

SCHEMES

FROM THE

**board
room**

**The War by Arch and Peabody
On the Aging, Ill, and Disabled**

Fact-Finding Mission by Religious Leaders for
Coalfield Justice and Interfaith Worker Justice

MAY 1, 2013



RLCJ
**Religious Leaders
for Coalfield Justice**

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MAY 14, 2013

Executive Summary

Responding to requests from many quarters, representatives of Religious Leaders for Coalfield Justice and Interfaith Worker Justice gathered in Charleston, W. Va.'s, St. Agnes Catholic Church on April 9, 2013, to hear testimony on the plight of 23,000 retired United Mine Workers of America miners, their families and dependents, who are threatened with loss of their health care benefits. Present with us were retirees and family members, clergy, community and health care officials, union leaders, and labor experts to address how St. Louis-based Peabody Energy and Arch Coal had assigned their contractual obligation to a new coal corporation named "Patriot" that appears to have been designed to fail. Based on this hearing, we found the following.

1. For decades, Peabody Energy and Arch Coal had repeatedly signed contractual agreements with the United Mine Workers of America to provide lifetime health care for their eligible retirees.
2. Under those agreements, UMWA miners chose to work under dangerous conditions for relatively lower wages to ensure this health care benefit on retirement.
3. Peabody and Arch made financially advantageous arrangements by spinning off separate coal companies and assigning to them their contractual liabilities for retiree health care: Arch created Magnum in 2005 and Peabody created Patriot in 2007.
4. Subsequently, in 2008, Patriot acquired Magnum, with the result that over 90 percent of the 23,000 retirees whose benefits were assigned to Patriot had never worked for Patriot but had been employed by Peabody or Arch.
5. As expected by coal industry analysts, Patriot filed for bankruptcy in 2012, anticipating a judge's decision under United States bankruptcy laws to dismiss its liabilities and ensure its future profitability.
6. A Patriot bankruptcy could result in loss of or severely reduced health care funding for not only these 23,000 retired miners and their dependents but also for long-



The St. Agnes Catholic Church in Charleston, W.Va served as sacred space for retired mineworkers who shared healthcare woes before a delegation of religious leaders.

established health facilities in coal-mining communities.

7. If Peabody and Arch are successful in their effort to shed contractual responsibilities for the health and welfare of their retirees, contractual responsibilities for retirees of other corporations may also be at risk, jeopardizing the economic well-being of the American people for higher corporate profits.

In 2012, hundreds of retirees wrote Judge Shelly Chapman, asking that the New York City venue for bankruptcy court proceedings, a venue originally engineered by Patriot, be moved to West Virginia. Subsequently, the venue was moved to St. Louis, home of Peabody, Arch, and Patriot.

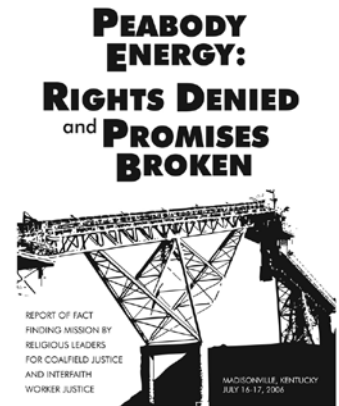
Just weeks before our hearing, thousands of active and retired miners and their families marched in St. Louis and in Charleston, seeking to draw public attention to the retirees' predicament. Yet Appalachian miners remain largely hidden from public interest. Our mission was to amplify their story and its wider implications for America's future in the religious community.



IWJ Executive Director, Kim Bobo, was arrested for standing in solidarity with retired mineworkers.

Background

This was not the first time that religious leaders encountered Peabody Energy. In a 2006 fact-finding mission, we heard testimony regarding the labor practices of Peabody in the coalfields of Kentucky and surrounding states. Our report found *"a pervasive pattern of disloyalty and disrespect on the part of Peabody's management toward its workers and violations of workers' legally guaranteed and internationally recognized right to organize."*



We also found that *"Peabody Energy is systematically deunionizing its mines, reducing miner health protections, and eliminating job security and retirement benefits, all conditions painstakingly achieved through decades of struggle and collective bargaining. Miners are being denied their hard-won voice in life-and-death workplace decisions."*

Our report concluded, *"Peabody's war on its employees is an assault on political democracy and human dignity. People of conscience today understand, [as people of conscience have understood over the past 150 years,] that corporate power and hubris ultimately destroy not only the economic and political environment supporting our common life but also the very fabric of social relationships through which we exercise our [essential human] capacities for honesty, hard work, fair play, compassion and respect."*¹

Just prior to our 2006 mission, Gregory Boyce became Peabody's CEO with a pledge to stockholders that he would continue the corporate policy of reducing the "intensity of our unionization." Over the next six years, that corporate policy was extended

1 "Peabody Energy: Rights Denied and Promises Broken." Report of Fact-Finding Mission by Religious Leaders for Coalfield Justice and Interfaith Worker Justice, 2006.

to include “spinning off,” or dumping, Peabody’s contractual responsibility to contribute to the health care for thousands of retired miners, their dependents and survivors. Peabody redefined this decades-long responsibility as merely a “legacy liability.” Peabody’s war had clearly escalated, reaching from the workplace into miners’ retirement homes and widening the scope of its life-and-death decision-making.

