UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

LORI J. LYNN, individually and on behalf of all others similarly situated, Plaintiff, v. PEABODY ENERGY CORPORATION, PEABODY HOLDING COMPANY, LLC, PEABODY INVESTMENT CORP., GREGORY H. BOYCE, GLENN L. KELLOW, MICHAEL C. CREWS, SHARON D. FIEHLER, ERIC FORD, BRYAN A. GALLI, CHRISTOPHER J. HAGEDORN, JEANNE L. HULL, ALEXANDER C. SCHOCH, ANDREW P. SLENTZ, CHARLES F. MEINTJES, KEMAL WILLIAMSON, DEFINED CONTRIBUTION ADMINISTRATIVE COMMITTEE, RICHARD KUSNIERZ, AND DOES 1-10, Defendants.	**CIVIL ACTION NO.: 4:15-cv-916** **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiff Lori J. Lynn ("Plaintiff"), on behalf of the Peabody Investments Corp. Employee Retirement Account (the "PIC Plan"), the Peabody Western-UMWA 401(k) Plan (the "Peabody Western Plan"), and the Big Ridge, Inc. 401(k) Profit Sharing Plan and Trust (the "Big Ridge Plan" and, together with the PIC Plan and Peabody Western Plan, the "Plans" or "Plan"), herself, and a class of similarly situated participants and beneficiaries of the Plans (the "Participants"), alleges as follows:

INTRODUCTION

1. Peabody Energy Corporation ("Peabody Energy" or the "Company"), an international mining Company, derives substantially all its revenue from mining and selling coal. It sells thermal coal to electric utilities and metallurgical coal to industrial customers. *See* Peabody Annual Report for Year-End 2015, at 2 (filed Feb. 25, 2015) ("2014 Form 10-K").

2. Peabody Energy and certain of its subsidiaries, in particular Peabody Investment Corp. ("PIC"), Peabody Western Coal Company ("Peabody Western"), Big Sky Coal Company ("Big Sky"), Seneca Coal Company ("Seneca Coal"), and Big Ridge, Inc. ("Big Ridge"), provide their employees the opportunity to save for retirement through the Plans, which are defined contribution plans.[1]

3. In essence, defined contribution retirement plans confer tax benefits on participating employees to incentivize saving for retirement. An employee participating in a defined contribution plan may have the option of purchasing the common stock of his or her employer for part of his or her retirement investment portfolio. In this case, Participants, through the Plans, had the option of purchasing the common stock of Peabody Energy ("Peabody Stock" or "Company Stock"). Shares of Peabody Stock are held in the Peabody Energy Corporation Stock Fund ("Peabody Stock Fund").

4. Plaintiff is a former employee of PIC and was a Participant in the PIC Plan during the Class Period (December 14, 2012 to the present), during which time the PIC Plan and Plaintiff's individual account in the Plan, held interests in the Peabody Stock Fund. During the

[1] Employees of Peabody Western, Big Sky and Seneca Coal participate in the same plan. In particular, employees of these companies who are members of the United Mine Workers of America (UMWA) collective bargaining unit covered by the Western Surface Agreement of 2013 are eligible for participation in the Western Plan. *See* Peabody Western Plan Annual Report for Year-End 2013, at 5 (filed June 27, 2014) ("2013 Form 11-K").

Class Period, the Peabody Western Plan and the Big Ridge Plan also held interests in the Peabody Stock Fund.

5. This is a class action brought pursuant to §§ 409 and 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1109 and 1132, against the Plans' fiduciaries, which include Peabody, Peabody Holding Company, LLC ("Peabody Holding"), PIC, the Defined Contribution Administrative Committee ("Administrative Committee"), and certain individual officers and management-level employees of the Company. As discussed herein, the gravamen of Plaintiff's allegations concerns the general practices of Defendants, *i.e.*, their breaches of fiduciary duties under ERISA, which affected and continue to affect all of the Plans in the same manner.

6. The Plans are legal entities that can sue and be sued. ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1). However, in a breach of fiduciary duty action such as this, the Plans are not parties. Rather, pursuant to ERISA § 409, and the law interpreting it, the relief requested in this action is for the benefit of the Plans and their Participants.

7. Plaintiff alleges that Defendants, as "fiduciaries" of the Plans, as that term is defined under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), breached duties owed to the Plans, to Plaintiff, and to the other Participants by, *inter alia*, retaining the Peabody Stock Fund as an investment option in the Plans when a reasonable fiduciary using the "care, skill, prudence, and diligence… that a prudent man acting in a like capacity and familiar with such matters would use" would have done otherwise. *See* ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1).

8. Specifically, Plaintiff alleges in Count I that Defendants, each having certain responsibilities regarding the management and investment of the Plans' assets, breached their fiduciary duties to the Plans, to Plaintiff, and to the proposed Class by: (a) continuing to offer

Peabody Stock as an investment option for the Plans when it was imprudent to do so; and (b) maintaining the Plans' pre-existing significant investment in Peabody Stock when it was no longer a prudent investment for the Plans. These actions/inactions run directly counter to (i) the express purpose of ERISA pension plans, which are designed to help provide funds for participants' retirement (*see* ERISA § 2, 29 U.S.C. § 1001 ("CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY")), and (ii) the purpose of the Plans (*i.e.*, to help Participants save for retirement).

9. Plaintiff's Count II alleges that certain Defendants failed to avoid or ameliorate inherent conflicts of interests which crippled their ability to function as independent, "single-minded" fiduciaries with only the Plans' and their Participants' best interests in mind.

10. Plaintiff's Count III alleges that certain Defendants breached their fiduciary duties by failing to adequately monitor other persons to whom management/administration of the Plans' assets was delegated, despite the fact that such Defendants knew or should have known that such other fiduciaries were imprudently allowing the Plans to continue offering Peabody Stock as an investment option and investing the Plans' assets in Peabody Stock when it was no longer prudent to do so.

11. The thrust of Plaintiff's allegations is that Defendants allowed the imprudent investment of the Plans' assets in Peabody Stock throughout the Class Period despite the fact that they knew or should have known that such investment was imprudent as a retirement vehicle because of the sea-change in the basic risk profile and business prospects of the Company caused by *inter alia*: (a) the collapse of coal prices which drastically and for the foreseeable future compromised Peabody Energy's financial health; (b) the Company's deteriorating Altman Z-score ("Z-score") – a financial formula commonly used by financial professionals to predict

whether a company is likely to go into bankruptcy – which indicated that Peabody Energy was and is in danger of bankruptcy; (c) an excessive increase in the Company's debt to equity ratio; and (d) increased costs due to the ill-advised acquisition of Australian company Macarthur Coal Ltd. ("Macarthur") as discussed further below.

12. Defendants knew or should have known that continued significant investment of the Plans' Participants' retirement savings in Company Stock would inevitably result in substantial losses to the Plans and, consequently, to the Participants. Indeed, as a consequence of the foregoing, the Plans and their Participants have suffered tens of millions of dollars of losses as the market price of Peabody Energy has fallen from approximately $26.56 on December 14, 2012, the first day of the Class Period, to $3.21 (both adjusted closes) on June 10, 2015, the most recent trading day preceding the date of this filing – a decline of 88%.

13. Defendants recognized or should have recognized the severity of the problems at the Company during the Class Period as a result of the above factors, yet took no steps to protect the Plans and their Participants.

14. ERISA requires fiduciaries to employ appropriate methods to investigate the merits of all plan investments as well as to engage in a reasoned decision-making process, consistent with that of a prudent person acting in a like capacity. The duty of prudence also requires fiduciaries to monitor the prudence of their investment decisions to ensure that they remain in the best interest of the plan's participants.

15. A fiduciary who simply ignores changed circumstances that have increased the risk of loss to the trust's beneficiaries is acting imprudently in violation of ERISA.

16. Trust law, from which ERISA is derived, clarifies that a "trustee has a duty to the beneficiaries to invest and manage the funds of the trust as a prudent investor would, in light of

the purposes, terms, distribution requirements, and other circumstances of the trust."[2] *See* Restatement (Third) of Trusts § 90.

17. When a trustee makes investment decisions, the trustee's conduct is judged using a "prudent investor" standard. Restatement (Third) § 90, at 292. The trustee must "invest and manage the funds of the trust as a prudent investor would, in light of the purposes, terms, distribution requirements, and other circumstances of the trust." *Id.* "[A] trustee's duties apply not only in making investments but also in monitoring and reviewing investments, which is to be done in a manner that is reasonable and appropriate to the particular investments, courses of action, and strategies involved." *Id.* comment b, at 295. Indeed, "[t]he Uniform Prudent Investor Act confirms that '[m]anaging embraces monitoring' and that a trustee has 'continuing responsibility for oversight of the suitability of the investments already made." *Tibble, et al. v. Edison International et al.*, 135 S. Ct. 1823, 1828 (2015) (citing The Uniform Prudent Investor Act § 2, Comment, 7B U.L.A. 21 (1995)).

18. In other words, "[p]rudence focuses on the process for making fiduciary decisions. Therefore, it is wise to document decisions and the basis for those decisions."[3] Thus a trustee must "make[] an investigation as to the safety of [an] investment and the probable income to be derived therefrom" and then make a reasonable investment decision based on that investigation. Restatement (Second) § 227 comment b, at 530.

[2] The Restatement (Second) of Trusts, which was effective when ERISA was enacted, states that: "Except as otherwise provided by the terms of the trust, if the trustee holds property which when acquired by him was a proper investment, but which thereafter becomes an investment which would not be a proper investment for the trustee to make, it becomes the duty of the trustee to the beneficiary to dispose of the property within a reasonable time." The Uniform Prudent Investor Act (1994), which has been adopted by almost all states, recognizes that "the duty of prudent investing applies both to investing and managing trust assets. . . ." Nat'l Conference of Comm'rs on Uniform State Laws, Uniform Prudent Investor Act § 2(c) (1994). The official comment explains that "'[m]anaging' embraces monitoring, that is, the trustee's continuing responsibility for oversight of the suitability of investments already made as well as the trustee's decisions respecting new investments." *Id.* § 2 comment.

[3] http://www.dol.gov/ebsa/publications/fiduciaryresponsibility.html

19. As similarly summarized in the Third Restatement: "***Changes in a company's circumstances***, ***adaptation to trust- and capital-market developments***, fine-tuning, and the like may, of course, justify the selling and buying of properties as an aspect of a prudent plan of asset allocation and diversification …. This is consistent with the trustee's ongoing duty to monitor investments and to make portfolio adjustments if and as appropriate, with attention to all relevant considerations, including tax consequences and other costs associated with such transactions." Restatement (Third) § 90 comment e(1) (emphasis added).

20. Prudent investment management demands, *inter alia*, that Defendants not merely rely upon the fact that Peabody's Stock price remains above $0 in determining whether investing in Company Stock was and is appropriate for the Plans. ERISA requires Defendants to scrutinize the risk of the Plans' investment in Peabody Stock – based upon, *inter alia*, the public information upon which the stock price is based and the risk inherent in the stock – to protect the Plans' Participants' retirement savings.

21. Even if it may have been a reasonable investment for some investors, ERISA requires fiduciaries to avoid taking excessive risk with retirement assets. After all, ERISA's fiduciary duties "have been described as 'the highest known to the law.'" *See, e.g.*, *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 598 (8th Cir. 2009) (quoting *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982)).

22. As discussed below, several years before the start of the Class Period, certain obstacles to the U.S. coal industry's continued growth were quite apparent. Among these obstacles were the increasing oversupply of coal, stiff competition from natural gas producers, and the transition of power generation plants to "cleaner" energy sources such as "renewable"

and gas-fired thermal plants instead of coal, all of which crashed coal prices to levels not seen in years.[4]

23. In April 2012, several months before the start of the Class Period, Moody's forecasted "permanent shifts" in the energy sector, as "depressed natural gas prices continue to put pressure on the coal generation sector." *See Moody's foresees permanent shifts in energy sector over next decade*, SNL Power Week (Canada), Apr. 9, 2012.

24. Thus, by the start of the Class Period, it was painfully obvious that Peabody Energy was wholly-dependent upon a dying industry.

25. The Plans' Participants had every right under ERISA to expect the Plans' fiduciaries to act in their interest and protect them from unduly risky investments, whether in the form of Company Stock or any other asset.

26. In failing to investigate, analyze, and review whether it was prudent to continue investment in Peabody Stock in the Plans, Defendants acted with procedural imprudence. Had Defendants conducted a prudent evaluation of whether Peabody Stock was an appropriate investment for the Plans during the Class Period, and taken appropriate Plan-protective action based upon what they would have discovered – such as ceasing the offering of Peabody Stock, divesting the Plans of Peabody Stock, or any of the other actions as described below – the Plans' Participants would not have suffered such devastating losses to their retirement savings.

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[4] *See US Coal: the West Coast challenge*, Platts Energy Economist, Mar. 3, 2011 at 1; *see also* Nick Cunningham, *Latest Casualty in Energy's Hardest Hit Industry*, May 13, 2015. Recently, Norway "made a big move toward dropping investments in coal companies by its massive $900 billion sovereign wealth fund because of their impact on climate change." *See* Karl Ritter, *Norway's $900 billion oil fund to slash coal investments*, U.S. News & World Report, May 28, 2015, available at http://www.usnews.com/news/business/articles/201/05/28/norway-oil-fund-to-slash-coal-investments.

27. Given the totality of circumstances prevailing during the Class Period, no prudent fiduciary would have made the same decision to retain the clearly imprudent Peabody Stock as a Plan investment option.

28. This action is brought on behalf of the Plans pursuant to ERISA §§ 409 and 502(a)(2), 29 U.S.C. §§ 1109 and 1132(a)(2), and seeks recovery of the losses to the Plans for which Defendants are personally liable. Because Plaintiff's claims apply to the Plans as a whole, inclusive of all their Participants with accounts invested in Company Stock during the Class Period, and because ERISA specifically authorizes participants such as Plaintiff to sue for Plan-wide relief for breaches of fiduciary duty such as those alleged herein, Plaintiff also brings this action under FED. R. CIV. P. 23(b) on behalf of all Participants and beneficiaries of the Plans whose Plan accounts were invested in Peabody Stock during the Class Period.

JURISDICTION AND VENUE

29. ***Subject Matter Jurisdiction.*** This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

30. ***Personal Jurisdiction.*** This Court has personal jurisdiction over all Defendants because they are all residents of the United States and ERISA provides for nation-wide service of process pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

31. ***Venue.*** Venue is proper in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2) because the Plan is administered in this district, some or all of the fiduciary breaches for which relief is sought occurred in this district, and one or more Defendants reside or may be found in this district.

PARTIES

Plaintiff

32. Plaintiff Lori Lynn is a former PIC employee. She is a "participant" in the PIC Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7), and held shares of Peabody Stock in her retirement investment portfolio during the Class Period. During the Class Period, the value of shares in Peabody Stock within her PIC Plan account diminished considerably as a result of Defendants' breaches of fiduciary duty a described herein.

Defendants

Company Defendants

33. Defendant Peabody Energy is a Delaware Corporation with its principal place of business at 701 Market Street, Saint Louis, Missouri. As noted above, Peabody Energy owns interests in active coal mining operations in both domestically and internationally. *See* 2014 Form 10-K at 2.

34. At all relevant times, Peabody Energy acted through its officers and employees, including the Board of Directors, who performed Plan-related fiduciary functions in the course and scope of their employment. Accordingly, the actions of the individual Defendants named herein, and other employee fiduciaries are imputed to Peabody Energy under the doctrine of *respondeat superior*, and Peabody Energy is liable for these actions. Thus, Defendant Peabody Energy was a fiduciary of the Plans, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because it exercised discretionary authority or control over the Plans' management and/or authority or control over management or disposition of the Plans' assets.

35. Defendant Peabody Holding is a wholly-owned subsidiary of Peabody Energy. Peabody Holding is the "Plan Administrator" for the Peabody Western Plan and the Big Ridge Plan. *See* Peabody Western Plan 2013 Form11-K at 5; Big Ridge Plan 2013 Form 11-K at 5.

Accordingly, Defendant Peabody Holding was a fiduciary of the Peabody Western Plan and Big Ridge Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because it exercised discretionary authority or control over these plans and management and/or authority or control over management or disposition of these plans' assets.

36. Defendant PIC is a wholly-owned subsidiary of Peabody Energy. PIC is identified as the Plan Administrator of the PIC Plan. *See* PIC Plan 2013 Form 11-K at 5. Accordingly, Defendant PIC was a fiduciary of the PIC Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because it exercised discretionary authority or control over PIC Plan management and/or authority or control over management or disposition of PIC Plan assets.

Director Defendants

37. At all relevant times, Peabody Energy acted through the Board of Directors.

38. Defendant Gregory H. Boyce ("Boyce"), served as Chairman, Chief Executive Officer, and Director of Peabody Energy during the Class Period. Defendant Boyce has been a director of the Company since March 2005 and was elected Chairman of the Board in October 2007. Effective May 4, 2015, Defendant Boyce became Executive Chairman. Defendant Boyce was a fiduciary of the Plans, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority to appoint and monitor the Plans' fiduciaries who had discretionary authority or control over the Plans' management and/or authority or control over management or disposition of the Plans' assets.

39. Defendant Glenn L. Kellow ("Kellow") served as President and Chief Executive Officer-elect, and Director of Peabody Energy during the Class Period. Defendant Kellow was named President and Chief Operating Officer in August 2013, and named President and Chief Executive Officer-elect in January 2015, at which time he also became a director of the

Company. Effective May 4, 2015, Defendant Kellow became Chief Executive Officer. Defendant Kellow was a fiduciary of the Plans, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority to appoint and monitor the Plans' fiduciaries who had discretionary authority or control over the Plans' management and/or authority or control over management or disposition of the Plans' assets.

