

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 11-0839

CALIFORNIA STATE TEACHERS' §
RETIREMENT SYSTEM; §
AMALGAMATED BANK, AS TRUSTEE §
FOR THE LONGVIEW COLLECTIVE §
INVESTMENT FUNDS; and MANVILLE §
PERSONAL INJURY SETTLEMENT §
TRUST; derivatively on behalf of §
MASSEY ENERGY COMPANY; §

Plaintiffs/Petitioners, §

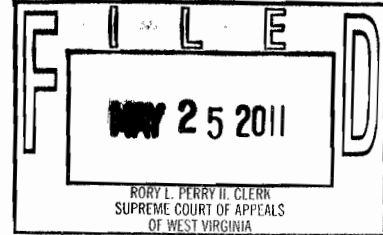
v. §

DON L. BLANKENSHIP; BAXTER F. §
PHILLIPS, JR.; DAN R. MOORE; E. §
GORDON GEE; RICHARD M. GABRYS; §
JAMES B. CRAWFORD; BOBBY R. §
INMAN; ROBERT H. FOGLESONG; §
STANLEY C. SUBOLESKI; J. §
CHRISTOPHER ADKINS; JEFFREY M. §
JAROSINSKI; M. SHANE HARVEY; and §
MARK A. CLEMENS; §

Defendants/Respondents, and §

MASSEY ENERGY COMPANY, a §
Delaware Corporation, §

Nominal Defendant/Respondent. §



**EMERGENCY PETITION FOR A PRELIMINARY INJUNCTION
PURSUANT TO WEST VIRGINIA CODE, SECTION 53-5-5**

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This petition was made public by order entered May 31, 2011.

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NATURE OF PROCEEDING

This action is pending before the Circuit Court of Kanawha County, West Virginia as *California State Teachers' Retirement System et al. v. Blankenship et al.*, Case No. 10-C-715. Unless awarded a preliminary injunction as requested by this Petition **before 9:30 a.m. on June 1, 2011**, Petitioners will be irreparably harmed and Defendants unjustly enriched. This Petition is not a petition for appeal; rather, it seeks the award of an injunction pursuant to West Virginia Code, Section 53-5-5; *see also State ex rel. McGraw v. Telecheck Services, Inc.*, 213 W.Va. 438, 447 n.13, 582 S.E.2d 885, 894 n.13 (2003) (distinguishing the original jurisdiction in injunction recognized in W. Va. Code, § 53-5-5, from the appellate power to review lower court orders involving preliminary injunctions). As a result of the circuit court's refusal to grant an injunction, Petitioners present this Petition along with copies of the original papers submitted to the circuit court respectfully request that this Court award the injunctive relief refused by the circuit court. W. Va. Code, § 53-5-5.

Petitioners seek to enjoin the proposed acquisition of Massey Energy Company ("Massey Energy" or the "Company") by Alpha Natural Resources, Inc. ("Alpha") pursuant to the terms of the Agreement and Plan of Merger dated January 28, 2011 (the "Merger Agreement") by which Alpha will acquire each outstanding share of Massey Energy common stock in exchange for 1.025 shares of Alpha stock plus \$10.00 per share in cash (the "Proposed Transaction"). As explained in detail by Petitioners' original papers and supporting evidence submitted to the circuit court, by agreeing to the Proposed Transaction, members of Massey Energy's Board of Directors ("Board") ignored their fiduciary duty to the Company's shareholders to pursue a

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value-maximizing transaction. Instead, they pursued their own personal interests in evading liability for the explosion at Massey Energy's Upper Big Branch mine ("Upper Big Branch" or "UBB").

Petitioners request that this Court temporarily enjoin the shareholder vote on the Proposed Transaction scheduled for 9:30 a.m. on June 1, 2011 to preserve the status quo so that an opportunity for complete briefing and a full hearing can be had on the merits. Alternatively, pursuant to the Court's inherent equitable powers, Petitioners seek the establishment of a litigation or constructive trust to preserve the shareholder derivative claims asserted in the underlying action.