Peabody’s legal obligation dates back to the 1946 National Bituminous Coal Wage Agreement and its Welfare and Retirement Fund. This fund, initially supported by mine operator contributions of five cents per ton of each ton of coal produced and sold (later changed to a contribution based on hours worked), was used to pay for miners’ uncompensated wage loss resulting from sickness, disability, death, or retirement. Payments are guaranteed for the life of the beneficiaries. In addition, Peabody and Arch have signed contracts for decades guaranteeing health care benefits for life.

Because coal mining is such a highly dangerous and debilitating occupation, a separate medical and hospital fund was also established, supported by UMW payroll deductions. It resulted in construction of 10 Miner Memorial hospitals, bringing hundreds of needed doctors and nurses to coal-mining communities.

In consideration of lifetime retiree health benefits, Peabody miners took fewer vacation days and often accepted lower wages than many other industrial workers are paid. They endured occupational hardships, injuries, and daily threats to life and limb in anticipation of living out their “golden years” with financial peace of mind.

But Peabody sought to eliminate its obligation for the security of its retirees, many of whom are now disabled or suffer from multiple work- and environment-related disorders and chronic illnesses. Few, if any, would be able to pay for their necessary health care out

of pocket, in part because miners’ pensions are based on their relatively lower earnings. One catastrophic illness could force most UMW beneficiaries into bankruptcy.

Peabody’s Bankruptcy Scheme

In 2007, at the height of Wall Street’s mortgage hubris, Peabody spun off a separate business, Patriot Coal Corporation, transferring 13.3 percent of its coal reserves in eastern United States. The spin-off also included transfer of roughly \$560 million in liabilities to Patriot in the form of retiree health care obligations. That figure has now grown to \$1 billion. At the time of Patriot’s creation, its directors were all Peabody officers or directors, including Boyce’s predecessor, Irl Englehardt. Peabody’s then Chief Financial Officer, Rick Navarre, boasted to his directors, “Our health care liability and related expenses will be reduced by 40 percent.... In total our legacy liabilities, expenses and cash flow will nearly [be] cut in half.”²

Then in 2008, Patriot acquired Magnum Coal Company for \$695 million, adding obligations for another 2,300 retired employees plus their dependents (\$500 million in liabilities) who had been spun off from Arch Coal when it created Magnum in 2005. By late 2012, Patriot reported that its liabilities had grown to \$1.37 billion. By then it had filed for bankruptcy, an act that could very easily result in the permanent discharge of Patriot’s liabilities. Discharging liabilities would not only eliminate retiree health benefits, it would also virtually dismantle a major component of the region’s health care system. Meanwhile, for the period 2008-2011,



² Peabody Energy 3Q 2007 Earnings Call (Nov. 6, 2007).

Peabody posted profits of \$2.2 billion and Arch made \$343 million, in all enough to pay all the future health care costs of their former employees forever, and twice over.

What was the motive for creating Patriot Coal with such a disparity between assets and liabilities? Bruce Rader, Assistant Professor of Finance at Temple University's Fox School of Business, has written, "...from a financial point of view, this venture [to form Patriot] seems to have been created to fail in the long run unless the most optimistic outcome for eastern coal was obtained." In other words, Patriot is essentially a vehicle for dramatically increasing Peabody's profits by transferring its obligation for retirees, if the bankruptcy scheme succeeds, to the backs of American taxpayers. Rader, an advocate for responsible capitalism, calls this scheme an example of "corporate socialism... a system that privatizes profits and socializes costs." He also calls it an exercise in "moral bankruptcy."³

Another consequence of this scheme is that Arch and Peabody become "indirect employers" of the miners that work for those corporations' profits. Under the terms of the spin-off, certain cost savings by Patriot redound to Peabody shareholders, making Patriot a conduit for increasing Peabody's profits.

This was the problem facing those we met with in Charleston, W. Va. We heard their testimony, discussed the situation, and concluded that Peabody's action is an egregious example of modern corporate larceny and economic violence.

This report, as was our 2006 report, is both a study document for people of faith and a call to action. But the action called for today is far more urgent, critical, and pervasive. What is at stake is the future presumption of corporate integrity and employee trust in the American economy. Today's working people can no longer expect steady

employment at living wages. If Peabody and Arch can get away with their dodge, no one's retirement will ever be secure.

Testimony from Retirees and Dependents

Tears flowed in the St. Agnes Catholic Church parish hall. But Dinah McCloud's tears were not for herself. They were for her many friends and neighbors who suffer from debilitating injuries and illnesses, and who are now enduring anxiety over the threatened loss of secure and stable health care. "It's a crying shame," she says. "I think about some who died in the mines or were killed. And I know people who want to be here today but are just too sick to make it."

Dinah's husband, David, is a retired miner and also a Free Will Baptist preacher. They had driven from Harts, W. Va., an hour and a quarter south of Charleston. "I woke up," he said, and decided to do something." He quotes from Malachi 3:5: *"Then I will draw near to you for judgment; I will be swift to bear witness against the sorcerers, against the adulterers, against those who swear falsely, against those who oppress the hired workers in their wages, the widow and the orphan, against those who thrust aside the alien, and do not fear me, says the Lord of hosts."*

Dinah and David, along with all the retired miners and family members who filled the St. Agnes parish house, deeply felt the burden they carried. They represented 23,000 colleagues and their dependents, salt-of-the-earth working people whose modest way of life is now endangered by wealthy corporate directors bent on squeezing even higher incomes out of these miners' guaranteed system of life support.