40. Defendant Michael C. Crews ("Crews") served as Executive Vice President, Chief Financial Officer, and Director of Peabody Energy during the Class Period. Defendant Crews was named Executive Vice President and Chief Financial Officer in June 2008. Defendant Crews was a fiduciary of the Plans, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority to appoint and monitor the Plans' fiduciaries who had discretionary authority or control over the Plans' management and/or authority or control over management or disposition of the Plans' assets.

41. Defendant Sharon D. Fiehler ("Fiehler") served as Executive Vice President, Chief Administrative Officer, and Director of Peabody Energy during the Class Period. Defendant Fiehler was named Executive Vice President and Chief Administrative Officer in January 2008. Defendant Fiehler was a fiduciary of the Plans, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because she exercised discretionary authority to appoint and monitor the Plans' fiduciaries who had discretionary authority or control over the Plans' management and/or authority or control over management or disposition of the Plans' assets. Moreover, Defendant Fiehler signed the 2011 and 2012 Forms 11-K on behalf of the PIC Plan, Peabody Western Plan, and Big Ridge Plan. *See* PIC Plan 2011 Form 11-K at 16; PIC Plan 2012 Form 11-K at 15; Peabody Western Plan 2011 Form 11-K at 13, Peabody Western Plan

2012 Form 11-K at 14; and Big Ridge Plan 2011 Form 11-K at 13; Big Ridge Plan 2012 Form 11-K at 13.

42. Defendant Eric Ford ("Ford") served as Executive Vice President – Office of the Chief Executive Officer and Director of Peabody during the Class Period. Defendant Ford was named Executive Vice President, Office of the Chief Executive Officer in August 2013. Defendant Ford retired from Peabody on January 31, 2014. Defendant Ford was a fiduciary of the Plans, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority to appoint and monitor the Plans' fiduciaries who had discretionary authority or control over the Plans' management and/or authority or control over management or disposition of the Plans' assets.

43. Defendant Bryan A. Galli ("Galli") served as Group Executive, Chief Marketing Officer, and Director of Peabody Energy during the Class Period. Defendant Galli was named Group Executive and Chief Marketing Officer in March 2014. Defendant Galli was a fiduciary of the Plans, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority to appoint and monitor the Plans' fiduciaries who had discretionary authority or control over the Plans' management and/or authority or control over management or disposition of the Plans' assets.

44. Defendant Christopher J. Hagedorn ("Hagedorn") served as Group Executive, Chief Development Officer, and Director of Peabody Energy during the Class Period. Defendant Hagedorn was named Group Executive and Chief Development Officer in March 2014. Defendant Hagedorn was a fiduciary of the Plans, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority to appoint and

monitor the Plans' fiduciaries who had discretionary authority or control over the Plans' management and/or authority or control over management or disposition of the Plans' assets.

45. Defendant Jeanne L. Hull ("Hull") served as Executive Vice President, Chief Technical Officer, and Director of Peabody Energy during the Class Period. Defendant Hull was named Executive Vice President and Chief Technical Officer in March 2011. Defendant Hull was a fiduciary of the Plans, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because she exercised discretionary authority to appoint and monitor the Plans' fiduciaries who had discretionary authority or control over the Plans' management and/or authority or control over management or disposition of the Plans' assets.

46. Defendant Charles F. Meintjes ("Meintjes") served as President-Australia and Director of Peabody Energy during the Class Period. Defendant Meintjes was named President-Australia in October 2012. Defendant Meintjes was a fiduciary of the Plans, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority to appoint and monitor the Plans' fiduciaries who had discretionary authority or control over the Plans' management and/or authority or control over management or disposition of the Plans' assets.

47. Defendant Alexander C. Schoch ("Schoch") served as Executive Vice President Law, Chief Legal Officer, Secretary, and Director of Peabody Energy during the Class Period. Defendant Schoch was named Executive Vice President Law and Chief Legal Officer in October 2006 and named Secretary in May 2008. Defendant Schoch was a fiduciary of the Plans, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority to appoint and monitor the Plans' fiduciaries who had discretionary

authority or control over the Plans' management and/or authority or control over management or disposition of the Plans' assets.

48. Defendant Andrew P. Slentz ("Slentz") served as Executive Vice President, Chief Human Resources Officer, and Director of Peabody Energy during the Class Period. Defendant Slentz was named Executive Vice President and Chief Human Resources Officer in April 2014. Defendant Slentz was a fiduciary of the Plans, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority to appoint and monitor the Plans' fiduciaries who had discretionary authority or control over the Plans' management and/or authority or control over management or disposition of the Plans' assets. Moreover, Defendant Slentz signed the 2013 Form 11-K on behalf of the PIC Plan, Peabody Western Plan, and Big Ridge Plan. *See* PIC Plan 2013 Form 11-K at 17; Peabody Western Plan 2013 Form 11-K at 15; Big Ridge Plan 2013 Form 11-K at 14.

49. Defendant Kemal Williamson ("Williamson") served as President-Americas and Director of Peabody Energy during the Class Period. Defendant Williamson was named President-Americas in October 2012. Defendant Williamson was a fiduciary of the Plans, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority to appoint and monitor the Plans' fiduciaries who had discretionary authority or control over the Plans' management and/or authority or control over management or disposition of the Plans' assets.

50. Defendants Boyce, Kellow, Crews, Fiehler, Ford, Galli, Hagedorn, Hull, Meintjes, Schoch, Slentz, and Williamson are collectively referred to herein as the "Director Defendants."

Administrative Committee Defendants

51. Upon information and belief, the Administrative Committee had the responsibility for selecting and monitoring the Plans' investment options. *See, e.g.*, 2013 Form 11-K at 1-2, Report of Independent Registered Public Accounting Firm letter to Defined Contribution Administrative Committee. Upon information and believe the Administrative Committee and its members[5] were fiduciaries of the Plans, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because they exercised discretionary authority to appoint and monitor the Plans' fiduciaries who had discretionary authority or control over the Plans' management and/or authority or control over management or disposition of the Plans' assets.

52. Defendant Richard Kusinerz ("Kusinerz") was, upon information and belief, a member of the Administrative Committee during the Class Period. Defendant Kusnierz signed the Forms 5500 filed with the Department of the Treasury, Internal Revenue Service, and Department of Labor ("DOL") for the plan years ending 2012, and 2013 as the Plan Administrator for the PIC Plan, Peabody Western Plan, and Big Ridge Plan. Defendant Kusnierz was a fiduciary of the Plans, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because they exercised discretionary authority to appoint and monitor the Plans'

[5] The entire composition of the Administrative Committee is not presently known to Plaintiff. During her investigation, Plaintiff requested pursuant to, ERISA § 104(b)(4), 29 C.F.R. § 2520.104b-1 that the Plan Administrator provide meeting minutes of the Administrative Committee in order to help identify all of the names of the members of the Administrative Committee. Plaintiff believes that after a reasonable opportunity for discovery to obtain any committee charters, trust agreements, and other relevant information, the aforementioned documents will provide additional evidentiary support for the allegations set forth herein, including with respect to the composition of the Administrative Committee during the Class Period. Indeed, while Plaintiff has identified the Defendant fiduciaries in the instant submission in accordance with the information she has obtained thus far, Plaintiff reserves the right to further amend during and after discovery, as determining the identity and full breadth of responsibilities of ERISA fiduciaries is an inherently fact-intensive effort.

fiduciaries who had discretionary authority or control over the Plans' management and/or authority or control over management or disposition of the Plans' assets.

53. Defendants Administrative Committee, as well as all individual members of the Administrative Committee during the Class Period, including, but not limited to Defendant Kusnierz, are collectively referred to herein as the "Administrative Committee Defendants."

Additional "John Doe Defendants"

54. To the extent that there are additional Company officers, directors, and employees who were fiduciaries of the Plans during the Class Period, including members of the Administrative Committee, the identities of whom are currently unknown to Plaintiff, Plaintiff reserves the right, once their identities are ascertained, to seek leave to join them to the instant action. Thus, without limitation, unknown "John Doe" Defendants 1-10 include other individuals, including, but not limited to, Company officers, directors, and employees, who were fiduciaries of the Plans within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A) during the Class Period.

THE PLANS

Overview of the Plans

55. As noted above, each of the Plans is a defined contribution plan. The PIC Plan is for non-represented employees of PIC and certain of its participating subsidiaries and affiliated companies. *See* PIC Plan 2013 Form 11-K at 5.

56. The Peabody Western Plan is for employees and former employees of Peabody Western, Big Sky Coal, and Seneca Coal, who are members of the United Mine Workers of America (UMWA) collective bargaining unit covered by the Western Surface Agreement of 2013. *See* Peabody Western Plan 2013 Form 11-K at 5.

57. Lastly, the Big Ridge Plan is for employees of Big Ridge who are represented by the United Mine Workers of America under a labor agreement that is effective through December 14, 2014. *See* Big Ridge Plan 2013 Form 11-K at 5.

Eligibility to Participate in the Plans

58. Qualified participants are eligible for participation in the Plans on the date of their employment or at any time afterward. *See* PIC Plan 2013 Form 11-K at 5; Peabody Western Plan 2013 Form 11-K at 5; Big Ridge Plan 2013 Form 11-K at 5.

Administration of the Plans

59. PIC is the "Plan Administrator" for the PIC Plan. *See* PIC Plan 2013 Form 11-K at 5. PIC is also referred to as the "Plan Sponsor." *Id.*

60. Peabody Holding Company, LLC is the "Plan Administrator" for the Peabody Western Plan and the Big Ridge Plan. *See* Peabody Western Plan 2013 Form11-K at 5; Big Ridge Plan 2013 Form 11-K at 5.

61. Upon information and belief, the Defined Contribution Administrative Committee is the day-to-day Plan Administrator for the three Plans. *See, e.g.*, PIC Plan 2013 Form 11-K at 1, 2 (Reports of Independent Registered Public Accounting Firms addressed to Defined Contribution Administrative Committee); Peabody Western Plan 2013 Form 11-K at 1, 2 (same); Big Ridge Plan 2013 Form 11-K at 1, 2 (same).

Contributions to the Plans

Contributions under the PIC Plan

62. The PIC Plan provides for both participant contributions and matching contributions from PIC, as well as "transition contributions" from PIC, and discretionary "performance contributions" at the direction of Peabody Energy's Board of Directors. *See* PIC Plan 2013 Form 11-K at 5-6.

63. Each year participants may contribute on a pre-tax, traditional after-tax, or Roth after-tax basis any whole percentage from 1% to 60% of eligible compensation as defined in the Plan. PIC Plan 2013 Form 11-K at 5. With respect to matching contributions by PIC, for participants other than those performing services in the Colorado, Wyoming, and New Mexico regions, PIC makes matching contributions equal to 100% of the first 6% of eligible compensation. *Id.* PIC Plan participants in the Colorado, Wyoming, and New Mexico regions are eligible for matching contributions by PIC up to 8% of such participant's eligible compensation, adjusted for the participant's age and years of service. *Id.*

64. Certain participants in the PIC Plan were also eligible for PIC "transition contributions." Specifically, certain PIC Plan participants in the Colorado, Wyoming, and New Mexico regions who have either completed 15 or more years of service, or attained age 45 and completed at least 5 years of service as of December 31, 2007, were entitled to PIC transition contributions equal to 9% of such participant's eligible compensation. *Id.* The PIC transition contributions began on January 1, 2009 and ended on December 31, 2012 for most participants. *Id.*

65. Certain PIC Plan participants who were no longer credited with any additional years of service for benefit accrual purposes were entitled to PIC transition contributions equal to either 5% or 7% of such participant's eligible compensation based on age and/or years of service as of December 31, 2000. PIC transition contributions began on June 1, 2009 and ended on December 31, 2012 for most participants. PIC Plan 2013 Form 11-K at 6.

66. Moreover, the PIC Plan also provides for discretionary "performance contributions" as established by the Peabody Energy's Board of Directors. *Id.* Specifically, Peabody Energy's Board of Directors establishes desired minimum and maximum performance

targets that require PIC to pay a performance contribution between 0% and 6% of eligible compensation into the accounts of active, eligible employees as of the end of the fiscal year, based upon Peabody Energy's financial performance. *Id.* If the minimum targets set for a fiscal year are not met, Peabody Energy's Board of Directors may authorize PIC to contribute a discretionary amount to the accounts of active, eligible employees. *Id.* If the maximum performance targets set for a fiscal year are exceeded, Peabody Energy's Board of Directors, at its discretion, may authorize PIC to contribute additional incremental percentages of eligible compensation to the accounts of active, eligible employees. *Id.*

Contributions under the Peabody Western Plan

67. The Peabody Western Plan provides for both participant contributions and matching contributions from the companies participating in the Peabody Western Plan – Peabody Western, Big Sky Coal, and Seneca Coal. *See* Peabody Western Plan 2013 Form 11-K at 5. Each year, participants may contribute on a pre-tax basis any whole percentage from 2% to 50% of eligible compensation, as defined in the Plan. *Id.*

68. Additionally, participants may defer the cash equivalent of up to 10 employee benefit days (*e.g.*, personal, floating, or graduated days) per calendar year as a contribution. *Id.* Peabody Energy makes matching contributions to the Peabody Western Plan on behalf of all qualified participants. *Id.* The amount of matching contributions for each qualified participant is 25% of the cash equivalent of employee benefit days that a participant defers. *Id.*

Contributions under the Big Ridge Plan

69. The Big Ridge Plan provides for both participant contributions and matching contributions from Big Ridge, Inc. *See* Big Ridge 2013 Form 11-K Plan at 5. Each year, participants may contribute on a pre-tax basis any whole percentage from 1% to 90% of eligible compensation, as defined in the Big Ridge Plan. *Id.* Effective December 14, 2012, the Big

Ridge Plan was amended such that eligible participants may elect to contribute an additional $125, $150, or $175 of their monthly eligible compensation on a pre-tax basis, and Big Ridge, Inc. makes matching contributions equal to 100% of eligible contributions that participants make to the Big Ridge Plan. *Id.*

Vesting of Contributions in the Plans

70. Participants in the PIC Plan are vested immediately in their own contributions and the realized and unrealized earnings or losses thereon. *See* PIC Plan 2013 Form 11-K at 6. Vesting of PIC matching contributions occurs ratably based on years of continuous service (20% per year after one year of service with 100% vesting after five years) and automatically vests 100% upon death, normal retirement date or disability retirement date, as defined in the PIC Plan. *Id.* PIC transition, performance and discretionary contributions, if any, are immediately vested 100%. *Id.*

71. Participants in the Peabody Western Plan and Big Ridge Plan are vested immediately in their own contributions, the employers'[6] matching contributions, and the realized and unrealized earnings or losses thereon. *See* Peabody Western Plan 2013 Form 11-K at 6; Big Ridge Plan 2013 Form 11-K at 6.

Investments Under the Plans

72. The Plans' Participants direct the investments of all contributions into various investment options offered by the Plans. *See* PIC Plan 2013 Form 11-K at 5; Peabody Western Plan 2013 Form 11-K at 5; Big Ridge Plan 2013 Form 11-K at 5.

73. Each Plan allows participants to "invest in a selection of mutual funds, a common/collective trust, and the Peabody Energy Stock Fund, which is a participating

[6] The employers in this context would include Peabody Western, Big Sky Coaly, Seneca Coal, and Big Ridge, Inc.

investment in the Amended and Restated Master Trust Agreement for the Peabody Energy Corporation Stock Fund (the Master Trust)." *See* PIC Plan 2013 Form 11-K at 5; Peabody Western Plan 2013 Form 11-K at 5; Big Ridge Plan 2013 Form 11-K at 5.

Master Trust

74. The Master Trust was established to hold investments in the Peabody Energy Stock Fund for each of Peabody's defined contribution plans. *See* PIC Plan 2013 Form 11-K at 8; Peabody Western Plan 2013 Form 11-K at 7; Big Ridge Plan 2013 Form 11-K at 7.

75. "Total investment income (loss) of the Master Trust is allocated to each plan investing in the Master Trust based on the units held in the Master Trust by each plan." *See* PIC Plan 2013 Form 11-K at 5; Peabody Western Plan 2013 Form 11-K at 5; Big Ridge Plan 2013 Form 11-K at 5.

Peabody Energy Stock Fund

76. The Peabody Energy Stock Fund is "valued at its unit closing price (comprised of publicly quoted market prices for Peabody Stock held plus uninvested cash position, if any) as reported on the active market on which the security is traded, and is classified within Level 1 of the valuation hierarchy." PIC Plan 2013 Form 11-K at 10; Peabody Western Plan 2013 Form 11-K at 9; Big Ridge Plan 2013 Form 11-K at 9.

77. Upon information and belief the three Plans' holdings in the Peabody Energy Stock Fund combine to comprise 100% of the Master Trust. The PIC Plan comprises between 98% and 99% of the Master Trust, whereas the Peabody Western Plan and Big Ridge Plan each equal approximately 1% of the Master Trust. *See* PIC Plan 2013 Form 11-K at 12 (noting that the PIC Plan's interest in the Master Trust was 98% in 2012 and 99% in 2013); Peabody Western Plan 2013 Form 11-K at 11 (noting that the Peabody Western Plan's interest in the Master Trust

was 1% for 2012 and less than 1% in 2013); Big Ridge Plan 2013 Form 11-K at 10 (noting that the Big Ridge Plan's interest in the Master Trust was 1% for 2012 and less than 1% for 2013).

78. The value of the Peabody Energy Stock Fund has diminished significantly for each of the Plans during the Class Period as Follows:

The PIC Plan

79. As of December 31, 2012, the PIC Plan had $46,712,000 in the Peabody Energy Stock Fund. *See* PIC Plan 2013 Form 11-K at 11. As of December 31, 2013, the PIC Plan had $38,735,000 in the Peabody Energy Stock Fund, a decline by almost $8 million in just one year. *Id.* Based on the Peabody Stock price of $19.06 as of December 31, 2013, the amount of Peabody Energy shares in the PIC Plan as of year-end 2013 was approximately 2,032,266.53.

