

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

DELORICE BRAGG, individually and as
Administratrix of the Estate of Don Israel
Bragg, and
FREDA HATFIELD, individually and as
Administratrix of the Estate of Ellery Hatfield,

Plaintiffs,

v.

CIVIL ACTION NO. 06-C-372-P
Honorable Roger L. Perry

ARACOMA COAL COMPANY, INC.,
MASSEY ENERGY COMPANY, INC.,
A.T. MASSEY COAL COMPANY, INC.,
and DON L. BLANKENSHIP,

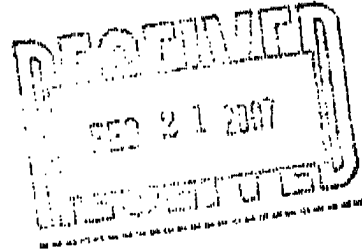
Defendants.

**MOTION TO DISMISS DEFENDANTS MASSEY ENERGY COMPANY, INC.,
AND A.T. MASSEY COAL COMPANY, INC.**

Defendants Massey Energy Company, Inc. ("Massey Energy"), and A.T. Massey Coal Company, Inc. ("AT Massey") (collectively, the "Corporate Defendants"), pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, move this Court to dismiss them, with prejudice, from this civil action. In support of this Motion, the Corporate Defendants state as follows:

FACTS

On January 19, 2006, a fire broke out near the storage unit of the mother drive for the longwall belt during the second shift at the Aracoma Coal Company's ("Aracoma") Alma No. 1 Mine ("the Mine"). Don Bragg ("Mr. Bragg") and Ellery Hatfield ("Mr. Hatfield") were working on a crew in a different part of the mine at that time. As this crew began to evacuate the mine, smoke migrated towards them. While moving through the escapeways, Mr. Bragg and Mr.



Hatfield became separated from the rest of their crew. Despite efforts to locate the two men on the evening of the 19th, their bodies were recovered two days later. The other ten men from their crew exited the mine to safety.

Delorice Bragg and Freda Hatfield (collectively, the "Plaintiffs") filed this suit against Aracoma, the Corporate Defendants, and Don L. Blankenship in their personal capacities and on behalf of the estates of Mr. Bragg and Mr. Hatfield. Aracoma employed Mr. Bragg and Mr. Hatfield and operated the mine. The Plaintiffs have filed a claim under section 23-4-2 of the West Virginia Code against Aracoma as the two men's employer. AT Massey is the parent corporation of Aracoma, and Massey Energy is the parent corporation of AT Massey. No effort is made to "pierce the corporate veil" in this Complaint. Instead, the Plaintiffs have alleged a negligence claim against the Corporate Defendants although neither of them was involved in the actual operation of the mine.

ARGUMENT

A trial court may dismiss a pleading if the pleading fails to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure. *Collin v. McJunkin*, 178 W. Va. 158, 159, 358 S.E.2d 242, 243, *cert. denied*, 484 U.S. 944 (1987). Dismissal should be granted when "the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Owen v. Board of Education*, 190 W.Va. 677, 678, 441 S.E.2d 398, 399 (1994) (internal citations omitted).

Plaintiffs have alleged that AT Massey is the parent corporation of Aracoma and that Massey Energy is listed as the "controlling entity" for Aracoma with the federal Mine Safety and Health Administration ("MSHA"). (Compl. ¶ 39.) Moreover, based solely on the Corporate Defendants' "superior position of corporate parental power and financial control," the Plaintiffs

baldly allege they “exercise significant influence over various aspects of the operations and management of Aracoma.” (*Id.* at ¶ 41.) Finally, because the Corporate Defendants are a “top producing national coal company,” Plaintiffs assert that the Corporate Defendants owed the coal miners in a subsidiary company’s mine a duty to provide a safe workplace and working conditions. (*Id.* at ¶¶ 41 – 42.) The Corporate Defendants allegedly violated this duty by allowing alleged unsafe working conditions to exist, failing to adopt safety standards, and creating a corporate culture of placing production over safety, all of which are alleged to have proximately caused the deaths of Mr. Bragg and Mr. Hatfield. (*Id.* at ¶¶ 41, 43 – 47.)

A. The Corporate Defendants did not own or possess the mine and cannot be held liable for the January 19, 2006, incident in the mine.

Plaintiffs have failed to state a claim against the Corporate Defendants based upon premises liability. Landowners or possessors of land owe a duty of reasonable care under the circumstances to all non-trespassing entrants. *Mallet v. Pickens*, 206 W. Va. 145, 155, 522 S.E.2d 436, 446 (1999). Plaintiffs have alleged that the Corporate Defendants, “as the controllers and/or owners of the Alma Mine,” owed such a duty. Taking the allegations of the Complaint as true, if the Corporate Defendants owned anything related to the mine, they owned mineral rights to the seam of coal. Any “premises” – i.e., the mine – in that seam of coal was created by the company that operated, controlled, and possessed the mine, Aracoma. The Corporate Defendants did not own or possess the mine. The Plaintiffs have no viable claim for premises liability against the Corporate Defendants.

B. The Corporate Defendants did not exercise control over the mine and cannot be held liable for the January 19, 2006, incident in the mine.