"The Lord may have called me to open my big mouth," he said. "Peabody defrauded workers at their mines. They made promises they didn't mean to keep. They oppress the poor and working people. I know we are supposed to depend on the Lord to

³ "Designed to Fail (The Case of Patriot Coal)" by Bruce B. Rader, Ph.D., CFA. no date. (www.fairnessatpatriot.org/media/temple-university-analysis)

provide, but sometimes we need to speak out and do something ourselves."

Dinah added, "The corporation turned its back on us and treats us like trash. It has no human compassion. We're on earth to help one another. But all across the country, there's too much abuse of workers and not enough respect for them."

"I worked for 10 years, getting laid off every year or six months," said David. "It's hard to get enough time in the mines for a pension and health care. Then they laid us all off for good and filed for bankruptcy. I thought that if Peabody is the biggest in the world, there'd be no problem. Now it's even worse than before. They tell us we're like the bakers at Twinkies. Twinkies!"

David's experience is typical of many miners in West Virginia. Their working years are not only dirty and dangerous but also subject to sudden changes in job description and location. The coal market traditionally runs in boom-and-bust cycles. This has made it extremely difficult for some miners to accumulate the number of years required for pensions and health care benefits. Moreover, as eastern underground mines become fewer and western strip mines become more prevalent, miners in the East have seen job opportunities shrink.

The one constant for UMWA miners is their contractual promise of lifetime health care. To be eligible for this health benefit, miners must put in at least 10 years of signatory service by age 55; or 20 years at age 55 or older, since full pensions are paid only after age 62; or immediately upon a mining injury resulting in total disability.

Without that promise, mining companies would face demands for higher wages and would experience higher rates of employee turnover. This is the case with the growing number of Appalachian non-UMWA mines.

David retired in 2007, after working 31 years, when Peabody spun off Patriot. Then Patriot

bought Magnum. "So now we all belong to Patriot," he said, "and a health care system they knew wouldn't make it. One of every five families in my church is affected. All of our pastors are miners and they all know families who are facing this problem. If we lose health care, it will devastate our churches. God says this is not right. This is a moral issue and we have to stand for ethical principles."

Another miner-Free Will Baptist preacher, Elbert Collins Jr., spoke up. "Ninety-five percent of our church members are miners," he said. "Thank the Lord for life and health benefits. But now we've come to a time of crisis. My wife was on the wait list for cancer [treatment], and she's had many problems." Dorothy Collins described some of her problems, and concluded, "If we didn't have a health card, the bills would overwhelm us."

Collins began working for \$24 a day. He retired in 1997. "We made millions for the coal companies. Now they owe us for our hard work. Let the president of the company go down 1,300 feet underground and crawl through the mud and breathe the dead air. After you work in the mines from age 20 to 62, you're broken. Then they throw you out. A coal miner can't enjoy the 'golden years.' If they take away our health card, what do we do? Go to the government and beg for welfare?"

Hubert "Skeeter" Lowe went to work for Arch in 1975. "When Arch formed Magnum in 2005, as a nonunion company, they put all us 'bad eggs' in one basket. So I retired early at '30 [years] and out.' Now my pension is less than what it costs for just one of my wife's prescriptions, which is \$1,500 a month. So health care means more to us than a pension. If health care is canceled, we'll have real problems." Skeeter worries whether he'll be able to pay for health care without going bankrupt.

Enoch Breedlove began working for Peabody in 1970. He was forced to quit in 1998, a year and a half before earning a full pension,

because he needed four heart bypasses. He and his wife need many prescribed medications and are praying that their health care will stay in force for two more years until they're eligible for Medicare. The cost of Medicare out-of-pocket co-payments and deductibles will deeply hurt UMWA retirees because of their relatively small pensions. But Enoch will find himself without health care coverage; it is unlikely that a miner with multiple ailments can survive for two years without coverage and not go bankrupt.

Shirley Inman is a diminutive woman by any standard, but pictured in front of the mammoth pieces of mining equipment she operated, she appears even smaller. She left a well-paying job in Chicago and came home to West Virginia to work in coal mines because of the guaranteed health care benefit. She began working for Arch in 1980 and eventually became an equipment operator. In 1998, a wayward steam shovel bucket hit her truck, throwing her into the air and injuring her spine. She was forced into retirement in 2010, just 55 days into her 30th year, by another mining accident that injured her neck. A cancer survivor, she is now experiencing spinal deterioration and other health problems, and relies on multiple prescriptions.

Rick Ryan's wife, Terry, talked about her husband's situation. He began working for Arch in 1974, retiring after 33 years with multiple health problems. He has a device



Retired Arch worker, Rick Ryan, and his wife Terry, give their testimony before the fact-finding delegation of religious leaders.

implanted in his head to control migraines. If he loses health insurance, they could never afford to adjust or remove the device. "One trip to the hospital would wipe us out. It's hard on him, with the future so uncertain. Arch dumped us on Magnum Coal," she continued. "Their president is smirking about it all. It just seems like in America, something's got to be fair."

