

Patriot Coal bankruptcy approved, thousands of retirees to lose health care

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Patriot Coal has been granted permission to tear up its collective bargaining agreements with the United Mine Workers (UMW) and escape its obligations to provide health care to its retirees. The ruling by US Bankruptcy Judge Kathy A. Surratt-States threatens the health care for some 21,000 retirees and their dependents and promises to bring down the labor costs of its more than 1,650 unionized miners to the level of its non-union workforce.

Under the ruling, Patriot will be allowed to change its collective bargaining agreements for both its active union workforce and retirees. According to a statement by the company, “The ruling would permit Patriot to adjust wages, benefits and work rules for union employees to a level consistent with the regional labor market.”

Under its approved bankruptcy plan, Patriot will cease providing health care to retirees and instead form a UMW Retiree Healthcare Trust, which will be structured as a Voluntary Employees’ Benefits Association (VEBA) to be administered by the union. The company will provide the VEBA with \$15 million in cash, a fraction of its retiree health care costs now averaging nearly \$7 million a month.

The UMW will be given a 35 percent stake in the reorganized company giving the union a financial stake in ratcheting up the exploitation of its membership in the future company. The scheme is modeled on the one imposed by the United Auto Workers during the Obama administration’s forced restructuring of the auto industry in 2009.

The bankruptcy plan was drawn up by the private-equity firm Blackstone Group, which has close ties to the Obama administration and has made billions through corporate acquisitions and asset stripping. CEO and co-founder Stephen Schwarzman who has amassed

a fortune worth \$5.2 billion received more than \$100 million in dividend payouts last year alone.

Patriot is the first major coal company to fall victim to the economic crisis of 2008. It is another case of the criminality of the American ruling class, which is determined to loot society and steal back everything ever won by the working class.

The bankruptcy proceedings have been closely followed throughout the coal mining industry and promise to herald a renewed assault on the living standards and working conditions of miners in the United States and internationally. The consequences of the ruling will be measured in the coming months and years though the increased loss of lives and limbs in the mines and the deepening of the social crisis gripping coalfield communities.

In her ruling, Judge Surratt-States acknowledged the receipt of over 900 letters by the court, many of which were from the thousands of retired coal miners who will be affected. The letters discussed the “horrendous conditions of the coal mines” and “how physically, mentally and emotionally grueling being a coal miner was.”

Many of these letters also included “medication lists, lists of various coal mining-related diagnoses and personal accounts of the years of hard work, and, all the reasons why these sacrifices were worth it for the promise of health care for life and an earned pension.”

While promising that “None of these letters, or their comments have been lost on this Court,” Judge Surratt-States argued that her decision had to be grounded in what the Bankruptcy Code and *stare decisis* (legal precedent) required.

In addition, she cynically claimed her decision had to balance the interests of the retirees with the some 4,200 workers currently employed by Patriot. “What is better

– something for a period of time or nothing in a short amount of time? What of the current employees; the fate of the rank and file UMWA-represented coal miners?” Surratt-States opined.

Patriot Coal was created on October 31, 2007 when Peabody Energy—the world’s largest coal company—sold its union operations east of the Mississippi to the new company. In 2008, Patriot bought Magnum Coal, a similar spinoff of union operations from Arch Coal—the second largest coal company in the US. Patriot currently operates 11 mining complexes in West Virginia and Kentucky.

Judge Surratt-States shied away from answering the charge that Patriot was created to fail. “Is it indeed that Debtor Patriot Coal Corporation was created to fail, or is it that hindsight is 20/20—and does the answer to that question have anything to do with the matter before the Court today?”

In her conclusion, she reiterated the question, “Was Debtor Patriot Coal Corporation created to fail? Maybe not. Maybe.” In fact, there is ample evidence that the creation and ultimate failure of Patriot was the conscious business plan of mining giants Peabody and Arch in order to shed its accumulated liabilities owed to generations of miners won through decades of bitter struggles waged in the coalfields.

When Peabody created Patriot in 2007, it sold the new company 13 percent of its coal reserves but burdened it with \$617 million, or about 40 percent, of its health care liabilities, as well as a raft of below-market coal contracts. At the time, Peabody CEO Rick Navarre gloated that the move would significantly lower Peabody’s legacy liabilities.

“Our retiree, health care liability and related expense will be reduced by about 40%,” Navarre claimed. “Workers’ compensation liability will be cut nearly 90% and asset retirement obligations will be one-third lower and the combined fund and multi-employee co-act obligations will now fully reside with Patriot. In total, our legacy liabilities, expenses and cash flows will be nearly cut in half.”

The recklessness of the deal is underscored by the fact that Peabody was forced to retain the liabilities for a group of 3,100 retirees in order for Patriot to be technically solvent and allow shares of the new company to be distributed to Peabody shareholders tax-free. In its first quarterly report filed after the spin-off,

Patriot reported \$1.2 billion in assets and \$1.1 billion in liabilities.

Similarly, the creation of the spinoff Magnum by Arch in 2006 included the transfer of 12 percent of Arch’s assets but 97 percent of its retiree health care liabilities. In announcing the transaction, the company bragged of a “substantial reduction Arch’s legacy liabilities,” worth about \$530 million. Arch also unloaded “an estimated \$50 million to \$60 million of below-market legacy sales contracts” to the new company, which was then bought by Patriot in 2008.

The ruling also directly threatens the benefits of the 3,100 retirees retained by Peabody by explicitly refusing to declare that the relief sought by Patriot shall not affect Peabody’s obligations to these retirees. Peabody has already announced, “should Patriot’s benefit obligations decrease, our funding would proportionately be reduced.”

While largely excusing the asset strippers who drove the company into bankruptcy, Judge Surratt-States blamed miners for “demanding benefits that the employer cannot realistically fund in perpetuity.”

In other words, the interests of workers, regardless of whether they are enshrined in legal contracts or not, are ultimately subject to what the capitalist class deems is affordable.



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