

COMMONWEALTH OF KENTUCKY
PIKE CIRCUIT COURT
DIVISION NO. I
CIVIL ACTION NO. 10-CI-1290

BERTHA ADKINS, BEVERLY ADKINS, J.D. ADKINS, RONALD ADKINS, STEVE ADKINS, TAMMY ADKINS, TERRY RAYE ADKINS, JAMES BENTLEY, LARRY BENTLEY, VANESSA BENTLEY, BILLY C. BLACKBURN, BOB BLACKBURN, EVERETT BLACKBURN, JR., JAMES WAYNE BLACKBURN, JIMMY D. BLACKBURN, RITA BLACKBURN, JOYCE ANN BLACKBURN, TERESA BENTLEY, DAVID BLAIR, FRED BLAIR, LARRY BLAIR, MARSHA BLAIR, MICHAEL N. BLAIR, NELLIE BLAIR, ROGER BLAIR, RONALD BLAIR, SHERRY BLAIR, BETTY BLANKENSHIP, BRIAN BLANKENSHIP, CARTER BLANKENSHIP, JESSE BLANKENSHIP, WHITNEY BLANKENSHIP, JANIE CAUDILL, ROBERT CAUDILL, JOHN CHANEY, TRACY CHANEY, CINDY DAMRON, CLERCY JANE DAMRON, CLYDE DAMRON, DAISY DAMRON, DWAYNE DAMRON, JOYCE DAMRON, LILLIAN C. DAMRON, MICHAEL DAMRON, THELMA DAMRON, TROY DAMRON, KATHY G. EPLING, LARRY A. EPLING, BRENDA FARMER, CHARLEEN FARMER, ERVIN E. FARMER, ROBERT FARMER, ANITA HAMILTON, DONALD HAMILTON, DORIS HARMON, HAROLD HARMON, HOLLIE HAWKINS, JASON HAWKINS, BETHANY HILL, RANDALL HILL, PATSY HILTON, JUDY IRICK, BETTY JONES, JOHN JONES, BRITTANY JUSTICE, GEORGE JUSTICE, LORIE JUSTICE, SHARON G. JUSTICE, SHERRY JUSTICE, TERRAH JUSTICE, TERRY JUSTICE, JOHN KEEN, SHARON KEEN, CARLENE LOONEY HEIRS (MARTHA ADKINS, JUDITH LEE, BARBARA FONTANA, EMMA RUNYON, DERONDA PORTON, LON LOONEY, JR., ANTHONY LOONEY), GERALD MARTIN, LONNIE MATNEY, JR., RHONDA K. MATNEY, CARL MCCOY, DEWEY MCCOY, GEORGE MCCOY, NADINE MCCOY, BEVERLY MEADE, BARBARA MEADOWS, EARL MEADOWS, GAYNELLE MEADOWS, JEANETTE MORGAN, ELSTER MORTON, JO ANN MORTON, RICKY MORTON, JIMMY ONEY, WILMA ONEY, STEVEN RATLIFF, STEVIE RATLIFF, TIMOTHY W. RATLIFF, CRAIG RAY, DONNA RAY, DIANE RILEY, MARY RILEY, MICHAEL RILEY, TERRY RILEY, CHRISTOPHER ROBINETTE, DONNA RODRIGUEZ, AGNES ROWE, BEECHIE ROWE, DONNA ROWE, DONNIE ROWE, LENA ROWE, NORMA ROWE, WENDELL ROWE, EMMA M. RUNYON, BEVERLY RYAN, MIKE RYAN, LAYTON SAWYERS, LAYTON SAWYERS, JR., PEGGY SAWYERS, DOUGLAS SAYERS, LESTER SAYERS, PAUL B. SAYERS, VICTORIA SAYERS, ELIZABETH SELLARDS, HOWARD SELLARDS, MARVIN BRIAN SELLARDS, CAROLYN SHADRICK, KENNETH SHADRICK, BEATRICE SPEARS, GARY A. SPEARS, PHILLIP R. SPEARS, SHERRY SPEARS, MYRNA SPEARS, DARYL D. TAYLOR, ANDY THACKER, BONNIE THACKER, EMIT H. THACKER, ERVIN THACKER, FREEDA THACKER, GLORIA THACKER, HAROLD THACKER, HAROLD D. THACKER, IMGRID THACKER, IRIS THACKER, KATHY THACKER, KATHY THACKER, NICOLE THACKER, PATRICIA THACKER, PHILLIP THACKER, RONNIE G. THACKER, RONNIE D. THACKER, RUTH ANN THACKER, SHIRLEY THACKER, TAMMY THACKER, TERESA THACKER, THOMAS THACKER, JR., THOMAS G. THACKER,