These retired miners and their families tend to live in close communities and attend the same churches. But they feel little direct support from the churches. "Maybe they're getting a little more sensitized," says Terry.

Cabin Creek Health Clinics

Cabin Creek typifies Southern West Virginia's geography: mountains and hollows, twisting streams, nearly isolated homesteads. Dan Doyle, MD, Director of the Cabin Creek and Riverside Health Centers, came to the area in 1978 in response to the Miners for Democracy movement's concern for black lung disease, or pneumoconiosis, caused from breathing coal dust. The movement was formed in 1970 by a miner from the Cabin Creek area, Arnold Miller, himself afflicted with black lung. Miller went on to become the first president of the UMWA from West Virginia. An early member of Miners for Democracy was a young miner named Cecil Roberts, today's UMWA President.

Miners for Democracy succeeded in winning recognition of and compensation for victims of black lung. But that victory was short lived. In the 1970s, 70 percent of miners' applications for black lung compensation were approved. Since 1981, an average of only seven percent have been approved. "We fought for black lung compensation back then," Doyle said, "and now we need to fight lawyers both here and in Washington intent on watering down legislation requiring benefits. This is just the latest round of a long struggle."

Doyle reported many cases of miners being laid off after 19 years of work,

making them ineligible for retiree health insurance and forcing them to rely on worker's compensation. "It's a constant struggle," he said, "to care for people and families without health insurance. As physicians, we must be involved."

Cabin Creek Health Systems is a non-profit, community-owned health center affiliated with the WVU School of Medicine. It was founded in 1973 at Dawes, W. Va., with support from the UMWA and the UMWA Health and Retirement Fund, when coal miners and other community members organized to address the shortage of primary care services in this coal mining region of southern West Virginia. A second clinic, Riverside, opened in 2001 at Belle, W. Va., and serves as both a school-based and community-based center. These two clinics cover more than three counties and a population of 52,000 people. The area's poverty rate is over 50 percent higher than the nation and 33 percent higher than the State.

Today Cabin Creek Health Systems operates four community health centers, having expanded to Sissonville and Clendenin in 2007. The medical staff includes physicians, physician assistants, pharmacists, and mental health providers. Care services include prenatal care, pediatrics, adult chronic and acute care, integrated mental health services, school-based health center services, pharmacy and independent laboratory services.

Amber Crist, who administers the Cabin Creek clinic, is from Cabin Creek and a long line of coal miners. Her parents have struggled all their lives, through good times and lay-offs; her father, 60, must now work in a nonunion mine. "Cabin Creek Health System cares for everyone, regardless of ability to pay," she said. "But without health care coverage, there would be nowhere to send people. Payments from Medicare and Medicaid keep our doors open. About 30 percent of our income is from Medicare; about 20 percent from Medicaid; about 25 percent from private insurance; and about 25 percent of our patients are uninsured.

The uninsured portion is growing, and if it reaches 50 percent, the clinic could not survive."

Churches in the area play an important part in the health care system by hosting classes in the communities. Amber hopes that the churches will also support the retired miners in their struggle to keep their health care.

In response to a question about coal dust affecting whole communities, Dr.

Doyle acknowledged the difficulty for miners and their families to jeopardize work opportunities in the face of coal companies' vigorous objections to raising community health issues. "People know that coal dust is bad, but they tend to overlook it to keep bread on the table."



Dr. Dan Doyle and Cabin Creek Clinic Administrator, Amber Crist

Issues Facing the United Mine Workers of America

Joe Carter is International District 17 Vice-President of the UMWA, covering southern West Virginia, eastern Kentucky and southwestern Virginia. He's been a member of the Union for 37 years, 14 of those years in underground mines. He called the struggle with Patriot the most serious since the 1989 Pittston Strike. "At least Pittston negotiated through established procedures. With Patriot, it's not normal negotiations. Everything is done through the bankruptcy rules."

"We renegotiate contracts every three to five years, and we sacrificed higher wages to keep the health care," he said. "UMWA members were proud to keep working and provide for their families. Then the price of coal declined. Patriot demanded fewer benefits and lower pay for union miners. Now



UMWA International Vice-President, Joe Carter, discusses impact of Patriot bankruptcy case on retired mineworkers and their families.

everything's in the hands of the bankruptcy judge. The bankruptcy system is set up for corporate survival, not for the benefit of people. The result is many personal bankruptcies after a corporation is insolvent. We urgently need bankruptcy law reform."

Carter also discussed the U.S. Senator Jay Rockefeller-sponsored Coalfield Accountability and Retired Employee Act that would extend the federally guaranteed welfare and retirement system for coal miners and their dependents, in place since 1946. This bill would a) transfer surplus interest from the Abandoned Mine Land fund to the UMWA 1974 pension plan, hard hit by the 2008 recession; b) give union retirees who lose their health care benefits due to company bankruptcy eligibility for the 1992 Benefit plan and hold employers accountable for contributions; and c) provide that employer contributions to the Retiree Bonus Trust are subject to the same tax exemptions as other retirement contributions. This bill is identical to H.R. 980, sponsored in the House of Representatives by U.S Representative Nick Rahall II.

