives to which
22 those people had access.

23 We actually started production on -- and have been
24 engaged in a rolling production since then on our own, plus
25 assisting in -- through confidentiality review, the production

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1 by the third part -- the two third parties, the two financial
2 advisors, over these past months, with about in the vicinity
3 total of I think 80,000 pages delivered both from Peabody and
4 from the third parties with whom Peabody is working on the
5 confidentiality issues.

6 With particular reference, Your Honor, to the so-
7 called electronic production, there was a big debate over a
8 long period of time about search terms as a basis for somehow,
9 on an electronic basis, a computerized basis, limiting the
10 number of documents that attorneys would actually have to
11 examine. That debate went on until finally on July 25th,
12 essentially Peabody gave up and said okay; we don't see --
13 we're not going to be reaching agreement here on additional
14 limitations on the search terms that you want. I think there
15 was something like forty-three.

16 And, Your Honor, so we finally said okay, we'll
17 take -- start with those search terms here to be as narrow as
18 we could get them in discussions with the other side. We knew
19 they would be horribly broad. In fact, Your Honor, I have a
20 piece of paper here that contains the listing of the search
21 terms. I'd be happy to provide that to the Court just so you
22 get a visual notion of what we are dealing with here in terms
23 of one of the first steps on a computer basis, once we have
24 retrieved all the electronic documents.

25 The search terms cover over onto seven -- even eight

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1 pages, Your Honor. Very, very complicated. We knew they would
2 bring back a whole lot of material, including material that
3 would not be responsive.

4 Then there was the issue of tape restoration, because
5 remember, this is -- these are period of time covering three
6 and a half years, from the beginning of 2005, all this at the
7 insistence of the committee -- from the beginning of 2005 until
8 May of 2008. So this -- in order to get materials and make
9 sure we had the materials, not only for people who are still at
10 Peabody, but people who are at Patriot but used to be at
11 Peabody, others who are no longer at Peabody but not at
12 Patriot, go back and restore tapes.

13 That process -- tapes -- well, first of all there was
14 the selection of dates which the plaintiffs -- or excuse me --
15 which the committee and Patriot made. And they gave us a
16 selection of dates. And then there were issues of -- well,
17 there weren't tapes for certain of the days. They wanted to
18 sequence them in a certain way. So we finally got tapes sent
19 for restoration in the beginning of July.

20 But when they were sent for restoration and some of
21 them were corrupted, some of them were mismarked on dates.
22 Finally restoration was complete, that is, just the physical
23 restoration of all these old, old tapes, was completed in early
24 August.

25 What happened then was that they were processed so

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1 that there was de-duplication and that's one of the initial and
2 standard processes of dealing with electronic data.

3 De-duplication and run through the date filter so that
4 materials that were from -- that were outside the date ranges
5 could be excluded. And then the search terms were run.

6 And what that returned once material outside the date
7 range was excluded and once the de-duplication was done and
8 then once the search terms were run, were about 630,000
9 documents.

10 We are satisfied that among that 630,000, are a whole
11 bunch that are not going to be responsive, because remember,
12 that's just running electronically and automatically running
13 the search terms. So we've been considering how it is that we
14 approach not having to have attorneys set eyes on 630,000
15 documents. And that's just, again, the electronic documents.
16 We have recovered, I think, something in the range of eighty
17 boxes of paper documents recently from Iron Mountain. And
18 there are going to be more paper documents, given the breadth
19 that has been insisted upon here for this discovery.

20 So we're in the process now of putting attorneys' eyes
21 on documents, assisted on the front end by analytical tools
22 available in the software program, to try to find a way and a
23 sensible fashion to narrow down on a significant basis the
24 number of documents that would otherwise have to be reviewed by
25 attorneys.

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1 We -- this process, under no circumstances, Your
2 Honor, that is the discovery process, given the breadth and
3 just the insistence that has come principally from the
4 committee, there's no possibility that this process will finish
5 before the beginning of next year, some time in the early part
6 of next year.