AND WANDA THACKER

PLAINTIFFS

VS. **FOURTH AMENDED COMPLAINT**

Unknown Agents of the Defendant Cambrian Coal Corporation, who participated in the decision to mine without a permit and/or participated in the decision to not properly reclaim the mine site operated by Cambrian Coal and/or participated in the decision not to properly maintain the sediment pond operated by the Defendant Cambrian Coal

and

CAMBRIAN COAL CORPORATION
P.O. Box 100
Belcher, Kentucky 41513

and

AEP KENTUCKY COAL, LLC
51 B. Tollage Creek
Pikeville, Kentucky 41501

and

Unknown Agents of the Defendant AEP Kentucky Coal, LLC, who participated in the decision to not properly reclaim the mine site operated by AEP Kentucky Coal, LLC and/or participated in the decision not to properly maintain the sediment pond operated by the Defendant AEP Kentucky Coal, LLC

DEFENDANTS

Come the Plaintiffs, by counsel, and for their Fourth Amended Complaint state as follows:

1. All of the Plaintiffs listed in the caption either own real property, or own an interest in real property, maintained a residence, or had contents or vehicles or other belongings that were destroyed in horrific flooding that occurred on July 17, 2010, in the Harless Creek area of Pike

County, Kentucky.

2. The Plaintiffs allege that the Defendants were engaging in ongoing coal mining activities in close proximity to the Harless Creek area of Pike County, Kentucky in 2009 and 2010. The Plaintiffs allege that the Defendants either caused and/or exacerbated the horrific flooding and destruction described elsewhere in this complaint, following a rainstorm that occurred on July 17, 2010.

3. The Plaintiffs allege that on July 17, 2010, in the early evening hours, the Defendants mining activities play a substantial role in causing massive amounts of water to suddenly escape from their mining sites that resulted in the Harless Creek Road being transformed into a raging river that engulfed and destroyed many of the Plaintiffs' homes, vehicles, and other property. During the tidal wave of water unleashed by the Defendants, many of the Plaintiffs were left stranded in their homes, and helplessly watched as their homes and personal possessions were destroyed and washed away.

4. As will be subsequently discussed in this complaint, unknown agents of both Defendants while working during the course and scope of their employment committed numerous violations of relevant environmental laws all of which harmed the Plaintiffs.

5. The Defendants are AEP, Kentucky Coal, LLC, which is a foreign limited liability company and Cambrian Coal Corporation, which is a Kentucky corporation. Both Defendants were actively mining coal and engaging in ultra hazardous activities in Pike County, Kentucky, in an area near where many of the Plaintiffs resided and/or owned an interest in property. AEP Coal, LLC, which is a foreign limited liability Kentucky, whose agent for service of process is CT Corporation System, 306 West Main Street, Suite 512, Frankfort, Kentucky. Cambrian Coal

Corporation agent for service of process is Craig T. Preece, Kentucky Route 292, Lovely, Kentucky 41231.

6. The Defendants collectively were initially cited a total of 6 times contained in four citations, which will be referenced subsequently in this pleading. The Plaintiffs allege that all of the violations set forth in the citations contributed to the flooding that harmed all of the Plaintiffs. The Plaintiffs further allege a distinct and separate cause of action in that each regulation referenced in the citations not only caused harm to each of the Plaintiffs, but also is a separate cause of action under KRS 446.070. The Plaintiffs also incorporates by reference into this complaint all of the relevant allegations contained in the aforementioned citations, which were attached to prior pleadings in this action.

7. Pursuant to KRS 350.101 et. seq., the Kentucky Energy and Environment Cabinet, Department for Natural Resources, (hereinafter “Cabinet”) adopted regulations governing surface mining and reclamation operations.

8. Previously filed in this action are a series of citations issued by the Kentucky Energy and Environment Cabinet, Department for Natural Resources, which cited the Defendants AEP Kentucky Coal, LLC and Cambrian Coal Corporation for engaging in activities which caused a massive flooding and tidal wave of water that resulted in substantial damage to each of the named Plaintiffs.

9. On July 29, 2010, the Kentucky Energy and Environment Cabinet, Department for Natural Resources, hereinafter “Cabinet” issued the Defendant Cambrian Coal Corporation a non-compliance citation number 5315556. This citation was marked as exhibit 1 to the original complaint, and in pertinent part alleged that the Defendants improperly maintained a sediment

pond that they controlled. The relevant regulation referenced in the citation can be found in KAR 16:090. As a result of the Defendant Cambrian Coal Corporation's failure to comply with their permit and allowing sediment to accumulate in their pond, the net result was excessive flow of water that trespassed and came upon each of the Plaintiffs' property.

10. The Kentucky Energy and Environmental Cabinet on August 3, 2010, issued the Cambrian Coal a non-compliance with respect to failing to perform the required reclamation on property they were mining and also a citation with respect to engaging in mining without a valid permit. This failure prompted the Defendant Cambrian Coal to be cited with mining without a permit under KAR 350.060, all resulted in damages to the Plaintiffs in that the failure to reclaim caused excessive runoff water flow all of which trespassed and came upon the property of the Plaintiffs. See attached non-compliance 532479 and was marked as exhibit 2 to the original complaint in this matter. The Plaintiffs allege that this non-compliance resulted in damages to them in that as the non-compliance indicates the failure of the Defendants to perform reclamation as mandated by KAR 16:020.