Brian Sanson is UMWA Health and Retirement Fund liaison and UMWA Director of Research and he addressed a number of questions related to the Patriot bankruptcy.

Q. What will be the economic impact on the communities where active and retired Patriot/Peabody/ Arch employees live if they lose medical benefits and pensions?

A. The UMWA Health and Retirement Funds and Patriot together provided health care payments of over \$770 million in 2012. In addition, the 1993 Benefit Plan (Orphan Fund) provides health care benefits to over 10,800 retirees, surviving spouses and dependents. This means that pension and health care dollars at risk for communities total in excess of \$1.3 billion per year.

Q. What is the UMWA retirees' average pension income?

A. UMWA members have historically traded higher wages and pension benefits for the promise of retiree health care upon reaching retirement age. For example, the average pension paid by the 1974 Pension Plan is \$581 a month. By comparison, a 2011 survey of over 100 multi-employer pension plans showed the median monthly pension as \$908, or nearly 50 percent higher than the average 1974 Plan benefit.

Q. How much is paid to doctors, health providers, hospitals, medical equipment companies and for other medical needs for UMWA retirees 65 and over and their dependents in the states where Patriot/Peabody/Arch pensioners live?

A. In 2012, Patriot and the UMWA Health and Retirement Funds provided health care payments that totaled over \$320 million to West Virginia, \$107 million to Kentucky, \$58 million to Illinois and \$33 million to Indiana. The retirees, widows and dependents do not have the financial means to pay for these benefits. The majority would most likely be forced into personal bankruptcy or fall into the various public welfare programs once their finances drop to a level that qualifies them.

Q. Who should be responsible for Patriot Coal's retiree health care obligations?

A. Of the 10,633 families receiving retiree health benefits from Patriot, over 8,350 last worked for a Peabody Energy subsidiary that was spun off in 2007. Over 92 percent of these retirees never worked a single day for Patriot Coal. Similarly, of the over 2,280 retirees who last worked for Arch subsidiaries, 2,118 retirees, or 92 percent, never worked a day for Patriot. Furthermore, 1,988 retirees, or 87 percent, never worked a day for Magnum Coal. This means that in total, of the 10,633 retirees receiving benefits from Patriot, over 9,600 of them, or 90 percent, never worked a day for Patriot or Magnum. Clearly, the primary motivation behind the Arch/Magnum transaction and the Peabody/Patriot spin off was to avoid the liabilities to its former employees.

Q. Will the Patriot reorganization plan negatively affect the UMWA 1974 Pension Plan?

A. Today, Patriot is the second largest contributor into the 1974 Pension Fund, contributing about \$23 million per year. But the 1974 Pension Fund is currently certified as being seriously endangered. If Patriot withdraws from that Fund, it will owe an estimated \$960,000,000 million.

Q. What does Peabody mean when it says that it has and will continue to keep its contractual obligations to its retirees?

A. This question highlights a growing rift between Peabody and Patriot. In the closed doors of its boardroom, Peabody Energy executives put together a document that specifically stated that any relief or cost savings Patriot was granted, with respect to its retirees, would be passed on to Peabody. But now Patriot has decided to bring suit against Peabody for dumping its retirees. Patriot now states: "Contrary to Peabody's public declarations that it has 'lived up to its obligations' and 'continues to do so,' ... Peabody appears poised to exploit Patriot's requested relief under Section 1114 as a

purported way to avoid paying for the health care benefits of the thousands of individuals comprising the assumed retirees."

Peabody took issue with Patriot's interpretation of the contract. "Our contract with Patriot Coal states that we will fund a portion of Patriot's retiree health care expenses for specified retirees," Peabody said. "This contract also appropriately states that, should Patriot's benefit obligations decrease, our funding would proportionately be reduced. These are Patriot's obligations and, to the extent they are reduced, we will meet our agreement with Patriot to fund the new lower levels."

Q. If the judge throws out the Union's contract, what does Peabody owe its retirees?

A. Let's just say Peabody comes around and decides to honor its contract with Patriot. That still leaves an estimated \$600 million in retiree debt that they have unloaded and have no intent of picking up.

Q. What does Patriot mean when it claims it isn't cutting off retirees' benefits?

A. In an April 5, 2013, press release, Ben Hatfield, Patriot's President and CEO, asserted that Patriot is not trying to strip UMWA retirees of their benefits; it is only seeking to modify them to bring them in line with their nonunion employees and retirees. However, in a press release the day before, the company announced the cessation of all medical benefits for nonunion retirees.

Q. Patriot claims the UMWA must provide these concessions to save nearly 4,000 active miners jobs. What does the UMWA say to this claim?

A. The UMWA's negotiating team has provided Patriot a path out of bankruptcy and they flatly refuse to take it. Patriot would rather bet on a bankruptcy judge giving them the concessions they have demanded rather than negotiate an agreement that meets their needs and still provides health care to UMWA retirees.