7 Now, that's not saying that -- at all, that we plan to
8 gather everything together and then just make a delivery then.
9 We have been and we will continue to deliver documents as we
10 are able to determine that they are responsive, not privileged
11 and we can mark them as confidential or as AEP confidential,
12 under the terms of the protective order. So the process is
13 ongoing. We're fully prepared, if the Court, for example, in
14 let's say sixty days, wants to have some kind of a report.
15 When we'll have, we think, after various iterations of looking
16 at the electronic materials, trying to make sure that in our
17 narrowing-down process, we're getting the responsive ones and
18 not getting nonresponsive ones, then we'll be in a position, I
19 think at that point, to give the Court a pretty good factual
20 recitation.

21 But that's not to say in the meantime even then, Your
22 Honor, that we won't be producing documents. We're going to be
23 producing documents on a regular basis. And we're also going
24 to be -- to the extent the third parties are -- that is the two
25 investment banks are producing documents, we'll be side-by-side

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1 looking at them, doing the confidentiality review on them, so
2 that they can continue the production to the extent they have
3 additional documents to produce.

4 So that's where we stand. It's a process that we
5 constantly hear, well, it's been going on for seven months, but
6 the fact is, that as I've set out for you here the dates, the
7 issue of the tapes, the tape restoration, the search terms,
8 which we -- as I say, we knew we were going to produce way, way
9 more than what would be properly responsive here, that really
10 is something that's been occurring over the summertime.

11 THE COURT: All right. Thank you.

12 MR. NEWMAN: If you have any questions, Your Honor,
13 I'll be happy to attempt to answer them further. But this is a
14 monumental process. Your Honor, remember there are bunches of
15 subsidiaries. The requests are for anything having to do with
16 any of the subsidiaries that were transferred to Patriot or
17 that were considered for transfer to Patriot, or assets that
18 were transferred to Patriot or considered for transfer to
19 Patriot, or any other transactions of a like variety that were
20 considered during a period of time at the beginning of 2005 to
21 the middle of 2008. So it's a huge process to identify what is
22 it that we need to be looking for to educate the attorneys that
23 are reviewing them and so forth.

24 And there are over 200 lawyers that at one point or
25 another touched this. So their names need to be addressed for

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1 privilege purposes. This is a monumental task. We are doing
2 it in the best possible way that we can think of, and with the
3 best possible organized approach, Your Honor.

4 THE COURT: All right. Thank you, Mr. Newman.

5 Mr. O'Neill.

6 MR. O'NEILL: I was hoping, Your Honor, that in our
7 eight months of cooperation we would have spared you some of
8 the details of this. Certainly that was our intention. We
9 wanted to get it to the point where we could just start getting
10 documents and not involve you in eight pages of search terms,
11 which we agree are highly complex. It's a highly complex
12 transaction. It's a lot of discovery.

13 But you would think that Mr. Newman was going from a
14 standing start today, not that he'd been working for eight
15 months on this -- or he and his team have been working on this
16 for eight months. They ought to be up and ready to go. And to
17 say that it's another four months before they're complete, Your
18 Honor, that sounds like he's trying to run out the clock.
19 Right? He's playing four corners on the estate and not making
20 a good-faith effort to comply with discovery requests which
21 have been outstanding for a lengthy period of time.

22 We agree, Your Honor -- and part of the reason we
23 requested this conference is because we think it's appropriate,
24 frankly, to involve the Court, because we felt that we were
25 getting sort of slow walked -- we agree that Your Honor should

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1 set a control date. We don't think sixty days is appropriate.
2 However, we were thinking of something in the order of two
3 weeks. And we hope that Peabody will more than redouble its
4 efforts, but try to get done quickly, not in four months, Your
5 Honor. That's effectively saying we're not going to get done
6 with the investigation before the case is over.

7 THE COURT: Mr. Moskowitz?

8 MR. MOSKOWITZ: Your Honor, just two quick closing
9 notes. Number one, Mr. Newman repeatedly referred to the
10 committee, the committee, the committee, the committee, in his
11 recitation of the events. I should certainly note that the
12 debtors have been intimately involved and working arm-in-arm
13 with the committee in all aspects of this. And again, we
14 support everything that Mr. O'Neill said in his recitation of
15 the events. And Mr. Newman's recitation of the events, I don't
16 think, is exactly correct.