80. The PIC Plan has not yet filed an annual report for the year-ended December 31, 2014. However, assuming no additional shares of Peabody Stock were purchased during 2014, the value of Peabody Stock in the PIC Plan at year-end 2014 would be $15,709,420.28 based on the Peabody Stock price of $7.73 as of December 31, 2014.

81. Again, assuming the PIC Plan has not purchased additional shares of Peabody Stock since year-end December 31, 2013, the value of Peabody Stock as of the filing of the instant complaint would be roughly $6,970,674.20 based on the Peabody Stock price of $3.21 as of June 10, 2015. Thus the value of the Peabody Energy Stock Fund in the PIC Plan is worth just a fraction of its value from the start of the Class Period.

The Peabody Western Plan

82. As of December 31, 2012, the Peabody Western Plan had $360,480 in the Peabody Energy Stock Fund. *See* Peabody Western Plan 2013 Form 11-K at 10. As of December 31, 2013, the Peabody Western Plan had $190,252 in the Peabody Energy Stock Fund, a $169,955 or 47.2% decline in just one year. *Id.* Based on the Peabody Stock price of $19.06

as of December 31, 2013, the amount of Peabody Energy shares in the Peabody Western Plan as of year-end 2013 was approximately 9,981.74.

83. The Peabody Western Plan has not yet filed an annual report for the year-ended December 31, 2014. However, assuming no additional shares of Peabody Stock were purchased during 2014, the value of Peabody Stock in the Peabody Western Plan at year-end 2014 would be $77,158.85 based on the Peabody Stock price of $7.73 as of December 31, 2014.

84. Again, assuming the Peabody Western Plan has not purchased additional shares of Peabody Stock since year-end December 31, 2013, the value of Peabody Stock in the Peabody Western Plan as of the filing of the instant complaint would be roughly $34,237.37 based on the Peabody Stock price of $3.21 as of June 10, 2015. Thus the value of the Peabody Energy Stock Fund in the Peabody Western Plan is worth just a fraction of its value from the start of the Class Period.

The Big Ridge Plan

85. As of December 31, 2012, the Big Ridge Plan had $550,001 in the Peabody Energy Stock Fund. *See* Big Ridge Plan 2013 Form 11-K at 9. As of December 31, 2013, the Big Ridge Plan had $194,750 in the Peabody Energy Stock Fund, a decline of $355,251, or 64.5% in just one year. *Id.* Based on the Peabody Stock price of $19.06 as of December 31, 2013, the amount of Peabody Energy shares in the Big Ridge Plan as of year-end 2013 was approximately 10,207.73.

86. The Big Ridge Plan has not yet filed an annual report for the year-ended December 31, 2014. However, assuming no additional shares of Peabody Stock were purchased during 2014, the value of Peabody Stock in the Big Ridge Plan at year-end 2014 would be $78,905.75 based on the Peabody Stock price of $7.73 as of December 31, 2014.

87. Again, assuming the Big Ridge Plan has not purchased additional shares of Peabody Stock since year-end December 31, 2013, the value of Peabody Stock in the Big Ridge Plan as of the filing of the instant complaint would be roughly $35,012.51 based on the Peabody Stock price of $3.21 as of June 10, 2015. Thus the value of the Peabody Energy Stock Fund in the Big Ridge Plan is worth just a fraction of its value from the start of the Class Period.

Plan Fiduciaries Are Bound by ERISA's Strict Standards

88. Despite the Plans' substantial investment in Peabody Stock, Defendants failed to protect the Plans and their Participants from the decline in value of the Peabody Stock resulting from the Company's deteriorating financial condition.

89. Fiduciaries of retirement plans such as the Plans here are bound by core ERISA fiduciary duties, including the duties to act loyally, prudently, and for the exclusive purpose of providing retirement benefits to plan participants. This is true regardless of the structure of a plan.

90. Accordingly, if the fiduciaries of the Plans knew, or if an adequate investigation would have revealed, that Company Stock was no longer a prudent investment for the Plans, then the fiduciaries had the obligation to disregard any purported Plan directions to maintain investments in Company Stock and protect the Plans by investing the Plans' assets in other, suitable, prudent investments.

CLASS ACTION ALLEGATIONS

91. Plaintiff brings this action derivatively on the Plans' behalf pursuant to ERISA §§ 409 and 502, 29 U.S.C. §§ 1109 and 1132, and as a class action pursuant to Rules 23(a), (b)(1), and/or (b)(2) of the Federal Rules of Civil Procedure on behalf of the Plans, Plaintiff, and the following class of similarly situated persons (the "Class"):

> All persons, except Defendants and their immediate family members, who were participants in or beneficiaries of the Plans at any time between December 14, 2012 and the present (the "Class Period")[7] and whose Plan accounts included investments in the Peabody Stock Fund.

92. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, and can only be ascertained through appropriate discovery, Plaintiff believes there are hundreds of employees of the Plans who participated in, or were beneficiaries of, the Plans during the Class Period and whose Plan accounts included investment in Peabody Stock.

93. For example, in 2012, there were 6,763 participants in the PIC Plan. *See* 2012 PIC Plan Form 5500 filed with the Department of Treasury Internal Revenue Service and the Department of Labor. In 2013, the number of participants in the PIC Plan was 6,626. *See* 2013 PIC Plan Form 5500 filed with the Department of Treasury Internal Revenue Service and the Department of Labor.

94. In 2012, there were 363 participants in the Peabody Western Plan. *See* 2012 Peabody Western Plan Form 5500 filed with the Department of Treasury Internal Revenue Service and the Department of Labor. In 2013, there were 358 participants in the Peabody Western Plan. *See* 2013 Peabody Western Plan Form 5500 filed with the Department of Treasury Internal Revenue Service and the Department of Labor.

95. Lastly, in 2012, there were 540 participants in the Big Ridge Plan. *See* 2012 Big Ridge Plan Form 5500 filed with the Department of Treasury Internal Revenue Service and the Department of Labor. In 2013, there were 476 participants in the Big Ridge Plan. *See* 2013 Big

[7] Plaintiff reserves the right to modify the Class Period definition in the event that further investigation/discovery reveals a more appropriate and/or broader time period during which Peabody Stock was an imprudent investment option for the Plan.

Ridge Plan Form 5500 filed with the Department of Treasury Internal Revenue Service and the Department of Labor.

96. At least one common question of law or fact exists as to Plaintiff and all members of the Class. Indeed, multiple questions of law and fact common to the Class exist, including, but not limited to:

(a) whether Defendants each owed a fiduciary duty to the Plans, Plaintiff, and members of the Class;

(b) whether Defendants breached their fiduciary duties to the Plans, Plaintiff, and members of the Class by failing to act prudently and solely in the interests of the Plans and the Plans' Participants and beneficiaries;

(c) whether Defendants violated ERISA; and

(d) whether the Plans, Plaintiff, and members of the Class have sustained damages and, if so, what is the proper measure of damages.

97. Plaintiff's claims are typical of the claims of the members of the Class because the Plans, Plaintiff, and the other members of the Class each sustained damages arising out of Defendants' uniform wrongful conduct in violation of ERISA as complained of herein.

98. Plaintiff will fairly and adequately protect the interests of the Plans and members of the Class because they have no interests antagonistic to or in conflict with those of the Plans or the Class. In addition, Plaintiff has retained counsel competent and experienced in class action litigation, complex litigation, and ERISA litigation.

99. Class action status in this ERISA action is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter,

be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

100. Class action status is also warranted under Rule 23(b)(1)(A) and (b)(2) because: (i) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants; and (ii) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

DEFENDANTS' FIDUCIARY STATUS

101. ERISA requires every plan to provide for one or more named fiduciaries who will have "authority to control and manage the operation and administration of the plan." ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1).

102. ERISA treats as fiduciaries persons explicitly named as fiduciaries under § 402(a)(1), 29 U.S.C. § 1102(a)(1), and any other persons who in fact perform fiduciary functions (*e.g.*, *de facto* or functional fiduciaries). Thus, a person acts as an ERISA fiduciary to the extent "(i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan." ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i).

103. During the Class Period, upon information and belief, each of the Defendants was a fiduciary – *i.e.*, either a named fiduciary or a *de facto* fiduciary – with respect to the Plans and owed fiduciary duties to the Plans and their Participants under ERISA. As fiduciaries, Defendants were required by ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), to manage and

administer the Plans, and the Plans' investments, solely in the interest of the Plans' Participants and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

104. Plaintiff does not allege that each Defendant was a fiduciary with respect to all aspects of the Plans' management, administration, and assets. Rather, as set forth below, Defendants were fiduciaries to the extent of the specific fiduciary discretion and authority for the Plans' management and authority assigned to or exercised by each of them and/or the specific exercise of authority or control over the Plans' assets by each of them, and, as further set forth below, the claims against each Defendant are based on such specific discretion and authority and/or exercise of authority or control.

105. Instead of delegating all fiduciary responsibility for the Plans to external service providers, upon information and belief, the Company chose to assign the appointment and removal of fiduciaries, such as the members of the Administrative Committee, to itself.

106. ERISA permits fiduciary functions to be delegated to insiders without an automatic violation of the rules against prohibited transactions occurring, ERISA § 408(c)(3), 29 U.S.C. § 1108(c)(3), but insider fiduciaries, like external fiduciaries, must act solely in the interest of participants and beneficiaries, not in the interest of the Plans' sponsor(s).

107. During the Class Period, all of Defendants acted as fiduciaries of the Plans pursuant to ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), and the law interpreting that section.

The Company Defendants' Fiduciary Status

108. Instead of delegating fiduciary responsibility for the Plans to external service providers, Peabody Energy, PIC and Peabody Holding chose to internalize certain vital fiduciary functions.

109. At all times, Peabody Energy acted through its directors, officers, and employees, including the Director Defendants, who performed Plan-related fiduciary functions in the course and scope of their employment. Peabody Energy had, at all applicable times, effective control over the activities of its officers and employees, including their Plan-related activities. Through its Board of Directors or otherwise, Peabody Energy had the authority and discretion to hire and terminate said directors, officers, and employees. Additionally, by failing to properly discharge their fiduciary duties under ERISA, the directors, officers, and employee fiduciaries breached duties they owed to the Plans' Participants.

110. Accordingly, the actions of the Director Defendants and other employee fiduciaries are imputed to Peabody Energy under the doctrine of *respondeat superior*, and Peabody Energy is liable for these actions.

111. Defendant Peabody Holding is the Plan Administrator for the Peabody Western Plan and the Big Ridge Plan. *See* Peabody Western Plan 2013 Form11-K at 5; Big Ridge Plan 2013 Form 11-K at 5. Accordingly, Defendant Peabody Holding was a fiduciary of the Peabody Western Plan and Big Ridge Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because it exercised discretionary authority or control over these plans and management and/or authority or control over management or disposition of these plans' assets.

112. Defendant PIC is identified as the Plan Administrator of the PIC Plan. *See* PIC Plan 2013 Form 11-K at 5. Accordingly, Defendant PIC was a fiduciary of the PIC Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because it exercised discretionary authority or control over PIC Plan management and/or authority or control over management or disposition of PIC Plan assets.

The Administrative Committee's Fiduciary Status

113. Upon information and belief, the Company officers/employees who comprised the Administrative Committee were appointed by the Board and were delegated the day-to-day responsibility for the administration of the Plans and the Plans' assets. *See, e.g.*, PIC Plan 2013 Form 11-K at 1, 2 (Reports of Independent Registered Public Accounting Firms addressed to Defined Contribution Administrative Committee); Peabody Western Plan 2013 Form 11-K at 1, 2 (same); Big Ridge Plan 2013 Form 11-K at 1, 2 (same).

Additional Fiduciary Aspects of Defendants' Actions/Inactions

114. As the Plans' fiduciaries, Defendants knew or should have known certain basic facts about the characteristics and behavior of the Plans' Participants, well-recognized in the 401(k) literature and the trade press[8] concerning investment in company stock, including that:

(a) Employees tend to interpret a match in company stock as an endorsement of the company and its stock;

(b) Out of loyalty, employees tend to invest in company stock;

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[8] *See, e.g.*, David K. Randall, *Danger in Your 401(k)*, Forbes.com (August 30, 2010), *available at*: www.forbes.com/forbes/2010/0830/health-retirement-savings-erisa-danger-in-401k_print.html); Liz Pulliam Weston, *7 Ways to Mess Up Your 401(k)*, MSN.com (December 31, 2007), *available at*: articles.moneycentral.msn.com/RetirementandWills/InvestForRetirement/7MostCommon401kBlunders.aspx); Joanne Sammer, *Managed Accounts: A new direction for 401(k) plans*, Journal of Accountancy, Vol. 204, No. 2 (August 2007), *available at*: www.aicpa.org/pubs/jofa/aug2007/sammer.htm); Roland Jones, *How Americans Mess Up Their 401(k)*s, MSNBC.com (June 20, 2006), available at: www.msnbc.msn.com/id/12976549/); Bridgitte C. Mandrian and Dennis F. Shea, *The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior*, 116 Q. J. Econ. 4, 1149 (2001), *available at*: mitpress.mit.edu/journals/pdf/qjec_116_04_1149_0.pdf); Nellie Liang & Scott Weisbenner, 2002, *Investor behavior and the purchase of company stock in 401(k) plan - the importance of plan design*, Finance and Economics Discussion Series 2002-36, Board of Governors of the Federal Reserve System (U.S.), *available at*: www.federalreserve.gov/pubs/feds/2002/200236/200236pap.pdf).

(c) Employees tend to over-extrapolate from recent returns, expecting high returns to continue or increase going forward;

(d) Employees tend not to change their investment option allocations in the plan once made;

(e) No qualified retirement professional would advise rank and file employees to invest more than a modest amount of retirement savings in company stock, and many retirement professionals would advise employees to avoid investment in company stock entirely;

(f) Lower income employees tend to invest more heavily in company stock than more affluent workers, though they are at greater risk; and

(g) Even for risk-tolerant investors, the risks inherent to company stock are not commensurate with its rewards.

115. Even though Defendants knew or should have known these facts, and even though Defendants knew of the substantial investment of the Plans' funds in Company Stock, they still took no action to protect the Plans' assets from its imprudent investment in Company Stock.

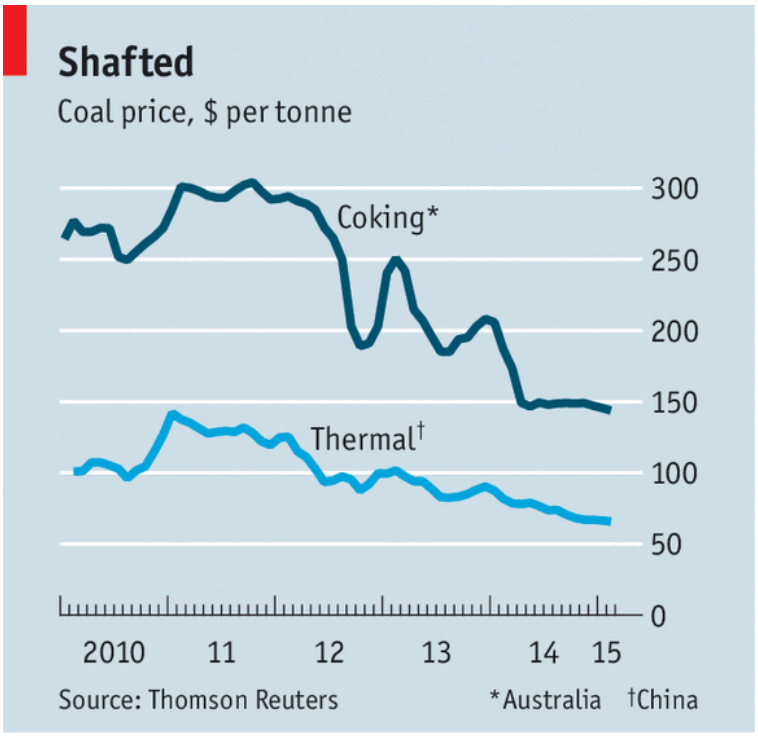
FACTS BEARING UPON DEFENDANTS' FIDUCIARY BREACHES

Overview

116. The company that would become Peabody Energy began in 1883, but did not formally incorporate until 1998. It became a public company in 2001 though an initial public offering. *See* 2014 10-K, at 2. Peabody Energy owns both mines and mining operations in the United States and Australia. As noted above, the Company also "market[s] and broker[s] coal from other coal producers, both as principal and agent, and trade[s] coal and freight-related contracts." *Id.*

117. Peabody Energy's IPO capitalized on two major factors: (1) a new energy plan by then President George W. Bush which called for increased coal production and (2) soaring coal prices in the previous six month period. *See Peabody raises $420 mln in IPO, more than expected*, Reuters, May 21, 2001; *see also Peabody Energy IPO Spotlights Resurgent Coal*, Pittsburgh Post-Gazette, May 23, 2001. Other factors helping Peabody's value that first year included limited coal supplies and "limited flexibility for producers to increase production quickly," which supported higher coal prices, as well as low inventories at utilities. *See Research Alert – JP Morgan starts Peabody as a buy*, Reuters, July 13, 2001.

118. Peabody Energy's success is thus heavily reliant on high coal prices and strong demand for coal. Based on this criteria, the last several years have been disastrous for Peabody Energy specifically, and the coal industry in general, with no respite in the foreseeable future. Summed up, "[p]rices have been sliding (see chart [below]), political opposition growing and demand dropping. The Dow Jones Total Coal Market index has fallen by 76% in the past five years."