Patriot's Fact Sheet

(Officials of the Patriot Coal Corporation declined our invitation to participate in our hearing. They also declined to discuss the situation with members of our team. They did, however, provide us with a four-page Fact Sheet meant to "add clarity and address common misconceptions and factual inaccuracies surrounding the filing of Patriot's 1113/1114 motions with the bankruptcy court on March 14, 2013." Sanson addressed several relevant portions of that Fact Sheet. (The entire Fact Sheet is appended to this report)

How can Patriot break its promise of lifetime health care to retirees?

Patriot: *There is no realistic scenario whereby Patriot can afford to continue to fund retiree health care benefits at current levels under the collective bargaining agreements.*

Sanson: Patriot could make adjustments to its business plan and provide real funding to its proposed Voluntary Employee Beneficiary Association.

What is Patriot's proposal for UMWA employees?

Patriot: *We are NOT proposing to "throw out" our collective bargaining agreements, but rather to amend them in order to survive.*

Sanson: Patriot proposes to take away the UMWA's ability to secure employment for its members.

Patriot: *The proposal would adjust union employee wages, benefits and work rules to be consistent with Patriot's nonunion hourly employees.*

Sanson: Patriot proposes end retiree health care for current active employees when they retire, increase out-of-pocket costs for active workers, and cut wages on some employees by \$7.00 an hour.

Patriot: *Hourly wages would be adjusted to be in line with the regional labor market.*

Sanson: "Regional labor market" is another way of saying "what we want to pay."

Patriot: *Union employees would be offered the same health care benefits as nonunion employees.*

Sanson: Union employees are being asked to agree to a health plan that the company has the unilateral right to change at any time. The UMWA has no real idea what its members would potentially pay. In fact, the union has attempted to reduce Patriot's costs without its proposed draconian cuts.

Patriot: *More flexible work rules would allow Patriot to realize additional efficiencies in its coal production.*

Sanson: Patriot claims it doesn't want additional production, that it can't sell the coal it has now. It wants a unilateral right to set schedules. Miners need a say in determining reasonable schedules. We have worked with Patriot to put together schedules that address issues as they arise.

What are the major components of Patriot's proposal for UMWA retirees?

Patriot: *We are NOT proposing to eliminate health care for UMWA retirees. UMWA retiree health care would be transitioned to a Voluntary Employee Beneficiary Association (VEBA) trust that would be designed and administered by the UMWA or the UMWA Health and Retirement Funds.*

Sanson: Patriot IS proposing to eliminate its employer-provided health care and provide instead an underfunded VEBA which carries no guarantees. Retiree benefits now cost almost \$80 million a year.

Patriot: *We would fund the trust with a significant ownership percentage of the reorganized company, which is expected to be worth hundreds of millions of dollars.*

Sanson: Ownership would need to be monetized, which takes time, during which retirees would go without health care.

Patriot: *Profit-sharing, up to a maximum of \$300 million.*

Sanson: Profit-sharing would be about \$2 million in 2016 only.

Patriot: *An initial cash contribution of \$15 million.*

Sanson: Patriot pays \$6-7 million a month, so \$15 million is only two months.

Patriot: *And future recoveries from litigation.*

Sanson: These recoveries will be years down the road, forcing many retirees to suffer in the time it takes to receive them.

Patriot: *This funding will provide meaningful long-term health care benefits for union retirees.*

Sanson: The word “meaningful” means different things to each of us.

Patriot: *Coal Industry Retiree Health Benefit Act of 1992 (Coal Act) and Black Lung beneficiaries would NOT be affected by this proposal, and their benefits will remain unchanged under these federally mandated programs.*

Sanson: Coal Act and Black Lung benefits cannot be changed under the bankruptcy statute.

Voices From the Community

Mike Caputo is Majority Whip in the West Virginia House of Delegates and a UMWA International Vice President. "I worked 20 years for Peabody," he said, "and I'm counting on health care. Ninety-one percent of Patriot retirees never worked for either Patriot or Magum." He discussed House Resolution 28, passed on March 25, 2013, a non-binding measure calling on Patriot to honor its health care obligation to 10,000 miners and 13,000 dependents. The resolution passed the House by a 93-4 margin. "Even the right-wing members of the House say that the union is right. This has happened to steel workers, airline workers, bakery workers, glass workers, and now mine workers. Enough is enough. It's time to take a stand."

Caputo also discussed the impact on West Virginia hospitals and state government. "We already have a seven-and-a-half percent cut in the state's budget. Without health care money, we can't balance the budget. And we can't fix that problem at the state level," he said.

One of the delegates who voted against House Resolution 28 is an official with coal operator Alpha Natural Resources (formerly Massey Energy). He said that although he empathizes with the retirees, he questions the wisdom of the legislative action on a pending court case. He argued that "this case is between the United Mine Workers of America and Patriot Coal."

Dr. John David, who directs the Southern Appalachian Labor School, said that this separation between a strategy of contract negotiation and one of legislative enforcement is a problem that began with Samuel Gompers [founder of the American Federation of Labor in 1886. Gompers believed that "labor will cease to engage in contests with employers as soon as labor finds it possible to induce employers....to substitute negotiation for

contest"]. John L. Lewis, former president of the United Mine Workers of America and founder of the Congress of Industrial Organizations, maintained that belief.

