FOUNDATION COAL
CORPORATION

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LETTER OF COMMENT NO. 98

August 8, 2008

VIA EMAIL

Technical Director
File Reference No. 1600-100
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: **File Reference No. 1600-100,** Proposed Statement of Financial Accounting Standards – *Disclosure of Certain Loss Contingencies*, an amendment of FASB Statements No. 5 and 141 (R) (the "Exposure Draft")

Dear Sir or Madam:

Foundation Coal Corporation appreciates the opportunity to comment on the above-referenced Exposure Draft. We have significant concerns about some of the proposed changes and the likely adverse ramifications thereof, which we believe outweigh any marginal benefits to financial statement users. We share the concerns articulated by other commentators, including as stated in the July 25, 2008 comment letter submitted by the Association of Corporate Counsel, and thus we will simply highlight some of the more significant points below.

The new disclosures contemplated by the Exposure Draft, specifically with respect to loss contingencies arising from pending or anticipated litigation, would undermine the important protections afforded to attorney work product and jeopardize the privilege afforded to attorney-client communications. Information regarding matters such as a "description of the factors that are likely to affect the ultimate outcome" or a "qualitative assessment of the most likely outcome" (including assumptions made in estimating the maximum exposure or in assessing the most likely outcome) inherently constitute or depend upon attorney opinion work product. Legal opinions of this nature should not be the subject of disclosure requirements for financial reporting purposes.

A company's best estimate of the maximum exposure to loss or a range of loss is a product of, and would otherwise reveal, the mental impressions and conclusions of the attorney in evaluating the specific legal claim or loss contingency. Information of this nature, which necessarily would be prepared in anticipation or because of litigation, ordinarily would be legally protected from discovery and disclosure as opinion work product and/or as privileged

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attorney-client communications. The Exposure Draft, by requiring disclosure of such information, directly conflicts with this fundamental principle of American law.

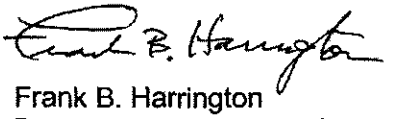
The proposed exemption limiting disclosure of information that could be prejudicial to the company's position with respect to the outcome of a contingency does not effectively avoid the serious problems we and other commentators have described with respect to the potential for mandating disclosure of otherwise privileged communications. The proposed requirement that the company reveal its justification for invoking the exemption will in most circumstances be prejudicial itself and could create even greater confusion and uncertainty in the mind of the user of the financial statements with respect to the loss contingency. Furthermore, the suggestion that the exemption should be invoked only "rarely" tends to eviscerate its efficacy in addressing the concerns about disclosure of privileged legal advice. This approach also creates considerable uncertainty about proper utilization of the exemption and is not likely to be construed consistently.

We also have significant concerns about requiring disclosure of the amount of a claim or assessment against the entity, or, if there is no claim or assessment amount, the entity's best estimate of the maximum possible exposure to loss. We do not believe that this change would result in an improvement in the reporting of quantitative information about loss contingencies. The amount of a claim frequently is stated by the claimant either to satisfy jurisdictional or pleading requirements or to provide an exaggerated value to their claim. Given this reality, requiring disclosure of such information is not likely to be helpful and is more likely to create undue confusion and concern. Moreover, if a loss contingency does not have a specific claim amount associated with it, which is common (and often legally required for unliquidated claims), entities may generally not be able to provide a reliable estimate of the maximum exposure to loss that is meaningful to users. Requiring entities to disclose "guesstimates" of this nature would not give users of financial statements reliable information. Furthermore, such estimates typically would represent the opinion work product of the attorney handling the specific claim or contingency and, as such, disclosure should never be required as a matter of financial reporting. The disclosure of an entity's "best estimate" of a loss amount would not only prejudice its position in litigation, but also would jeopardize its ability to settle claims amicably. Moreover, mandating this type of disclosure most likely would increase the cost of settling, thereby adversely affecting the interests of the company and its stakeholders.

In addition, we do not believe it would be beneficial to mandate disclosure of the amount of settlement offers. The specific disclosure of settlement offers could have a chilling effect on pending settlement negotiations and would be prejudicial to the prospect of settling the claim in question or other pending contingencies. Settlements typically include a confidentiality clause so as to protect the company from having settlement amounts used against it by other existing or potential claimants. Such information, therefore, should not be made publicly available, and accounting disclosure requirements should not be imposed in a manner which tends to interfere with a company's ability to resolve claims and contingencies through settlement.

In summary, we believe the likely harmful effects of the proposed changes to companies faced with pending or potential litigation significantly outweigh any potential benefits, which we view as marginal at best given the speculative and largely unreliable information that the proposal would require companies to disclose.

Very truly yours,



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