

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

ALBERTA ALLEN, ET AL

PLAINTIFFS

VS.

**SUPPLEMENTAL RESPONSE TO DEFENDANT'S
INTERROGATORIES
AND NOTICE OF EXPERT WITNESS OPINION**

LEXINGTON COAL COMPANY, ET AL

DEFENDANTS

*** * * * ***

Come the Plaintiffs, by and through counsel, and hereby gives notice that they have retained the services of Jack Spadaro of Hamlin, West Virginia. (See attached Resume).

Jack Spadaro is expected to testify that a sediment pond that is believed to be operated by Lexington Coal Company did suffer a breach and/or overtopping all of which exacerbated the flooding that occurred over Mother's Day weekend in 2009. Jack Spadaro is expected to testify that there is clear evidence that following the flooding repair work was done on the breach overtopped area. The repairs included a rebuilding of the embankment and the replacement of a drainage pipe. Jack Spadaro is expected to testify to all of which are an indication of the failure of the sediment pond which resulted in water entering the Quicksand Creek which contributed to and exacerbated the horrific flooding that occurred in the community.

Jack Spadaro is further expected to testify that he has viewed the swinging bridges on Route 542 and it appears that the condition of the bridges indicate a substantial wall of water and increased water flow. Jack Spadaro attributes the increased water flow to a combination of the mining operations and the overtopping or failure of the sediment pond which caused a rapid rising in the flood elevation.

Jack Spadaro has also interviewed many of the citizens in the community and on several occasions has viewed the damages to the residences, swinging bridges, and real property in the area.

Jack Spadaro has also reviewed the mining history which includes references to violations and citations which corroborate that there has been a lack of reclamation and a history of violation of the relevant surface mining laws. The mining companies in the area according to Jack Spadaro failed to protect the hydrologic balance as required by state and federal law and that such failure exacerbated the horrific flooding that occurred on Mother's Day weekend in 2009. Jack Spadaro is also expected to testify that the mining companies failed to properly assess the cumulative hydrological effect of mining of the water shed all of which violated the industry standard and relevant standard of care which contributed to the severity and exacerbation of the flooding experienced by the residence in the community.

Jack Spadaro will also testify that based on his visual observations the photographs taken during an airplane inspection he believes that there are eight mining operations in the area but only six have been documented in terms of the permit numbers. Jack Spadaro is expected to testify that the reclamation of the sites was ineffective and incomplete. Jack Spadaro is expected to testify that there were large areas of the erosion which in his opinion exacerbated the Mother's Day weekend flooding that occurred. There is also evidence of landslides in massive areas where no reclamation has occurred. Jack Spadaro is expected to testify that he has viewed photographs taken by Alvin Prater which indicate that near the Breathitt-Knott County border there is a landslide, mud slides, and other mining practices which exacerbated the Mother's Day flooding.

It further appears from Jack Spadaro's investigation into this matter that ICG Coal

Company, Appalachian Fuels, LLC, Lexington Coal Company, LLC, and Miller Bros. Coal, LLC
all played a role in causing the flooding that devastated the community in May of 2009.

RESPECTFULLY SUBMITTED,

NED PILLERSDORF
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was delivered by U.S. Mail, postage prepaid, to the following on this the ____ day of November, 2009:

HON. SUSAN MAINES
Casey Bailey & Maines, PLLC
3151 Beaumont Centre Circle, Suite 200
Lexington, Kentucky 40513

with the Original to:

Breathitt Circuit Court Clerk
Justice Center
1131 Main Street
Jackson, KY 41339

NED PILLERSDORF