

**IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA**

**ALEX ENERGY, INC., d/b/a EDWIGHT  
MINING COMPANY, a West Virginia  
corporation, INDEPENDENCE COAL  
COMPANY, INC., a West Virginia corporation,  
and MARFORK COAL COMPANY, INC., a  
West Virginia corporation,**

**Plaintiffs,**

**v.**

**CIVIL ACTION NO. \_\_\_\_\_**

**ANTRIM LAURA CASKEY, GLEN COLLINS,  
JAMES GERARD MCGUINNESS, RORY MCILMOIL,  
MICHAEL LEE ROSELLE, and CHAD STEVENS,**

**Defendants.**

**VERIFIED COMPLAINT**

Plaintiffs, Alex Energy, Inc., d/b/a Edwight Mining Company, Independence Coal Company, Inc., and Marfork Coal Company, Inc. (collectively referred to as "Plaintiffs"), by and through their undersigned counsel, hereby state as follows for their Verified Complaint against the above-named defendants ("Defendants") in this matter:

**PARTIES**

1. Alex Energy, Inc., d/b/a Edwight Mining Company ("Alex Energy"), a corporation organized and existing under the laws of the State of West Virginia, is engaged in the production and sale of coal.
2. Independence Coal Company, Inc. ("Independence"), a corporation organized and existing under the laws of the State of West Virginia, is engaged in the production and sale of coal.

3. Marfork Coal Company, Inc. ("Marfork"), a corporation organized and existing under the laws of the State of West Virginia, is engaged in the production and sale of coal.

4. Defendant Antrim Laura Caskey is, upon information and belief, a resident of New York and is currently living in Rock Creek, West Virginia.

5. Defendant Glen Collins is, upon information and belief, a resident of Rock Creek, West Virginia.

6. Defendant James Gerard McGuinness is, upon information and belief, a resident of Montegut, Louisiana and is currently living in Rock Creek, West Virginia.

7. Defendant Rory McIlmoil is, upon information and belief, a resident of Locust Grove, Virginia.

8. Defendant Michael Lee Roselle is, upon information and belief, a resident of Forrestville, California and is currently living in Rock Creek, West Virginia.

9. Defendant Chad Stevens is, upon information and belief, a resident of Athens, Ohio.

#### **JURISDICTION**

10. Jurisdiction in this matter is proper under W. Va. Code §§ 53-5-4 and 56-3-33 and otherwise falls within the Court's general jurisdiction and authority.

#### **VENUE**

11. Venue is proper under W. Va. Code § 56-1-1 because the acts complained of in Plaintiffs' Verified Complaint occurred in Raleigh County, West Virginia.

## FACTS

12. The instant Complaint arises from Defendants' trespass upon the Beetree Surface Mine and continued trespass upon the Edwight Surface Mine.

13. The Beetree Surface Mine is located on Coal River Mountain in Raleigh County, West Virginia, and sits adjacent to the Edwight Surface Mine.

14. By Deed of Lease dated January 1, 1958, Western Pocahontas Corporation, the owner of the Beetree Surface Mine property, leased all coal mining rights for such property to Truax-Traer Coal Company. By various amendments, supplements and assignments said lease and mining rights are vested in Black King Mine Development Co. ("Black King") by Assignment of Deed of Lease between Primeacre Land Corporation and Black King dated August 12, 1992.

15. By Agreement of Sublease dated August 1, 1994 as thereafter amended, Black King leased the mining rights for the Beetree Surface Mine property to Marfork. Marfork obtained the mining permits and conducts the mining operations.

16. Notably, Black King and Marfork are corporate subsidiary entities owned by A.T. Massey Coal Company, Inc. ("A.T. Massey") which is owned by Massey Energy Company ("Massey Energy").

17. The Edwight Surface Mine is located on Cherry Pond Mountain in Raleigh County, West Virginia.

18. By Lease Agreement dated February 1, 1984, Rowland Land Company, LTD ("Rowland"), the owner of the Edwight Surface Mine property, leased all coal mining rights for such property to Peabody Coal Company ("Peabody"). By Rowland Lease Assignment and Assumption Agreement (the "Assignment") dated October 15, 1994, Peabody assigned a portion

of its lease and mining rights to Ceres Land Company ("Ceres") and Ceres assumed the rights and obligations to mine the Edwight Surface Mine.