See Coal Mining, In the Depths, The Economist, Mar. 28, 2015 at 65.

119. Worldwide, "the tide is turning against coal." *See Coal Mining, In the Depths*, The Economist, Mar. 28, 2015 at 65. In America, coal use peaked in 2007. *Id.* One of the reasons is that in the United States, "coal now struggles to compete with natural gas, which has fallen 80% in price since 2008." *Id.* Other coal industry experts have similarly opined that "the industry faces something historic – persistently low natural gas prices – a reality that caps the level of potential price improvement in U.S. coal markets." *See Weak 2014 Numbers Worsen An Already Bad Outlook For Coal Companies*, Institute for Energy Economics and Financial Analysis, Feb. 2, 2015 at 1, available at http://ieefa.org/weak-2014-numbers-worsen-already-bad-outlook-coal-companies/.

120. This downturn for the coal industry is not simply a temporary blip. "The fear now is of a structural shift" in which coal is phased out. *Coal Mining, In the Depths*, The

Economist, Mar. 28, 2015 at 65. The Economist predicts "new coal-mining investments would risk becoming stranded assets, and older deep mines would be even more uneconomic than now." *Id.* According to the Economist, "Carbon Tracker, a non-profit group, reckons that more than $100 billion worth of planned capital spending risks being stranded by 2035. A prospect as black as a miner's lungs." *Id.*

121. The fact is that the "U.S. coal industry has decoupled from the broader, gradually recovering economy and its spiral has deepened." *See Weak 2014 Numbers Worsen An Already Bad Outlook For Coal Companies*, Institute for Energy Economics and Financial Analysis, Feb. 2, 2015 at 1, available at http://ieefa.org/weak-2014-numbers-worsen-already-bad-outlook-coal-companies/. It appears that "more pragmatic leaders and champions of the industry acknowledge the severity of its financial conditions, and have conceded a reality that is more in line with analysts who see weak prices through 2015 – and then little upside potential thereafter." *Id.*

122. Predictably, the severe and historic downturn of the coal industry has devastated Peabody Energy's financials. For full-year 2014, Peabody Energy reported a staggering net income loss of $777,300,000; for full-year 2013, it reported a net income loss of $512,600,000, and for full-year 2011, it reported a net income loss of $575,100,000.

123. The Company's financial condition, when viewed through the lens of objective financial metrics, plainly indicates the Company's deterioration over the last several years. Not surprisingly, the Company's stock price reflects the struggling company's condition. Peabody Energy's stock price reached its highest peak on June 1, 2008 at $88.05 per share. The next highest peak was $71.96 on March 1, 2011. The Company has seen its share price steadily decline ever since. As one observer recently noted about Peabody Energy after it posted a new

52-week low of $3.86 on May 18, 2015, "The company had no news today, and it's still mining coal which is no way to please investors these days." Paul Ausick, The 52-Weel Low Club for Monday, May 18, 2015, available at: http://247wallst.com/investing/2015/05/18/the-52-week-low-club-for-monday-35/.

124. In light of the Company's diminished financial prospects, resulting in a dramatic shift in the Company's basic risk profile, the Peabody Energy Stock Fund was not a prudent Plan investment option during the Class Period. The Plans' fiduciaries knew or should have known this fact and should have taken steps to protect the Plans and their Participants. Sadly though, as set forth below, the Defendant-fiduciaries did nothing while the retirement savings of the Plans' Participants simply evaporated as a result of these inactions.

The Colossal Collapse of the Coal Industry

125. Modern coal use around the world is largely divided into two types: thermal coal, used for the production of electric power generation whether by power plants or industries producing and consuming their own power, and metallurgical coal, which is used by industries in the production of other materials, such as iron and steel. *See The Coal Facts: thermal coal vs. metallurgical coal*, Global News, June 10, 2013, available at http://globalnews.ca/news/627069/the-coal-facts-thermal-coal-vs-metallurgical-coal/.

126. Beginning in 2007, certain obstacles to the U.S. coal industry's continued growth started to become apparent. In that year, coal plants had severely slowed production, reducing their use from between 50 and 80% capacity on average to less than 30% on average. This is in addition to the number of coal plants which either had or were scheduled to be completely retired. *See Bank of America and Citigroup Biggest Lenders to Coal*, Bloomberg Business, Apr. 29, 2013, available at http://www.bloomberg.com/news/articles/2013-04-29/bank-of-america-and-citigroup-biggest-lenders-to-coal.

127. By the end of 2007, in addition to increased pressure from the natural gas market as a competitor to thermal coal, regulatory uncertainty about increased emissions standards had "stalled plans for many new coal plant builds," needed to replace aging plants which were due to be retired. *See Fitch: Regulatory Challenges and Beneficial Fundamentals for U.S. Coal Industry*, Business Wire, Dec. 19, 2007 at 1. While U.S. electric consumption was growing, certain coal-plants were aging and due for retirement, and industry uses and exports were expected to remain flat. "As a result, the US coal industry's fortunes are inextricably linked with the development of new U.S. coal-fired plants." *See Uphill struggle for new US coal plant*, Platts Energy Economist, Aug. 1, 2008 at 1.

128. In 2008, the Dow Jones U.S. Coal Index hit a high of 700. This was driven in large part by strong demand for metallurgical coal in the developing world, including China and India. As a result, a number of coal companies whose core business was thermal coal acquired metallurgical coal companies in an attempt to diversify via debt-heavy deals. *See Are coal stocks ready to make a comeback?*, CNBC, Jul. 9, 2014, available at http://www.cnbc.com/id/101816298. The 2008 high is in stark contrast to today's Dow Jones U.S. Coal Index which stands below 100.

129. By 2012, there was a marked decline in U.S. coal demand. In April 2012, Moody's forecast "permanent shifts" in the energy sector, as "depressed natural gas prices continue to put pressure on the goal generation sector." *See Moody's foresees permanent shifts in energy sector over next decade*, SNL Power Week (Canada), Apr. 9, 2012 at 1.

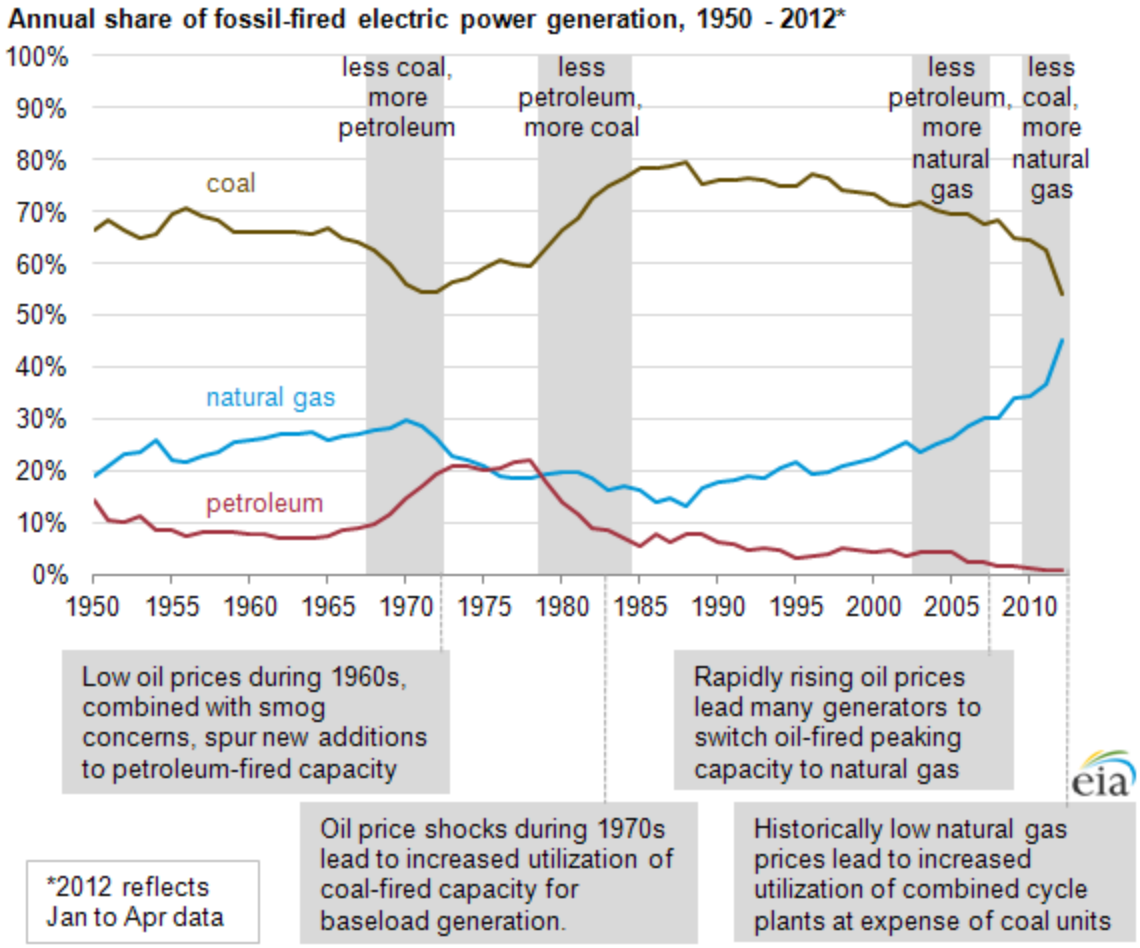
130. On June 25, 2012, the U.S. Energy Information Administration ("EIA") predicted continuing U.S. coal production declines through 2015. *See Annual Energy Outlook 2012*, U.S.

Energy Information Administration, Jun. 25, 2012 at 98. Long term, the outlook for coal was similarly poor:

> Over the next 25 years, the share of electricity generation from coal falls to 38 percent, well below the 48-percent share seen as recently as 2008, due to slow growth in electricity demand, increased competition from natural gas and renewable generation, and the need to comply with new environmental regulations.

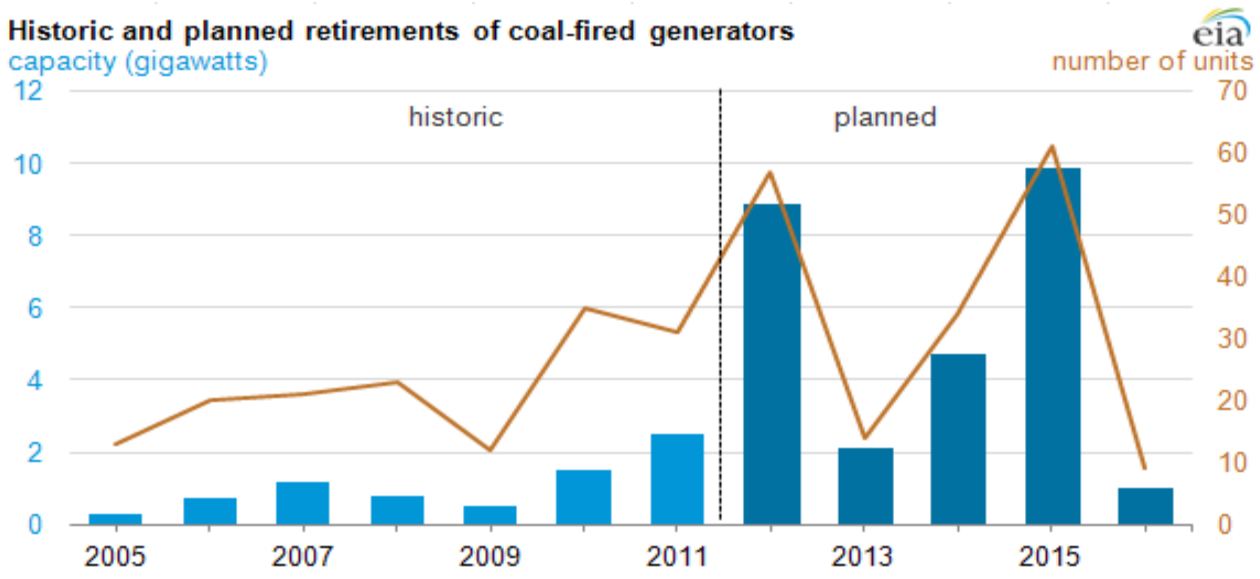
Id. at 4.

131. On July 13, 2012, the EIA released the results of a study about competition between coal, natural gas and petroleum in the energy generation sector which clearly showed the decline of coal as a fuel for energy production in the face of natural gas competition. Noting that coal's share of power generation historically "varied in response to changes in the cost and availability of competing fuels," the EIA cited the lower cost of natural gas as well as a 96% growth of natural gas generating capacity between 2002 and 2012 as key factors in coal's declining use as illustrated by this chart:



See Competition among fuels for power generation driven by changes in fuel prices, EIA, July 13, 2012, available at http://www.eia.gov/todayinenergy/detail.cfm?id=7090.

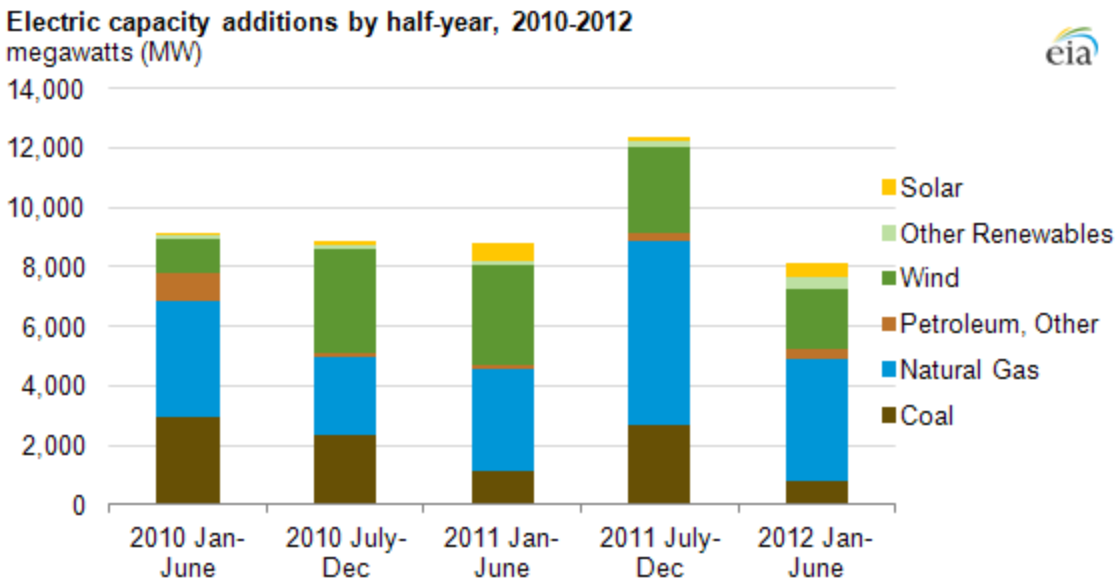
132. In late July 2012, the EIA announced that plant owners and operators were planning to retire 8.5% of the total 2011 coal-fired plant capacity. *See 27 gigawatts of coal-fired capacity to retire over next five years*, EIA, July 27, 2012, available at http://www.eia.gov/todayinenergy/detail.cfm?id=7290. This was more than four times the number of retirements of the preceding five year period:



Id.

133. The EIA also predicted that coal would not recapture its 45% share of the power generation market over the next 25 years. *See Fuel used in electricity generation is projected to shift over the next 25 years*, EIA, July 30, 2012, available at http://www.eia.gov/todayinenergy/detail.cfm?id=7310. In fact, coal's share of power generation, already historically low, was predicted fall to fall 38% over the next quarter century. *Id.*

134. In keeping with projections, in August 2012, the EIA released the results of a survey of new electric capacity additions by fuel source, showing that new coal-plants were being far outpaced by natural gas and wind-plants:



See Natural gas, renewables dominate electric capacity additions in the first half of 2012, EIA, Aug. 20, 2012, available at http://www.eia.gov/todayinenergy/detail.cfm?id=7610.

135. By September 2012, Moody's had already seen that any growth in exports for the U.S. coal industry would be insufficient to offset domestic declines. *See Moody's: Growing export opportunities for US coal industry insufficient to offset domestic declines*, Moody's Investors Service, Sep. 14, 2012 at 1. The industry "is going through a long-term shift in market fundamentals, pressured by abundant, cheap natural gas and ever-stringent environmental regulations, and has shrunk coal's share of the US power market by over 10% in the last four years." *Id*.

136. The situation was clear by the fall of 2012:

> Once mighty, the US coal industry's domestic market appears to be in **terminal decline**. New power generation is made up almost entirely of natural gas plant or renewable energy sources. Old coal plant closures as being hastened by environmental regulation. In the face of shale gas, coal no longer seems cheap. On a variety of fronts, coal has been left standing on the starting line, outpaced by innovation in other sectors of the energy world.

See US Coal in decline, Platts Energy Economist, Oct. 1, 2012 at 1 (emphasis added).

137. Coal exports to Canada were also expected to continue their decline, begun in 2007, as depicted in the below chart:

See Canada Week: Canada is a declining market for U.S. coal, EIA, Nov. 29, 2012, available at http://www.eia.gov/todayinenergy/detail.cfm?id=8970. This was the result of Canadian policies aimed at reducing coal-fired electric generation as contributors of greenhouse gases. *Id.*

138. Long-term prospects for exports to Europe were also dim. With nearly half of U.S. exports headed to European coal-fired power plants, Laszlo Varro, head of gas, coal and power markets for the International Energy Agency ("IEA") stated that, "regulations in Europe will eventually lead to a substantial decommissioning of coal-fired generation capacity outside of Germany, similar to what is happening in the U.S. now." *See IEA head: European coal renaissance 'not going to be permanent'*, SNL Daily Gas Report, Jan. 28, 2013 at 1. Varro also expressed doubt that the U.S. industry would be a strong competitor for Chinese and Indian markets, with Indonesia being a closer low-cost supplier and China improving its railroad infrastructure to move coal from its own mines to power plants. *Id*. at 2.