STATEMENT OF JURISDICTION

This Court has original jurisdiction over this action as recognized by the procedures provided by Section 53-5-5 of the West Virginia Code. W. Va. Code, § 53-5-5 ("When a circuit court . . . shall refuse to award an injunction . . . the original papers presented to the court . . . may be presented to the supreme court of appeals, or a judge thereof in vacation, who may thereupon award the injunction."); see *Wheeling Park Comm'n v. Hotel and Restaurant Employees, Int'l. Union, AFL-CIO*, 198 W.Va. 215, 220 n.4, 479 S.E.2d 876, 881 n.4 (1996) (explaining that "W. Va. Code, § 53-5-5 gives this Court original jurisdiction over proceedings when a circuit court refuses to award an injunction."); *State ex rel. McGraw v. Telecheck Services, Inc.*, 213 W.Va. 438, 447 n.13, 582 S.E.2d 885, 894 n.13 (2003) (noting that "because procedures for the exercise of this jurisdiction [in injunction] have been recognized in Virginia

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and West Virginia for at least 200 years, it can be fairly seen as arising from the inherent common law power of the judges of the state's supreme court").

The Court's exercise of its original jurisdiction over injunction is appropriate where the circuit court fails to enter an order refusing an injunction but where "in effect" the circuit court's inaction results in the denial of injunction relief:

In the case before us, the record is devoid of an order by the circuit court which dissolved or refused to dissolve the injunction at issue. . . . However . . . 'when an appeal presents a jurisdictional [quandary], . . . the court may forsake the jurisdictional riddle and simply dispose of the case on the merits.'

. . . *[T]he record indicates that the circuit was in effect refusing to dissolve the preliminary injunction given that it stated that it would not review the appropriateness of the preliminary injunction until it evaluated the legal nature of a [an entity at issue in the litigation]. If the circuit court had entered an order which dissolved or refused to dissolve the injunction, then the same issue would have been before us.*

Wheeling Park Comm'n, 198 W.Va. at 220 n.4, 582 S.E.2d at 881 n.4 (internal citations omitted) (emphasis added).

Similar facts are presented here. Petitioners sought and were denied a preliminary injunction by the circuit court when they were denied a hearing on their motion for preliminary injunction, which injunction *must* be issued *before* June 1, 2011 to avoid the irreparable harm justifying the relief sought (as explained more fully herein). Accordingly, having been refused by the circuit court, Petitioners seek the same preliminary injunctive relief from this Court pursuant to West Virginia Code, Section 53-5-5. W. Va. Code, § 53-5-5.

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PROCEDURAL BACKGROUND¹

Petitioner Manville Personal Injury Settlement Trust (“Manville Trust”) filed the underlying shareholder’s derivative action on April 15, 2010.² Petitioners California State Teachers’ Retirement System (“CalSTRS”) and Amalgamated Bank, as trustee for the LongView Collective Investment Funds, joined the shareholder derivative action with the filing of the First Amended Verified Shareholder Derivative Complaint on June 7, 2010. The underlying shareholder derivative action asserts claims of breach of fiduciary duty on behalf of the Company against certain current and former Massey Energy officers and directors. Through these claims, the action seeks to hold the Defendants accountable for systematic failures in oversight and willful violations of applicable law that led to the Upper Big Branch disaster and other damages to the Company.

On January 29, 2011, Alpha and Massey Energy announced the Proposed Transaction at issue in this Petition. On April 15, 2011, the two companies announced that shareholders would

¹ A more detailed version of the following procedural background is provided with Petitioners’ Exhibit B to their Response and Objection to Defendants’ Joint Motion to Cancel Hearing, Renewed Motion to Stay and Motion for Expedited Relief. (Appendix Tab 2 at Ex. B.)

