

COMMONWEALTH OF KENTUCKY
BREATHITT CIRCUIT COURT
CIVIL ACTION NO. _____

TROY M. BANKS, FRANCINE BANKS,
ELVISE CARPENTER, EDITH CRASE,
WANDA FUGATE, BARBARA GULLETT,
BRENT HALE, JOHNNIE JEAN HOLBROOK,
BILLY R. NAPIER, CHARLENE NAPIER,
KELVIN NAPIER, MILDRED NAPIER,
BILL ROARK, RAY ROARK, AND TOLLIE YOUNG

PLAINTIFFS

VS.

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: Lexington Coal Company, LLC and Unknown Agents of
Lexington Coal Company, LLC
Agent for Service of Process: CSE, Lawyers Incorporation Service
421 West Main Street
Frankfort, Kentucky 40601

Serve: Appalachian Fuels LLC and Unknown Agents of Appalachian Fuels, LLC
Agent for Service of Process: FBT LLC Lexington
2700 Lexington Financial Center
Lexington, Kentucky 40507-1749

Serve: Miller Bros. Coal, LLC. and Unknown Agents of
Miller Bros. Coal, LLC
Agent for Service of Process: CT Corporation
4169 Westport Road
Louisville, KY 40207

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 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. in Breathitt County, Kentucky. All of the Plaintiffs either individually or as married couples have an ownership interest in property 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 Appalachian Fuels were operating impoundment ponds and conducting other coal related mining operations in Breathitt County, Kentucky, and were given a permit by the Commonwealth of Kentucky Environmental and Protection Cabinet to do so. (Permit No. KY0063347. It is believed that the Defendant Lexington Coal Company, LLC in some manner assumed the responsibilities for operating the impoundment in question.

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 operate certain impoundment ponds that either breached, overtopped, or otherwise ruptured thus exacerbating the flooding thus causing each of the Plaintiffs' homes, businesses, and/or farms and possessions to be damaged. 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. It is believed that the Defendants Appalachian Fuels, LLC and Miller Bros. Coal, LLC may be in bankruptcy. If this is true, the Plaintiffs will not be seeking any relief until permission is granted by the bankruptcy court.

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, 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; and

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

RESPECTFULLY SUBMITTED,

A handwritten signature in blue ink, appearing to be 'Ned Pillersdorf', written over a horizontal line.

NED PILLERSDORF
PILLERSDORF, DEROSSETT & LANE
124 WEST COURT STREET
PRESTONSBURG, KENTUCKY 41653
PH: (606) 886-6090