"Health and welfare benefits should be legally-established, as they are in Europe," David said. "The 1947 Taft-Hartley law made organizing even more difficult. Another problem is that royalty fees are based on tons of coal produced, not on hourly wages. As a result, mechanization increases coal company profits and decreases their labor costs. Basic human rights [like pensions and health care] have no place at the bargaining table. They should be implemented

as public policy [like unemployment insurance and worker's compensation]."

Dr. David has recently written that "...millions of American workers who made this nation an industrial power and fought with honor in numerous wars have become victims of economic violence which is preventing them from meeting their basic needs. This economic

...millions of American workers who made this nation an industrial power... have become victims of economic violence which is preventing them from meeting their basic needs. This economic violence...is outrageously legal since it is an outcome of management techniques, government policy, and legal maneuvers, all within the rules...of our current economic system....

Over past decades, miners have been stripped of effective means of protecting their livelihoods and living standards.

violence, while not moral, is outrageously legal since it is an outcome of management techniques, government policy, and legal maneuvers, all within the rules, regulations and procedures of our current economic system.... Over past decades, miners have been stripped of effective means of protecting their livelihoods and living standards. West Virginians are law-abiding people.... But this does not mean they can or will peacefully accept economic violence which destroys their lives and those of their children."

Post-Hearing Postings

Subsequent to our hearing, amid charges and counter-charges, court motions and public relations gambits, several telling events were noted in the press. In two interviews, Ben Hatfield, Patriot's most recent CEO, appeared to confirm our conclusion that the spin-offs by Arch and Patriot were less than sound business ventures. On April 13, the *West Virginia State Journal* reported that Hatfield, formerly CEO of International Coal Group, admitted that, "Frankly, as a competitor, we looked at [Patriot's formation] and said, 'How could that work?' It looks like a bad balance here – too many liabilities and not enough assets.... As a competitor, we were very suspect from the day the spin-off was announced as to whether this venture could survive."

He was asked, "Did the stack of legacy liabilities...doom Patriot from the start?" "I think it a fair assessment to be honest," Hatfield said. "I frankly agree with many things (UMWA President) Cecil Roberts has said. Something doesn't quite smell right here."

On April 22, the St. Louis Journal asked Hatfield: *Is there any truth to the United Mine Workers of America's claim that executives of Peabody, Arch Coal and Patriot Coal created Patriot as a subsidiary that was designed to fail, in order to avoid payment of health care obligations to retired miners and surviving spouses?*

"I think they [the UMWA] are asking good questions and deserve answers. [Patriot was] saddled with burdens from the start based on decisions that Peabody made," Hatfield said.

Legacy liabilities include more than \$70 million a year in health care for retired union mine workers, \$50 million to treat water that drains or is discharged from mines and legacy coal supply agreements that were acquired from Peabody Energy and Arch Coal, Hatfield said.

What do you think will become of Patriot?
Hatfield, 56, the son of a union miner and grandson of a miner, said he is determined

to orchestrate a plan that will allow Patriot to emerge from bankruptcy as a profitable company.

The Charlottesville SNL Financial reported on April 17 that Irl Engelhardt, Peabody's former Chairman and CEO and initially Patriot's CEO, was accused by the UMWA of dodging a subpoena to avoid testifying in its case against Peabody and Patriot. After nine

attempts to serve the subpoena, Engelhardt was finally served on April 13. Since then he has attempted to have the subpoena quashed, saying he was not given sufficient notice for the deposition. The UMWA believes Engelhardt's testimony will be key in proving its case that Peabody designed Patriot to fail when it spun the company off.

Something
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right here.

Findings

1. Since 1946, Peabody Energy and Arch Coal had repeatedly signed contractual agreements with the United Mine Workers of America to provide lifetime health care for their eligible retirees.
2. Under those agreements, UMWA miners chose to work under dangerous conditions for relatively lower wages to ensure this health care benefit on retirement.
3. Peabody and Arch made financially advantageous arrangements by spinning off separate coal companies and assigning to them their contractual liabilities for retiree health care: Arch created Magnum in 2005 and Peabody created Patriot in 2007.
4. Subsequently, in 2008, Patriot acquired Magnum, with the result that over 90 percent of the 23,000 retirees whose benefits were assigned to Patriot had never worked for Patriot but had been employed by Peabody or Arch.
5. As expected by coal industry analysts, Patriot filed for bankruptcy in 2012, anticipating a judge's decision under U. S. bankruptcy laws to dismiss its liabilities and ensure its future profitability.
6. A Patriot bankruptcy could result in loss of or severely reduced health care funding for not only these 23,000 retired miners and their dependents but also for long-established health facilities in coal-mining communities.
7. If Peabody and Arch are successful in their effort to shed contractual responsibilities for the health and welfare of their retirees, contractual responsibilities for retirees of other corporations may also be at risk, jeopardizing the economic well-being of the American people for higher corporate profits.

Conclusion

When Arch and Peabody spun off Magnum and Patriot, leading to Patriot's bankruptcy, they divested not only 23,000 people from their liability spread sheets; they withdrew from participation in a common-sense morality that has held Americans together as a people for over two centuries. The foundations for this common-sense morality are political, cultural, and religious.