17 I will say, though, that it speaks for itself, the
18 fact that we've been at this for nine months, and the fact that
19 only a trickle of electronic documents have been produced,
20 speaks for itself in terms of the timing of this all. Your
21 Honor has seen discovery processes before. Your Honor has seen
22 them in Chapter 11 in particular. And I think we can all
23 agree, this one is moving at a snail's pace and they're trying
24 to run out the clock. They need a deadline in order to
25 complete their production.

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1 And even if it's a best efforts deadline, they should
2 make their best efforts to complete their production by a
3 deadline. Maybe that deadline, I don't know if it's thirty
4 days, I don't know if it's sixty days. Jones Day has a lot of
5 lawyers and a lot of contract attorneys. There's no excuse to
6 get an aspirational prediction that they'll be finished with
7 their production when? Hm, I think when the debtors emerge
8 from Chapter 11. Thank you, Your Honor.

9 THE COURT: Thank you.

10 Mr. Newman, did you have anything else?

11 MR. NEWMAN: Just one moment, Your Honor.

12 THE COURT: Um-hum.

13 MR. NEWMAN: Your Honor, if this is an accusation of
14 bad faith on behalf of either Peabody or our law firm, I would
15 ask that Patriot or the committee put something in writing,
16 make that accusation on which the Court can act, and we will
17 respond.

18 I don't know how this Court can sit there and hear
19 this kind of lawyer wrangling without having an opportunity to
20 look at an organized presentation on paper. Again, I say if
21 there's an accusation of bad faith, put it in paper -- on
22 paper. We will respond. This is a difficult process. We're
23 doing our best.

24 MR. MOSKOWITZ: Let me just say, Your Honor, that I
25 respect Mr. Newman very much and I think he's a great guy. And

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1 I don't think he's personally acting in bad faith.

2 What I will suggest is that what we're seeing here is
3 potentially another delay tactic, the fact that we should
4 actually have to go ahead and make a motion. As Your Honor is
5 painfully aware, there are no magistrates for -- discovery
6 magistrates in bankruptcy, so unfortunately, these kinds of
7 disputes darken Your Honor's door.

8 Oral conferences with respect to the pace and timing
9 of discovery are utterly commonplace. I'm sure Your Honor has
10 had them many times before. That's what this is. And what
11 we're asking for is something completely ordinary course, which
12 is a time table. And the fact that they're resisting it so
13 fiercely and suggest that we should go through a letter-writing
14 campaign or a motion-writing campaign, just to find out if they
15 can produce things on an ordinary, normal time table, I think
16 is quite telling. Thank you, Your Honor.

17 THE COURT: All right. Thank you. Let me take a
18 brief recess and let me take a look at the orders again. We'll
19 be in temporary recess.

20 (Recess from 11:48 a.m. until 12:07 p.m.)

21 THE CLERK: Your Honor, we're back on the record.

22 And are we ready, or have there been some discussions?

23 UNIDENTIFIED SPEAKER: There have been discussions,
24 but nothing that I think would affect --

25 THE COURT: Mr. Moskowitz, we don't need any more

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1 time?

2 UNIDENTIFIED SPEAKER: They're coming, Your Honor.

3 MR. MOSKOWITZ: No, no --

4 THE COURT: All right.

5 All right, thank you, be seated, please.

6 I quickly reviewed the order that was entered on June
7 the 6th, I believe it was -- June the 7th, which actually
8 contained very few references to dates on when documents would
9 be produced.

10 So what I'm inclined to do -- I have to agree with Mr.
11 Newman that there is no formal motion in front of me, and it
12 certainly seems as though the parties have reached an impasse.
13 So Mr. O'Neill and Mr. Moskowitz, if you would please prepare a
14 motion to compel, and file it by August the 29th. Mr. Newman,
15 Mr. Cousins, Ms. Wilson, you all can file a response by
16 September the 5th. And then we'll take the matter upon Friday
17 September the 13th at 10 a.m. Parties may appear in person or
18 by phone that day. And that'll be the only matter we take up.