² The following day, April 16, 2010, Manville Trust filed a motion for a rule to show cause as to why the then-current directors should not be held in civil contempt for violating the terms of a June 30, 2008 order issued by the Circuit Court of Kanawha County as part of the resolution of a previous shareholder derivative action filed in July 2007, *Manville Personal Injury Settlement Trust v. Blankenship et al.*, Case No. 07-C-1333, in the Circuit Court of Kanawha County. The circuit court, Judge James C. Stucky presiding, issued a rule to show cause on April 22, 2010 based on a finding that the plaintiff had made a prima facie showing of civil contempt. That contempt proceeding is still pending despite repeated efforts by the alleged contemnors to have it dismissed.

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vote on the merger at special meetings to be held on June 1, 2011.³ On the same day, Alpha announced that the executive management team for the post-merger company would include key Defendants in this action: Massey Energy Chief Executive Officer (“CEO”) Baxter Phillips, Chief Operating Officer (“COO”) Christopher Adkins, General Counsel Shane Harvey, and Senior Vice President of Group Operations Mark Clemens. Promptly following these announcements, Petitioners filed a motion for leave to file a Second Amended Verified Shareholder Derivative and Class Action Complaint on May 2, 2011, seeking, *inter alia*, to enjoin the merger or provide for the creation of a trust to preserve the asserted shareholder derivative claims. (Appendix, Tab 15.) Petitioners served the motion and exhibits on all parties to the action and sent copies of the filings to counsel for Alpha. (*See id.*)

After expedited discovery leading up to and during the week of May 9-13, 2011, Petitioners filed their Motion for Preliminary Injunction on May 16, 2011 seeking to temporarily delay the shareholder vote on the merger until a full hearing on the merits could be held or, in the alternative, provide for a trust to preserve the shareholder derivative claims. (Appendix, Tab 14.) Pursuant to the request of counsel for Petitioners, the circuit court provided May 25, 2011 at 3:30 p.m. as the time and date for the hearing on Petitioners’ motion for leave to file an amended complaint, their motion for preliminary injunction, and attendant motions seeking leave to file supporting documents out of time and a memorandum in excess of the page limits provided by the rules.

³ Counsel for Defendants had previously represented that the vote would be held in late June or early July.

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On May 16, 2011, Petitioners noticed their motion for preliminary injunction for hearing at a date and time provided by the circuit court along with their motions for leave to file their Second Amended Verified Shareholder Derivative and Class Action Complaint, for leave to file a memorandum of law in support of the motion for preliminary injunction out of time, and for leave to exceed page limits. (Appendix, Tabs 11-13.) On May 17, 2011, Petitioners served counsel for Defendants Blankenship and Adkins with subpoenas to secure their attendance and testimony at the hearing on Petitioners' motion for preliminary injunction set for May 25, 2011 at 3:30 p.m. (Appendix, Tab 8.) Thereafter, counsel for Defendants submitted letters to the circuit court and a Joint Motion to Cancel Hearing, Renewed Motion to Stay and Motion for Expedited Relief to the circuit court, essentially asking the court to cancel (not postpone) the hearing and stay the proceedings.⁴ (Appendix, Tabs 7, 9-10.)

Petitioners submitted a Memorandum of Law in Support of their Motion for Preliminary Injunction at noon on May 18, 2011, served a copy of the brief on all parties of record, and sent copies to counsel for Alpha. (Appendix, Tab 6.) On May 20, 2011, Petitioner filed a declaration and exhibits consisting of supporting evidence referenced by their May 18, 2011 Memorandum of Law in Support of their Motion for Preliminary Injunction along with a Trial Court Rule 6.04 compendium of authorities. (Appendix, Tabs 4-5.) The same day, Petitioners also submitted an Amended Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Injunction

⁴ On July 2, 2010, Defendants filed a motion to stay the underlying action in favor of later-filed cases before the Delaware Court of Chancery. The motion was initially noticed hearing for June 24, 2010, but was continued indefinitely, and the motion has never been reset for hearing. With their motion to cancel the May 25, 2011 hearing, the Defendants were asking the circuit court to impose a stay of the proceedings without notice and a hearing on the motion to stay.

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(Appendix, Tab 3) and their Response and Objections to Defendants' Joint Motion to Cancel Hearing, Renewed Motion to Stay and Motion for Expedited Relief (Appendix, Tab 2).