Its political grounding is found in the Preamble to the United States Constitution: "We the People... in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution...." Culturally, Americans embrace values of economic fairness, religious tolerance, compassion for the afflicted, self-reliance, and mutual respect regardless of station in life. As Dinah McCloud put it, "We're on earth to help one another."

As global corporations, Arch and Peabody appear to have abandoned both political and cultural dimensions of our common morality. In their stead, they single-mindedly champion wealth and the freedom to acquire wealth irrespective of any national interests or human consequences. Their schemes divide our people by pitting the power of wealth against the vulnerable, dismantling a mutually agreed-upon system of justice, fostering domestic affliction, ensuring corporate self-defense at the expense of our common defense, undermining the general welfare, and usurping the advantages of their liberty to the detriment of our posterity.

Religious frameworks for our common-sense morality are derived also from scriptural injunctions for just relationships and theological applications to specific situations. For example, American religious bodies

have supported labor's right to organize for almost a century. In 1923, The Federal Council of Churches joined with the National Catholic Welfare Conference and the Central Conference of American Rabbis to protest the steel industry's dehumanizing seven-day week and 12-hour day. Today, Catholic scholars, citing Catholic social doctrine, "judge and declare that ... Peabody Energy, Arch Coal, and their investors... [have a] moral obligation to ensure that contracted health or pension benefits to workers are not reduced or abandoned...even though their relation to [the workers] may be 'less than direct.'"

In this sense, Arch and Peabody embody a global trajectory toward corporate apostasy and dictatorship in the name of economic freedom. In response, people of faith may lament with the Psalmist who cries, *Hear my voice, O God. Protect me from the intrigues of the wicked. They encourage each other in evil plans, they talk about hiding their snares; They say, "who will see them?" They plot injustice and say, "We have devised a perfect plan!" Surely the mind and heart of man are cunning* (Ps. 64:1-6 passim).

As for our part, we who issue this report commit ourselves, and invite commitments from all faith traditions, to stand with mine workers, their families and communities as they seek a just solution to their plight. And we invite prayers for them, as well as for owners and managers of Arch, Peabody and Patriot, that over time we may all find ourselves living within a common- sense morality to the end that this world may become one people.

Call to Action

Religious Leaders for Coalfield Justice and Interfaith Worker Justice urge religious communities to:

1. Engage in active support for affected coal miners and their families.
2. Support reform of federal bankruptcy legislation to exclude collective bargaining agreements from liability liquidation.
3. Support passage of the U.S. Senate's 2013 "Coalfield Accountability and Retired Employee Act," which would extend the federally guaranteed welfare and retirement system for coal miners and their dependents in place since 1946, and partially restore funds in the event of losses due to a Patriot bankruptcy.
4. Divest stock holdings in Arch Coal, Inc., and Peabody Energy, or hold stock in these companies pending opportunities for shareholder action on reform.
5. Recognize the degree to which corporate policies against workers are increasingly reflected in public policies that erode worker rights and foster popular opinion against organized labor. Lead grassroots educational and mobilization efforts around issues critical to workers, including employee health care, workplace safety, economic equity, and healthy communities.
6. Participate in Labor Day efforts to lift up worker issues in congregations by utilizing "Labor in the Pulpits" material from Interfaith Worker Justice (www.iwj.org/resources/plan-labor-day-service).

Fact Finding Delegation

Rev. Jeff Allen, Executive Director, West Virginia Council of Churches

Rev. Ted Erickson retired United Church Board for Homeland Ministries staff (report drafter)

Rev. Jim Lewis, Episcopal Church, Charleston, West Virginia

Dr. Edie Rasell, Minister for Economic Justice, United Church of Christ

Fr. John Rausch, Executive Director, Catholic Committee of Appalachia

Rev. Bill Somplatsky-Jarman, Coordinator for Social Witness Ministries, Presbyterian Church (USA)

Panel organizer and staff, Tena Willemsma, Religious Leaders for Coalfield Justice

Mr. Enoch Breedlove, UMWA retiree

Mr. Emory Carter, UMWA retiree

Mr. Joe Carter, International Vice-President, UMWA District 17

Mr. Mike Caputo, International Vice-President, UMWA District 31, Majority Whip WV House of Delegates

Pastor Elbert Collins Jr, UMWA retiree

Mrs. Dorothy Collins, Jr. spouse

Ms. Amber Crist, Director of Education and Program Development, Cabin Creek Health Systems

Dr. John David, Director, Southern Appalachian Labor School

Dr. Dan Doyle, MD, Cabin Creek and New River Health Systems

Mr. Tommy Hensley, UMWA retiree

Ms. Shirley Inman, UMWA retiree

Mr. Hubert Lowe, UMWA retiree

Pastor David McCloud, UMWA retiree

Mrs. Dinah McCloud, spouse

Mr. Rick Ryan, UMWA retiree

Mrs. Terry Ryan, Spouse

Mr. Brian Sanson, UMWA Health and Retirement Fund Liaison and UMWA Director of Research

Interfaith Worker Justice:

Interfaith Worker Justice (IWJ) advances the rights of workers by engaging diverse faith communities into action, from grassroots organizing to shaping policy at the local, state and national levels.

Religious Leaders for Coalfield Justice:

An informal coalition of Appalachian religious leaders working for economic and social justice with particular focus on workers rights.



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