Leading to the Start of the Class Period, Numerous Red Flags Warned of the Imprudence of Peabody Stock as an Investment Option for the Plans

139. In addition to the above objective indicia that the coal industry was undergoing a historic downturn that would last for the foreseeable future, other objective factors demonstrated the imprudence of investing retirement savings in Peabody Stock.

140. For example, at the end of 2011 Peabody completed the purchase of Australia's Macarthur Coal Ltd. ("Macarthur") for $5.1 billion, folding the results of the acquisition into its Australian Mining business segment. *See* February 27, 2012 Form 10-K at 38. The acquisition of Macarthur would prove to be a financial albatross for Peabody Energy in the years to come but the negative effects were felt almost immediately. As result of financing the money needed to purchase Macarthur, Peabody Energy's Debt to Equity Ratio ("D/E Ratio"), skyrocketed from 0.4731 to 1.214.

141. As 2012 began, Peabody Energy realized that the "higher-margin international assets" of Macarthur were not as profitable, with higher than expected costs expected throughout 2012. *See Peabody Energy seeing higher-than-expected costs at Macarthur operations*, SNL Daily Coal Report, Jan. 26, 2012. Defendant Boyce noted, "It's also very clear to us that the mines were not being operated to sustainable industry standards." *Id*. Peabody Energy planned to invest in the operations, and was hopeful that they would benefit the company in 2013.

142. Other red flags indicating the Company's deteriorating financial condition were apparent. The Company itself acknowledged that the outlook for 2012 was not good, with Peabody Energy forecasting a weak outlook in the first quarter of the new year, citing construction issues, flat U.S. demand, and investments and upgrades a number of mines. As a result, "Peabody shares lost more than 4 percent or more than average volume." *See Peabody*

Q4 Profit Up, Details Weak Outlook; Stock Down – Update, RTT News, Jan. 24, 2012. The stock was down 37% over the past year, over declining optimism as prices fell on weakened demand related to competing, lower-cost natural gas and utility customers allow their stockpiles of coal to deplete somewhat before purchasing more. *See Market Talk: Miss At Peabody Energy Pressures Shares Anew*, Dow Jones News Service, Jan. 24, 2012.

143. In March 2012, Peabody shares fell 5% after a mining rival, BHP Billiton said it expects weaker demand from China. On March 20, 2012, Peabody was the ***worst-performing*** stock in the S&P 500 index for the day. *See Peabody Energy: S&P Intraday Laggard*, TheStreet.com, Mar. 20, 2012 (emphasis added). Peabody also announced that storms and flooding in Australia were affecting its operations, as port and rail movements were halted, "curtailing production and restricting access to underground operations." *Queensland flooding to drag Peabody Q1'12 earnings to low end of guidance*, SNL Daily Coal Report, Mar. 26, 2012. With more than half of its consolidated earnings coming from Australian operations, this was a significant blow to Peabody. *Id*. On March 26, the adjusted close share price for Peabody Stock was $28.89.

144. There was additional evidence of the Company's precarious financial condition. The Altman Z-Score ("Z-Score"), developed in 1968 by Professor Edward Altman of the Stern School of Business at New York University, is a bankruptcy prediction model commonly accepted and used by financial analysts. *See National Wildlife Federation v. EPA*, 286 F.3d 554, 565-66 (D.C. Cir. 2002) (upholding Federal agency's use of Altman Z-Score analysis for predicting likelihood of bankruptcy and accepting that it "has been quite accurate over these last 25 years and remains an objective, established tool") (internal quotes and citations omitted).

145. A Z-Score greater than 2.99 is the "safe zone" meaning a company is unlikely to go bankrupt, a score of 1.88 to 2.99 is the "grey zone," and a score less than 1.88 is the "distress zone" where there is a high probability the company will go bankrupt within two years.

146. As of March 31, 2012, Peabody Energy's Z-score was firmly within the distress zone, at 1.670.

147. On April 19, 2012, Peabody announced that its first quarter profits "slipped on weaker U.S. coal demand for electricity generation because of a mild winter and utility switchovers to cheaper natural gas," and that it was cutting production for the year. *Coal miner Peabody 1Q earnings slip*, The Associated Press State & Local Wire, Apr. 19, 2012. April also saw the news of coal-fire power plant projects being cancelled or put on hold indefinitely in response to tightening emissions standards and public outcry. *See Challenges Face U.S. Coal-Fired Power Plant Projects, an Industrial Info News Alert*, Marketwire, Apr. 25, 2012.

148. Probably the most eye-popping red flag was the incredible wave of bankruptcy filings by U.S. coal producers that began in 2012 and continued into 2013, in the wake of calls that 2013 would see "trough" pricing of coal. *See Bankruptcy filings by US coal companies accelerate as markets flounder*, SNL Daily Coal Report, Mar. 1, 2013 at 1. Facing slower economic growth in countries such as China, thus decreasing demand for metallurgical coal, and competition from shale gas and stricter environmental regulations hitting thermal coal, the downturn appeared "more chronic" rather than cyclical. *Id*. Coal-fire plants, too costly to retrofit with better pollution control technology in the face of cheap natural gas, were forced to close, which lead to lower demand for coal especially from Central Appalachian producers. The largest company to file was Patriot Coal Corporation ("Patriot Coal") on July 9, 2012, with assets of nearly $4 billion. *Id*.

149. Patriot Coal's bankruptcy is of particular relevance to the Defendants' breach of fiduciary duty to the Plans and their Participants. In 2007, Peabody Energy spun off Patriot Coal giving the new company Peabody Energy's Appalachian mines and operations. *See Was Patriot Coal Doomed to Fail?*, SNL Daily Coal Report, July 24, 2012.

150. Like Peabody Energy, Patriot Coal sponsored a defined contribution plan. Prior to June 28, 2012, the Patriot Coal plan invested in common stock of Patriot Coal through the Patriot Coal Stock Fund. The Patriot Coal plan fiduciaries, who were operating under a similar backdrop of dire circumstances as Defendant-fiduciaries were and are today, appointed an independent fiduciary on June 21, 2012 (prior to filing for bankruptcy) to oversee the Patriot Coal Stock Fund. *See* Patriot Coal 2012 Form 5500, Notes to Financial Statements For the Years Ended December 31, 2012 and 2011 at 7. Upon information and belief, the Defendant-fiduciaries have not even taken such a minimal step toward protecting the Plans and their Participants.

151. Significantly, "[b]ased on a number of considerations, the independent fiduciary determined that it was in the best interest of Plan participants and beneficiaries to stop purchasing Patriot Coal Stock under the Plan and to sell all shares of Patriot Coal held in the Patriot Coal Stock Fund. On June 28, 2012, all of the shares were sold and participants can no longer invest in Patriot Coal Stock through the Plan." *See* Patriot Coal 2012 Form 5500, Notes to Financial Statements For the Years Ended December 31, 2012 and 2011 at 7.

152. The action taken by the Patriot Coal plan fiduciaries along with the numerous other bankruptcy filings by coal companies should have alerted the Defendant-fiduciaries to take steps to protect the assets of the Plans and their Participants invested in the Peabody Energy Stock Fund. This is especially so when considering that as of June 30, 2012, Peabody Energy's

bankruptcy risk remained in the distress zone and increased from the prior quarter to a 1.53 Z-score.

153. In late July 2012, Peabody Energy announced that its second quarter 2012 income had fallen 29 percent from second quarter 2011, with its revenue nearly flat despite the acquisition of Macarthur in the interim. *See Peabody Q2 profit falls 29 percent*, St. Louis Business Journal, July 24, 2012. This result came from both lower realized prices and higher costs from its Australian operations. Peabody Energy also reported lower ships due to production cutbacks made in response to lower market demand. *Id*. Peabody Energy then cut production and earnings forecasts for the remainder of the year, calling for up to $100 million in lower net income for the third quarter. *Peabody warns of coal cuts: Falling Prices, Rising Costs and Carbon Tax Spell Trouble*, The Australian, July 26, 2012. Thermal coal prices had slumped about 30 percent in the past year, "because of increased coal experts from the US as low-priced shale gas is favored by power stations, unexpectedly low demand from China and India, and more exports from Indonesia." *Id*.

154. On August 3, 2012, Peabody Energy reported its financial results for the second quarter of 2012, ending June 30, 2012. For the 6 months ended June 30, the Company's net income decreased $84.8 million from 2011 to 2012, falling from $470.9 million to $386.1 million. *Id.* Adjusted EBITDA[9] also showed declines in the production and sale segments, dropping 15.7% from the comparable quarter of 2011 to 2012, mostly attributable to the 39.4% decrease in the Australian Mining segment, a decline of $156.1 million. *Id*. at 45.

[9] EBITDA, a common accounting term, is Earnings Before Income Tax, Depreciation and Amortization. Adjusted EBITDA is defined by Peabody as "income from continuing operations before deducting net interest expense, income taxes, asset retirement obligation expense and depreciation, depletion and amortization." *See* February 27, 2012 Form 10-K at F-61. The Company further reports that the "chief operating decision maker uses Adjusted EBITDA as the primary measure of segment profit and loss." *Id*.

155. Poor coal demand forced Peabody Energy to shut the Air Quality Mine in Vincennes, Indiana in September 2012. Peabody Energy spokeswoman Beth Sutton said, "We expect U.S. coal to decline as much as 100 million tons or more this year, primarily due to gas switching." *Peabody Energy to close mine*, Evansville Courier & Press, Sept. 6, 2012. Shortly thereafter, in November 2012, Peabody subsidiary Big Ridge Inc. announced the permanent closure of the Willow Lake Mine in southern Illinois following the death of a worker who was trapped by a machine. Big Ridge cited "fail[ure] to meet acceptable standards for safety, compliance and operating performance," as factors in the closure. *See Peabody to close willow Lake Mine, lay off 400 workers*, St. Louis Business Journal, Nov. 27, 2012. The Willow Lake Mine had a previous fatality in July 2010, and had been cited repeatedly for safety violations. The mine closure resulted in a onetime charge to the fourth quarter results of $40 to $60 million. *Id*.

156. By September 30, 2012, Peabody Energy had a Z-Score of 1.48.

157. On November 7, 2012, Peabody reported its financial results for the third quarter of 2012, ending September 30, 2012. As reported therein, the Company's net income had declined 80% from the previous quarter. *See* Nov. 7, 2012 Form 10-Q at 1. Indeed, for the first three quarters ended September 30, the Company's net income declined 43.2%, from 2011 to 2012. *Id.* The Australian Mining segment was a significant contributor to the Company's declines.

158. In a December 14, 2012 press release, the Company provided news of what lay ahead for the Company in the first quarter of 2013. The news was not good. Among other things, the Company warned of "lower realized metallurgical coal pricing compared with the fourth quarter of 2012." *See Peabody Energy Provides Comments Regarding First Quarter 2013*

Outlook, PR Newswire, Dec. 14, 2012. Further, the Company stated it expected to be impacted by "an increase in Australian unit costs," "a decline of approximately 2 million tons in U.S. sales based on market-related demand, as well as decrease of approximately 5 percent in average realized pricing due to the expiration of higher-priced contracts," and "higher depreciation, depletion and amortization expenses as recently completed capital projects fully begin operations and production increases from higher-cost reserves acquired in recent years." *Id.*

159. Shares dropped 2.2% on the news, and 18% over the course of the year. *See Peabody Warns on 2013 Sales, Capex; Cites High Costs, Lower Prices*, Dow Jones Factiva Newswires, Dec. 14, 2012.

160. The Class Period begins on December 14, 2012 because by the time of this announcement a plethora of red flags, including the action taken by the Patriot Coal plan fiduciaries, indicated that given the deteriorating financial condition of the Company and the coal industry, Peabody Stock was not a prudent investment option for retirement savings.[10] Additionally, the Company itself was predicting that the future financial prospects for the Company was not promising. On this day, the Company Stock was trading at $25.56, which was ***71% below*** the all time high of $88.05 on June 1, 2008 when coal prices were at their peak. Further, $25.56 was the Class Period high for the Company Stock price.

161. At this point in time, that is, on December 14, 2012, it was patently clear, or should have been clear, to the Plans' fiduciaries, that a permanent structural shift in the only true business segment that comprised Peabody Energy's business, *i.e.*, coal, was irreparably compromised for the foreseeable future given, *inter alia*, the depressed prices of coal prices and drastically reduced demand for coal over the last several years. Because of these and other

[10] Plaintiff reserves her right to modify the Class Period definition in the event that further investigation/discovery reveals a more appropriate and/or broader time period during which Peabody Stock constituted an imprudent investment option for the Plans.

factors delineated above, by December 14, 2012, the basic risk profile and future business prospects of Peabody Energy had so dramatically changed, that continued deterioration of the price of Peabody Stock was inevitable, making Peabody Stock an imprudent Plan investment option.

162. Just a few short weeks after its December 14, 2012 press release, Peabody Energy announced that it had a loss of ***$1.01 billion*** in the fourth quarter of 2012, both from write downs and losses from continuing operations. *See Peabody Energy Swings to 4th-Quarter Loss on Write-Downs*, Dow Jones Factiva Newswires, Jan. 29, 2013. The write-downs for Australian operations and non-core assets accounted for $884 million, amid the significant price declines in coal including the 50% drop in global metallurgical coal prices since its high in 2011. *See Peabody writes down $884 million in Australian and non-core assets*, Platts Coal Outlook, Feb. 4, 2013. Approximately $357 million of the write-downs in Australia were related to the Macarthur acquisition. *Id*. Peabody CEO Defendant Boyce also stated that U.S. coal exports for the industry could drop by 30 million short tons, with two thirds of the decrease attributable to metallurgical coal. *Id*.

163. The Company reported a net loss of $575.1 million for the year. *See* Dec. 31, 2012 Annual Report, Form 10-K at 41. By year-end 2012, the Company's D/E Ratio shot up once more, to 1.275 and its Z-Score was 1.46.

2013 Was a New Year But the Same Old Story for Peabody Energy

164. Peabody Energy reported a net loss of $19.4 million for the first quarter of 2013, compared to $178.3 million net income for the same quarter of 2012, a decline of 110.9%. *See* May 8, 2013 Form 10-Q at 1. Adjusted EBITDA for the sale and production segments declined 39.2% compared to the first quarter of 2012, decreasing from $639.9 million to $389.2 million in

2013. Australian Mining itself declined 66% percent, from $295.6 million to $100.4 million, while Western U.S. Mining declined 22.5%, from $207 million in 2012 to $160.5 million in 2013. *Id*. at 43. Peabody's D/E Ratio decreased incrementally to 1.262.

165. As of the end of the first quarter of 2013, Peabody Energy's Z-Score was at an all time low, at 1.32, meaning that already in the distress zone, Peabody's risk of bankruptcy was at an all time high.

166. On April 15, 2013, Peabody shares fell 7%, to $19.26 a share, on the news of a predicted slowdown in Chinese growth which could lead to weaker coal demand. *See Coal shares tumble on concerns of dropping demand in China*, St. Louis Business Journal, Apr. 15, 2013.

167. Analysts continued to forecast bleak conditions for the coal industry stating that "Weak economic conditions in Europe, slower growth in Asia and readily available supply across the globe are impacting the international markets for both thermal coal and metallurgical coal." *Get ready for drop in US coal exports, industry official say*, SNL Daily Coal Report, Apr. 29, 2013. Citigroup Global Markets Inc. in particular predicted that 2013 would see price declines in almost all commodities, including thermal coal. *Id*. Domestic thermal coal prices were also expected to fall, particularly in the Illinois Basin where Peabody Energy has significant operations. *See Illinois Basin producers could be looking at some slipping prices*, The U.S. Coal Review, Apr. 29, 2013.

168. In June 2013, Peabody announced plans to cut 450 contractor jobs at its Australian mines for both thermal and metallurgical coal. *See Peabody to cut 450 jobs at Australian coal mines*, St. Louis Business Journal, Jun. 25, 2013. Reuters reported that thermal coal prices had dropped 30 percent in the last two years, while metallurgical coal prices had

fallen 40 percent in just the last year. *Id.* In fact, coal saw its biggest quarterly decline in prices in a year, falling 7.5 percent. *See Coal hit by year's worst quarter*, St. Louis Business Review, Jun. 26, 2103.

169. As of June 30, 2013, Peabody Energy's Z-Score stood at 1.13.

170. At the end of July 2013, Peabody announced its net income had dropped again for the second quarter of 2013, with revenue falling 12.9 percent compared to the same period in the previous year driven by lower pricing from mining operations and lower trading and brokerage results. *See Peabody Q2 profit drops 58 percent*, St. Louis Business Journal, July 23, 2013. Prices were impacted by higher supplies from Indonesia and Australia, and the U.S. and China both cutting production. *Id*. Peabody also announced plans to eliminate 170 permanent jobs in Australia, about 5.7 percent of its workforce, in addition to the 230 vacancies it did not plan to fill in a cost-tightening measure. *See Peabody cutting 170 jobs in Australia*, St. Louis Business Journal, July 23, 2013.

171. Peabody Energy had a net loss of $19.1 million for the three months ended September 30, 2013. *See* Nov. 8, 2013 Form 10-Q at 1. As of this date, the Company's Z-Score was 1.12 and its D/E ratio edged higher, to 1.335.

172. In October 2013, another alarm sounded for the U.S. coal industry, with the release of a study noting that most of the coal estimated to exist in the U.S. is "buried too deeply," or was otherwise too unprofitable to extract, and thus unlikely to be mined. Speaking for the Institute for Energy Economics and Financial Analysis ("IEEFA"), Tom Sanzillo stated that the country will undergo a shift in its energy mix, leading to an industry that would "be smaller with less producers, fewer mines and higher prices." *See New reports say US has reached 'peak coal'*, SNL Daily Coal Report, Oct. 31, 2013.