On May 23, 2011, the circuit court informed Petitioners' counsel by telephone that the hearing on Petitioners' motions was being postponed indefinitely and that the circuit court would not have time for a hearing until well after the scheduled shareholder vote on the merger. Thereafter, circuit court staff informed counsel for Defendants of the same. (Appendix, Tab 1.) Despite the request of Petitioners' counsel, the circuit court has refused to enter an order cancelling the hearing, believing that none is necessary because the hearing was not set pursuant to an order. Because the circuit court will not grant the requested preliminary injunction without a hearing, the circuit court has thus refused Petitioners' request for an injunction by denying Petitioners a hearing prior to the June 1, 2011 shareholder vote on the Proposed Transaction.

SUMMARY OF ARGUMENT

Injunctive relief is imperative based on the facts supported by the record in this action because Petitioners have demonstrated that (1) they are substantially likely to succeed on the merits, (2) the public interest strongly favors granting a preliminary injunction of this merger, and (3)-(4) the irreparable harm to Petitioners far outweighs the ever-slight potential for harm to Defendants. *See Camden-Clark Mem. Hosp. Corp. v. Turner*, 212 W.Va. 752, 756, 575 S.E.2d 362, 366 (2002).⁵ Importantly, despite due notice of the Petitioners' motion for preliminary

⁵ Indeed, without a preliminary injunction to maintain the status quo by postponing the June 1, 2011 shareholder vote on the merger and the precipitous merger closing that would follow, Massey Energy shareholders will be irreparably harmed, and the Court will face the unenviable task of unwinding an unlawful merger. *See, e.g., Consol. Gold Fields PLC v. Minorco, S.A.*, 871 F.2d 252, 261 (2d Cir. 1989)

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injunction, supporting memorandum of law, and evidence submitted establishing the facts entitling Petitioners to relief to both Defendants and Alpha, neither have come forth with arguments or evidence to dispute the legal and factual predicate on which Petitioners rely. *See* W. Va. R. Civ. P. 65(a) (stating that “notice to the adverse party” is required before the issuance of a preliminary injunction (emphasis added)).

As explained in detail in the Amended Memorandum of Law in Support of Plaintiffs’ Motion for a Preliminary Injunction (Appendix, Tab 3, hereinafter referenced in citations as “Pls.’ Am. Mem.”), the Alpha–Massey Energy merger is the product of the Massey Energy Board’s efforts to maintain control of the Company’s internal investigation into the causes of the Upper Big Branch explosion and to escape liability for the shareholder derivative claims asserted in this action and the claims at issue in the contempt proceeding pending before the Honorable James C. Stucky (*Manville Personal Injury Settlement Trust v. Blankenship et al.*, Case No. 07-C-1333, in the Circuit Court of Kanawha County). (Pls.’ Am. Mem. 9-13.) The merger at issue here is unlawful because the Defendants put their personal interests ahead of the shareholders in driving the sales process to favor Alpha and ultimately approving the Proposed Transaction, which was the product of a process flawed, *ab initio*, because of the Defendants’ conflicts of interest. (Pls.’ Am. Mem. 11-18.)

(“Erring on the side of granting the injunction becomes especially imperative in corporate control contests because once the [merger] has been consummated it becomes difficult, and sometimes virtually impossible, for a court to unscramble the eggs. A preliminary injunction is therefore the remedy of choice for preventing an unlawful merger.” (citations and internal quotations omitted)).

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Faced with the prospect of a hostile takeover by Alpha and loss of control of the Company's internal investigation and its exculpatory "supernatural" cause of the Upper Big Branch explosion (Pls.' Am. Mem. 11; Blankenship Dep. 40), the Board, led by Defendant Inman, entered into a secret pact with Alpha CEO Kevin Crutchfield that the Massey Energy officers who were directing the internal investigation would be promised high-ranking positions within the post-merger company. (Pls.' Am. Mem. 11-18.) Not coincidentally, the Massey Energy officers in charge of the internal investigation are the ones most culpable for the Upper Big Branch explosion for reasons explained in more detail in Petitioners' briefing to the Court. (Pls.' Am. Mem. 4-5, 9-11.)