19. By Subleases dated February 20, 1996 and March 1, 2005, Ceres leased such certain mining rights for the Edwight Surface Mine property to Independence and Marfork, respectively. Independence's affiliated company Alex Energy, Inc., d/b/a Edwight Mining Company obtained the mining permits and conducts the mining operations at the Edwight Surface Mine.

20. Notably, Ceres, Independence, Marfork, and Alex Energy are all corporate subsidiary entities owned by A.T. Massey, which is owned by Massey Energy.

21. Presently, the mine permits for the Edwight Surface Mine are held by Alex Energy, pursuant to which Alex Energy operates the Edwight Surface Mine as authorized by state and federal law. Moreover, pursuant to the various leases, assignments and assumptions, subleases and other instruments, Independence, Marfork, and Alex Energy possess certain interests in the surface rights of the Edwight Surface Mine property, including the rights of possession and use of the property at issue.

22. At the Edwight Surface Mine, Plaintiffs engage in, among other lawful activities, the use of explosives to blast rock and coal, as well as the removal of rock and coal using large pieces of mechanized equipment, including, but not limited to, rock trucks, excavators, and bulldozers. The Edwight Surface Mine also contains a network of mine pits and haul roads upon which this equipment travels and is used by mine personnel.

23. In compliance with state and federal mining rules and regulations, Plaintiffs provide all mining personnel operating at the Beetree Surface Mine and Edwight Surface Mine

with the legally mandated safety training and equipment to ensure the safe performance of coal mining activities.

24. All access roads onto the Edwight Surface Mine property have locked gates and are manned by security personnel. Plaintiffs' security personnel ensure that all visitors to the Edwight Surface Mine are aware of the safety rules and regulations, including safety guidelines for blasting.

25. On or about February 3, 2009, Defendants Collins, McGuiness, McIlmoil, Roselle and Stevens (and presently unknown or uncertain others) knowingly, intentionally, unlawfully, and without the permission of Marfork, entered the Beetree Surface Mine property. Upon information and belief, Defendants McGuiness and Roselle organized the February 3, 2009, entry onto the Beetree Surface Mine property.

26. Defendants Roselle and McGuiness are members of the environmentalist group Climate Ground Zero. Upon information and belief, through its membership and through Defendants Roselle and McGuiness, Climate Ground Zero advocates the abolition of mountain top mining.

27. Defendants' intentional and unlawful activities of February 3, 2009 were orchestrated by themselves and others so as to be videotaped from a helicopter. The videotape recording and/or photographic images from the videotape was later published on and uploaded to various websites, including but not limited to Youtube ([www.youtube.com](http://www.youtube.com)) and the Climate Ground Zero website ([www.climategroundzero.org](http://www.climategroundzero.org)). Upon information and belief, by publicizing their intentional and unlawful entry onto the Beetree Surface Mine and subsequent trespasses onto the Edwight Surface Mine property, Defendants hope to raise support for their purported cause – the abolition of mountain top mining – and encourage third parties to engage

in similar unsafe, disruptive, and unlawful activities on privately owned mine properties affiliated with A.T Massey and Massey Energy.

28. On or about February 3, 2009, once Defendants Collins, McGuinness, McIlmoil, Roselle, and Stevens entered onto the Beetree Surface Mine property, Defendants Collins, McGuinness, McIlmoil, and Roselle chained themselves to a bulldozer and excavator. Defendants displayed a painted banner stating "SAVE COAL RIVER MOUNTAIN." Upon information and belief, Defendant Stevens videotaped and/or photographed the unlawful activities (and others unknown or uncertain videotaped and/or photographed the unlawful activities from the helicopter).

29. In the process of chaining themselves to Marfork's mining equipment, Defendants Collins, McGuinness, McIlmoil, Roselle, and Stevens blocked an access road on the Beetree Surface Mine property, an area that even for trained miners is clearly regulated. In blocking the access road, Defendants restricted Marfork's exclusive use and possession of the Beetree Surface Mine property and, by unlawfully tampering or otherwise tortiously interfering with mining equipment, Defendants exposed themselves and future equipment operators to a substantial risk of severe physical injury or death.