173. On December 9, 2013, Peabody announced the closure of the Wilkie Creek mine, affecting 200 employees and contractors. *See Peabody Energy closes Australian mines it had tried to sell*, St. Louis Business Journal, Dec. 9, 2013. The job losses were in addition to the 70 employees that had already lost their jobs in September, as well as the 620 jobs it had already cut in Australia during the summer. *Id*. Charges for closing the mine, including potential contractual liabilities and reclamation and rehabilitation of the mine, were expected to cost between $115 million and $130 million. *See Closing mine in Australia to cost Peabody up to $130 million,* St. Louis Business Journal, Dec. 12, 2013.[11]

174. There were other mine closures, including a domestic mine in Indiana affecting 70 jobs. *See Area Mine closing: Viking Mine to shut down soon*, The Washington Times-Herald, Dec. 18, 2013. Local business officials predicted more mine closings in the area, citing higher regulatory standards. *Id*.

175. Peabody Energy suffered a net loss of $512.6 million for all of 2013, the second year of net income loss of at least half a billion dollars. *See* February 21, 2014 Annual Report Form 10-K at 43. Every sale and production business segment recorded a year-to-year decline in Adjusted EBITDA, falling nearly a billion dollars, or 38.9%. Australian Mining continued its poor performance, declining 66.3% or $622.3 million from year-end 2012. *Id*. at 48.

176. As of December 31, the Company's Z-Score dipped even further and stood at .93. The Company's D/E ratio climbed to 1.538.

[11] Peabody Energy eventually found a buyer for the Wilkie Creek mine, inking a deal in May 2014 to sell the property to Bentley Resources for $70 million in cash, as well as the assumption of transportation obligations and other liabilities, a far cry from its initial $500 million asking price in 2012. *See Peabody Energy Enters Into Agreement With Bentley Resources To Sell Wilkie Creek Mine In Australia*, PR Newswire, May 13, 2014.

The Company's Struggles Continued and the Losses Mounted Throughout 2014

177. In the first half of 2014, Citigroup published three reports which reiterated the major structural decline in the coal industry caused by new, stricter emission standards, increasing competition by renewable energy sources and limited feasibility in opening new coal plants in the wake of older plant retirement. "In short, Citigroup says, the evolution in electricity markets is being driven by a combination of regulatory and technology changes." *See Beginning of the end for coal? Citi sees structural decline*, Renew Economy, May 15, 2014, available at http://reneweconomy.com.au/2014/beginning-end-coal-citi-sees-structural-decline-30396.

178. On April 9, 2014, the Wall Street Journal published an interview with Defendant Boyce, who extolled the benefits of coal as a fuel source, particularly for those who live in poverty. *See In Defense of Coal: Peabody Energy's CEO on with it isn't going away*, Apr. 9, 2014. Interestingly, Boyce called for "a balanced portfolio of energy – we need solar, wind, renewables, gas, coal. The only way to reduce risk in these energy portfolios is to make sure we're using all forms of energy." *Id*. The irony is that Defendant Boyce implicitly acknowledged the high risk profile of the Company because of its **sole** reliance on coal.

179. On May 12, 2014, Peabody reported its financial results for the first quarter of 2014, ending March 31, 2014. As reported therein, the Company lost $44.1 million for the three months ended March 31, 2014. *See* May 12, 2014 Form 10-Q at 1. This is almost two and half times the already significant loss posted for the same quarter in 2013. *Id.* The Australian Mining segment continued its precipitous decline, posting only $1.8 million in Adjusted EBITDA, compared to $100.4 million for the first quarter of 2013, a startling 98.2% decrease. *Id*. at 32. The Company's D/E ratio decreased slightly to 1.510.

180. May brought more bad news for the coal industry at least from Peabody Energy's perspective. In May 2014, IEEFA noted that there was a global shrink in the demand for thermal coal. Increasing Chinese coal production would further limit the ability of American and Australian mines to offset shrinking domestic use through exports, as well as China's own environmental initiatives and move to more efficient energy generation. *See Briefing Note: Thermal Coal Outlook*, May 15, 2014 at 6, available at http://ieefa.org/thermal-coal-outlook-may2014/. United States thermal coal capacity would continue to fall, with newer natural gas and solar power plants vastly outnumbering new coal plant additions. *Id*. at 6-7. Further, Europe and Japan were increasingly relying on stronger output from renewable energy sources, including off-shore wind farms and new solar power capacities. *Id*. at 7-8.

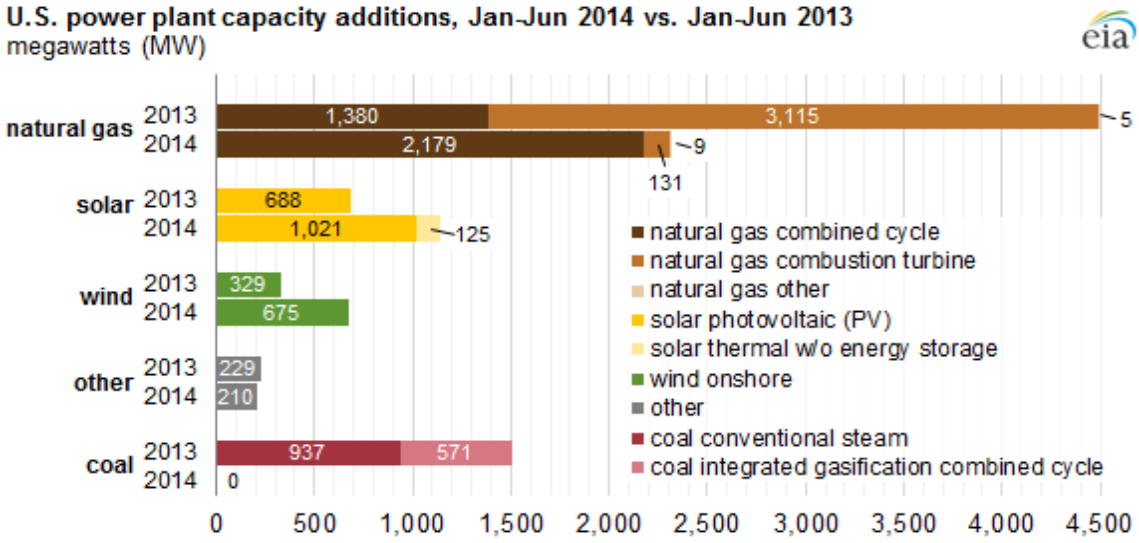
181. In June 2014, the Environmental Protection Agency ("EPA") announced new regulations for curbing carbon dioxide emissions from power plants, with major implications for both power plants and their suppliers. *See Carbon rules loom large for coal-heavy Missouri, Illinois*, St. Louis Post Dispatch, Jun. 1, 2014. Peabody Energy released a statement in response to the proposals, calling climate change a "modeled crisis" that should not be guiding American policy and declaring the "proposed regulations will make energy more scarce and more expensive without any material improvement in emissions." *See Statement of Peabody Energy on National Carbon Target*, PR Newswire, Jun. 2, 2014. Both the EPA and analysts agreed that there would be coal tonnage declines in response to the so-called Clean Power Plan, particularly in the Powder River Basin of as much as 34% for thermal coal, where Peabody Energy was heavily invested. *See Trio of coal stocks hit 52-week lows, but some see positives in EPA proposal*, SNL Daily Coal Report, Jun. 3, 2014.

182. In July 2014, Peabody Energy share prices fell in response to interest rate hike fears. *See Stock prices fall amid fears of interest rate hikes*, Portland Press Herald, July 8, 2014. "Peabody Energy fell 3.7 percent, as energy stocks lost 0.6 percent as a group." *Id*. Next came news of the retirement of an Ameren Corp. coal-fired plant in Missouri, "the company's oldest and least efficient base load power plant," and a significant customer for Peabody which provided 1.4 million tons of coal to the company in 2013 and over 1 million tons of coal so far in 2014. *Peabody Energy primary supplier of Ameren coal plant slated for 2022 retirement*, SNL Daily Coal Report, July 9, 2014. This was a bellwether for more coal plant retirements that would affect Peabody's bottom line over the next decade.

183. On August 8, 2014, Peabody reported its financial results for the second quarter of 2014, ending June 30, 2014. As reported therein, the Company's net income continued to suffer dramatically. Specifically, for the three months ended June 30, 2014, the Company reported a net loss of $71.2 million, the fourth straight quarter of loss. *See* August 8, 2014 Form 10-Q at 1. Indeed, for the six months ended June 30, 2014, Peabody reported a net loss of $115.3 million. *Id.* Although Australian Mining segment posted better Adjusted EBITDA results than the first quarter of the year, rising to $12.2 million, it paled in comparison to the $112.5 million earned during the same quarter the year before, an 89.1% decline. *Id*. at 35. In fact, total Adjusted EBITDA for the Company was down $144.4, or 27%, for the six months ending June 30, 2014, when compared the same period the previous year. *Id*.

184. September brought more bad news for the U.S. coal industry and Peabody Energy. In the first half of 2014, 4,350 megawatts of new generation capacity came online, completely attributable to natural gas, solar, wind and other sources. No coal capacity was added. Even the 1,500 megawatts of coal-fired capacity added in 2013 was minimized by the

4,500 megawatt capacity added by natural gas-fired plants that same year, as demonstrated by this chart:



See Natural gas, solar, and wind lead power plant capacity additions in first-half 2014, EIA, Sept. 9, 2014, available at http://www.eia.gov/todayinenergy/detail.cfm?id=17891.

185. In the same month, Peabody Energy reached a new low point in its relentless descent. On September 19, 2014, Peabody was officially removed from the S&P 500 index, a result of its stock falling 22 percent over the year compared to only 2 percent by the SNL Coal Index and an 18 percent increase by the S&P index. *See Peabody Energy replaced in S&P 500 index after market capitalization swoon*, SNL Daily Coal Report, Sept. 16, 2014. Peabody's market capitalization had dropped from $19.68 billion on April 1, 2011 to $4.32 billion on August 13, 2014. *Id.*

186. Interestingly, at the time of its bankruptcy filing, Patriot Coal had assets worth nearly $4 billion. *See Bankruptcy filings by US coal companies accelerate as markets flounder*, SNL Daily Coal Report, Mar. 1, 2013 at 1.

187. Peabody Energy was not the only coal company to experience stock market declines due to the downturn in the industry as a whole. As explained by SNL Daily Coal Report:

> Under assault from almost every direction, U.S. coal equities saw their value shrink to historic lows, with some equities hitting all-time lows. Since Monday, Peabody shares are down more than 8% and were trading Sept. 26 at $12.09

See Peabody hits back at coal critics, calling for rejection of 'climate alarmism', Sept. 29, 2014.

188. On October 20, 2014, Peabody Energy revealed that third quarter revenue was down 4.2 percent, primarily due to continuing weak pricing on the Australian market. *See Peabody posts $154 million loss in Q3*, St. Louis Business Journal, Oct. 20, 2014.

189. As outlined by Tom Sanzillo, director of finance studies for the IEEFA, Peabody Energy was an increasingly bad investment and pointed out major weaknesses in the Company which continued to pay out yearly $92 million in dividends despite quarter after quarter of losses. Some of the key problems for Peabody were:

(a) year-to-date net losses of $272 million, following two years of net losses;

(b) shares down 62 percent over the last two years as opposed to the S&P 500 Index, which was up 30 percent over the same time frame, while over five years, Peabody shares were down 75 percent while S&P 500 was up 80 percent;

(c) falling revenue, due to "stalling global demand" and a suggested structural decline for thermal coal; and

(d) seriously declining debt-to-equity ratio with $3.7 billion of take or pay liabilities, $5.5 billion of net debt, $700 million of not fully funded mine rehabilitation provisions and $700 million of accrued but unfunded post retirement pension liabilities for workers, as opposed to management[12].

See Rating Peabody: A coal giant on the ropes, Business Spectator, Oct. 24, 2014; *see also Pressures on coal sector likely to persist*, Canberra Times, Dec. 29, 2014. Unsurprisingly in light of these financials, Fitch downgraded Peabody's IDR from 'BB' to 'BB-' on October 28. Their other ratings, for secured and unsecured debts, were also downgraded. *See Fitch Downgrades Peabody Energy Corp's IDR to 'BB-'*, Dow Jones Institutional News, Oct. 28, 2014.

190. By November 2014, IEEFA noted the sharp decline of U.S. coal stocks relative the positive performance of the stock market:

> While the overall U.S. stock market has risen dramatically since 2010, U.S. coal stocks have collapsed, and the U.S. coal industry is in its fourth year of decline. Third-quarter earnings reports show the trend continuing. The four largest producers in the Power River Basin (Alpha, Arch, Cloud Peak, and Peabody) continue to see their stock prices drop as they report declining revenues, tighter margins, and distressed asset sales.

See 20 Fourth-Quarter Questions for Powder River Basin Coal Producers, Nov. 11, 2014 at 1, available at http://ieefa.org/20questions/.

191. The article further detailed that each producer reported declining revenues ranging from 10 to 30 percent from 2011 through 2013. *Id*. Noting a "fundamental structural coal-industry change," due in part to increased, constant competition from cheap natural gas as well as a diminishing likelihood with the industry's ability to offset domestic losses with exports, the article saw "little true likelihood of a significant turnaround." *Id*.

192. In November, Peabody Energy reported its financial results for the third quarter of 2014, ending September 30, 2014. As reported therein, the Company recorded a net loss of $149 million for the three months ended September 30, 2014, significantly worse than the $19.1

[12] The source notes an inconsistency between the "zero funding of the post-retirement pension plan, in contrast to the 90 percent funding of the $947 million defined benefits plan."

million net loss recorded for the same quarter in 2013. *See* Nov. 6, 2014 Form 10-Q at 1. This loss compounded the problems for the Company's dismal bottom line, resulting in a net loss of $264.3 million for the nine months ended September 30, 2014. *Id.* Adjusted EBITDA continued to flag, with the Australian Mining segment earning just $16.9 million for the quarter, compared to $74.8 million for the third quarter 2013. *Id*. at 36. Overall, Adjusted EBITDA for the Company fell to $216.3 million for the quarter, a 30.7% decline from the previous year's quarter, and only $606.3 million for the nine months ended September 30, 2014, a decline of 28.5% from the previous year. *Id*.

193. By December 2014, more entities were beginning to take a stand against coal on environmental grounds. This was not good news for Peabody Energy or the coal industry in general. In December 2014, Norwegian pension fund KLP announced it sold off $386 million worth of stocks and bonds from 27 companies that derive revenue from coal mining or coal-fired energy production, including Peabody Energy. Nathan Fabian, CEO of the Investor Group on Climate Change, said that more funds would likely follow suit due to climate impacts. "It's not really a question of whether it is a good or bad thing to do; it's simply a result of responding to the investment risks." *Norwegian fund's exit from coal investment ramps up divestment trend*, SNL Metals & Mining Daily: West Edition, Dec. 5, 2014.

194. Thus, 2014 was another highly disappointing year for Peabody Energy. The Company suffered a dramatic $777.3 million net loss for the year, losing $513 million in the fourth quarter of 2014 alone. *See* February 25, 2015 Annual Report Form 10-K at 43. This marked the sixth straight quarter and the third year in a row of net losses.

195. Year-end Adjusted EBITDA[13] for the sale and production segments of the Company declined 18.4% compared to the previous year, down $262.2 million, with continuing

[13] Beginning with the year end results of December 31, 2014, Peabody adjusted its definition of

weak results from the Australian Mining segment which declined from $316.6 million to $74.4 million, or 76.5%, compared to the previous year's results. *Id*. at 48.

196. As a result of a single quarter's loss of half a billion dollars, Moody's downgraded Peabody's ratings, amid expectations that earnings would continue to fall in 2015. *See Moody's downgrades Peabody Energy, sees coal market recovery out 18 months*, SNL Daily Coal Report, Mar. 2, 2015.

197. As of December 31, 2014, Peabody Energy still remained in grave danger of bankruptcy with a Z-Score of .65. Peabody Energy's D/E Ratio was now at 2.197, significantly higher than any point in the last 12 years. Further, the price of Peabody Stock continued its steady decline throughout 2014 as well:

2014 Quarter	High	Low
First Quarter	$19.94	$15.18
Second Quarter	$19.63	$15.79
Third Quarter	$16.71	$11.88
Fourth Quarter	$12.41	$7.23

In 2015, Peabody Energy Fared No Better as the Company's Financial Condition Continued to Deteriorate, Losses Continued to Mount and its Stock Price Continued to Plummet

198. On January 5, 2015, Peabody posted a new 52 week low in share price, falling to $6.92 a share. A few days later on January 14, 2015, Barclays Capital Inc. opined on the outlook of five coal producers, including Peabody Energy. Noting the weakness in the coal sector, it stated that "[t]here is not really much these companies can do except curtail marginal mines,

"Adjusted EBITDA" to be "(loss) income from continuing operations before deducting net interest expense; income taxes; asset retirement obligation expenses; depreciation, depletion, and amortization; asset impairment and mine closure costs; charges for the settlement of claims and litigation related to previously divested operations; and changes in deferred tax asset valuations allowance and amortization of basis difference related to equity affiliates." *See* Peabody Energy Announces Results For The Year Ended December 31, 2014, Jan. 27, 2015 News Release, available at http://www.peabodyenergy.com/investor-news-release-details.aspx?nr=869. The Company reiterated that "[m]anagement uses Adjusted EBITDA as the primary metric to measure segment operating performance." *Id*.

conserve liquidity, and hope for a price upturn." *Barclays offers grim coal industry outlook, says recent supply cuts not enough*, SNL Daily Coal Report, Jan. 16, 2015. But of course, any meaningful price upturn is not in the foreseeable future. As one analyst stated, "The world is swimming in cheap BTUs (gas in the U.S., oil everywhere, nuclear in China, etc.)," which would not help weak coal prices. *See 'The world is swimming in cheap BTUs': Oversupply heaps pressure on coal sector*, SNL Daily Coal Report, Jan. 23, 2015.