Defendants have hidden these and other key facts from the Company's shareholders, who are scheduled to vote on the merger at a special meeting set for June 1, 2011 by issuing a materially false and misleading Proxy statement. Massey Energy Schedule 14A filed April 29, 2011 with the Securities and Exchange Commission ("SEC") in Form DEFM14A ("Proxy")⁶ For instance, in describing the discussion during which Defendant Inman secured Alpha CEO Crutchfield's commitment to hire the most culpable of Massey Energy's officers, the Proxy statement reads as follows:

Subsequent to their September 28 meeting, Mr. Crutchfield and Adm. Inman spoke to each other by telephone on a number of occasions Although it was not a factor in the Massey board of directors' evaluation of a potential business combination with Alpha, Adm. Inman also indicated that there were several key

⁶ The reality is that many, if not most, of the Company's institutional investors have already voted their shares based on the information contained in the April 29, 2011 Proxy. The Proxy and the Company's other SEC filings are available on Massey Energy's corporate website, www.masseenergyco.com, under the "Investors" tab or at <http://phx.corporate-ir.net/phoenix.zhtml?c=102864&p=irol-sec>.

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operators running Massey mines who were very talented and that Alpha would be well served to recognize their talent and consider appropriate positions for them at Alpha if a business combination were consummated.

Proxy 70.

This statement is false and misleading as evidenced by deposition testimony in this action and confidential internal documents produced in the course of discovery. In truth, Inman discussed five Massey Energy executives and just two mine operators. Four of the five Massey Energy executives he discussed are named Defendants in this action,⁷ including the two men running the Company's internal investigation who are, not coincidentally, the high-level Massey Energy executives most culpable for the Upper Big Branch disaster, Chris Adkins (Chief Operating Officer) and Shane Harvey (General Counsel). (Pls.' Am. Mem. 13-14.) Tellingly, the *only* two mine operators Inman discussed were Chris Blanchard and Jason Whitehead, the President and Vice-President of Performance Coal Company ("Performance Coal"), which operated the Upper Big Branch mine at the time of the explosion. Shareholders (and the public) are currently unaware of this fact or the fact that these two operators' hiring was part of a broader secret pact between Inman and Crutchfield through which Alpha would hire the Massey Energy executives most culpable for participating in (or covering up) illegal conduct implicated in the UBB disaster. Crutchfield's response to Inman's demand took place during an October 1, 2010 telephone call that is memorialized in an email. "I pledged that none of these names would pose a problem." (Pls.' Am. Mem. 13.)

⁷ Defendants Phillips, Adkins, Harvey, and Clemens were named by Defendant Inman during this call along with the Vice President and Corporate Secretary Richard R. Grinnan.

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As revealed and reiterated by media coverage of the UBB investigation, Blanchard and Whitehead have been focal points in that investigation since the day the explosion occurred. Both have declined to be interviewed on Fifth Amendment grounds.⁸ In the report by the Governor's Independent Investigation Panel (the "GIIP"), *Upper Big Branch—The April 5, 2010 explosion: a failure of basic safety practices* (May 2011) (the "GIIP Report"), <http://www.post-gazette.com/pg/pdf/201105/20110519upperbigbranchreport.pdf>,⁹ the GIIP places much, if not most, of the blame for the UBB disaster on Blanchard and Whitehead, in particular, as the upper management for the mine operator, Performance Coal. At pages 99-102, the GIIP Report explains how matters directly under Blanchard's and Whitehead's purview at Upper Big Branch contributed to the explosion as part of what the Report terms "the normalization of deviance":

- **Lack of Air** ("Extremely low air flow was a chronic problem in some parts of the mine.")
- **Illegal ventilation changes** ("Evidence was uncovered of major ventilation changes being made while miners were working underground, a blatant disregard for worker safety and a violation of the law. Again, such a practice became the norm at UBB.")
- **Engineering issues** ("[E]vidence suggests that [Massey Energy's assigned engineering team] were frequently not involved with ventilation changes made by upper management at the mine.")

