

Bankruptcy ruling wrong, unfair, UMWA says

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[TRIANGLE, VA] The ruling announced today by Judge Kathy Surratt-States of the U.S. Bankruptcy Court of the Eastern District of Missouri in favor of proposals by Patriot Coal to eliminate its collective bargaining agreements and cut off retiree health care is "wrong, unfair and fails to fully recognize the coming wave of human suffering that will be experienced by thousands of people throughout the coalfields," United Mine Workers of America (UMWA) International President Cecil E. Roberts said today.

"As often happens under American bankruptcy law, the short-term interests of the company are valued more than the dedication and sacrifice of the workers, who actually produce the profits that make a company successful," Roberts said.

"The UMWA presented a very clear picture in court of what Patriot actually needed to come out of bankruptcy," Roberts said. "Patriot can survive as a viable and profitable company well into the future without inflicting the level of pain on active and retired miners and their families it seeks. Patriot is using a temporary liquidity problem to achieve permanent changes that will significantly reduce the living standards of thousands of active and retired miners and their families.

"We are disappointed that the Bankruptcy Court failed to see that, and we intend to appeal the ruling to the Federal District Court," Roberts said.

"But I want to make it emphatically clear that despite this ruling, the UMWA's effort to win fairness for these active and retired workers is by no means over," Roberts said. "Indeed, this ruling makes it more important than ever for the architects of this travesty, Peabody Energy and Arch Coal, to take responsibility for the obligations they made to thousands of retirees who are now at imminent risk."

Patriot was created by Peabody Energy in 2007 with 43 percent of Peabody's liabilities but just 11 percent of its assets. Because Patriot was created with insufficient assets to meet its liabilities to retired miners, analysts such as Bruce Rader, Professor of Finance at Temple University, have described the company as "designed to fail." Even Patriot CEO Ben Hatfield said that "something doesn't smell right" about the manner in which his company was founded.

In 2008, Patriot acquired Magnum Coal, a company created by Arch Coal and other investors, into which Arch had shifted all its long-term liabilities to retirees, spouses and widows.

Under the Bankruptcy Court's ruling, Patriot will be allowed to cease paying for retiree health care benefits as early as July 1. Responsibility for paying benefits would be handed over to a Voluntary Employee Beneficial Association (VEBA), which will only have guaranteed funding of \$15 million plus a royalty payment of \$0.20 per ton of coal the company produces, which may add approximately \$5 million to the VEBA per year. Current health care costs for these retirees average nearly \$7 million per month.

The company has offered the UMWA a 35 percent stake in the company, which could be sold to help fund the VEBA, in the event there is a willing buyer. Since the current and future value of the company is unknown, there is no way of knowing how much money this could provide for health care benefits or when such funding would be available. The company has also proposed a profit-sharing mechanism that would not provide any additional assistance to the VEBA until 2016 and even then would not provide more than about \$2 million per year, at best.

"We are going to continue to make every effort to secure adequate funding to meet the long-term health care needs of these retirees," Roberts said. "Peabody and Arch can decide to live up to their obligations and end this problem tomorrow. But if they don't, we will continue our litigation against them and are optimistic about our chances."

The UMWA has filed suit in Charleston, W. Va., alleging that Peabody and Arch violated the Employee Retirement Income Security Act (ERISA) by illegally dumping contractual obligations when they created Patriot and Magnum.

The Bankruptcy Judge's ruling creates a path for Patriot to throw out its current collective bargaining agreements with the UMWA and implement substandard conditions of employment at its operations where the UMWA represents the workers. This includes cutting wages by several dollars per hour, taking thousands of dollars out of family incomes; eliminating paid time off by about one-

third, with higher cuts for more senior employees; and drastically increasing out-of-pocket health care costs.

The ruling also allows Patriot to eliminate retiree health care for currently active employees, more than half of whom have worked long enough to be eligible for health care under the cancelled UMWA contract. Several hundred more are within 3 years of eligibility.

"Patriot says that for it to survive, the union-represented workforce needs to be on the same scale as its non-union workers," Roberts said. "No, it does not need that and it never did.

"The UMWA made specific proposals to the company that demonstrate—using the company's own numbers and future projections—how the company could get through the next couple of lean years and then make millions, without punishing its workers in this way," Roberts said. "The company rejected every one of those proposals and continues to insist upon changing long-standing contractual language that will not improve their bottom line one penny."

"We will continue to meet with the company this week to see if there is a way forward," Roberts said. "We have long acknowledged that Patriot is in trouble, because it can no longer pay Peabody and Arch's bills. We remain willing to take painful steps to help Patriot get through the rough period it faces over the next couple of years.

"But if we're going to share in that pain, then we have every right to share in the company's gain when it becomes profitable again," Roberts said. "That only makes sense, and we will continue to try to get this management team to understand that."

The UMWA's public protests against Peabody and Arch will continue with a June 4 rally in Henderson, Ky., at 10:00 a.m. at the Henderson County courthouse. More than 4,000 people are expected at that event.