

Patriot Coal Was Set Up To Fail, Union Leader Says

By [Lisa Uhlman](#)

Law360, New York (August 29, 2012, 4:25 PM ET) -- The head of the United Mine Workers of America International on Tuesday accused former [Patriot Coal Corp.](#) parent [Arch Coal](#) of dooming the company for bankruptcy in a 2005 spinoff that saddled it with long-term liabilities it couldn't sustain.

UMWA President Cecil E. Roberts said in a speech before thousands of members in Evansville, Ind., that the union would do “whatever it takes” to protect the benefits of active workers and retirees and their families during Patriot's Chapter 11 restructuring, which it blamed on the 2005 spinoff.

“Patriot is a company that was set up to fail so that two of the biggest coal operators, [Peabody Energy](#) [Corp.] and Arch Coal, could try to walk away from their contractual obligations,” Roberts said, according to a press release. “We will not stand idly by and watch our members pay the price for corporate greed.”

According to the UMWA, the 2005 move saw Arch spin off its union operations in West Virginia, along with the associated long-term obligations, into a company called Magnum Coal. A year and a half later, Peabody spun off its operations east of the Mississippi River that employed UMWA-represented workers, including the parent's pension and long-term health care obligations, creating Patriot.

The two new companies later merged, “resulting in a weaker Patriot Coal with large legacy obligations and below-market coal contracts in the face of an industry-wide recession,” the company said.

When it filed for Chapter 11 protection July 9, Patriot blamed climbing labor costs as coal demand and prices dropped, calling itself a “union shop.”

At a court hearing on July 16, its attorney Marshall Huebner of [Davis Polk & Wardwell LLP](#) noted that the company is far more heavily unionized than its competitors and pays a price for it.

There are more than three times as many retirees and dependents receiving medical benefits as there are active employees, Huebner said. Meanwhile, under the company's pension plan, there are 10 pensioners for every active, working, unionized miner, he said, adding that Patriot is paying \$12,000 toward the plan per active, represented employee. By 2020, he said, that figure could climb to \$45,000.

According to the UMWA, about 2,000 Patriot employees, or about half its workforce, are members of the union, the only one the company works with. In addition, more than 10,000 retirees receive their health care from Patriot, and more than 22,000 active members, retirees and dependents receive benefits from the company.

“Patriot has already indicated that they intend to use the bankruptcy process to seek significant concessions,” Roberts said in Tuesday's speech. “This meeting today is the kickoff of what we anticipate will be a long-term campaign to fight for fairness at Patriot.”

The St. Louis-based company is also in the midst of fighting a number of attempts, including one by the UMWA, to have its Chapter 11 case transferred from the Southern District of New York to the Southern District of West Virginia or elsewhere.

The company objected to the motions Monday, saying they don't make the compelling case necessary to surmount the substantial deference to the debtor's choice of venue and that its business has a national and international scope that would make any other forum inconvenient for most of its creditors.

In its motion to transfer venue, filed July 19, the union says the company's assets, employees, retirees and creditors are largely located in the Southern District of West Virginia, while the debtors' presence in New York is justified only by two subsidiaries apparently formed for the sole purpose of having the case heard in the Southern District of New York.

Patriot listed \$3.6 billion in assets against \$3.1 billion of debt in court documents and has secured \$802 million of loans to fund operations during the bankruptcy from [Citigroup Global Markets Inc.](#), [Barclays Bank PLC](#) and [Merrill Lynch Pierce Fenner & Smith Inc.](#)

Patriot is represented by Marshall S. Huebner, Damian S. Schaible, Elliot Moskowitz and

James I. McClammy of Davis Polk & Wardwell LLP.

The UMWA is represented by Susan M. Jennik and Serge Ambroise of Kennedy Jennik & Murray PC.

The case is In re: Patriot Coal Corp., case number [1:12-bk-12900](#), in the U.S. Bankruptcy Court for the Southern District of New York.

--Additional reporting by Zach Winnick. Editing by Sarah Golin.