30. Once Defendants Collins, McGuinness, McIlmoil, Roselle, and Stevens were discovered by security personnel, Defendants were informed that they were trespassing on privately owned property, advised of the risks in wandering around a mine site without protective equipment or safety and hazard recognition training, and asked to vacate the premises.

31. Despite repeated requests by Marfork's security personnel that Defendants cease and desist their unlawful activities and vacate the Surface Mine property peacefully, Defendants refused to comply.

32. After Defendants failed to respond to Marfork's requests, Marfork security personnel contacted the West Virginia State Police ("State Police").

33. Defendants Collins, McGuiness, McIlmoil, Roselle, and Stevens (and others) were removed from the Beetree Surface Mine property by the State Police and individually cited for misdemeanor trespass.

34. Despite having been cited by the State Police for misdemeanor trespass, Defendant Roselle has unequivocally represented that he and his associates will continue to enter onto mine property affiliated with A.T. Massey and Massey Energy. Defendant Roselle, who has compared his environmentalist agenda and activism campaign to "Jihad," has stated that "[c]ertainly you can expect to see more civil disobedience if this blasting on Coal River Mountain proceeds."

35. Consistent with Defendant Roselle's stated plan of operating outside the constraints of the law, on or about February 16, 2009, Defendants McGuiness and Roselle, accompanied by unknown or uncertain others, including photographers and/or videographers, entered onto the Edwight Surface Mine. Upon information and belief, one of the photographers or videographers accompanying Defendants McGuiness and Roselle was Defendant Caskey, who videotaped and/or photographed Defendants' intentional and unlawful entry onto the Edwight Surface Mine.

36. On or about February 16, 2009, Defendants McGuiness, Roselle, and, upon information and belief, Caskey knowingly, intentionally, unlawfully, and without the permission of Plaintiffs, entered onto the Edwight Surface Mine. Upon information and belief, prior to entering onto the Edwight Surface Mine, Defendants McGuiness and Roselle posted a press

release on the Climate Ground Zero website ([www.climategroundzero.org](http://www.climategroundzero.org)) announcing their unlawful trespass onto the Edwight Surface Mine property.

37. Equipped with two lengths of chain and locks, Defendants McGuiness and Roselle intended to chain themselves to a drill rig, a piece of machinery used in blasting operations. The risk of severe bodily injury and the very real possibility of death associated with Defendants' intended goal of chaining themselves to, or otherwise tampering with, a piece of equipment that facilitates the discharge of explosives is patently obvious.

38. During the course of this unauthorized and unlawful expedition, Defendants McGuiness and Roselle changed course and instead blocked an access road on the Edwight Surface Mine, an undertaking that is no less infused with the risk of serious bodily injury or death. In total disregard to their personal safety and that of Plaintiffs' mining personnel and contract personnel, Defendants McGuiness and Roselle stood and sat in the roadway in front of a large truck and displayed a painted banner stating "Windmills Not Landfills." Defendants thereby knowingly and intentionally prevented the truck from moving and unloading blasted rock, forcing the equipment operator to idle the equipment, with a cargo load, at a steep road surface. Defendants' actions also prevented other, similar work in the area. Upon information and belief, Defendant Caskey (and unknown and uncertain others) remained in the area to videograph and/or photograph the unlawful actions of Defendants McGuiness and Roselle.

39. Plaintiffs' security personnel informed Defendants McGuiness, Roselle and Caskey (and others) that they were trespassing on privately owned property, advised them of the blasting and mining operations being conducted at the Edwight Surface Mine, and asked Defendants to vacate the premises.

40. Despite repeated requests by Plaintiffs' security personnel that Defendants cease and desist their unlawful activities and vacate the Edwight Surface Mine peacefully, Defendants McGuiness, Roselle and, upon information and belief, Defendant Caskey (and others) refused to comply.

