

COMMONWEALTH OF KENTUCKY
BREATHITT CIRCUIT COURT
CIVIL ACTION NO. 09-CI-00192

ALBERTA ALLEN, STANLEY BACH,
FRANCIS BACH, KENNETH BACK,
WANDA BACK, HOBERT BAILEY,
APRIL BAILEY, RONNIE BARNETT,
JANET BARNETT, JESSICA BROWN,
STEVEN BROWN, JR., JUNE BROWN,
STEVEN BROWN, PEARL CAMPBELL,
DWIGHT CARPENTER, TERESA CARPENTER,
CONNIE HATTON, JAMES HATTON,
MELISSA HENSLEY, JAMES HENSLEY,
JAMES HOLBROOK, JOY HOLBROOK,
ANNA LOVINS, ARTHUR MILLER, LEEON NAPIER,
HELEN PRATER, PAUL DAVID ROARK
KIMBERLY ROMINE, SOUTH SIZEMORE,
LARRY SPENCER, WANDA SPENCER,
BLAINE TRUSTY, REBECCA WHITENYMER
TODD WHITENYMER, RICKEY BARNETT,
LISA BARNETT, SAMANTHA SPOKES HARMON,
BRYAN HARMON, GARY BUSH, RHONDA BUSH,
ERICA WHITE, OLLIE HOWARD, PHYLLIS HOWARD,
DENNIS OAKS, RUBY OAKS, ETTAZENE MONTGOMERY,
WANDA CHRISTIAN, JUNE CHRISTIAN, CURTIS CLEMONS,
IMOGENE STEVENS, EARL STEVENS, IRENE MCINTOSH,
TED MANNS, JR., SANDRA DEE MANNS, CASSIE
CARPENTER, KENNY CARPENTER, BRENDA K. TRIMBLE,
CLEDA MANNS, TRIBUE MANNS, DOUGLAS HOWARD,
DIANNIA HOWARD, VELMA MCINTOSH, TINA RITCHIE,
CHRISTINE RITCHIE, ALVIN PRATER, ARCH STACY,
CLARENCE BAILEY, CHARLOTTE BAILEY,
WALTER WILSON, PATTY WILSON, JERRY FUGATE,
BOBBY SALLEE, BETTY SALLEE, AND RAYMOND COMBS

PLAINTIFFS

VS.

FIFTH AMENDED COMPLAINT

LEXINGTON COAL COMPANY, LLC,
UNKNOWN AGENTS OF LEXINGTON COAL
COMPANY, LLC, APPALACHIAN FUELS, LLC,
UNKNOWN AGENTS OF APPALACHIAN FUELS, LLC,

MILLER BROS. COAL, LLC, AND

UNKNOWN AGENTS OF MILLER BROS. COAL, LLC,
ICG COAL, LLC AND
UNKNOWN AGENTS OF ICG COAL, LLC

DEFENDANTS

Serve: ICG, LLC and Unknown Agents of
ICG, LLC
Agent for Service of Process: Corporation Service Company
421 West Main Street
Frankfort, KY 40601

Come the Plaintiffs, by counsel, and for their fifth amended complaint state as follows:

1. The Plaintiffs herein listed are all residents and/or reside and own an interest in real property and/or lost personal property in the flooding that occurred in their community as will be subsequently described in this Complaint. All of the Plaintiffs either individually or as married couples have an ownership interest in property and/or had possessions that were destroyed and/or have experienced lost earnings or profits as a result of flooding that occurred in Breathitt County on May 8th, 9th, and 10th, 2009.

2. The Defendant, Lexington Coal Company, LLC is a Kentucky Corporation and their employees do coal processing or excavation services and engaged in ultra hazardous coal mining activities in Breathitt County, Kentucky during 2008 and 2009.

3. The Defendant, Lexington Coal Company, LLC assume responsibilities for monitoring and maintaining the sediment pond in question and negligently and recklessly failed to perform those duties in allowing the sediment pond to breach and exacerbating the flooding that occurred on the dates referenced in the complaint.

4. It is believed that the Defendants were operating impoundment ponds and/or

conducting other coal related mining operations in Breathitt County, Kentucky.

5. All of the Defendants were engaged in coal mining activities that involved surface mining and reclamation.

6. The Defendants negligently and carelessly either mined or failed to properly reclaim mining properties which played a substantial role in causing the flooding described elsewhere in this Complaint.