⁸ The significance of the fact that Defendant Inman discussed these two operators, and just these two operators, was somehow lost on plaintiffs' counsel in the action pending before the Delaware Court of Chancery—the action that Defendants maintain should proceed while this first-filed action pending in the Circuit Court of Kanawha County is stayed. As explained in Petitioners' Response and Objection to Defendants' Joint Motion to Cancel Hearing, Renewed Motion to Stay and Motion for Expedited Relief and its Exhibit A, there are fundamental differences between this action and the Delaware action. (See Appendix, Tab 2, at 3-4 & Ex. A.)

⁹ The GIIP Report was released on May 19, 2011, the week after depositions were conducted in this matter pursuant to the schedule requested by Defendants and approved by the Delaware Court of Chancery over objections by plaintiffs in that matter.

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- **Inadequate Rock Dusting** (“The company’s indifference to rock dusting was evidenced by the fact that only a two-man crew was assigned to dust the entire mine on a part-time basis, and the rock dusting equipment assigned to them did not work properly.”)
- **Ineffective fireboss system** (“The preshift, onshift examination process, aimed at identifying problems and protecting miners’ lives, was irrevocably broken at UBB.”)
- **Faulty equipment and structure** (“From a poorly maintained top of the line shearer to broken rock dusters and damaged and defective airlock doors, an inattention to equipment and structure was the norm at this mine.”)
- **Intimidation of workers** (“There is ample evidence through testimony that miners were discouraged from stopping production for safety reasons.” (providing anecdotal examples involving Chris Blanchard and Jason Whitehead))

GIIP Report 97-100. As noted, the men responsible for these matters are the two operators—the *only* two operators—that Inman discussed with Crutchfield on their October 1, 2010 telephone call during which Crutchfield pledged their hiring would not present a problem.¹⁰ (Pls.’ Am. Mem. 13-14.)

As discussed in more detail in Petitioners’ briefing to the Circuit Court, Crutchfield’s pledge has already come to fruition with respect to the Massey Energy executives who have directed the Company’s internal investigation since shortly after the explosion occurred: COO Adkins and General Counsel Harvey. (Pls.’ Am. Mem. 18.) The importance of this internal

¹⁰ To give some perspective to Defendant Inman’s mention of just these two particular operators, the Court may reference Massey Energy’s 2009 annual report, filed on Form 10-K with the SEC on March 1, 2010, which explains that the Company had 23 processing and shipping centers (called “Resource Groups”), operated 56 mines (42 underground and 14 surface mines), employed over 5,800 people, and owned 106 subsidiaries at the time of the Upper Big Branch explosion. Massey Energy Co. Annual Report (Form 10-K), at 1, 14, Ex. 21 (Mar. 1, 2011).

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investigation and its finding a supernatural cause for the explosion are well articulated by the

GIIP Report:

The issue of a massive, unforeseen inundation is significant from a legal standpoint because mitigating factors can excuse or decrease the liability of a mine or business owner following a disaster such as occurred at Upper Big Branch. If, for example, it were determined that the explosion and deaths were the result of an “act of God” – something over which the owner had no control and could not have predicted, the company could argue that it would have no legal liability.

GIIP Report 70-71.

Defendants’ interest in the internal investigation’s continuity post-merger cannot be overstated in light of the liability they face for the shareholder derivative claims asserted in the underlying action and the claims at issue in the contempt proceeding before Judge Stucky. (Pls.’ Am. Mem. 12.) In this regard, it is equally telling that on April 15, 2011, Alpha CEO Crutchfield announced in a letter to “Everyone at Alpha and Massey” that the post-merger Executive Leadership Team would include Chris Adkins, who would report directly to Crutchfield and “spearhead the implementation of [Alpha’s safety program] *Running Right* across all facets of the company.” This is the same Chris Adkins who is and has been in charge of the Company’s internal investigation along with General Counsel Shane Harvey and who declined to answer, on Fifth Amended grounds, over 50 questions at his deposition in this matter, including questions about his basic job responsibilities and his understanding of the term “running coal.”¹¹ (Pls.’ Am. Mem. 18-20.)