199. On January 22, 2015, Peabody Energy announced that Defendant Boyce would step down as CEO on May 4, 2015 with Defendant Kellow his replacement. Boyce would remain as chairman. *See Boyce to step down at Peabody*, St. Louis Business Journal, Jan. 22, 2015. Five days later, Peabody announced that 2014 revenue was down 3 percent from 2013, due to weaker Australian pricing. Australian revenue dropped 16 percent in revenue per ton, only partly offset by a rise of 9 percent in shipments. *See Peabody posts $749 million loss for 2014*, St. Louis Business Journal, Jan. 27, 2015. Despite this, the Company also declared a dividend of $0.0025 per share. Shares fell on the news, dropping to their lowest level in 12 years. *See Stock Move: Peabody Energy Shares Drop to Nearly 12-Year Low on Wider-Than-Expected Q4 Loss; Sees Q1 Loss, Cuts Dividend*, Midnight Trader Live Briefs, Jan. 27, 2015.

200. On April 20, 2015, Peabody reported that its outgoing CEO Defendant Boyce and incoming CEO Defendant Kellow, would take cuts to their base salary "in light of current business conditions." However, the cuts totaled only $238,000 for both men, a fraction of the $10.99 million Defendant Boyce was paid in the previous year or the millions Kellow would earn as CEO due to the bonus structure of their contracts, which was more than the median pay for CEOs of peer companies. *See Those Executive 'Pay Cuts' at Peabody Energy? Mostly a*

Charade, Institute for Energy Economics and Financial Analysis, Apr. 29, 2015, available at http://ieefa.org/those-executive-pay-cuts-at-peabody-energy-mostly-a-charade/.

201. On May 5, 2015, Peabody Energy reported its financial results for the first quarter ending March 31, 2015. As reported therein, the Company experienced a net loss of $173.3 million for the three months ended March 31, 2015, marking the ***seventh straight quarter*** the Company posted a net loss. *See* May 5, 2014 Form 10-Q at 1. This was a precipitous decline from the net loss of $44.1 million of the first quarter 2013. *Id*. The Company's Adjusted EBITDA fell to $165.6 million, with the Australian Mining segment posting an earnings loss of $24.5 million. *Id*. at 32.

202. Peabody's D/E ratio jumped again to 2.551.

203. Just a day later on May 6, 2015, Bank of America published a new coal policy, attached as Exhibit A, that cemented the generally held view that the coal industry was an unduly risky segment in which to invest. Following a due diligence review, the bank announced:

> Over the past several years, Bank of America has significantly reduced our exposures to coal extraction companies. Going forward, Bank of America will continue to reduce our credit exposure to coal extraction companies. This commitment applies globally, to companies focused on coal extraction and to divisions of diversified mining companies that are focused on coal.

Id. at 1.

204. The dire outlook for the coal industry shows no signs of abating. On May 12, 2015, Patriot Coal filed for bankruptcy protection for the second time in three years, the results of competition from natural gas, high emission standards and weakened demand for metallurgical coal in China. It had emerged from the previous bankruptcy in December 2013, having reduced its debt from $3.07 billion to $545 million through the sale of assets and the closure of some mines. *See Patriot Coal Files for Second Bankruptcy in Three Years Amid Commodity Price Slump*, BNA's Bankruptcy Law Reporter, May 12, 2015, available at

http://www.bloomberg.com/news/articles/2015-05-12/patriot-coal-files-for-bankruptcy-after-commodity-price-slump. Not surprisingly, "**Patriot's woes are indicative of the wider malaise in the coal industry**." *See* Nick Cunningham, *Latest Casualty In Energy's Hardest Hit* Industry, Yahoo Finance, May 25, 2015, available at http://finance.yaoo.com/news/latest-casualty-energy-hardest-hit-202728319.html.

205. Other coal companies to file for protection recently include Longview Power LLC, Dynegy Inc., Edison Mission Energy, James River Coal Co., America West Resources Inc., Trinity Coal Corp., Americas Energy Co., Clearwater Resources LP and Consolidated Energy. *See Patriot Coal Files for Second Bankruptcy in Three Years Amid Commodity Price Slump*, BNA's Bankruptcy Law Reporter, May 12, 2015, available at http://www.bloomberg.com/news/articles/2015-05-12/patriot-coal-files-for-bankruptcy-after-commodity-price-slump. An additional four companies were seen as distressed: Walter Energy had raised the possibility of its own bankruptcy filing, Alpha Natural Resources Inc., the second-largest coal producer by sales, was warned by the New York Stock Exchange that its shares would be delisted if its shares continued to trade below $1, and Arch Coal Inc. and Peabody Energy Corp. had each lost over 75% of their share value. *Id*.

206. Another blow to Peabody Energy and the coal industry was the recent revelation in an article that the Office of Surface Mining Reclamation and Enforcement (OSMRE), "the nation's leading coal industry regulator" is examining whether coal companies, including Peabody Energy, still qualify for a government program that allows coal companies to self-insure or "self-bond" for clean-up costs in case of bankruptcy. *See* Patrick Rucker, *Coal Giant Peabody Faces Federal Scrutiny Over Clean-Up Insurance*, *Yahoo! Finance*, June 4, 2015, *available at* http://finance.yahoo.com/news/coal-giant-peabody-faces-federal-174047899.html.

The reason for the examination is OSMRE's concern that "slumping coal prices and declining demand have put industry balance sheets under stress, raising questions about whether Peabody, the world's largest private coal company, and other coal firms meet the financial criteria to self bond." *Id.* Importantly, as the article notes, "the shares of many major coal companies – including Peabody – have fallen by more than 90 percent in the last four years **and industry analysts warn that near-term bankruptcies are a real danger**." *Id.* (emphasis added).

207. According to Greg Conrad, director of the Interstate Mining Compact Commission which speaks for coal producing states, "[t]his is the first time we've see [sic] this: a downturn in the coal industry raising questions about self bonds." *Id.*

208. If Peabody Energy were to be disqualified from the government program, it would be subjected to substantial cost increases as it "would have to pay market rates to insure the billions of dollars required to restore old mines and ravaged landscapes back to health." *Id.* Currently, "[n]o mining company taps the self-bond program more extensively than … Peabody." *Id.*

209. By the end of 2014, it appeared that Peabody Energy would no longer qualify to self-bond. In order to maintain its qualification for self-bonding, Peabody "must have a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater." *Id.* However, a review of securities filings "found that Peabody failed both those tests at the end of 2014." *Id.*

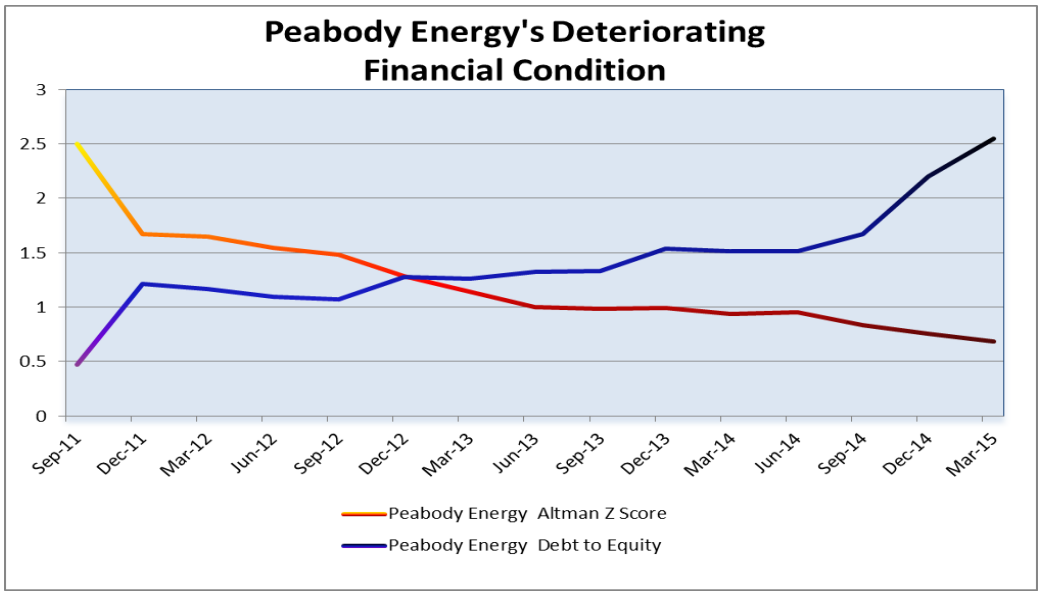
210. More evidence of Peabody Energy's financial woes came on June 8, 2015, when the Company announced it would "cut 250 corporate and regional positions in the coming months" due to escalating costs for the Company. *See* Jacob Kirn, *St. Louis Business Journal*, *Peabody Cutting 250 Corporate, Regional Jobs*, June 8, 2015, available at:

http://www.bizjournals.com/. "The Company said the reductions represent about 25 percent of corporate and regional support positions." *Id.*

211. As of the filing of the instant complaint, for all the reasons set forth above, Peabody Energy has been and remains an imprudent investment option for the Plans.

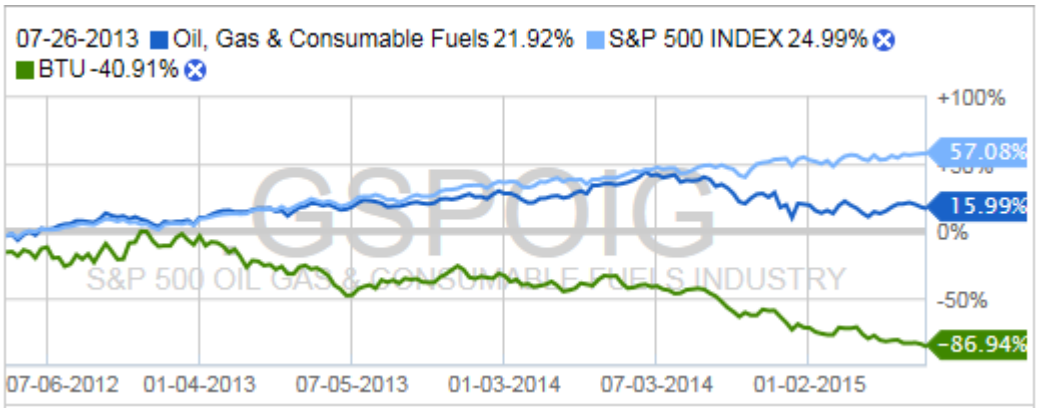
DEFENDANTS KNEW OR SHOULD HAVE KNOWN THAT PEABODY STOCK WAS AN IMPRUDENT INVESTMENT FOR THE PLANS, YET FAILED TO PROTECT THE PLANS' PARTICIPANTS

212. As illustrated by the following chart, Peabody Energy's tenuous financial condition as measured by its Z-Score and debt-equity ratio began in early 2012, but accelerated sharply during the third quarter ending September 30, 2012.



213. Further, as the below graph of Peabody Energy's performance relative to the S&P 500 index, of which it was a part until September 2014, makes clear, the Company has severely underperformed the general market:

214. Peabody Energy is radically underperforming compared to the oil and gas sector as well as the S&P 500 Index, having lost over 86% of the share price in three years compared to a sector increase of nearly 16%:



Source: Fidelity Research https://eresearch.fidelity.com/eresearch/markets_sectors/sectors/industries.jhtml?tab=learn&industry=101020

215. Even compared to the Dow Jones U.S. Coal Index, Peabody has lost more market capitalization than its peers:

Source: Google Finance http://www.google.com/finance?cid=4931635

216. The Company's financial condition, when viewed through the lens of objective financial metrics, plainly indicates the Company's deterioration over the last several years. During the Class Period, although they knew or should have known that Company Stock was an imprudent investment for the Plans, Defendants did nothing to protect the significant investment of the Plan Participants' retirement savings in the Peabody Stock Fund.

217. Since the beginning of the Class Period through the filing of the instant complaint, the Plans' imprudent investments in Peabody Stock have been decimated, as indicated below:

Source: http://bigcharts.marketwatch.com.

218. As a result of the enormous erosion of the value of Peabody Stock, the Plans' Participants, the retirement savings of whom were heavily invested in Peabody Stock, suffered unnecessary and unacceptable significant losses.

219. Because of their high ranking positions within the Company and/or their status as fiduciaries of the Plans, Defendants knew or should have known of the existence of the above-mentioned problems.

220. Defendants knew or should have known that, due to the Company's exposure to losses stemming from the problems described above, the Company Stock was imprudent no matter what its price. Regardless, the Company Stock price inevitably dropped drastically and steadily beginning in 2011, a year before the start of the Class Period, and continued throughout the Class Period due to the pervasive problems facing the Company. There was absolutely no objective evidence that the Company Stock price would or could recover. Yet, Defendants failed to protect the Plans and their Participants from these foreseeable losses.

221. Upon information and belief, Defendants failed to adequately review the performance of the other fiduciaries of the Plans to ensure that they were fulfilling their fiduciary duties under the Plans and ERISA. Defendants also failed to conduct an appropriate investigation into whether Peabody Stock was a prudent investment for the Plans and, in connection therewith, failed to provide the Plans' Participants with information regarding Peabody Energy's problems so that the Plans' Participants could make informed decisions regarding whether to include Peabody Stock in their accounts in the Plans.

222. An adequate (or even cursory) investigation by Defendants would have revealed to a reasonable fiduciary that investment by the Plans in the Peabody Stock Fund during the Class Period was clearly imprudent. A prudent fiduciary acting under similar circumstances would have acted during the Class Period to protect the Plans' Participants against unnecessary losses, and would have made different investment decisions.

223. Because Defendants knew or should have known that Peabody Stock was not a prudent investment option for the Plans during the Class Period, they had an obligation to protect the Plans and their Participants from unreasonable and entirely predictable losses incurred during the Class Period as a result of the Plans' investment in Peabody Stock.

224. Defendants had available to them several different options for satisfying this duty, including, among other things: divesting the Plans of Peabody Stock; discontinuing further contributions to and/or investment in Peabody Stock under the Plans; resigning as fiduciaries of the Plans if, as a result of their employment by Peabody Energy, they could not loyally serve the Plan and the Plans' Participants in connection with the Plans' acquisition and holding of Peabody Stock; making appropriate public disclosures as necessary; and/or consulting independent

fiduciaries regarding appropriate measures to take in order to prudently and loyally serve the Participants of the Plans.

225. Despite the availability of these and other options, Defendants failed to take any adequate action during the Class Period to protect the Plans' Participants from losses resulting from the Plans' investment in Peabody Stock.

AT LEAST CERTAIN OF THE DEFENDANTS SUFFERED FROM CONFLICTS OF INTEREST

226. Pursuant to the duty of loyalty, an ERISA fiduciary must discharge his duties solely in the interest of the participants and beneficiaries. 29 U.S.C. § 1104(a)(1)).

227. Peabody Energy's SEC filings during the Class Period, including Form DEF 14A Proxy Statements, make clear that a portion of certain officers' compensation, including Defendants Boyce, Crews, Kellow, Meintjes, and Williamson was in the form of stock awards and option awards. For example, in 2014, Defendant Boyce received $4,619,615 in stock awards. *See* 2014 Proxy Statement (filed Mar. 24, 2015) at 53. Defendants Crews, Kellow, Meintjes, and Williamson received $885,969, $1,771,919, 1,497,585, and 738,299, respectively. *Id.* As noted above, Defendants Boyce and Kellow's compensation was more than the median pay for CEOs of peer companies.

228. Certain officers were also beneficial owners of Peabody Energy, including Defendants Boyce, Crews, Kellow, Meintjes, and Williamson. As of March 1, 2015, Defendants Boyce, Crews, Kellow, Meintjes, and Williamson owned 1,603,487, 190,244, 293,844, 169,885, and 267,663 shares of Peabody Energy, respectively. *Id.* at 31.

229. Because of at least some of the Defendants' compensation in Peabody Stock and ownership of Peabody Stock these Defendants had a conflict of interest which put them in the position of having to choose between their own interests as executives and stockholders, and

the interests of the Plans' Participants, whose interests Defendants were obligated to loyally serve with an "eye single" to the Plans. *See generally Mertens v. Hewitt Assoc.*, 508 U.S. 248, 251-52 (1993); 29 U.S.C. § 1104(a)(1)(B). These Defendants, while attempting to shore up Peabody Energy during the Class Period as its stock price inevitably plummeted, abandoned their duties to the Plans and their Participants, and failed to consider at any time during the Class Period what was in the best interest of the Plans and their Participants as they should have done as Plan fiduciaries.

230. Some Defendants may have had no choice in tying their compensation to Peabody Stock (because compensation decisions were out of their hands), but Defendants did have the choice of whether to keep the Plans' Participants' retirement savings tied up to a large extent in Peabody Stock or to take steps to protect the Plans and their Participants.

CLAIMS FOR RELIEF UNDER ERISA

231. At all relevant times, Defendants are/were and acted as fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

232. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), provides, in pertinent part, that a civil action may be brought by a participant for relief under ERISA § 409, 29 U.S.C. § 1109.