41. In order to prevent any injury to Defendants McGuiness, Roselle, and Caskey (and others), coal production ceased.

42. State Police were again called by Plaintiffs. Defendants McGuiness and Roselle were again cited by the State Police for misdemeanor trespass and again released. Upon information and belief, Defendant Caskey (and others) fled.

43. In commenting on the February 16, 2009, citation issued by State Police, which carries a penalty of \$100.00, Defendant Roselle stated that "[they] have no intention of paying any fines." Defendant Roselle has unequivocally established that the purported cause espoused by himself and his associates – the abolition of mountain top mining – will be accomplished "by any means necessary." Defendant Roselle has further represented that the accomplishment of that cause will not be constrained by the laws of the State of West Virginia, because "[w]hen you run out of ways to get things done, you have to cross the line."

44. Defendants have further represented that, despite the citations issued by the State Police for misdemeanor trespass, Defendants will not be deterred by the imposition of a monetary fine or the prospect of serving a jail sentence, but will continue to intentionally and unlawfully come onto the subject mine property until Plaintiffs cease their mountain top mining operations.

45. As was the case with Defendants' trespass onto the Beetree Surface Mine, a videotape recording and photographs from the videotape of Defendants McGuiness and

Roselle's intentional and unlawful entry onto the Edwight Surface Mine were later published on and uploaded to various websites, including but not limited to Youtube ([www.youtube.com](http://www.youtube.com)) and the Climate Ground Zero website ([www.climategroundzero.org](http://www.climategroundzero.org)). Upon information and belief, by publicizing their intentional and unlawful entry onto the Edwight Surface Mine, Defendants hope to raise support for their purported cause and encourage third parties to engage in similar unsafe, disruptive and unlawful activities on privately owned mine property affiliated with A.T. Massey and Massey Energy.

46. On February 25, 2009, Defendants McGuiness, Roselle and Caskey entered the Edwight Surface Mine. Until Defendants were discovered by Plaintiffs' security personnel, Plaintiffs were unaware of the presence of Defendants McGuiness, Roselle, and Caskey. By wandering around an active surface mine site, Defendants placed themselves, as well Plaintiffs' mining personnel and contract personnel, at substantial risk of sustaining severe physical injury.

47. Defendants McGuiness, Roselle and Caskey knowingly, intentionally, unlawfully, and without the permission of Plaintiffs again came onto the Edwight Surface Mine.

48. Once on the Edwight Surface Mine property, Defendants McGuiness and Roselle lay in the middle of an access road next to a painted banner stating "SAVE COAL RIVER MOUNTAIN." Defendant Caskey videographed and/or photographed Defendants McGuiness and Roselle as they lay in the middle of the access road, blocking traffic and heavy equipment on the Edwight Surface Mine and otherwise prevented mining operations in the area because of their unlawful presence and activities.

49. Plaintiffs' security personnel again informed Defendants McGuiness, Roselle and Caskey that they were trespassing on privately owned property, advised them of the blasting and

mining operations being conducted at the Edwight Surface Mine, and told Defendants to vacate the premises.

50. Despite repeated requests made by Plaintiffs' security personnel that Defendants vacate the Edwight Surface Mine peacefully, Defendants again refused to comply.

51. In order to prevent any injury to Defendants, coal production operations ceased.

52. Instead of peacefully vacating the Edwight Surface Mine property, Defendants McGuinness and Roselle became aggressive, confrontational, and belligerent toward Plaintiffs' personnel in an attempt, upon information and belief, to draw Plaintiffs' personnel into a violent encounter with the hope of drawing attention to Defendants' purported cause.

53. For the second time in less than a month, Plaintiffs were forced to call the State Police to remove Defendants from the Edwight Surface Mine. Defendants McGuinness, Roselle and Caskey were cited by the State Police for misdemeanor trespass and released. Notably, this was the third time in less than a month that a Massey-affiliated operation was forced to call the State Police to remove Defendants from private property.

54. At no time while Defendants were trespassing on the Beetree Surface Mine property or Edwight Surface Mine property were any of the Defendants wearing state or federally mandated protective equipment that is required for even trained mining personnel.

55. Upon information and belief, Defendants have not been certified by state or federal mining authorities or undergone safety or hazard recognition training required by state and federal mining authorities for mining personnel.