19 The only other comment that I will make, Mr. Newman,
20 is the beginning of 2014 seems like a long time. So I would
21 encourage Peabody to look at what can be done to speed up the
22 process at something sooner than that, keeping in mind that it
23 is a large undertaking to go through all of those documents.
24 But I think that we've got to move things along a little
25 faster, certainly being here in bankruptcy court.

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1 All right, Mr. O'Neill and Mr. Moskowitz, anything
2 else?

3 MR. NEWMAN: No, Your Honor. Thank you.

4 MR. MOSKOWITZ: Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 All right, Mr. Newman, anything else?

7 MR. NEWMAN: No, Your Honor.

8 THE COURT: All right. All right, then.

9 Mr. Huebner, anything else, then, on behalf of the
10 debtors?

11 MR. HUEBNER: No, Your Honor. We really appreciate,
12 once again, the Court's time and indulgence. You have, I
13 believe, all the orders, so we're good to go.

14 THE COURT: I believe I do. So we'll be busy this
15 afternoon.

16 MR. HUEBNER: Thank you, Your Honor.

17 THE COURT: All right. All right, then, thank you.
18 We'll be in recess until next week. All right, thank you.

19 (Whereupon these proceedings were concluded at 12:10 PM)

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C E R T I F I C A T I O N

I, Hana Copperman, certify that the foregoing transcript is a true and accurate record of the proceedings.

Hana Copperman

HANA COPPERMAN

AAERT Certified Electronic Transcriber CET**D 487

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Date: August 21, 2013

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UNITED STATES BANKRUPTCY COURT
Eastern District of Missouri
Thomas F. Eagleton U.S. Courthouse
111 South Tenth Street, Fourth Floor
St. Louis, MO 63102

In re: Debtor(s):
Patriot Coal Corporation

Case No.: 12-51502 -A659

CHAPTER 11

Notice of Filing of Transcript and of Deadlines Related to Restriction and Redaction

To: All Persons of Record at Hearing

A transcript of the proceeding held on August 20, 2013 was filed on August 21, 2013.

The following deadlines apply:

If you wish to have personal data identifiers redacted from the transcript, a *Request for Transcript Redaction* must be filed within 7 days of the date of this notice: August 28, 2013. Personal data identifiers **include: social security numbers, financial account numbers, names of minor children, and dates of birth**. If no such request is filed within the allotted time, the Court will presume redaction of personal data identifiers is not necessary.

Any party seeking redaction shall file a *Statement of Transcript Redactions* identifying the location of the personal data identifiers sought to be redacted within 21 days of the date of this notice: September 11, 2013. The party filing the statement shall serve it by regular mail upon all parties at the hearing and shall include a Certificate of Service listing the date and parties served. The *Statement of Transcript Redactions* event will be restricted from public view and cannot be served electronically through the CM/ECF system. If no *Statement of Transcript Redactions* is filed within the allotted time, the Court will presume redaction of personal identifiers is not necessary.

Any party may file a response in opposition to the Statement within 7 days of the date the Statement is filed using the *Response to Statement of Transcript Redactions* event. If a response in opposition to the Statement is filed, the Court will rule on the matter. If a hearing is needed, the Court will send notice of hearing.

If a request for redaction is filed, the redacted transcript is due within 31 days of the date of this notice: September 23, 2013.

The transcript may be made available for remote electronic access upon expiration of the restriction period, which is 90 days from the date of filing of the transcript: November 19, 2013, unless extended by court order. However, during this 90-day period the transcript is available for viewing only during normal business hours at the Clerk's office.

Any questions regarding the transcript process should be directed to Matt Parker, Director of Courtroom Services, at (314) 244-4801.

FOR THE COURT:

/s/Dana C. McWay
Clerk of Court

Dated: 8/21/13

Copies Mailed To:

Brian Walsh, 211 N. Broadway #3600, St. Louis MO 63102
Rev. 12/10