7. All of the Defendants violated mining regulations as described in the previous paragraph, and is actionable as a separate cause of action.

8. The coal mining activities in question primarily occurred on or near Route 542 in Breathitt County, Kentucky.

9. The Plaintiffs allege that the Defendants under state law were obligated to prevent coal mining material and/or debris to escape from the permitted area. The Plaintiffs allege that the Defendants violated this regulation in that they allowed coal mining debris to escape from the mining area and has impacted each of the Plaintiffs thus causing damages as will be further described in this complaint.

10. The Plaintiffs allege that under KRS 446.070 they have a statutory cause of action against the Defendants in that the Defendants have caused coal mining debris and other materials to escape from the mining area and have impacted each of the Plaintiffs' homes, businesses, and farms thus causing damages, all in violation of Kentucky Coal Mining Regulations 350.060 et seq, and constituting a state law trespass cause of action.

11. The Plaintiffs further allege that the Defendants were negligent, grossly negligent, strictly liable, created a nuisance and/or trespassed as to each of the Plaintiffs by causing coal

mining debris to impact the Plaintiffs' homes, businesses, and farms and destroyed their belongings, etc.

12. The Plaintiffs further allege that following heavy rains that occurred in May of 2009, each of the Plaintiffs received substantial flood related damage when the Defendants coal mining activities exacerbated the levels of the Quicksand Creek. The Plaintiffs specifically allege that the Defendants previously described coal mining activities exacerbated the flooding that caused each of the Plaintiffs' homes, businesses, swinging bridges, and/or farms and possessions to be damaged or destroyed. The actions of the Defendants in exacerbating the flood conditions was in reckless disregard of the Plaintiffs rights. Said actions of the Defendants have caused the Plaintiffs' homes to be destroyed, for them to lose contents, for them to suffer lost earnings, and cause the death of household pets, and otherwise cause many of the Plaintiffs to become homeless and destitute.

13. The Defendants were grossly negligent and acted in reckless disregard of the Plaintiffs' rights in that they concealed the breach of the impoundment ponds and deliberately misled regulatory agencies and/or failed to report to regulatory agencies the breach or overtopping of the impoundment ponds in question and failed to properly reclaim property that they had surface mined on.

14. The Plaintiffs allege that the actions of the Defendants have substantially interfered with the right to enjoy their property, have caused many of the Plaintiffs to have their homes totally destroyed, caused a diminution in value of their property, and otherwise destroyed the quality of life of every single Plaintiff all in excess of the jurisdictional limits of this Court.

15. The Plaintiffs do not allege any federal cause of action.

16. 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).

17. Appalachian Fuels for some unknown period also was in control of the sediment pond in question. At the time of the filing of this amended complaint, Appalachian Fuels and Miller Bros. Coal, LLC are in bankruptcy proceedings in Lexington, Kentucky and no claim is being asserted against them at this time.

18. The Plaintiffs will not proceed with proceedings against the bankrupt Defendants (Miller Bros. Coal, LLC and Appalachian Fuels, LLC) until permission to proceed against there insurers is granted by the bankruptcy court. Forty-one of the Plaintiffs have received permission to proceed against the insurers of Miller Bros. Coal, LLC.

WHEREFORE, the Plaintiffs seek relief as follows:

1. Judgment against the Defendants.
2. An injunction mandating that the Defendants comply with all state mining regulations and that the Defendants repair the water systems that they have destroyed.
3. The Plaintiffs seek attorney fees for destruction of the water supply, as well as replacement water damages for 20 years, under KRS 350.250 et. seq.
4. The Plaintiffs seek punitive damages, compensatory damages as previously described in this complaint, including but not limited to destruction and replacement of contents of their home, diminution in value of their property, costs of repair, lost earnings, and other expenses associated with finding replacement housing, as well as compensation for the loss of family pets, lost farming income, replacement of swinging bridges, and transportation costs.
5. The Plaintiffs seek expenses and any remediation that may be necessary to make their residences habitable or compensation for the purchase of substitute housing, lost

business income and/or lost rental income.

6. Trial by jury.

7. Any and all other relief deemed appropriate, including interest on any judgment, plus attorney fees.

RESPECTFULLY SUBMITTED,

NED PILLERSDORF
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