56. By knowingly, intentionally, and unlawfully coming onto the Beetree Surface Mine and Edwight Surface Mine properties without consent or permission, Defendants have and will continue to:

a. Place themselves at substantial risk of sustaining severe physical injury from explosions or falling rock by traveling in areas where Plaintiffs, unaware of Defendants' presence, are blasting;

b. Place themselves at substantial risk of sustaining severe physical injury from heavy operational machinery in areas where Plaintiffs, unaware of Defendants' presence, are conducting mining operations and coal production;

c. Place themselves and Plaintiffs' personnel and contract personnel at substantial risk of sustaining severe physical injury by unlawfully tampering or otherwise tortiously interfering with mining equipment;

d. Place Plaintiffs' personnel and contract personnel at substantial risk of sustaining severe physical injury from having to maneuver heavy operational machinery in an emergency situation to avoid Defendants blocking the roadways;

e. Place Plaintiffs' personnel and contracting personnel at substantial risk of sustaining severe physical injury from having to focus their attention not on their assigned tasks, but on whether Defendants have wandered into an area where severe physical injury could result either from blasting, mining operations, or coal production.

57. By knowingly, intentionally, and unlawfully coming onto the Beetree Surface Mine and Edwight Surface Mine properties without consent or permission, Defendants have and will continue to:

a. Deprive Plaintiffs of the exclusive possession of the Beetree Surface Mine and Edwight Surface Mine properties;

b. Substantially, unreasonably, and unlawfully interfere with Plaintiffs' beneficial use of the subject properties, to-wit, the mining of coal;

c. Substantially, unreasonably, and unlawfully interfere with the productive use of the Edwight Surface Mine by slowing and/or stopping the production of coal;

d. Substantially, unreasonably, and unlawfully interfere with Plaintiffs' ability to produce coal;

e. Substantially, unreasonably, and unlawfully interfere with Plaintiffs' coal mining businesses by increasing the operating costs through unexpected, unanticipated, and unavoidable delays associated with Plaintiffs' cessation of blasting, mining, and production activities to protect Defendants from harm while they are unlawfully trespassing on the Edwight Surface Mine property.

58. If the knowing, intentional, and unlawful entry of Defendants onto the Beetree Surface Mine and Edwight Surface Mine and other illegal activities of Defendants pled herein continue, such activities will impact Plaintiffs' ability to engage in their business operations.

59. If the knowing, intentional, and unlawful entry of Defendants onto the subject properties and other illegal activities of Defendants pled herein continue, then such activities shall continue to place Defendants, as well as Plaintiffs' personnel and contract personnel, at substantial risk for severe physical injury or death; force Plaintiffs' personnel to focus on the possibility of random acts in various and random areas on the Beetree Surface Mine and Edwight Surface Mine, creating operational safety problems the risk of which is significant; and interfere with Plaintiffs' coal production operations at the Edwight Surface Mine, thereby causing irreparable economic harm incapable of calculation or reparation through an award of damages.

60. Plaintiffs have suffered irreparable harm and injury as a consequence of the knowing, intentional, and unlawful entry of Defendants onto the Beetree Surface Mine and Edwight Surface Mine and other illegal activities of Defendants pled herein, and unless such

activities are enjoined by this Court, Plaintiffs will continue to sustain substantial and irreparable harm on account of the conduct of Defendants. With the announced intentions and agenda of Defendants, the wrongful conduct of Defendants is of a continuing nature and would require a multiplicity of lawsuits to protect Plaintiffs' rights at law, for which damage Plaintiffs have no adequate remedy at law.

61. Greater injury and harm will be sustained by Plaintiffs as a consequence of the denial of injunctive relief than will be imposed upon Defendants through the granting of such injunctive relief to Plaintiffs.

62. Plaintiffs will likely succeed on the merits of their Complaint, making imposition of injunctive relief appropriate in this case. In fact, Defendants have no defense. They have announced to whoever will listen that they are trespassing and will continue to trespass.