233. ERISA § 409(a), 29 U.S.C. § 1109(a), "Liability for Breach of Fiduciary Duty," provides, in pertinent part, that any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

234. ERISA §§ 404(a)(1)(A) and (B), 29 U.S.C. §§ 1104(a)(1)(A) and (B), provide, in pertinent part, that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and their beneficiaries, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

These fiduciary duties under ERISA §§ 404(a)(1)(A) and (B) are referred to as the duties of loyalty, exclusive purpose and prudence and, as courts within this Circuit have noted, these duties "have been described as 'the highest known to the law.'" *See, e.g.*, *Braden*, 588 at 598 (quoting *Donovan*, 680 F.2d at 272 n.8).

235. These duties entail, among other things:

(a) the duty to conduct an independent and thorough investigation into, and continually to monitor, the merits of all the investment alternatives of a plan;

(b) the duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an "eye single" to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor;

(c) the duty to disclose and inform, which encompasses: (i) a negative duty not to misinform; (ii) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (iii) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries.

236. ERISA § 405(a), 29 U.S.C. § 1105 (a), "Liability for breach by co-fiduciary," provides, in pertinent part, that:

> [I]n addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances: (A) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; (B) if, by his failure to comply with section 404(a)(1), 29 U.S.C. § 1104(a)(1), in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or (C) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

237. Plaintiff therefore brings this action under the authority of ERISA § 502(a) for Plan-wide relief under ERISA § 409(a) to recover losses sustained by the Plans arising out of the breaches of fiduciary duties by Defendants for violations under ERISA § 404(a)(1) and ERISA § 405(a).

COUNT I

FAILURE TO PRUDENTLY AND LOYALLY MANAGE THE PLANS' ASSETS (BREACHES OF FIDUCIARY DUTIES IN VIOLATION OF ERISA §§ 404 AND 405 BY THE COMPANY DEFENDANTS AND THE ADMINISTRATIVE COMMITTEE DEFENDANTS)

238. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

239. This Count alleges fiduciary breaches against the Company Defendants and the Administrative Committee Defendants (the "Prudence Defendants").

240. At all relevant times, as alleged above, the Prudence Defendants were fiduciaries of the Plans within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) in that they had

or exercised discretionary authority or control over the administration and/or management of the Plans and/or exercised any authority or control over the disposition of the Plans' assets.

241. Under ERISA, fiduciaries who have or exercise discretionary authority or control over management of a plan or exercise any authority or control over the disposition of a plan's assets are responsible for ensuring that all investment options made available to participants under a plan are prudent. Furthermore, such fiduciaries are responsible for ensuring that assets within the plan are prudently invested. The Prudence Defendants were responsible for ensuring that all investments in Company Stock in the Plans were prudent. The Prudence Defendants are liable for losses incurred as a result of such investments being imprudent.

242. A fiduciary's duty of loyalty and prudence requires it to disregard plan documents or directives that it knows or reasonably should know would lead to an imprudent result or would otherwise harm plan participants or beneficiaries. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). Thus, a fiduciary may not blindly follow plan documents or directives that would lead to an imprudent result or that would harm plan participants or beneficiaries, nor may it allow others, including those whom they direct, or who are directed by the plan, including plan trustees, to do so.

243. The Prudence Defendants' duty of loyalty and prudence also obligates them to speak truthfully to the Plans' Participants, not to mislead them regarding the Plans or its assets, and to disclose information that Participants need in order to exercise their rights and interests under the Plans. This duty to inform Participants includes an obligation to provide Participants with complete and accurate information, and to refrain from providing inaccurate or misleading information, or concealing material information, regarding the Plans' investments/investment

options such that Participants can make informed decisions with regard to the prudence of investing in such options made available under the Plans.

244. The Prudence Defendants breached their duties to prudently and loyally manage the Plans' assets. During the Class Period, the Prudence Defendants knew or should have known that, as described herein, Company Stock was not a suitable and appropriate investment for the Plans. Yet, during the Class Period, despite their knowledge of the imprudence of the investment, the Prudence Defendants failed to take any meaningful steps to protect Plans' Participants from the inevitable losses that they knew would ensue as the already-weakened Peabody Energy faced mounting losses as the core of its business model – the coal industry – became increasingly obsolete and its ultimate demise became more of a certainty.

245. The Prudence Defendants further breached their duties of loyalty and prudence by failing to divest the Plans of Company Stock during the Class Period when they knew or should have known that it was not a suitable and appropriate investment for the Plans.

246. The Prudence Defendants also breached their duties of loyalty and prudence by failing to provide complete and accurate information regarding the Company's true financial condition and, generally, by conveying inaccurate information regarding the Company's future outlook. During the Class Period, upon information and belief, the Company fostered a positive attitude toward Company Stock, and/or allowed Participants in the Plans to follow their natural bias towards investment in the equities of their employer by not disclosing negative material information concerning the imprudence of investment in Company Stock. As such, Participants in the Plans could not appreciate the true risks presented by investments in Company Stock and therefore could not make informed decisions regarding their investments in the Plans.

247. The Prudence Defendants also breached their co-fiduciary obligations by, among their other failures, knowingly participating in each other's failure to protect the Plans from inevitable losses. The Prudence Defendants had or should have had knowledge of such breaches by other fiduciaries of the Plans, yet made no effort to remedy them.

248. As a direct and proximate result of the breaches of fiduciary duties during the Class Period alleged herein, the Plans and, indirectly, Plaintiff and the Plans' other Participants and beneficiaries lost a significant portion of their retirement investments. Had the Prudence Defendants taken appropriate steps to comply with their fiduciary obligations during the Class Period, Participants could have liquidated some or all of their holdings in Company Stock and thereby eliminated, or at least reduced, losses to the Plans and themselves.

249. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a) and ERISA § 409, 29 U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count.

COUNT II

BREACH OF DUTY TO AVOID CONFLICTS OF INTEREST (BREACHES OF FIDUCIARY DUTIES IN VIOLATION OF ERISA §§ 404 AND 405 BY THE DIRECTOR DEFENDANTS)

250. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

251. This Count alleges fiduciary breaches against the Director Defendants (the "Conflicts of Interest Defendants").

252. At all relevant times, as alleged above, the Conflicts of Interest Defendants were fiduciaries of the Plans within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Consequently, they were bound by the duties of loyalty, exclusive purpose and prudence.

253. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), imposes on plan fiduciaries a duty of loyalty, that is, a duty to discharge their duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries.

254. During the Class Period, the Conflicts of Interest Defendants breached their duty to avoid conflicts of interest and to promptly resolve them by, *inter alia*: failing to timely engage independent fiduciaries who could make independent judgments concerning the Plans' investments in the Company's own securities; and by otherwise placing their own and/or the Company's interests above the interests of the Participants with respect to the Plans' investment in Company Stock.

255. As a consequence of the Conflicts of Interest Defendants' breaches of fiduciary duty during the Class Period, the Plans suffered tens of millions of dollars in losses, as their holdings of Company Stock were devastated. If the Conflicts of Interest Defendants had discharged their fiduciary duties to prudently manage and invest the Plans' assets, the losses suffered by the Plans would have been minimized or avoided.

256. Therefore, as a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans and, indirectly, Plaintiff and the Plans' other Participants, lost a significant portion of their retirement investments.

257. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a), and ERISA § 409, 29 U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count.

COUNT III

FAILURE TO ADEQUATELY MONITOR OTHER FIDUCIARIES AND PROVIDE THEM WITH COMPLETE AND ACCURATE INFORMATION

(BREACHES OF FIDUCIARY DUTIES IN VIOLATION OF ERISA § 404 BY THE COMPANY DEFENDANTS AND DIRECTOR DEFENDANTS)

258. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

259. This Count alleges fiduciary breaches against the Company and Director Defendants (the "Monitoring Defendants").

260. At all relevant times, as alleged above, the Monitoring Defendants were fiduciaries of the Plans, within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

261. As alleged above, the scope of the fiduciary responsibilities of the Monitoring Defendants included the responsibility to appoint, remove, and, thus, monitor the performance of other Plan fiduciaries.

262. Under ERISA, a monitoring fiduciary must ensure that monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment and holding of a plan's assets, and must take prompt and effective action to protect the plan and participants when they are not.

263. The monitoring duty further requires that appointing fiduciaries have procedures in place so that on an ongoing basis they may review and evaluate whether the "hands-on" fiduciaries are doing an adequate job (for example, by requiring periodic reports on their work and the plan's performance, and by ensuring that they have a prudent process for obtaining the information and resources they need). In the absence of a sensible process for monitoring their appointees, the appointing fiduciaries would have no basis for prudently concluding that their appointees were faithfully and effectively performing their obligations to the plan's participants or for deciding whether to retain or remove them.

264. Furthermore, a monitoring fiduciary must provide the monitored fiduciaries with complete and accurate information in their possession that they know or reasonably should know that the monitored fiduciaries must have in order to prudently manage the plan and the plan's assets, or that may have an extreme impact on the plan and the fiduciaries' investment decisions regarding the plan.

265. During the Class Period, the Monitoring Defendants breached their fiduciary monitoring duties by, among other things:

(a) failing, at least with respect to the Plans' investment in Company Stock, to properly monitor their appointee(s), to properly evaluate their performance, or to have any proper system in place for doing so, and standing idly by as the Plans suffered enormous losses as a result of the appointees' imprudent actions and inaction with respect to Company Stock;

(b) failing to ensure that the monitored fiduciaries appreciated the true extent of the Company's precarious financial situation and the likely impact that financial failure would have on the value of the Plans' investment in Company Stock;

(c) to the extent any appointee lacked such information, failing to provide complete and accurate information to all of their appointees such that they could make sufficiently informed fiduciary decisions with respect to the Plans' assets and, in particular, the Plans' investment in Company Stock; and

(d) failing to remove appointees whose performance was inadequate in that they continued to permit the Plans to make and maintain investments in the Company Stock despite the practices that rendered it an imprudent investment during the Class Period.

266. As a consequence of the Monitoring Defendants' breaches of fiduciary duty, the Plans suffered tremendous losses. If the Monitoring Defendants had discharged their fiduciary monitoring duties as described above, the losses suffered by the Plans would have been minimized or avoided.

267. The Monitoring Defendants are liable as co-fiduciaries because they knowingly participated in each other's fiduciary breaches as well as those by the monitored fiduciaries, they enabled the breaches by those Defendants, and they failed to make any effort to remedy these breaches despite having knowledge of them.

268. Therefore, as a direct and proximate result of the breaches of fiduciary duty by the Monitoring Defendants during the Class Period alleged herein, the Plans and, indirectly, Plaintiff and the Plans' other Participants and beneficiaries, lost tens of millions of dollars of retirement savings.

269. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109, 1132(a)(2) and (a)(3), the Monitoring Defendants are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

CAUSATION

270. The total Peabody Stock price collapse of over 88% as of the filing of the instant complaint, which devastated the Plans' assets, could have and would have been avoided in whole or in part by Defendants complying with their ERISA fiduciary duties. Defendants could have

taken certain actions based on the publicly known information alone such as, and not limited to: investigating whether Peabody Stock was a prudent retirement investment; retaining outside advisors to consult them or to act as fiduciaries; seeking guidance from governmental agencies (such as the DOL or SEC); resigning as fiduciaries of the Plans; stopping or limiting additional purchases of Peabody Stock by the Plans; and/or by divesting the Peabody Stock held by the Plans.

271. Despite these and other options, Defendants – who knew or should have known that Peabody Stock was an imprudent retirement investment – chose to, as fiduciaries, continue allowing the Plans to acquire further Peabody Stock, while taking no action to protect their wards as Peabody Energy's condition worsened and the Plans' Participants' retirement savings were decimated. Prudent fiduciaries would have acted otherwise and taken appropriate actions to protect the Plans and their Participants.

272. To the extent Defendants wanted to take action based on non-publicly disclosed information that they were privy to, the following alternative options – which are pled as alternative statements under FED. R. CIV. P. 8(d)(2) to the extent they are inconsistent – were available to Defendants and (a) could have been done without violating securities laws or any other laws, (b) should have been done to fulfill Defendants' fiduciary obligations under ERISA, and (c) would not have been more likely to harm the Plans than to help it.

273. First, Defendants could have and should have directed that all Company and Participant contributions to the Peabody Stock Fund be held in cash rather than be used to purchase Peabody Stock. The refusal to purchase Company Stock for the Peabody Stock Fund is not a "transaction" within the meaning of insider trading prohibitions. This action would not

have required any independent disclosures that could have had a materially adverse effect on the price of Peabody Stock.

274. Alternatively, Defendants should have closed the Peabody Stock Fund itself to further contributions and directed that contributions be diverted from the Company Stock Fund into other (prudent) investment options or, if there were no such instructions, the Plans' default investment option.

275. Additionally, and importantly, because Defendants could and should have concluded that Peabody Stock was an imprudent retirement savings vehicle based solely upon public information, no disclosure was required before conducting an orderly liquidation of the Plans' holdings.

276. Defendants also could have:

- sought guidance from the DOL or SEC as to what they should have done;
- resigned as fiduciaries of the Plans to the extent they could not act loyally and prudently; and/or
- retained outside experts to serve either as advisors or as independent fiduciaries specifically for the Plans and not the Company in general.

277. The Plans suffered millions of dollars in losses during the Class Period because substantial assets of the Plans were imprudently invested, or allowed to be invested, by Defendants in Company Stock during the Class Period, in breach of Defendants' fiduciary duties, as reflected in the diminished account balances of the Plans' Participants.

278. Had Defendants properly discharged their fiduciary and/or co-fiduciary duties, the Plans and their Participants would have avoided a substantial portion of the losses that they suffered through the Plans' continued investment in Company Stock.

279. Given the totality of circumstances prevailing during the Class Period, no prudent fiduciary would have made the same decision to retain the clearly imprudent Peabody Stock as an investment in the Plans.

280. Despite the availability of these and other options, Defendants took no meaningful action during the Class Period to protect the Plans' Participants from losses as a result of the Company Stock's imprudence until it was too late to make any substantial difference.

REMEDIES FOR BREACHES OF FIDUCIARY DUTY

281. As noted above, as a consequence of Defendants' breaches, the Plans suffered significant losses.

282. ERISA § 502(a), 29 U.S.C. § 1132(a) authorizes a plan participant to bring a civil action for appropriate relief under ERISA § 409, 29 U.S.C. § 1109. Section 409 requires "any person who is a fiduciary . . . who breaches any of the . . . duties imposed upon fiduciaries . . . to make good to such plan any losses to the plan…." Section 409 also authorizes "such other equitable or remedial relief as the court may deem appropriate…."

283. With respect to calculation of the losses to a plan, breaches of fiduciary duty result in a presumption that, but for the breaches of fiduciary duty, the Participants in the Plans would not have made or maintained its investments in the challenged investment and, where alternative investments were available, that the investments made or maintained in the challenged investment would have instead been made in the most profitable alternative investment available. In this way, the remedy restores the values of the Plans' assets to what they would have been if the Plans had been properly administered.

284. Plaintiff, the Plans, and the Class are therefore entitled to relief from Defendants in the form of: (1) a monetary payment to the Plans to make good to the Plans the losses to the Plans resulting from the breaches of fiduciary duties alleged above in an amount to be proven at

trial based on the principles described above, as provided by ERISA § 409(a), 29 U.S.C. § 1109(a); (2) injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by ERISA §§ 409(a) and 502(a), 29 U.S.C. §§ 1109(a) and 1132(a); (3) reasonable attorney fees and expenses, as provided by ERISA § 502(g), 29 U.S.C. § 1132(g), the common fund doctrine, and other applicable law; (4) taxable costs; (5) interests on these amounts, as provided by law; and (6) such other legal or equitable relief as may be just and proper.

285. Each Defendant is jointly and severally liable for the acts of the other Defendants as a co-fiduciary.

JURY DEMAND

Plaintiff demands a jury.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. A Judgment that the Defendants, and each of them, breached their ERISA fiduciary duties to the Participants during the Class Period;

B. A Judgment compelling the Defendants to make good to the Plans all losses to the Plans resulting from Defendants' breaches of their fiduciary duties, including losses to the Plans resulting from imprudent investment of the Plans' assets, and to restore to the Plans all profits the Defendants made through use of the Plans' assets, and to restore to the Plans all profits which the Participants would have made if the Defendants had fulfilled their fiduciary obligations;

C. A Judgment imposing a Constructive Trust on any amounts by which any Defendant was unjustly enriched at the expense of the Plans as the result of breaches of fiduciary duty;

D. A Judgment awarding actual damages in the amount of any losses the Plans suffered, to be allocated among the Plans' Participants' individual accounts in proportion to the accounts' losses;

E. A Judgment requiring that Defendants allocate the Plans' recoveries to the accounts of all of the Plans' Participants who had any portion of their account balances invested in Peabody Stock maintained by the Plans in proportion to the accounts' losses attributable to the decline in the price of Peabody Stock;

F. A Judgment awarding costs pursuant to 29 U.S.C. § 1132(g);

G. A Judgment awarding attorneys' fees pursuant to 29 U.S.C. § 1132(g) and the common fund doctrine; and

H. A Judgment awarding equitable restitution and other appropriate equitable monetary relief against the Defendants.

Dated: June 11, 2015

Respectfully submitted,

DYSART TAYLOR COTTER MCMONIGLE & MONTEMORE, P.C.

By: */s/ Don R. Lolli*
Don R. Lolli #56263MO
4420 Madison Avenue, Suite 200
Kansas City, MO 64111
Telephone: (816) 931-2700
Facsimile: (816) 931-7377
Email: dlolli@dysarttaylor.com

KESSLER TOPAZ MELTZER & CHECK LLP
Edward W. Ciolko
Donna Siegel Moffa
Mark K. Gyandoh
Julie Siebert-Johnson
280 King Of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056
Email: eciolko@ktmc.com
dmoffa@ktmc.com
mgyandoh@ktmc.com
jsjohnson@ktmc.com

Counsel for Plaintiff