¹¹ The plaintiffs in the Delaware action also somehow missed the significance of Chris Adkins appointment as co-head of Alpha’s new office of Running Right and Business Excellence and how his

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Based on these facts and others discussed in more detail in Petitioners' briefing, Petitioners have demonstrated that the Alpha-Massey Energy merger was the product of a flawed and hurried sales process, driven by the Defendants' desire to maintain the Company's internal investigation and its findings as part of their efforts to escape personal accountability for their fiduciary failures.

REQUEST FOR RELIEF

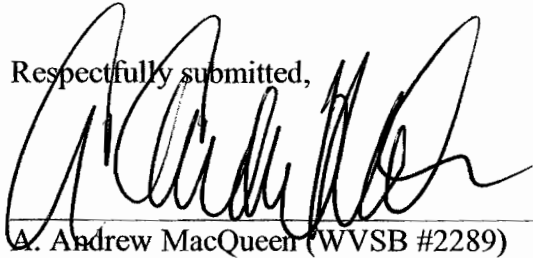
For the reasons summarized above and set forth in their briefing in support of a preliminary injunction filed with the circuit court and submitted herewith, Petitioners respectfully request that this Court: (1) receive and consider the record before the circuit court and enter an order preliminarily enjoining the June 1, 2011 stockholder vote to preserve the status quo until a proper hearing can be held; (2) schedule the Petitioners' Motion for a Preliminary Injunction for hearing before this Court prior to June 1, 2011; or, at minimum, (3) establish a litigation or constructive trust to preserve the shareholder derivative claims against the Defendants for the benefit of Massey Energy's shareholders.

hands-on management of day-to-day operations have been implicated in lawsuits involving previous disasters at Massey Energy mines, including the Aracoma Alma No. 1 Mine fire that resulted in the death of two miners and the largest ever civil and criminal penalty to be imposed against a mine operator for a coal mining accident. (Pls.' Am. Mem. 9-11; Appendix, Tab 2, at 3-4 & Ex. A.)

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. _____

CALIFORNIA STATE TEACHERS' §
RETIREMENT SYSTEM; §
AMALGAMATED BANK, AS TRUSTEE §
FOR THE LONGVIEW COLLECTIVE §
INVESTMENT FUNDS; and MANVILLE §
PERSONAL INJURY SETTLEMENT §
TRUST; derivatively on behalf of §
MASSEY ENERGY COMPANY; §

Plaintiffs/Petitioners, §

v. §

DON L. BLANKENSHIP; BAXTER F. §
PHILLIPS, JR.; DAN R. MOORE; E. §
GORDON GEE; RICHARD M. GABRYS; §
JAMES B. CRAWFORD; BOBBY R. §
INMAN; ROBERT H. FOGLESONG; §
STANLEY C. SUBOLESKI; J. §
CHRISTOPHER ADKINS; JEFFREY M. §
JAROSINSKI; M. SHANE HARVEY; and §
MARK A. CLEMENS; §

Defendants/Respondents, and §

MASSEY ENERGY COMPANY, a §
Delaware Corporation, §

Nominal Defendant/Respondent. §

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This is to certify that true and correct copies of Plaintiffs/Petitioners' Emergency Petition For a Preliminary Injunction Pursuant To West Virginia Code, Section 53-5-5; Appendix of Relevant Documents; and Motion to Seal Record; have been served upon the following counsel by email as indicated on this 25th day of May, 2011:

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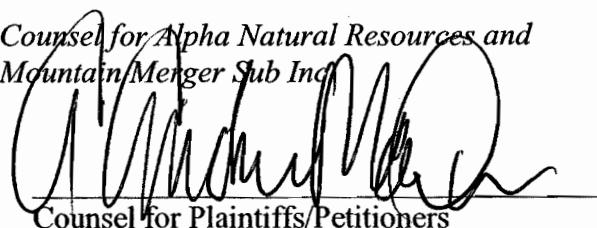
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