63. Injunctive relief is also appropriate in this case because Defendants have represented that, despite citations issued by the State Police for misdemeanor trespass, they will not be deterred or constrained by the State of West Virginia's criminal code, imposition of a monetary fine, or the prospect of serving a jail sentence, but will continue to intentionally and unlawfully come onto the Beetree Surface Mine and Edwight Surface Mine, and other A.T. Massey and Massey Energy affiliated properties until Plaintiffs mountain top mining operations cease.

#### **COUNT I – TRESPASS**

64. Plaintiffs adopt and incorporate by reference the allegations of all relevant preceding paragraphs of the Complaint as if fully set forth herein.

65. Plaintiffs are, and at all relevant times complained of herein have been, in lawful possession of and have the right to use the Edwight Surface Mine located on Cherry Pond Mountain in Raleigh, West Virginia for their own benefit.

66. Plaintiff Marfork is, and at all relevant times complained of herein has been, in lawful possession of and has the right to use the Beetree Surface Mine located on Coal River Mountain in Raleigh, West Virginia for its own benefit.

67. At all times complained of herein, Defendants have entered onto the Beetree Surface Mine and Edwight Surface Mine knowing that said properties are private property in the lawful possession of Plaintiffs.

68. At all times complained of herein, Defendants' knowing, intentional, and unlawful entry onto the subject properties was without the permission and consent of Plaintiffs or any other person who could grant such permission..

69. Through their knowing, intentional, and unlawful entry onto the Beetree Surface Mine and Edwight Surface Mine properties, Defendants have proximately caused Plaintiffs irreparable injury by tortiously interfering with Plaintiffs' use of the property, including blasting, mining, and coal production operations, resulting in damages that are incapable of calculation in or compensation by monetary damage and placing Defendants as well as Plaintiffs' employees at risk for substantial physical injuries.

70. Absent injunctive relief from this Court, Defendants' intentional and unlawful physical entry onto the Beetree Surface Mine and Edwight Surface Mine properties will continue, and thereby continue to cause irreparable harm to Plaintiffs.

**COUNT II – TORTIOUS INTERFERENCE  
WITH BUSINESSES RELATIONSHIPS**

71. Plaintiffs adopt and incorporate by reference the allegations of all relevant preceding paragraphs of the Complaint as if fully set forth herein.

72. Plaintiffs are engaged in the business of producing and selling coal.

73. Plaintiffs have existing contracts with third parties for the sale of coal and otherwise are in the business of marketing and selling coal to other buyers.

74. At all times complained of herein, Defendants desired to interfere with or knew that interference with Plaintiffs' performance of their contractual duties and obligations was certain or substantially certain to occur as a result of Defendants' actions.

75. At all times complained of herein, Defendants intentionally and improperly interfered with Plaintiffs' performance of their contractual duties and obligations by trespassing on the Edwight Surface Mine and preventing and attempting to prevent Plaintiffs from engaging in the production of coal for sale.

76. At all times complained of herein, Defendants intentionally and improperly interfered with Plaintiffs' performance of their contractual duties and obligations by trespassing on the Edwight Surface Mine, thereby causing Plaintiffs to perform their contractual duties and obligations with third parties at increased cost and substantial burden.

77. As a result of Defendants' intentional and improper interference with Plaintiffs' performance of their contractual duties and obligations, as well as Plaintiffs' prospective business relationships, Defendants have proximately caused Plaintiffs irreparable pecuniary harm.

78. Absent injunctive relief from this Court, Defendants' intentional and unlawful physical entry onto the Edwight Surface Mine will continue, and thereby continue to cause irreparable pecuniary harm to Plaintiffs.

**PRAYER FOR RELIEF**

Plaintiffs pray that this Court temporarily, preliminarily, and permanently restrain and forever enjoin Defendants, jointly and severally, and also their agents, employees, associates, representatives and all other persons in any way allied, associated, confederating or conspiring with, or in aiding, or abetting, said named Defendants, and to all others to whom knowledge of said Temporary Restraining Order shall come, until the further order of said Court, from:

(a) Trespassing or otherwise congregating on any of the mining properties of corporate entities affiliated with A.T. Massey Coal Company, Inc. and Massey Energy Company, including but not limited to the Beetree Surface Mine and Edwight Surface Mine properties in Raleigh County, West Virginia;

(b) Interfering, obstructing, blocking, impeding or tampering with any coal operating equipment, trucks or other vehicles of any of the corporate entities affiliated with A.T. Massey Coal Company, Inc. and Massey Energy Company, including but not limited to Plaintiffs, no matter where such equipment, trucks or other vehicle may be located; and

(c) Doing any other unlawful act of any kind to interfere with or prevent Plaintiffs from conducting their businesses in a lawful manner.