11. On August 3, 2010, the Defendant Cambrian Coal was issued a citation for failure to control runoff from their surface mining operation and that two sediment controlled ditches were breached. The citation number for this is 013154, and is marked as exhibit 3 to the original complaint.

12. The Defendant AEP Kentucky LLC, was issued a citation by the Cabinet on July 23, 2010, Citation Number 013372, which was attached as exhibit 4 to the original complaint. In this citation, AEP Kentucky LLC, was cited for having several slides that occurred and for failure to establish a temporary sediment control using best available technologies. These

regulations are mandated under KAR 20:060. The violations of these regulations resulted in excessive water flow which came upon or trespassed upon the Plaintiffs' property.

13. The Plaintiffs allege that the failure of the Defendants to properly reclaim their mining site, to properly maintain sediment ponds, and other violations which are referenced in the citations all contributed to substantial real property damage, loss of contents, loss of vehicle, loss of business, loss of inventory, and other damages to the Plaintiffs all in excess of the jurisdictional limits of this Court.

14. The Plaintiffs allege that the Defendants were all engaging in ultra hazardous activity and are therefore strictly liable under Kentucky Law for the damages they caused.

15. The actions of the Defendants resulted in excessive water flow that resulted in damages upon all of the Plaintiffs' property and constituted an assault and battery on the persons of some of the Plaintiffs.

16. Many of the Plaintiffs experienced emotional distress as a result of the traumatic events described elsewhere in the complaint.

17. Many of the Plaintiffs homes were totally destroyed and they have been rendered homeless, and many Plaintiffs are seeking damages for costs associated with the relocation of their homes, include loss of contents, destroyed vehicles, loss of business income, and other damages. As a result, many of the Plaintiffs have experienced great pain and suffering, and/or suffer from post traumatic stress disorder symptoms.

18. The Plaintiffs assert that the Defendants committed the state law torts of trespass and created a nuisance in that the majority of the Plaintiffs' homes have become unlivable or uninhabitable during the relevant time frame.

19. The Defendants were negligent and grossly negligent in that they concealed their violations of environmental regulations and misled regulatory agencies and/or failure to report to regulatory agencies violations of their permit.

20. Plaintiffs allege that the actions of the Defendants has substantially interfered with their ability to use and enjoy their property and/or caused a diminution in value of their property and/or destruction of their property and harmed the quality of life and caused substantial pain and suffering to each Plaintiff.

21. The Plaintiffs also allege individual claims under KRS 446.070, in that the Defendants individually and collectively violated numerous mining regulations in which no remedy is provided for.

22. The Plaintiffs further assert that the Defendants acted in reckless disregard of the Plaintiffs right by virtue of their callous disregard of the Plaintiffs rights by mining without a permit, failure to reclaim, and other environmental violations that are referenced in the attached citations.

23. The Plaintiffs allege that most, if not all of the Plaintiffs, rely on well water, all of which were destroyed, interrupted, or polluted, and is actionable under KRS 350.421. The Plaintiffs allege that the Defendants actions were the legal cause of their water loss claim(s) and allege a separate cause of action for this loss. The Plaintiff, Janie Caudill, has requested, pursuant to KRS 350.020 that the Cabinet investigate the water loss issues.

24. The Plaintiffs have a statutory cause of action under KRS 446.070 against the Cambrian and AEP for allowing flood waters, coal mining debris, and other materials to escape from the mining area. Cambrian and AEP have harmed the Plaintiff's homes, businesses,

personal property and farms causing damages in violation of Kentucky Coal Mining Laws contained in KRS 350.250.

25. Since the filing of the original complaint, the Defendant, Cambrian, has been cited by the Kentucky regulatory authorities for subsequent violations on January 2, 2011, January 19, 2011, October 27, 2010, October 14, 2010, December 1, 2010, and January 20, 2011. The Plaintiffs contend that these subsequent violations, after the Defendant, Cambrian, had been given notice that their mining activities had already caused significant harm to the community, act as an additional basis to the punitive damage claim that the Plaintiffs have asserted throughout these proceedings.

WHEREFORE, the Plaintiffs seek relief as follows:

1. Judgment against all Defendants.
2. Compensation for the damages referenced earlier in this complaint, including loss of diminution in value of homes, destruction of homes, loss contents, loss vehicles, loss earnings, and other damages, including pain and suffering and the costs of alternative housing and substitute transportation and other reasonable foreseeable damages, including pain suffering and the massive interference of the quality of life of the Plaintiffs.
3. The Plaintiffs also seek an assessment of punitive damages.
4. The Plaintiffs also seek injunctive relief to the extent that many of the Plaintiffs will need to relocate as a result of the massive flooding and damages that the Defendants caused.
5. Replacement of water supply under KRS 350.421, and attorney fees, and expert witness expenses pursuant to KRS 350.020 (1), and KRS 350.020 (2).

6. Compensation for pain, suffering and humiliation.
7. Trial by jury.
8. Any and all other relief deemed appropriate.

RESPECTFULLY SUBMITTED,

NED PILLERSDORF
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