The West Virginia Code requires that “[e]very employer and every owner of a place of employment, place of public assembly, or a public building, now or hereafter constructed, shall

so construct, repair and maintain the same as to render it reasonably safe." W. Va. Code § 21-3-1. However, "[w]hen the owner of a place of employment provides a reasonably safe workplace and exercises no control thereafter, the owner has complied with the responsibilities imposed" by the statute. Syl. Pt. 3, *Henderson v. Meredith Lumber Co., Inc.*, 190 W. Va. 292, 438 S.E.2d 324 (1993). The Court reasoned that "the employer's duty is directly related to employment activity-activity controlled by the employer-and the owner's duty is limited to providing a reasonably safe workplace, unless the owner continues to exercise control of the place of employment." *Henderson*, 190 W. Va. at 294, 438 S.E.2d at 326. As Aracoma, the decedents' employer, operates and controls the mine, the Plaintiffs' Complaint fails to state a claim against the Corporate Defendants. Simply put, the Corporate Defendants did not exercise the requisite control over the mine.

Moreover, the requisite control cannot be created by the simple parent-subsidary relationship between these companies. It is hornbook law that a parent is not liable for the torts of its subsidiary. Absent allegations that the corporate veil should be pierced – allegations that are absent in the Plaintiffs' Complaint – a parent corporation is not responsible for the activities of its subsidiary corporations because courts should be reluctant to disregard the corporate form. *U.S. v. Bestfoods*, 524 U.S. 51, 61 (1998) (stating that "[i]t is a general principle of corporate law deeply 'ingrained in our economic and legal systems' that a parent corporation (so-called because of control through ownership of another corporation's stock) is not liable for the acts of its subsidiaries"); *Reynolds Metal Co. v. Columbia Gas Sys., Inc.*, 669 F.Supp. 744 (E.D.Va. 1987) (rejecting attempt to pierce the corporate veil in a vertically-integrated family of companies); *W. Va. Highlands Conservancy, Inc. v. Pub. Serv. Comm'n of W. Va.*, 206 W. Va. 633, 527 S.E.2d 495 (1998) (per curiam); accord *Southern Elec. Supply Co. v. Raleigh County*

Nat'l Bank, 173 W. Va. 780, 320 S.E.2d 515 (1984); *First Huntington Nat'l Bank v. Guyan Mach. Co.*, 121 W. Va. 589, 5 S.E.2d 532 (1939); *William C. Atwater & Co., Inc. v. Fall River Pocahontas Collieries Co.*, 119 W. Va. 549, 195 S.E. 99 (1937). While the Plaintiffs have alleged that the Corporate Defendants exercised parental power over Aracoma, that allegation is not enough to hold the Corporate Defendants liable for the actions of Aracoma. (Compl. ¶ 41.) A parent corporation may properly exercise control of a subsidiary like any majority shareholder may exercise control of a corporation. *Southern Elec. Supply*, 173 W. Va. at 786, 320 S.E.2d at 521; *Guyan Mach. Co.*, 121 W. Va. at 591-92, 5 S.E.2d at 533; *W. Va. Highlands Conservancy*, 206 W. Va. at 640, 527 S.E.2d at 502. Piercing the corporate veil, on the other hand, becomes proper when the parental control becomes pervasive and absolute. *Southern Elec. Supply*, 173 W. Va. at 786, 320 S.E.2d at 521; *Guyan Mach. Co.*, 121 W. Va. at 591-92, 5 S.E.2d at 533; *W. Va. Highlands Conservancy*, 206 W. Va. at 640, 527 S.E.2d at 502 (noting that to pierce the corporate veil, a finding of pervasive control by the parent of the subsidiary for an improper purpose is needed)

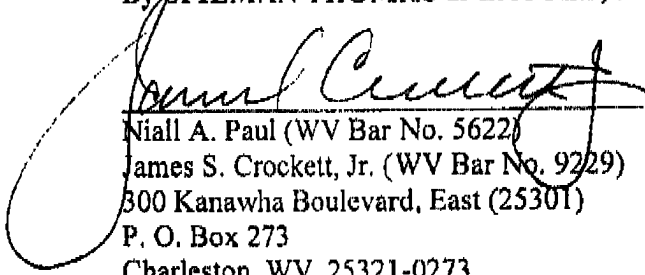
Finally, neither Massey Energy's alleged status as the controlling entity for Aracoma nor Massey Energy and AT Massey's status as "top producing national coal company[ies]" places a duty on the Corporate Defendants. Massey Energy's status as a "controlling entity" only impacts the amount of penalties levied by MSHA. See 30 C.F.R. § 100.3. The Plaintiffs' claim that a duty attaches to the Corporate Defendants based upon their market share is specious at best. The Plaintiffs have failed to state a claim against the Corporate Defendants, and the Corporate Defendants should be dismissed from this lawsuit.

CONCLUSION

For the foregoing reasons, Count II of the Complaint should be dismissed for failing to state a claim upon which relief may be granted.

**MASSEY ENERGY COMPANY, INC., and
A.T. MASSEY COAL COMPANY, INC.**

By SPILMAN THOMAS & BATTLE, PLLC



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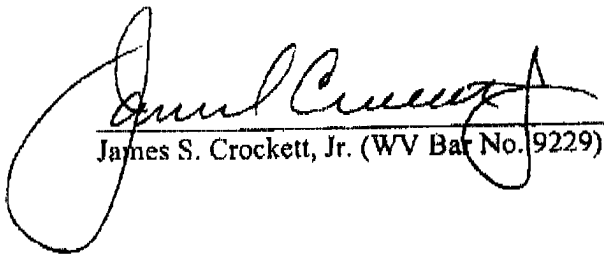
Defendants.

CERTIFICATE OF SERVICE

I, James S. Crockett, Jr., counsel for Massey Energy Company, Inc., and A.T. Massey Coal Company, Inc., do hereby certify that I have served a true and exact copy of the foregoing "Motion to Dismiss Defendants Massey Energy Company, Inc., and A.T. Massey Coal Company, Inc." upon the following counsel, on this 20th day of February, 2007, addressed as follows:

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