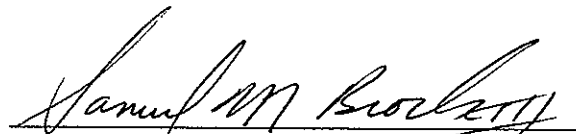
Plaintiffs further request that the Court order that the West Virginia State Police shall remove any Defendants who enter or attempt to enter the mine properties of corporate entities affiliated with A.T. Massey Coal Company, Inc. and Massey Energy Company,

including but not limited to the Beetree Surface Mine and Edwight Surface Mine properties and remove any signs or other such materials from the properties posted or left by Defendants.

Plaintiffs further request that said Temporary Restraining Order be made perpetual upon final hearing thereon; that compensatory damages be awarded to Plaintiffs for the losses they have suffered; that Plaintiffs be awarded their costs expended in this case, interest upon damages they have sustained and their reasonable attorneys' fees, expenses and costs of prosecuting this action; and that the Court grant Plaintiffs such other and further relief as the Court may deem fit and proper.

**ALEX ENERGY, INC., d/b/a EDWIGHT  
MINING COMPANY,  
INDEPENDENCE COAL COMPANY, INC.,  
MARFORK COAL COMPANY, INC.,**

**BY: SPILMAN THOMAS & BATTLE, PLLC**



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VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, to-wit:

This day personally appeared before me, the undersigned authority, Toby Edwards, who first being duly sworn by me, deposes and says that he is Toby Edwards, President for Edwight Mining Company, which is a d/b/a of Alex Energy, Inc.; that as such he is duly authorized to execute this Verification on its behalf; that he has read the foregoing Verified Complaint and knows the contents thereof; that the facts set forth therein are true, except as to such matters as are therein stated to be upon information and belief; and that insofar as matters are therein stated to be upon information and belief, he/she believes them to be true.

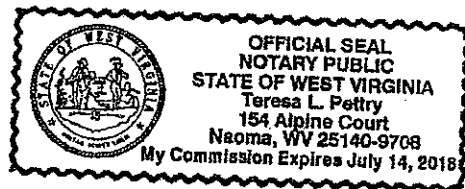
Toby Edwards  
TOBY EDWARDS

Taken, subscribed and sworn to before the undersigned Notary Public on this 27 day of February, 2009.

My commission expires: July 14, 2018.

Teresa L. Pettry  
NOTARY PUBLIC

[NOTARY PUBLIC]

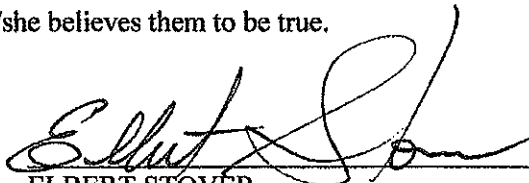


VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF Raleigh, to-wit:

This day personally appeared before me, the undersigned authority, Elbert Stover, who first being duly sworn by me, deposes and says that he is Elbert Stover, Chief of Security for Performance Coal Company, Inc., a corporate affiliate of Marfork Coal Company, Inc., Independence Coal Company, Inc. and Alex Energy, Inc.; that as such he is duly authorized to execute this Verification on its behalf; that he has read the foregoing Verified Complaint and knows the contents thereof; that the facts set forth therein are true, except as to such matters as are therein stated to be upon information and belief; and that insofar as matters are therein stated to be upon information and belief, he/she believes them to be true.

  
ELBERT STOVER

Taken, subscribed and sworn to before the undersigned Notary Public on this 27<sup>th</sup> day of February, 2009.

My commission expires: Dec. 13<sup>th</sup>, 2010.

  
NOTARY PUBLIC

[NOTARY PUBLIC]

